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Resolving Business Disputes Between US and Central European Enterprises; New Developments In Some Former CMEA-Countries

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International Commercial Arbitration in Former Yugoslavia New Developments in Croatia

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by
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1. Introduction

The dissolution of Yugoslavia and the foundation of several new independent states on its territory has led to a number of legal changes, as well as to a number of new questions. At this time, international recognition of three new states (Bosnia and Herzegowina, Croatia and Slovenia) has also produced numerous consequences in the field of international commercial arbitration in this part of Central Europe. In this paper, I will, at first, attempt to give a short survey of the new situation concerning international commercial arbitration in Croatia, which could be used as an example of similar problems and expectations in the other republics of former Yugoslavia. Secondly, I will present an arbitral institution in Croatia which has started to concern itself with international commercial arbitration - The Permanent Court of Arbitration attached to the Croatian Chamber of Economy.

2. The most important legal changes concerning international commercial arbitration in Croatia

Before the dissolution of Yugoslavia, international commercial arbitration was mostly regulated by federal (Yugoslav) acts which were applied in all republics. The most important provisions of Yugoslav law on arbitration were contained in the Code of Civil Procedure (*Zakon o parničnom postupku* - further quoted as **CCP**), Art. 469-486, as in force from July 1, 1977, and in the Conflict of Laws Act (*Zakon o rješavanju sukoba zakona* - further quoted as **CLA**), Art. 97-101 in force from January 1, 1983.[1] Yugoslav Law on arbitration has been considerably changed by the amendments on CCP in 1990, not long before Yugoslavia itself ceased to exist.[2]

Croatia declared its independence on June 25, 1991, but the actual secession took

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[1] Translation of these two acts is provided in annexes 1 and 2 (reprinted from Yugoslav national report in *International Handbook of Commercial Arbitration*).

[2] See Annex III of this paper. The most important changes concern the precise formulation of the range of application of CCP, the form of arbitral agreement (adoption of UNCITRAL-Model Law instead of the New York Convention) and shorter time-limit for the setting aside of an award (no request for the setting aside may be made after the expiry of one year (before: five years) from the final validity date of the award.

place after expiration of a 3-month moratorium and came into force on October 8, 1991. Since that time, Croatia has not recognized any federal legal act. Nevertheless, on the same day, Croatian Parliament published a number of acts on adoption of Yugoslav laws as the laws of the Republic of Croatia (*Narodne novine*, no. 53 (1991)). According to these acts, CCP and CLA have been adopted as well, but with some changes and the omission the jurisdiction of all federal institutions.

In spite of the fact that most of the provisions concerning international commercial arbitration remained unchanged, the simple fact that Croatia is, since then, a new state, led to some important practical consequences. I will mention just three of them[3]:

1.) Yugoslavia was a member of many international conventions and bilateral agreements concerning international commercial arbitration - including the Geneva Protocol (1923), the Geneva Convention (1927), the New York Convention (1958), the European Convention (1961) and the Washington Convention (1965). Croatia has not notified its acceptance of these conventions yet, except the provision of its Constitutional Act on Sovereignty and Independence which says that all international conventions to which Yugoslavia was a party will be applied in Croatia, "if they are not contrary to the Constitution and public policy of the Republic of Croatia, in accordance with the provisions of international law concerning succession of states."[4] Until then, there is a high probability (but not certainty) that Croatian courts will recognize and enforce foreign arbitral awards either on the grounds of the quoted Constitutional Act or on the grounds of factual reciprocity.

2.) During the existence of Yugoslavia, arbitration between parties from different republics of Yugoslavia was considered as domestic. Now, for example, a Slovenian enterprise would be considered in Croatia as a foreign entity, and an award made in Slovenia as a foreign arbitral award. Therefore, the number of disputes deemed as "international" have increased, as well as the number of potential international arbitrations. Only disputes between Croatian enterprises are deemed to be domestic now.

3.) In former Yugoslavia the only institution dealing with international commercial arbitration was Foreign Trade Arbitration Court (FTAC) in Belgrade. This arbitration court still exists and considers itself as a "Yugoslav" institution. Even if Croatia was not at war with Serbia, there should have been no chance for recognition of an FTAC award in Croatia now, since Croatia doesn't recognize Yugoslav acts and considers Yugoslavia as a non-existent state.

These changes led to a series of difficult problems. Just to report a few of them -

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[3] Fore others, see Dika, M., "Neki problemi izazvani preuzimanjem saveznih gradjanskoprocesnih zakona" (Some Problems Caused by Adoption of Federal Acts Concerning Civil Procedure), in: *Gradjanskopravni aspekti državnopravnog osamostaljenja Hrvatske*, pp. 69-94.

[4] Constitutional Act on Sovereignty and Independence of Republic of Croatia, Art. 3 (*Narodne novine*, no. 32 (1991)).

many Croatian enterprises made arbitral agreements with foreign enterprises providing the jurisdiction of FTAC; furthermore, there is a number of arbitral agreements between Croatian enterprises and enterprises belonging to other former Yugoslav republics which used to be domestic and are now regarded as international; recognition of arbitral awards made outside Croatia could also be doubted. At the same time, Croatian state courts were overfilled with unsolved cases[5], and Croatian government tried to present Croatia as an appropriate place for foreign investments. For all those reasons, a need for other means for solving international commercial disputes was bigger than ever. All these problems brought initiatives in Croatia to establish an institution which will deal with international commercial arbitration.

3. Permanent Court of Arbitration attached to the Croatian Chamber of Economy

3.1. An Historical Survey

Even if there was no arbitral institution dealing with international commercial arbitration, that doesn't mean that there was no tradition of commercial arbitration in Croatia at all. The first court of arbitration in Zagreb was founded in 1853. It had, for example, in 1926. more than 35 000 cases.[6] The new court of arbitration was established in 1965: the Permanent Court of Arbitration attached to the Croatian Chamber of Economy (PCA). It had jurisdiction only in domestic arbitration, but many of its members were at the same time arbitrators in FTAC cases. It should be mentioned that some leading authorities in the field of international commercial arbitration came from Croatia, so that even the Yugoslav national report in the International Handbook of Commercial Arbitration was written by an author from Croatia - Prof. Dr. Aleksandar Goldštajn from the University of Zagreb. Some Croatian lawyers also have experience as arbitrators in ICC cases, as well as in arbitration proceedings before other international tribunals.

3.2. The PCA and international commercial arbitration

After the declaration of independence, Belgrade was no more appropriate venue for international arbitration for Croatian enterprises. Even before it became legally possible, some enterprises which had made arbitral agreements providing the jurisdiction of the FTAC in Belgrade brought their claims before the PCA. In such a manner some disputes between Croatian enterprises and enterprises from USA, Germany and Hungary waited for PCA's decision whether these cases would be accepted. Recognizing the urgent need for a change in this field, new Statute of Croatian Chamber of Economy (CCE) in force from November 1991 provided a possibility of the jurisdiction of PCE in the cases of international commercial arbitration. The same provision was accepted in the amendments on the

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[5] Just for example, the biggest commercial court in Zagreb had at the beginning of this year three weeks no money to pay postal expenses. During that time, no notices were delivered to the parties.

[6] See Dika, "Stalni izbrani sud pri Privrednoj komori Hrvatske" (Permanent Court of Arbitration attached to the CCE), in: *Arbitraža i poduzetništvo*, p. 96.

Arbitration Rules of PCA, in force form December 28, 1991. However, these Rules were made only for domestic arbitration and were not suitable for international arbitration without significant changes. Instead of new amendments, PCA decided to set up entirely new rules which should be designed specifically for international commercial arbitration. These rules - Rules of International Arbitration of PCA or Zagreb Rules - adopted most of their contents from UNCITRAL-Arbitration Rules, but some influence of UNCITRAL-Model Law, ICC-Rules and Vienna Rules can also be noticed. Zagreb Rules were published very recently and came into force on May 7, 1992 - just two weeks ago. Their unofficial translation in English and German is available in Annex IV of this text.

3.3. The organisation of PCA

The seat and address of PCA is:

Stalno izbrano sudište	Permanent Court of Arbitration
Hrvatska gospodarska komora	Croatian Chamber of Economy
Rooseveltov trg 2	Rooseveltov trg 2
41 000 ZAGREB	41 000 ZAGREB
Hrvatska	Croatia

Phone	041/ 453 422
Fax	041/ 448 618
Telex	21 524

The PCA is an independent court of arbitration, attached to the CCE which provides financial resources for its work and appoints the organs of PCA. Otherwise, CCE has no influence on the work of PCA. Organs of PCA are the Presidium (consisting of a president, two vice-presidents and four other members)[7], and the Secretary. These organs administer arbitration proceedings: statement of claim and other written statements shall be submitted through the Secretariat of the PCA (see Art. 30 of Zagreb Rules); if parties did not agree otherwise, the President acts as an appointing authority (Art. 12); Secretary and Presidium control the formal and - partly - substantial contents of an award (Art. 43) etc. The PCA has also a non-binding list of arbitrators, consisting of 118 names of leading Croatian legal, financial and economical experts.[8] The Presidium of PCA also considers the possibility of including foreign experts on its new list of arbitrators.

3.4. Practice and ambitions of the PCA

It could be expected that several kinds of disputes shall be brought before PCA:

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[7] Members of the Presidium are mostly noted lawyers and professors of law. At the present, the President of the PCA is Prof. Dr. Siniša Triva, a member of the Croatian Academy of Sciences and professor of Civil Procedure at the University of Zagreb.

[8] See Triva, S., "Arbitražno rješavanje domaćih i medjunarodnih trgovačkih sporova" (Arbitration of Domestic and International Commercial Disputes), in: *Arbitraža i poduzetništvo*, p. 23.

1.) disputes between Croatian enterprises and enterprises form Western and Central Europe and USA;

- these disputes have often come before FTAC as a subject of arbitration and other arbitral institutions; now, the PCA expects that considerable amounts of such disputes shall be brought before PCA - especially when enforcement has to take place in Croatia;

2.) disputes between Croatian enterprises and enterprises from republics of former Yugoslavia;

- these disputes used to be solved before PCA as domestic disputes; PCA had a great reputation and experience in such arbitrations;

3.) disputes between enterprises from republics of former Yugoslavia (other than Croatia) as well as between these enterprises and other international enterprises;

- the PCA could become a neutral institution suitable for international arbitration with post-Yugoslav elements; it has experience in the ex-Yugoslav legal system, competent experts and liberal rules of international arbitration;

4.) other disputes between non-Croatian parties;

- for some time, it could be expected that this kind of arbitral proceedings will not come often before the PCA; but, after formal adoption of international conventions concerning international commercial arbitration, Zagreb could easily become an attractive venue for international arbitration as well;

3.4. The costs

At the moment, the costs of arbitration proceedings before PCA are very low. Nevertheless, a draft of new provisions concerning costs has already been discussed by the Presidium of PCA. It could be expected that the costs will be - more or less - determined by average standards of similar arbitral institutions (e.g. Vienna Arbitral Centre, ICC etc.)

3.5. How to bring a case before PCA?

The PCA started to deal with international commercial arbitration very recently. Therefore, until now there are very few actual arbitral agreements providing PCA's jurisdiction in international commercial disputes. The PCA has already recommended to some Croatian enterprises which have made arbitral agreements providing for jurisdiction of FTAC in Belgrade to contact their partners and make new agreements providing for jurisdiction of PCA. But, according to the new law on arbitration in Croatia and to new Rules of PCA, it is possible to bring a case before PCA even without any previous arbitral agreement. Croatian CCP (Art. 470, paragraph 3) has recently adopted a provision of Art. 7, par. 2 of the UNCITRAL-Model Law; according to this provision an agreement can be concluded by an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. Because of this, the Rules of PCA allow submission of a statement of claim without the submission of written arbitral agreement. If the other party submit a statement of defence or proceeds with the arbitration without stating his objection that PCA has no jurisdiction, under Croatian Law this will be considered a written agreement. Even before current changes, there has been a rule that an arbitral agreement may be concluded by consonant statements of the parties, entered into a record

at the oral hearing.[9] But, even if the parties could be deemed to accept the jurisdiction of PCA after they begin to discuss the subject matter of the dispute, Secretariat of the PCA will try to reach an explicit written agreement concerning the jurisdiction of PCA.

4. Conclusion

Although PCA could be viewed as a relatively young institution of international arbitration, it has the chance to develop in a noted and attractive arbitral forum in Central and Eastern Europe. It has its own rules, but these rules contain well-known provisions and follow the standards of internationally proved arbitral rules. However, parties can decide that some other rules shall be applied. PCA has a competent staff, which is a mixture of youth and experience. Altogether, it could be stated that even now the PCA is able to pass all the tests imposed on international arbitral institutions.[10] Of course, in the future some improvements may appear to be necessary. Therefore, PCA will be thankful for any help and assistance provided by other, more experienced arbitral institutions. We are also looking forward to working with any other arbitral institution, so all proposals for mutual cooperation would be welcome. The PCA could also provide information concerning law and arbitration practice in Croatia and former Yugoslavia to all interested persons. In that way, we hope that we will help to solve some international commercial disputes in this part of Central Europe and contribute to the promotion of international commercial arbitration as a whole.

Literature:

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Goldštajn, A: "Yugoslavia", national report in *Int. Handbook on Commercial Arbitration*
Triva, S; Sajko, K; Dika, M; Lopičić, P; Filipović, V: *Arbitraža i poduzetništvo* (Arbitration and Business), Zagreb, 1991
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Dika, M: *Komentar zakona o medjunarodnom privatnom i procesnom pravu* (Commentary on the Conflict of Laws Act), Belgrade, 1991

ANNEX I: excerpts from CCP
ANNEX II: excerpts from CLA
ANNEX III: amendments on CCP (1990)
ANNEX IV: The Rules of International Arbitration of PCA

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[9] See Art. 12 of Arbitral Rules of FTAC; see also Triva, Goldštajn, *Medjunarodna trgovačka arbitraža* (International commercial arbitration), p. 250-51.

[10] See Melis, W., "Function and Responsibility of Arbitral Institutions", in: *Comparative Law Yearbook of International Business.*

ANNEX I

CODE OF CIVIL PROCEDURE

CHAPTER THIRTY ONE

PROCEEDINGS BEFORE ARBITRATION COURTS*
(In force since July 1, 1977)

Article 469

1. For disputes concerning the rights which the parties may freely dispose of, the parties may stipulate the jurisdiction of an arbitration court if one of the parties is a foreign physical or legal person, *except for* disputes falling *under the exclusive jurisdiction* of Yugoslav courts of law according to the provisions of law on exclusive jurisdiction over disputes with an international element.[1]

. . . .

5. In other cases, jurisdiction of an arbitration court may only be provided for by statute.[2]

Article 470

1. An arbitration agreement may be concluded with respect to an *existing* dispute and with respect to *future* disputes which may arise out of a particular legal relationship. An arbitration agreement shall be legally valid only if it is concluded in writing.[3]
2. An arbitration agreement shall also be considered to have been concluded in writing if it was concluded by an exchange of letters, cables or telexes.
3. The existence of an arbitration agreement may only be proved by documents.

Article 471

An arbitration agreement is validly concluded if the provision on the jurisdiction of an arbitration court is contained in general conditions for the conclusion of legal transactions.

Article 472

1. An arbitration court shall consist of an odd number of arbitrators.
2. If the agreement made by the parties does not specify the number of arbitrators, each party shall appoint one arbitrator, who shall then choose an arbitrator to act as president of the court.
3. A judge of a court of law and a judge of a court of associated labour only may be chosen as president of an arbitration court.

Article 473

1. If the parties have stipulated the jurisdiction of an arbitration court for the settlement of a dispute, the court of law before which a suit has been brought in

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* Translation provided by Dr. Marko Pavičić.

1. Articles 27–32, CCP. Emphasis added, *Gen. Ed.*
2. Paragraphs 2, 3 and 4 omitted as unnecessary.
3. Emphasis added, *Gen. Ed.*

the same dispute and between the same parties shall, at an objection raised by the respondent, declare itself incompetent, annul all acts undertaken in the proceedings, and reject the suit.

2. An objection as referred to in paragraph 1 of this Article shall be raised by the respondent at the preparatory hearing at the latest, and if no preparatory hearing is held, then at the main hearing before the court begins to discuss the subject matter of the dispute.

Article 474

1. A party who on the basis of an arbitration agreement should appoint an arbitrator may be requested by the other party to appoint the arbitrator within fifteen days and to notify him thereof.

2. A request as referred to in paragraph 1 of this Article shall be legally valid only if the requesting party has appointed his own arbitrator and notified the other party thereof.

3. When on the basis of an arbitration agreement the appointment of an arbitrator should be made by a third person, each party may make a request as referred to in paragraph 2 of this Article to this person.

4. The person requested to appoint an arbitrator shall be bound by this appointment as of the moment the other party or one of the parties has been notified of the appointment.

Article 475

1. If an arbitrator is not appointed in time, the arbitrator shall, on request of a party, be appointed by the competent court of law unless the parties agreed otherwise.

2. If the arbitrators cannot agree on the choice of the president, and it is not otherwise specified in the agreement, the president shall, on the request of each arbitrator or party, be appointed by the competent court of law.

3. The arbitrators and/or president shall be appointed by the court of law which would have had jurisdiction over the dispute if no arbitration agreement had been concluded.

4. No appeal may be lodged against the ruling of the court.

5. A party who does not wish to make use of its authority under paragraphs 1 or 2 of this Article may file a suit and request the court of law having jurisdiction over the appointment to declare the arbitration agreement terminated.

Article 476

1. Except in the cases referred to in Article 475 of this Law, each party may file a suit and request the court of law to declare the arbitration agreement terminated:

a If the parties cannot agree on the choice of the arbitrators whom they should jointly appoint;

b If the person appointed by the arbitration agreement as an arbitrator refuses or is not able to perform this duty.

2. Such a request shall be decided by the court referred to in Article 475, paragraph 3, of this Law.

3. The court shall summon the parties to attend the hearing on such request, but the court may also render a decision if the parties, duly summoned, have failed to appear.

Article 477

1. An arbitrator who has been challenged is bound to comply if the challenge has been made for the reasons specified in Article 71 of this Law.[4] The parties may challenge an arbitrator for the same reasons.

2. A party who has alone or together with the other party appointed an arbitrator, may challenge him only if the reasons for the challenge have occurred or the party has learned thereof after the arbitrator was appointed.

3. Unless otherwise agreed by the parties, the challenge shall be decided by the court referred to in Article 475, paragraph 3, of this Law.

Article 478

Unless otherwise agreed by the parties, the arbitrators shall determine the rules of procedure to be applied before the arbitration court.

Article 479

1. Witnesses shall be heard by the arbitration court without taking an oath.

2. An arbitration court may not resort to coercion, nor impose any punishment on witnesses, parties and other persons participating in the proceedings.

3. An arbitration court may request the court of law having territorial jurisdiction to give legal assistance (Article 179) in the presentation of evidence which it itself is not able to obtain. The provisions of this Law on the presentation of evidence before a judge commissioned by a rogatory letter shall apply.

Article 480

1. When an arbitration court consists of more than one arbitrator, awards shall be made by a majority vote, unless otherwise specified by the arbitration agreement.

2. If the necessary majority cannot be reached, the arbitration court shall notify the parties thereof.

3. If for the case referred to in paragraph 2 of this Article the parties have not agreed otherwise, each of them may file a suit and demand the court referred to in Article 475, paragraph 3, of this Law, to declare the arbitration agreement terminated.

Article 481

1. An award made by an arbitration court must contain a statement of reasons, unless otherwise agreed by the parties.

2. The original of the award and all copies must be signed by all arbitrators. An award shall also be valid when an arbitrator refuses to sign it, if the majority of the arbitrators have signed the award and noted this refusal of signature.

3. Copies of an award shall be delivered to the parties through the court referred to in Article 475, paragraph 3, of this Law. Permanent arbitration courts deliver their awards themselves.

Article 482

The originals of awards and receipts of their service shall be deposited with the court referred to in Article 475, paragraph 3, of this Law; if awards have been made by a permanent arbitration court, they shall be kept by this court.

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4. According to Article 71, an arbitrator may be challenged on the following grounds:

1. If he himself is a party to, or the legal representative or attorney of a party to, the dispute; if he is a joint beneficiary or joint debtor with one of the parties, or has in the same case given evidence as witness or expert witness;

2. If one of the parties or his legal representative or attorney is his relation;

3. If he is a permanent or temporary employee of the party in dispute;

4. If he is guardian, adopter or adoptee of one of the parties, his legal representative or attorney;

5. If he has taken part in making an award in the same case;

6. If there are other circumstances that might cast doubt upon his impartiality.

Article 483

1. An award of an arbitration court shall with respect to the parties have the force of a finally-binding judgment, unless it is specified in the agreement that the award may be contested before a higher arbitration court.

2. At the request of a party, the court referred to in Article 475, paragraph 3, of this Law shall put on the copy of the award a clause confirming its final validity and enforceability. Permanent arbitration courts themselves confirm the final validity and enforceability of their awards.

Article 484

1. An award of an arbitration court may be set aside upon a suit filed by a party.

2. Such suits shall be decided by the court referred to in Article 475, paragraph 3, of this Law.

Article 485

The setting aside of an award of an arbitration court may be requested:

1 If no arbitration agreement has been concluded at all, or if such agreement is not legally valid (Articles 469–471);

2 If with respect to the composition of the arbitration court or with respect to decision-making, a provision of this Law or of the arbitration agreement has been violated;

3 If the award does not contain a statement of reasons according to Article 481, paragraph 1, of this Law, or if the original and copies of the award are not signed in the way specified in Articles 481, paragraph 2, of this Law;

4 If the arbitration court has exceeded its terms of reference;

5 If the award is unintelligible or contradictory in itself;

6 If the arbitration court has ordered a party to perform something that is not allowed by law, or is generally forbidden;

7 If there exist any of the reasons for the reopening of the proceedings as referred to in Article 421 of this Law.[5]

Article 486

1. A suit for the setting aside of an arbitral award may be brought before the competent court of law within thirty days. If the setting aside is demanded for the reasons referred to in Article 485, points 1 to 6, of this Law, this time limit is counted from the date when the award was served upon the parties; if a party learned of it later, then from the date he learned of it. As regards the counting of the time limit when the setting aside is requested for the reasons specified in Article 485, point 7, of this Law, the provisions of Article 423, paragraphs 1 and 2, of this Law apply analogously.

2. No request for the setting aside may be made after the expiry of five years from the date the award of the arbitration court became finally valid.

Article 487

The parties may not by mutual agreement waive the application of the provisions of Article 477, paragraphs 1 and 2, Article 481, paragraphs 2 and 3, and Articles 484–486, of this Law.

5. Examples of such reasons may be that the award was obtained by fraud, or that it is based on evidence that has been declared false, or on evidence recognized as false, or if after it was made, a document or other piece of evidence has been discovered which would have had a decisive influence on the award (*Gen. Ed.*).

ANNEX II

ACT ON THE SETTLEMENT OF CONFLICTS BETWEEN YUGOSLAV LAWS AND PROVISIONS OF OTHER COUNTRIES CONCERNING SPECIFIC MATTERS

(In force since January 1, 1983)

CHAPTER ONE

BASIC PROVISIONS

Article 1

1. This Law contains rules on the determination of applicable law pertaining to status-related, family and property matters and other substantive law matters with an international element.

2. This Law also contains rules on the jurisdiction of the courts of law and other agencies of the Socialist Federal Republic of Yugoslavia over settlement of matters as referred to in paragraph 1 of this Article, rules of procedure, and rules on the recognition and enforcement of court decisions and arbitral awards.

Article 2 is omitted.

Article 3

The provisions of this Law shall not apply to the matters referred to in Article 1 of this Law if they are regulated by other federal laws or international treaties.

CHAPTER FOUR

RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS AND ARBITRAL AWARDS

1. *Recognition and Enforcement of Foreign Court Decisions*

Article 86

1. Foreign court decisions are equalized with the decisions of the courts of law of the Socialist Federal Republic of Yugoslavia and shall have legal effect in the Socialist Federal Republic of Yugoslavia only if they are recognized by a court of law of the Federal Socialist Republic of Yugoslavia.

2. A settlement reached before a court of law (court settlement) shall also be considered to be a foreign court decision as referred to in paragraph 1 of this Article.

3. A decision of another organ which is in the State in which it was rendered equalized with a court decision or a court settlement shall also be considered to be a foreign court decision if it regulates matters as referred to in Article 1 of this Law.

Article 87

1. A foreign court decision shall be recognized if the party requesting the recognition of this decision has also submitted a confirmation from the foreign court of law or another organ regarding the final validity of this decision according to the law of the State in which it was rendered.

Article 88

1. A court of law of the Socialist Federal Republic of Yugoslavia shall refuse to recognize a foreign court decision if, upon an objection of the person against whom

this decision was rendered, it finds that this person was not able to take part in the proceedings due to procedural irregularities.

2. It shall, in particular, be considered that a person against whom a foreign court decision was rendered was not able to take part in the proceedings if a summons, statement of claims or a ruling by which the proceedings were commenced was not served on him personally, or because no attempt at all was made to serve him personally, unless he had, in any way, taken part in the discussion of the subject matter at the hearing in first-instance proceedings.

Article 89

1. A foreign court decision shall not be recognized if the issue involved falls within the exclusive jurisdiction of a court of law or another organ of the Socialist Federal Republic of Yugoslavia.

2. If the respondent seeks the recognition of a foreign court decision rendered in a marital dispute, or if this is demanded by the claimant, and the respondent does not object, the exclusive jurisdiction of a court of law of the Socialist Federal Republic of Yugoslavia shall not be an obstacle to the recognition of such a decision.

Article 90

1. A foreign court decision shall not be recognized if a court of law or another organ of the Socialist Federal Republic of Yugoslavia has rendered a final binding decision on the same issue, or if another foreign court decision rendered on the same issue has been recognized in the Socialist Federal Republic of Yugoslavia.

2. The court of law shall suspend the recognition of a foreign court decision if, before a court of law in the Socialist Federal Republic of Yugoslavia, an earlier-filed law suit concerning the same legal issue and between the same parties is in progress – until the law suit has been terminated by a finally binding judgment.

Article 91

A foreign court decision shall not be recognized if it is contrary to the foundations of the social order established by the Socialist Federal Republic of Yugoslavia Constitution.

Article 92

1. A foreign court decision shall not be recognized if there is no reciprocity.

2. Non-existence of reciprocity shall not be an obstacle to the recognition of a foreign court decision rendered in a marital dispute or in a dispute concerning the determination or contestation of paternity or maternity, and if the recognition or enforcement of the foreign court decision is sought by a citizen of the Socialist Federal Republic of Yugoslavia.

3. As regards the recognition of a foreign court decision, the existence of reciprocity is presumed until the contrary is proved, and if the existence of this reciprocity is doubted, an explanation shall be given by the federal organ of administration responsible for juridical affairs.

Articles 93–95 are omitted.

Article 96

1. Foreign court decisions shall be enforced in accordance with the provisions of Articles 87–92 of this Law.

2. The submitter of a request for the enforcement of a foreign court decision must, in addition to the confirmation referred to in Article 87 of this Law, also submit a confirmation of the enforceability of such a decision in accordance with the law of the State in which it was rendered.

2. *Recognition and Enforcement of Foreign Arbitral Awards*

Article 97

1. A foreign arbitral award shall be understood to mean an arbitral award which was not made in the Socialist Federal Republic of Yugoslavia.

2. A foreign arbitral award shall be treated as an award of the State in which it was made.

3. Arbitral awards made in the Socialist Federal Republic of Yugoslavia in the making of which the procedural law of a foreign State was applied shall also be considered as foreign awards, if this is not contrary to the mandatory provisions of the Socialist Federal Republic of Yugoslavia.

4. Foreign arbitral awards as referred to in paragraph 2 of this Article shall be considered as being awards of the State whose procedural law was applied.

Article 98

1. A foreign arbitral award shall be recognized and enforced if the party demanding its recognition and enforcement has, together with his request, submitted to the court:

1. The original of the arbitral award or a verified copy thereof;

2. The original of the arbitration agreement or a verified copy thereof.

2. If a foreign arbitral award or an arbitration agreement or the verified copies thereof are not made in the language which is the official language of the court of law before which proceedings are instituted for the recognition and enforcement of such award, the party demanding the recognition and enforcement of the award must submit their translation in this language made by a person so authorized.

Article 99

The recognition and enforcement of a foreign arbitral award shall be rejected if it is found:

1. That according to the law of the Socialist Federal Republic of Yugoslavia the subject matter of the dispute may not be settled by arbitration;

2. If a court of law or other agency of the Socialist Federal Republic of Yugoslavia has exclusive jurisdiction;

3. If the recognition or enforcement of the award is contrary to the foundations of the social order determined by the Socialist Federal Republic of Yugoslavia Constitution;

4. If there is no reciprocity;

5. If the arbitration agreement was not concluded in writing or by an exchange of letters, cables or telexes;

6. If the arbitration agreement is not legally valid;

7. If the party against whom the recognition and enforcement of the award is sought has not been properly notified of the appointment of the arbitrators or the arbitration proceedings, or if for some other reasons he was prevented from making use of his rights in the proceedings;

8. If the composition of the arbitration court or arbitral proceedings were not in conformity with the provisions of the arbitration agreement;

9. If the arbitration court has exceeded its terms of reference as determined by the arbitration agreement.

If parts of a foreign arbitral award relating to the questions which were the subject matter of the arbitration can be severed from the part with respect to which the arbitration court has exceeded its terms of reference, the parts of

ANNEX III

Amendments on Code of Civil Procedure (in force since July 1, 1990)

Article 468a (new provision)

Provisions of this Chapter shall apply to the proceedings before arbitration courts with its seat in Yugoslavia, unless according to some other federal act or international convention an arbitration court with seat in Yugoslavia is considered as a foreign arbitration court.

Article 469 (changed)

For disputes concerning the rights which the parties may freely dispose of, the parties may stipulate the jurisdiction of an arbitration court if at least one of them is a natural person with permanent or habitual residence abroad, or a legal person with a seat abroad, unless such disputes fall under the exclusive jurisdiction of Yugoslav court of law.

Article 469a (new provision)

... (omitted as unnecessary)

Article 470 (changed)

1. An arbitration agreement may be concluded with respect to an existing dispute and with respect to future disputes which may arise out of a particular legal relationship. An arbitration agreement shall be legally valid only if it is concluded in writing.

2. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.

3. An agreement is in writing if it is concluded by an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.

Article 479a (new provision)

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

Article 485 (changed no. 6 - definition of **ordre public**)

...

6. If an award is contrary to the Constitution and foundations of the social order of Yugoslavia.

Article 486 (paragraph 2 - number changed: "five" to "one")

...

2. No request for the setting aside may be made after the expiry of one year from the date the award of the arbitration court became finally valid.

(Since October 8, 1991 these amendments have been adopted in Croatia as Croatian law as well; the only change was that the words "Republic of Croatia" have been substituted for the word "Yugoslavia" and respectively "Croatian" instead of "Yugoslav".)

ANNEX IV

THE RULES OF INTERNATIONAL ARBITRATION OF THE PERMANENT ARBITRATION COURT ATTACHED TO THE CROATIAN CHAMBER OF ECONOMY

(Zagreb Rules)

INTERNATIONALE SCHIEDSGERICHTSORDNUNG DES STÄNDIGEN SCHIEDSGERICHTSHOFES BEI DER KROATISCHEN WIRTSCHAFTSKAMMER

(Zagreber Regeln)

ARBITRATION

General Provisions

Jurisdiction of the Arbitration

Article 1.

1. These Rules regulate settlement (arbitration) of disputes under following conditions:

(a) That the dispute arises out of commercial relations considering rights which parties may freely dispose of;

(b) That the parties have agreed upon the jurisdiction of the Permanent Arbitration Court attached to the Croatian Chamber of Economy;

(c) That at least one party is a natural person with a permanent or habitual residence abroad, or a legal person with a seat abroad;

(d) That the dispute doesn't fall under the exclusive jurisdiction of Croatian court of law.

2. The parties may derogate procedural provisions of these Rules by their agreement, unless such agreement is contrary to the **ordre public** of Republic of Croatia.

Pleas as to the jurisdiction

Article 2.

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

SCHIEDSGERICHTSBARKEIT

Allgemeine Bestimmungen

Zuständigkeit des Schiedsgerichtshofes

Artikel 1.

1. Diese Regeln finden im Fall der Streitbeilegung unter der Voraussetzung Anwendung, daß:

(a) sich die Streitigkeit auf Rechte aus einer Handelsbeziehung bezieht über die die Parteien frei verfügen können;

(b) die Parteien die Zuständigkeit des Ständigen Schiedsgerichtshofes bei der kroatischen Wirtschaftskammer vereinbart haben;

(c) zumindest eine Partei eine natürliche Person die ihren ständigen oder gewöhnlichen Aufenthalt im Ausland hat, oder eine juristische Person mit Sitz im Ausland ist;

(d) die ausschließliche internationale Zuständigkeit der staatlichen kroatischen Gerichte nicht vorgeschrieben ist.

2. Durch Parteienvereinbarung kann jede Prozeßvorschrift dieser Schiedsordnung ausgeschlossen werden, es sei denn, die Vereinbarung vorstößt gegen den **ordre public** der Republik Kroatien.

Einrede der Unzuständigkeit des Schiedsgerichts

Artikel 2.

1. Das Schiedsgericht ist befugt, über Einreden gegen seine Zuständigkeit einschließlich aller Einwendungen, die das Bestehen oder die Gültigkeit der Schiedsklausel oder der selbstständigen Schiedsvereinbarung betreffen, zu entscheiden.

2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. An arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, whith respect to a counter-claim, in the reply to the counter-claim.

2. Das Schiedsgericht ist befugt, über das Bestehen oder die Gültigkeit des Vertrages zu entscheiden, der die Schiedsklausel enthält. Eine Schiedsklausel, die in einem Vertrag enthalten ist und die Durchführung eines Schiedsverfahrens nach dieser Schiedsgerichtsordnung vorsieht, wird als eine von den anderen Bestimmungen des Vertrages getrennte Vereinbarung angesehen. Eine Entscheidung des Schiedsgerichts, daß der Vertrag nichtig ist, zieht nicht ohne weiteres die Nichtigkeit der Schiedsklausel nach sich.
3. Die Einrede der Unzuständigkeit des Schiedsgerichts ist spätestens in der Klagebeantwortung oder, im Falle einer Widerklage, in der Beantwortung der Widerklage zu erheben.

Place of arbitration

Article 3.

1. Subject to an agreement by the parties, the arbitration is to be held at the seat of the Court. With permission of the parties, arbitral tribunal may determine the locale of the arbitration within Republic of Croatia.
2. The arbitral tribunal may meet at any place it deems appropriate for inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.
3. The award shall be made at the place of arbitration.

Schiedsort

Artikel 3.

1. Haben sich die Parteien über den Ort des Schiedsverfahrens nicht geeinigt, findet das Schiedsverfahren am Sitz des Schiedsgerichtshofes statt. Mit der Zustimmung der Parteien kann das Schiedsgericht einen anderen Ort innerhalb der Republik Kroatien bestimmen.
2. Das Schiedsgericht kann zum Zweck der Besichtigung von Waren oder anderen Sachen oder der Prüfung von Urkunden an jedem ihm geeignet erscheinenden Ort zusammentreten. Die Parteien sind hiervon rechtzeitig zu benachrichtigen, um ihnen die Teilnahme daran zu ermöglichen.
3. Der Schiedsspruch ist am Ort des Schiedsverfahren zu erlassen.

Language of arbitration

Article 4.

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to all written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

Verfahrenssprache

Artikel 4.

1. Vorbehaltlich einer anderweitigen Vereinbarung der Parteien hat das Schiedsgericht unverzüglich nach seiner Bestellung die Sprache oder die Sprachen, in denen das Verfahren durchgeführt werden soll, zu bestimmen. Diese Bestimmung gilt für alle Schriftsätze und im Falle von mündlichen Verhandlungen, für die Sprache oder die Sprachen, die bei diesen mündlichen Verhandlungen zu verwenden sind.

2. Until the language or languages of arbitration have been determined, statement of claim, statement of defence and any other written statements may be submitted in the official language of the Court, or in the language of the contract or of the arbitration agreement.
3. If arbitrators fail to agree on the language of arbitration, arbitration is to be conducted in Croatian.
4. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages of arbitration.

2. Solange die Sprache oder die Sprachen des Schiedsverfahrens noch nicht bestimmt worden sind, können die Klageschrift, die Klagebeantwortung und alle weitere Schriftsätze in der offiziellen Sprache des Schieds-gerichtshofes, in der Sprache des Vertrages oder der Schiedsvereinbarung vorgelegt werden.
3. Wenn sich die Schiedsrichter über die Sprache des Schiedsverfahren nicht einigen können, wird das Schiedsverfahren in kroatischer Sprache durchgeführt.
4. Das Schiedsgericht kann anordnen, daß alle der Klageschrift oder der Klagebeantwortung beigefügten Schriftstücke und alle sonstigen im Laufe des Verfahrens in Originalsprache vorgelegten Urkunden, mit einer Übersetzung in die Verfahrenssprache(n) zu versehen sind.

Organisation of the Court

Article 5.

Concerning the organisation of the Court, the provisions of articles 3 to 11 of the Rules of Domestic Arbitration of the Permanent Court of Arbitration attached to the Croatian Chamber of Economy (NN 19/85, 1/89, 15/90 and 69/91) shall apply, unless Zagreb Rules do not provide otherwise.

Organisation des Schiedsgerichtshofes

Artikel 5.

Bezüglich der Organisation des Schiedsgerichtshofes, finden Art. 3 bis 11 der Schiedsregeln des Ständigen Schiedsgerichtshofes bei der Kroatischen Wirtschaftskammer (NN 19/85, 1/89, 15/90 und 69/91) Anwendung, soferne nicht die Zagreber Regeln etwas anderes bestimmen.

Waiver of right to object

Article 6.

A party who knows that any provision of these rules from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet 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 object.

Verzicht auf das Recht der Einrede

Artikel 6.

Ist einer Bestimmung dieses Gesetzes, von der die Parteien abweichen können, oder einem Erfordernis der Schiedsvereinbarung nicht entsprochen worden, und setzt eine Partei trotz Kenntnis hiervon das schiedsrichterliche Verfahren fort, ohne gegen den Verstoß unverzüglich oder, falls hierfür eine Frist vorgesehen ist, innerhalb dieser Frist Einspruch zu erheben, so wird angenommen, sie habe auf die Einrede verzichtet.

Representation and assistance

Article 7.

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the Court and to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

Composition and appointment of the arbitral tribunal

Number of arbitrators

Article 8.

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within 15 days after the receipt by the respondent of the statement of claim the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

Appointment of a sole arbitrator

Article 9.

1. If the parties have agreed that a sole arbitrator is to be appointed, they shall communicate the name of the sole arbitrator to the Secretariat of the Court.
2. If within 30 days after the statement of defence was submitted to the Secretariat of the Court, or after the statement of defence failed to be submitted, the parties do not communicate the name of a sole arbitrator, a sole arbitrator shall be appointed by an appointing authority.

Appointment of a panel of arbitrators

Article 10.

1. If the parties have agreed that a panel of arbitrators is to be appointed, claimant shall appoint his arbitrator in the statement of claim; defendant shall appoint his arbitrator within a period of

Vertretung und Beistand

Artikel 7.

Die Parteien können sich durch Personen ihrer Wahl vertreten oder beistehen lassen. Die Namen und Anschriften dieser Personen müssen dem Schiedsgerichtshof und der anderen Partei schriftlich mitgeteilt werden; diese Mitteilung muß die Angabe enthalten, ob die Bestellung der betreffenden Person als Vertreter oder als Beistand geschieht.

Zusammensetzung und Bestellung des Schiedsgerichts

Anzahl der Schiedsrichter

Artikel 8.

Haben sich die Parteiein nicht vorher über die Anzahl der Schiedsrichter (d.h. einen oder 3 Schiedsrichter) geeinigt und haben sie nicht innerhalb von 15 Tagen nachdem der Beklagte die Klageschrift zugestellt wird, vereinbart, daß nur ein Schiedsrichter tätig werden soll, so sind drei Schiedsrichter zu bestellen.

Bestellung des Einzelschiedsrichters

Artikel 9.

1. Wenn die Parteien vereinbart haben, daß ein Einzelschiedsrichter zu bestellen ist, so haben die Parteien den Namen des Einzelschiedsrichters dem Sekretariat des Schiedsgerichtshofes mitzuteilen.
2. Falls innerhalb von 30 Tagen nach der Einreichung der Klagebeantwortung bei dem Sekretariat des Schiedsgerichtshofes oder nach ungenützten Ablauf der Frist zur Klagebeantwortung die Parteien den Namen des Einzelschiedsrichters nicht mitgeteilt haben, wird der Einzelschiedsrichter von einer Ernennenden Stelle bestellt.

Bestellung des Schiedsrichtersenates

Artikel 10.

1. Wenn die Parteien vereinbart haben, daß ein Schiedsrichtersenat zu bestellen ist, so hat der Kläger seinen Schiedsrichter in der Klageschrift, und der Beklagte seinen in der für die Klage-

time fixed for submission of the statement of defence.
2. If one or both parties do not appoint their arbitrators within a period of time referred to in this article, paragraph 1, or if the parties agreed that the appointment is to be done by an appointing authority, arbitrators shall be appointed by an appointing authority; in that case, parties and appointed arbitrators shall be notified thereof.
3. Within 30 days after receipt of a notice of the appointment, two arbitrators shall choose the third arbitrator as the presiding arbitrator of the tribunal. If within that period of time the two arbitrators have not agreed on the choice of the presiding arbirator, the presiding arbitrator shall be appointed among the names on the list of arbitrators by an appointing authority.

beantwortung bestimmten Frist zu bestellen.
2. Wenn eine oder beide der Parteien ihre(n) Schiedsrichter nicht innerhalb der in Abs. 1 bestimmten Frist bestellt haben, oder wenn die Parteien vereinbart haben, daß die Bestellung von einer Ernennenden Stelle vorgenommen wird, so werden die Schiedsrichter von einer Ernennenden Stelle bestellt, worüber die Parteien und die bestellte Schiedsrichter zu benachrichtigen sind.
3. Innerhalb von 30 Tagen nach Erhalt der Nachricht von ihrer Bestellung haben die beiden Schiedsrichter einen dritten Schiedsrichter zum Vorsitzenden des Schiedsgerichtes zu wählen. Haben sich die beiden Schiedsrichter innerhalb dieser Frist über die Bestellung des Vorsitzenden des Schiedsgerichts nicht geeinigt, so wird dieser aus dem Kreis der Personen, deren Namen sich auf der Schiedsrichterliste des Schieds-gerichtshofes befinden, von einer Ernennenden Stelle bestellt.

Appointment in the case of multiparty litigation

Article 11.

If more then one party appear as claimant or respondant, and if they fail to agree upon a common arbitrator, this arbitrator shall be appointed by an appointing authority.

Bestellung im Fall der Streitgenossenschaft

Artikel 11.

Wenn mehrere Personen gemeinschaftlich klagen oder geklagt werden und sich über die Bestellung des gemeinsamen Schiedsrichters nicht einigen können, wird dieser von einer Ernennenden Stelle bestellt.

Appointing authority

Article 12.

1. Parties may determine an appointing authority by their agreement.
2. If no such authority has been designated by the parties, or if the appointing authority agreed upon refuses to act, the appointing authority shall be the President of the Court.

Ernennende Stelle

Artikel 12.

1. Die Parteien können vertraglich eine Ernennende Stelle vorsehen.
2. Wenn die Parteien keine Ernennende Stelle bestimmt haben oder die vertraglich vorgesehene Ernennende Stelle es ablehnt, tätig zu werden, so wird als die Ernennende Stelle der Präsident des Schiedsgerichtshofes tätig.

Appointment by an appointing authority

Article 13.

1. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment the appointing authority shall use the following list-procedure, unless both parties agree that the list-procedure should not be used or unless the appointning authority determines in

Bestellung durch die Ernennende Stelle

Artikel 13.

1. Die Ernennende Stelle hat den Einzelschiedsrichter so schnell wie möglich zu bestellen. Bei der Bestellung geht die Ernennende Stelle nach dem folgenden Listenverfahren vor, es sei denn, beide Parteien schließen dieses Verfahren aus oder die Ernennende Stelle ent-

its discretion that the use of the list-procedure is not appropriate for the case:

(a) At the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;

(b) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;

(c) After the expiration of the above period of time the appointing authority shall appoint the arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the arbitrator.

2. In making the appointment, the appointing authority shall have regard to such consideration as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by an appointing authority in the same way as provided in this article, paragraphs 1 and 2.

Changes in the composition of an arbitral tribunal

Challenge of arbitrators

Article 14.

A prospective arbitrator shall disclose to those who approach him in connexion with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

scheidet nach ihrem Ermessen, daß die Verwendung des Listenverfahrens im konkreten Fall nicht geeignet ist:

a) auf Ersuchen einer der Parteien übersendet die Ernennende Stelle beiden Parteien eine gleichlautende Liste, die mindestens drei Namen enthält;

b) innerhalb von 15 Tagen nach Erhalt dieser Liste kann jede Partei der Ernennenden Stelle die Liste zurücksenden, nachdem sie den oder die Namen, gegen die sie Einwände hat, gestrichen und die übrigen Namen in der von ihr bevorzugten Reihenfolge numeriert hat;

c) nach Ablauf der Frist bestellt die Ernennende Stelle den Einzelschiedsrichter aus dem Kreis der Personen, deren Namen auf den ihr zurückgesandten Listen verblieben sind, und zwar in Übereinstimmung mit der von den Parteien angegebenen Reihenfolge;

d) kann die Bestellung aus irgendeinem Grund nicht nach diesem Verfahren stattfinden, so kann die Ernennende Stelle den Einzelschiedsrichter nach freiem Ermessen bestellen.

2. Bei der Bestellung berücksichtigt die Ernennende Stelle solche Umstände, die geeignet sind, die Bestellung eines unabhängigen und unparteiischen Schiedsrichters zu sichern, und trägt dabei auch der Zweckmäßigkeit der Bestellung eines Schiedsrichters, der eine andere Staatsangehörigkeit als die der Parteien besitzt, Rechnung.

3. Wenn die beiden Schiedsrichter innerhalb von 30 Tagen nach der Bestellung des zweiten Schiedsrichters sich nicht über die Person des zu wählenden Vorsitzenden geeinigt haben, ist der Vorsitzende von der Ernennenden Stelle auf dieselbe Art und Weise zu bestellen, wie dies in Abs 1 und 2 dieses Artikels vorgesehen ist.

Änderungen in der Zusammensetzung des Schiedsgerichts

Ablehnung von Schiedsrichtern

Artikel 14.

Wer als Schiedsrichter vorgesehen ist, hat diejenigen, die an ihn im Zusammenhang mit seiner möglichen Bestellung herantreten alle Umstände offenzulegen, die geeignet sind, berechtigte Zweifel an seiner Unparteilichkeit oder Unabhängigkeit aufkommen zu lassen. Auch ein schon bestellter oder gewählter Schiedsrichter hat den Parteien derartige Umstände offenzulegen, soferne sie nicht bereits zuvor von ihm darüber

Article 15.

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Article 16.

1. A party who intends to challenge an arbitrator shall send notice of his challenge within 15 days after the appointment of the challenged arbitrator has been notified to the Court or within 15 days after the circumstances mentioned in articles 14 and 15 became known to that party.
2. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.
3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in article 9 or 10 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

Article 17.

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw (article 16, paragraph 3) the decision on the challenge will be made:

(a) When the initial appointment was made by an appointing authority, by that authority;

(b) When the initial appointment was not made by an appointing authority, but an appointing authority has been previously designated, by that authority;

(c) In all other cases, by the appointing

unterrichtet worden sind.

Artikel 15.

1. Jeder Schiedsrichter kann abgelehnt werden, wenn Umstände vorliegen, die Anlaß zu berechtigten Zweifeln an seiner Unparteilichkeit oder Unabhängigkeit geben.
2. Eine Partei kann den von ihr ernannten Schiedsrichter nur aus Gründen ablehnen, von denen sie erst nach seiner Bestellung Kenntnis erlangt hat.

Artikel 16.

1. Eine Partei, die einen Schiedsrichter ablehnen will, hat diesen Entschluß innerhalb von 15 Tagen nach dem Tag, an dem ihr die Bestellung dieses Schiedsrichters bekanntgegeben wurde, oder innerhalb von 15 Tagen, nachdem sie von den in den Art. 14 und 15 bezeichneten Umständen Kenntnis erlangt hat, dem Schiedsgerichtshof bekanntzugeben.
2. Die Ablehnung ist der anderen Partei, dem abgelehnten Schiedsrichter und den anderen Mitgliedern des Schiedsgerichts bekanntzugeben. Die Bekanntgabe hat schriftlich unter Angabe der Gründe der Ablehnung zu erfolgen.
3. Wurde ein Schiedsrichter von einer Partei abgelehnt, so kann die andere Partei der Ablehnung zustimmen. Der Schiedsrichter kann auch nach seiner Ablehnung selbst zurücktreten. In keinem der beiden Fälle beinhaltet dies, daß die Ablehnungsgründe als berechtigt anerkannt werden. In beiden Fällen ist das in den Art. 9 oder 10 vorgesehene Verfahren für die Bestellung des Ersatz-schiedsrichters in vollem Umfang anzuwenden, selbst wenn eine Partei ihr Recht, den abgelehnten Richter zu bestellen oder an seiner Bestellung mitzuwirken, nicht ausgeübt hat.

Artikel 17.

1. Stimmt die andere Partei der Ablehnung nicht zu und tritt auch der abgelehnte Schiedsrichter nicht selbst zurück (Art. 16 Abs. 3), so entscheidet über die Ablehnung:

(a) wenn die ursprüngliche Bestellung von einer Ernennenden Stelle vorgenommen wurde, diese Stelle;

(b) wenn die ursprüngliche Bestellung zwar nicht von einer Ernennenden Stelle vorgenommen wurde, eine solche aber schon vorher bestimmt wurde, diese Stelle;

(c) in allen anderen Fällen die Ernen-

authority to be designated in accordance with the procedure for designating an appointing authority as provided for in article 12.
2. If the appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in articles 9 to 14 except that, when this procedure would call for the designation of an appointing authority which decided on the challenge.

nende Stelle, die nach Art. 12 zu bestimmen ist.
2. Bestätigt die Ernennende Stelle die Ablehnung, so ist ein Ersatzschiedsrichter nach dem in den Art. 9 bis 14 für die Bestellung eines Schiedsrichters vorgesehenen Verfahren zu bestellen; sieht dieses Verfahren jedoch die Bestimmung einer Ernennenden Stelle vor, so erfolgt die Bestellung dieses Schiedsrichters durch die Ernennende Stelle, die über die Ablehnung entschieden hat.

Replacement of an arbitrator

Ersetzung eines Schiedsrichters

Article 18.

Artikel 18.

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 9 to 14 that was applicable to the appointment or choice of the arbitrator being replaced.
2. In the event that an arbitrator fails to act or in the event of the **de jure** or **de facto** impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply.

1. Im Fall des Ablebens oder des Rücktritts eines Schiedsrichters während des Schiedsverfahrens ist ein Ersatzschiedsrichter nach dem Verfahren zu bestellen, das nach den Art. 9 bis 14 für die Bestellung des zu ersetzenden Schiedsrichters anzuwenden war.
2. Bleibt ein Schiedsrichter untätig oder wird es für ihm aus rechtlichen oder tatsächlichen Gründen unmöglich, seine Aufgabe zu erfüllen, ist das in den vorhergehenden Artikeln vorgesehene Verfahren für die Ablehnung und die Ersetzung eines Schiedsrichters anzuwenden.

Repetition of hearings in the event of the replacement of an arbitrator

Wiederholung der mündlichen Verhandlung bei Ersetzung eines Schiedsrichters

Article 19.

Artikel 19.

1. If under articles 16 to 18 a member of the panel of arbitrators is replaced, any hearings held previously shall be repeated. With permission of the parties, arbitral tribunal may decide that hearings need not to be repeated.
2. If a sole arbitrator is replaced, hearings shall be repeated.

1. Wird ein Mitglied des Schiedsgerichts nach den Art. 16 bis 18 ersetzt, so sind alle vorher durchtgeführten mündlichen Verhandlungen zu wiederholen. Mit Erlaubhnis der Parteien kann das Schiedsgericht beschließen, daß die mündliche Verhandlung nicht wiederholt zu werden braucht.
2. Wird Einzelschiedsrichter ersetzt, so sind alle vorher durchgeführten mündlichen Verhandlungen zu wiederholen.

Arbitral proceedings

Schiedsverfahren

General provisions

Allgemeine Bestimmungen

Article 20.

Artikel 20.

1. Subject to these Rules, the arbitral tribunal

1. Vorbehaltlich dieser Schiedsgerichtsordnung

may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.
2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
3. All written statements, documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

kann das Schiedsgericht das Schiedsverfahren auf die Art und Weise durchführen, die ihm angemessen erscheint, vorausgesetzt, daß beide Parteien gleich behandelt werden und daß jede Partei in jedem Stadium des Verfahrens alle Möglichkeiten hat, ihren Standpunkt vorzubringen und ihre Anträge zu stellen.
2. Wenn eine der Parteien es in irgendeinem Stadium des Verfahrens beantragt, hat das Schiedsgericht eine mündliche Verhandlung zur Aufnahme von Beweisen durch Zeugen, Sachverständige und Parteien durchzuführen. Wird kein derartiger Antrag gestellt, so entscheidet das Schiedsgericht, ob eine mündliche Verhandlung anzuberaumen oder ob das Verfahren auf der Grundlage von Urkunden und anderen Unter-lagen durchzuführen ist.
3. Alle Schriftsätze, Urkunde oder Informationen, die dem Schiedsgericht von einer Partei vorgelegt oder erteilt werden, sind gleichzeitig von dieser Partei auch der anderen Partei zu übermitteln.

Statement of claim

Article 21.

Klageschrift

Artikel 21.

1. Arbitral proceeding shall be instituted by submission of a statement of claim.
2. The statement of claim shall include the following particulars:
(a) The names and addresses of the parties;
(b) The relief or remedy sought;
(c) A statement of the facts supporting the claim;
(d) A statement of the evidence;
(e) A statement of the arbitral agreement, if existing;
(f) A statement of the appointment of an arbitrator;
(g) A statement of the value of the dispute.
3. If such documents exist, a copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.
4. The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

1. Das Schiedsverfahren wird durch Einreichung einer Klage eingeleitet.
2. Die Klageschrift hat folgende Angaben zu enthalten:
(a) die Bezeichnung der Parteien und ihre Anschriften;
(b) das Klagebegehren;
(c) eine Darstellung des Sachverhalts, auf den sich das Klagebegehren stützt;
(d) Angaben zu den Beweisen;
(e) Angaben zur Schiedsvereinbarung, wenn eine solche vorhanden ist;
(f) Angaben zur Bestellung des/der Schiedsrichter(s);
(g) Angaben über den Streitwert.
3. Falls solche Urkunden vorhanden sind, ist der die Schiedsklausel enthaltende Vertrag bzw. - falls die Schiedsvereinbarung nicht im Hauptvertrag enthalten ist - die (selbstständige) Schiedsabrede in Kopie beizulegen.
4. Der Kläger kann seiner Klageschrift alle Urkunden, der er für erforderlich erachtet, beifügen oder die Urkunden oder andere Beweismittel, die er vorlegen wird, angeben.

Statement of defence

Article 22.

Klagebeantwortung

Artikel 22.

1. Secretariat of the Court shall communicate the statement of claim with the documents annexed to the defendent and determine a period of time within which the statement of defence in writing is to be communicated. The statement of defence is to be submitted to the Secretariat of the Court, which sends it, with the documents annexed, to the claimant and to the each arbitrator.
2. The provisions of article 21, paragraphs 2 and 4, shall appropriately apply to a statement of defence.

1. Das Sekretariat des Schiedsgerichtshofes hat die Klageschrift und die beigefügten Urkunden dem Beklagten zu übersenden und eine Frist zu bestimmen, innerhalb derer die schriftliche Klagebeantwortung eingebracht werden soll. Diese Klagebeantwortung ist dem Sekretariat des Schiedsgerichtshofes vorzulegen, das sie samt den Beilagen dem Kläger übersendet.
2. Art. 21 Abs. 2 und 4 sind auf die Klagebeantwortung sinngemäß anzuwenden.

Counterclaim

Article 23.

Widerklage

Artikel 23.

1. Until closure of the hearing, the respondent may submit to the Court a counterclaim or a claim relied on for the purpose of a set-off in the form of a counterclaim, if the counterclaim or the claim relied on for the purpose of a set-off arises out of a legal relation included in the arbitral agreement.
2. If parties submit independent claims against each other arising out of different contracts, and if there exists a jurisdiction of the Court for all such claims, the Secretariat of the Court shall attempt to join the proceedings and continue them before the same arbitral tribunal.

1. Solange die Verhandlung nicht geschlossen ist, kann der Beklagte bei dem Schiedsgerichtshof eine Widerklage anbringen oder sich zum Zweck der Aufrechnung auf eine Forderung berufen, soferne sich die Widerklage oder die Forderung aus einem in der Schiedsvereinbarung eingeschlossenen Rechtsverhältniss ergibt.
2. Wenn die Parteien voneinander unabhängige gegenseitige aus verschiedenen Rechtsverhältnissen hervorgehende Klagen angebracht haben und wenn die Zuständigkeit des Schiedsgerichtshofes für solche Klagen gegeben ist, hat das Sekretariat des Schiedsgerichtshofes zu achten, daß die Verfahren zu gemeinsamen Verhandlung verbunden und vor ein und demselben Schiedsgericht weitergeführt werden.

Amendments to the claim

Article 24.

Klageänderung

Artikel 24.

During the course of the arbitral proceedings either party may amend or supplement his claim unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

Im Laufe des Schiedsverfahrens kann jede der beiden Parteien ihre Klage bzw. Klagebeantwortung ändern oder ergänzen, es sei denn, das Schiedsgericht hält es wegen der Verspätung, mit der eine solche Änderung vorgenommen wird, wegen des Nachteils für die andere Partei oder wegen irgendwelcher sonstiger Umstände für unangebracht, sie zuzulassen. Eine Klage kann jedoch nicht so geändert werden, daß sie die Schiedsklausel oder die selbständige Schiedsvereinbarung überschreitet.

Further written statements

Article 25.

Weitere Schriftsätze

Artikel 25.

The arbitral tribunal shall decide which further

Das Schiedsgericht hat zu entscheiden, welche

written statements, shall be required from parties or may be presented by them and shall fix the periods of time for communicating such statements.

Periods of time

Article 26.

1. The periods of time fixed by the arbitral tribunal for the communication of written statements should not exceed 45 days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.

2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Default

Article 27.

1. If within the period of time fixed by the arbitral tribunal, the respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.
2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of hearings

Article 28.

1. When arbitral tribunal considers the case

weiteren Schriftsätze von den Parteien beizubringen sind oder von ihnen vorgelegt werden können, und hat die Fristen für die Einreichung dieser Schriftsätze festzusetzen.

Fristen

Artikel 26.

1. Die vom Schiedsgericht für die Einreichung von Schriftsätzen (einschließlich der Klageschrift und der Klagebeantwortung) festgesetzten Fristen sollen 45 Tage nicht überschreiten. Das Schiedsgericht kann jedoch die Fristen verlängern, wenn es eine Verlängerung für gerechtfertigt erachtet.
2. Zum Zweck der Berechnung einer in dieser Schiedsgerichtsordnung bestimmten Frist beginnt diese Frist mit dem Tag zu laufen, der auf den Tag folgt, an dem die Zustellung, die Mitteilung oder der Vorschlag zugegangen ist. Ist der letzte Tag der Frist am Aufenthaltsort oder am Geschäftssitz des Empfängers ein staatlicher Feiertag oder ein arbeitsfreier Tag, so wird die Frist bis zum ersten darauffolgenden Werktag verlängert. Staatliche Feiertage und arbeitsfreie Tage, die in den Lauf der Frist fallen, werden mitgerechnet.

Säumnis

Artikel 27.

1. Verabsäumt es der Beklagte, seine Klagebeantwortung innerhalb der vom Schiedsgericht bestimmten Frist zu überreichen, ohne dafür ausreichende Gründe vorzubringen, so hat das Schiedsgericht die Fortsetzung des Verfahrens anzuordnen.
2. Erscheint eine Partei, die nach dieser Schiedsgerichtsordnung ordnungsgemäß geladen war, nicht zur Verhandlung, ohne dafür ausreichende Gründe vorzubringen, so kann das Schiedsgericht das Verfahren fortsetzen.
3. Legt eine der Parteien nach ordnungsgemäßer Aufforderung schriftliche Beweise nicht innerhalb der festgesetzten Frist vor, ohne dafür ausreichende Gründe vorzubringen, so kann das Schiedsgericht den Schiedsspruch auf Grund der ihm vorliegenden Beweisergebnisse erlassen.

Schluß der Verhandlung

Artikel 28.

1. Wenn das Schiedsgericht nach den Ergebnis-

heard in such a manner that the award can be made, it will declare the hearings closed; after that, the arbitral tribunal shall return to discussion and voting in order to reach the decision.
2. During discussion and voting, arbitral tribunal may decide to reopen the hearings, if it considers it necessary to fulfil the proceedings or make clear some important issues.

sen der durchgeführten Verhandlung den Rechtstreit als reif zur Entscheidung hält, wird es die Verhandlung für geschlossen erklären und sich zur Beratung und Abstimmung zurückziehen.
2. Das Schiedsgericht kann, wenn es dies zur Ergänzung des Vorgebrachten oder zur Aufklärung von wichtigen Fragen für notwendig hält, die Verhandlung für wieder eröfffnet erklären.

Notice

Article 29.

1. Any notice, including a notification, communication or proposal, is deemed to be valid if it is delivered against receipt or forwarded to the addressee by registered post.
2. Notice is deemed to be valid if it is done, according to the provisions of this article, paragraph 1, either to the party or to its representative.

Zustellung

Artikel 29.

Jede Zustellung einschließlich einer Mitteilung oder eines Vorschlages wird als zugegangen angesehen, wenn es gegen Empfangsbescheinigung ausgehändigt oder wenn es eingeschrieben an die Anschrift übersandt wird.
2. Die Zustellung gilt als erfolgt, wenn sie gemäß Abs. 1 der Partei oder ihrem Vertreter ausgehändigt oder übersandt wurde.

Number of copies of written statements and annexed documents

Article 30.

Statement of claim, statement of defence, annexed documents and any other written statements and annexed documents which a party sends to the Court during the course of the proceedings shall be submitted through the Secretariat of the Court in number of copies sufficient to provide one copy for each opposing party and one for each arbitrator.

Anzahl von Ausfertigungen der Schriftsätze und der Beilagen

Artikel 30.

Die Klageschrift, die Klagebeantwortung, die Beilagen, sowie alle anderen während des Verfahrens dem Schiedsgerichtshof bzw. dem Schiedsgericht übersandten Schriftsätze samt Beilagen sind beim Sekretariat des Schiedsgerichtshofes in so vielen Ausfertigungen eingereicht werden, daß je eine Abschrift für jede Gegenpartei und jeden Schiedsrichter zur Verfügung steht.

Evidence

Article 31.

1. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.
2. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

Beweis

Artikel 31.

1. Hält es das Schiedsgericht für angebracht, so kann es einer Partei auftragen in einer von ihm bestimmten Frist eine Aufstellung der Urkunden und anderen Beweismittel vorzulegen, auf die sich die betreffende Partei zum Nachweis der ausgeführten strittigen Tatsachen in ihrer Klage oder Klagebeantwortung zu berufen beabsichtigt.
2. Das Schiedsgericht kann in jedem Zeitpunkt des Verfahrens die Parteien zur Vorlage von Urkunden oder anderen Beweismitteln innerhalb einer von ihm bestimmten Frist auffordern.

Article 32.

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any documents on which the expert has relied in his report.
4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may testify on the points at issue. The provisions of article 33 shall be applicable to such proceedings.

Artikel 32.

1. Das Schiedsgericht kann einen oder mehrere Sachverständige bestellen, die ihm über die vom Schiedsgericht genau bezeichneten Punkte schriftlich zu berichten haben. Eine Abschrift der Fragen, die gestellt werden, ist den Parteien zu übermittlen.
2. Die Parteien haben dem Sachverständigen alle sachdienlichen Auskünfte zu erteilen oder ihm alle arheblichen Urkunden oder Waren zur Untersuchung vorzulegen, die er von ihnen verlangt. Jede Meinungsverschiedenheit zwischen einer Partei und dem Sachverständigen über die Erheblichkeit der verlangten Auskunft oder Vorlage ist dem Schiedsgericht zur Entscheidung vorzulegen.
3. Nach Erhalt des Berichts des Sachverständigen hat das Schiedsgericht den Parteien Abschriften dieses Berichts zu übersenden und ihnen die Möglichkeit zu geben, zu dem Bericht schriftlich Stellung zu nehmen. Die Parteien sind berechtigt, jedes Schriftstück zu prüfen, auf das sich der Sachverständige in seinem Bericht berufen hat.
4. Auf Antrag einer der Parteien kann der Sachverständige nach Ablieferung seines Berichts in einer mündlichen Verhandlung gehört werden, in der die Parteien anwesend sein und dem Sachverständigen Fragen stellen können. Zu dieser Verhandlung können die Parteien sachverständige Zeugen beibringen, die zu den streitigen Fragen aussagen sollen. Art. 33 ist auf dieses Verfahren anzuwenden.

Oral hearing

Article 33.

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. If witnesses are to be heard, at least 15 days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.
3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least 15 days before the hearing.

Mündliche Verhandlung

Artikel 33.

1. Im Fall einer mündlichen Verhandlung hat das Schiedsgericht den Parteien den Tag, die Zeit und den Ort der Verhandlung rechtzeitig im voraus bekanntzugeben.
2. Sind Zeugen zu vernehmen, so hat jede Partei dem Schiedsgericht und der anderen Partei mindestens 15 Tage vor der Verhandlung die Namen und Anschriften der Zeugen, die sie vernehmen lassen möchte, den Gegenstand der Zeugenaussagen und die Sprachen bekanntzugeben, in denen die Zeugen aussagen werden.
3. Das Schiedsgericht trifft Vorkehrungen für die Übersetzung von mündlichen Ausführungen bei der Verhandlung und für die Anfertigung eines Verhandlungsprotokolls, wenn es die eine oder die andere dieser Maßnahmen nach den Umständen des Falls für geboten hält oder wenn die

4. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.
5. Evidence of witnesses may also be presented in the form of written statements signed by them.
6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered, and which party has to discharge the burden of proof.

Parteien dies vereinbart und ihre Vereinbarung dem Schiedsgericht mindestens 15 Tage vor der Verhandlung bekanntgegeben haben.
4. Verhandlungen sind nicht öffentlich, soferne nicht die Parteien etwas anderes vereinbaren. Das Schiedsgericht kann verlangen, daß sich Zeugen während der Vernehmung anderer Zeugen zurückziehen. Das Schiedsgericht kann die Art der Zeugeneinvernahme nach freiem Ermessen bestimmen.
5. Der Beweis durch Zeugen kann auch in Form schriftlicher, von den Zeugen unterzeichneter Erklärungen erbracht werden.
6. Das Schiedsgericht hat die Zulässigkeit, die Erheblichkeit, die Bedeutung und die Beweiskraft der angebotenen Beweise zu beurteilen, sowie, welche Partei den Beweislast trägt.

Interim measures

Article 34.

1. At the request of either party, the arbitral tribunal may recommand any interim measure it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.
2. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Vorläufige Maßnahmen

Artikel 34.

1. Auf Antrag der einen oder der anderen Partei kann das Schiedsgericht alle vorläufigen Maßnahmen, die es in Ansehung des Streitgegenstandes für notwendig erachtet, empfehlen, insbesondere sichernde Maßnahmen für Waren, die den Streitgegenstand bilden, wie etwa die Anordnung ihrer Hinterlegung bei einem Dritten oder die Anordnung des Verkaufs verderblicher Waren.
2. Ein Antrag auf Anordnung vorläufiger Maßnahmen, der von einer der Parteien bei einem staatlichen Gericht gestellt wird, ist weder als mit der Schiedsvereinbarung unvereinbar noch als Verzicht auf diese anzusehen.

Decision making

Article 35.

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. Presiding arbitrator may decide on his own in the case of questions of procedure. On the proposal of an arbitrator, such decisions are subject to revision by the arbitral tribunal.

Entscheidung

Artikel 35.

1. Besteht das Schiedsgericht aus drei Schiedsrichtern, so ist jeder Schiedsspruch oder jede andere Entscheidung des Schiedsgerichts mit Stimmenmehrheit zu erlassen.
2. Über Verfahrensfragen entscheidet allein der Vorsitzende des Schiedsgerichts. Auf Vorschlag eines Schiedsrichters kann Schiedsgericht solche Entscheidung überprüfen und ändern.

Form and effect of the award

Article 36.

1. The award shall be made in writing. The award is final, binding, and no appeal may be

Form und Wirkung des Schiedsspruchs

Artikel 36.

1. Der Schiedsspruch ist schriftlich zu erlassen. Der Schiedsspruch ist rechtskräftig, endgültig

filed against it. The parties undertake to carry out the award without delay.
2. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
3. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall expressly state the absence of the signature.
4. The award may be made public only with the consent of both parties.
5. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

und bindet die Parteien. Die Parteien verpflichten sich, den Schiedsspruch unverzüglich zu erfüllen.
2. Das Schiedsgericht hat den Schiedsspruch zu begründen, es sei denn, die Parteien haben vereinbart, daß er nicht zu begründen ist.
3. Der Schiedsspruch ist von den Schiedsrichtern zu unterzeichnen und hat die Angabe des Tages und des Ortes, an dem er erlassen wurde, zu enthalten. Besteht das Schiedsgericht aus drei Schiedsrichtern und fehlt die Unterschrift eines von ihnen, so ist das Fehlen dieser Unterschrift im Schiedsspruch ausdrücklich zu vermerken.
4. Der Schiedsspruch darf nur mit Zustimmung beider Parteien veröffentlicht werden.
5. Von den Schiedsrichtern unterschriebene Abschriften des Schiedsspruchs sind den Parteien durch das Schiedsgericht zu übermitteln.

Interlocutory or partial award

Article 37.

In addition to making a final award, the arbitral tribunal shall be entitled to make interlocutory or partial awards.

Zwischen- und Teilschiedsspruch

Artikel 37.

1. Das Schiedsgericht ist berechtigt nicht nur endgültige sondern auch Zwischen- oder Teilschiedssprüche zu erlassen.

*Applicable law, **amiable compositeur***

Article 38.

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
2. The arbitral tribunal shall decide as **amiable compositeur** ili **ex aequo et bono** only if the parties have expressly authorized the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transactions.

Anzuwendendes Recht, Billigkeitsentscheidung

Artikel 38.

1. Das Schiedsgericht hat das Recht anzuwenden, das die Parteien als in der Sache selbst maßgebend bezeichnet haben. Fehlt eine solche Bezeichnung durch die Parteien, so hat das Schiedsgericht jenes Recht anzuwenden, das von den Kollisionsnormen, die es im betreffenden Fall für anwendbar erachtet, bezeichnet wird.
2. Das Schiedsgericht hat nur dann nach Billigkeit (**amiable compositeur, ex aequo et bono**) zu entscheiden, wenn es dazu ausdrücklich von den Parteien ermächtigt wurde.
3. In allen Fällen hat das Schiedsgericht nach den Bestimmungen des Vertrages zu entschieden und die auf Geschäfte dieser Art anwendbaren Handelsbräuche zu berücksichtigen.

Interpretation of the award

Article 39.

1. Within 30 days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpr-

Auslegung des Schiedsspruches

Artikel 39.

1. Innerhalb von 30 Tagen nach Erhalt des Schiedsspruchs kann jede Partei, unter Benachrichtigung der anderen, das Schiedsgericht um

etation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 36 shall apply.

eine Auslegung des Schiedsspruchs ersuchen.
2. Die Auslegung ist innerhalb von 45 Tagen nach Erhalt des Antrags schriftlich zu erteilen. Die Auslegung bildet einen Bestandteil des Schiedsspruchs, und Artikel 36 findet auf sie Anwendung.

Correction of the award

Article 40.

1. Within 30 days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of article 36 shall apply.

Berichtigung des Schiedsspruchs

Artikel 40.

1. Innerhalb von 30 Tagen nach Erhalt des Schiedsspruchs kann jede Partei unter Benachrichtigung der anderen das Schiedsgericht um Berichtigung von im Schiedsspruch enthaltenen Rechen-, Schreib-, Druck- oder anderen Fehlern gleicher Art ersuchen. Das Schiedsgericht kann solche Berichtigungen von sich aus innerhalb von 30 Tagen nach Mitteilung des Schiedsspruchs vornehmen.
2. Auf solche Berichtigungen, die schriftlich vorzunehmen sind, findet Art. 36 Anwendung.

Additional award

Article 41.

1. Within 30 days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an aditional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within 60 days after the receipt of the request.
3. When an additional award is made, the provisions of article 36 shall apply.

Ergänzender Schiedsspruch

Artikel 41.

1. Innerhalb von 30 Tagen nach Erhalt des Schiedsspruchs kann jede Partei unter Benachrichtigung der anderen beim Schiedsgericht den Erlaß eines ergänzenden Schiedsspruchs über Ansprüche beantragen, die im Schiedsverfahren geltend gemacht, im Schiedsspruch aber nicht behandelt wurden.
2. Erachtet das Schiedsgericht diesen Antrag für gerechtfertigt und ist es der Ansicht, daß die Auslassung ohne weitere mündliche Verhandlung oder Beweisaufnahme behoben werden kann, so hat es den Schiedsspruch innerhalb von 60 Tagen nach Erhalt des Antrags zu ergänzen.
3. Bei Erlaß eines ergänzenden Schiedsspruchs findet Art. 36 Anwendung.

Settlement or other grounds for termination

Article 42.

1. If, during the arbitral proceedings, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings, or, if requested by both parties and accepted by the tribunal, make the award by consent. The arbitral tribunal is not obliged to give reasons for

Einigung oder andere Gründe für die Einstellung des Verfahrens

Artikel 42.

1. Einigen sich die Parteien vor Erlaß des Schiedsspruchs über die Beilegung der Streitigkeit, so hat das Schiedsgericht entweder einen Beschluß über die Einstellung des Schiedsverfahrens zu erlassen oder, falls beide Parteien es beantragen und das Schiedsgericht zustimmt, die Einigung in Form eines Schiedsspruchs mit

such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intentions to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to to issue such an order unless a party raises justifiable grounds for objection.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 36, paragraphs 1 and 3 to 5, shall apply.

vereinbartem Wortlaut zu Protokoll zu nehmen. Dieser Schiedsspruch bedarf keiner Begründung.
2. Wird es, bevor der Schiedsspruch erlassen wurde, aus irgendeinem anderen Grund als dem des Abs. 1 unnötig oder unmöglich, das Schiedsverfahren fortzusetzen, so hat das Schiedsgericht die Parteien von seiner Absicht, einen Beschluß über die Einstellung des Verfahrens zu erlassen, zu unterrichten. Das Schiedsgericht hat die Befugnis, einen solchen Beschluß zu erlassen, es sei denn, daß eine der Parteien dagegen begründete Einwände erhebt.
3. Das Schiedsgericht übermittelt den Parteien von den Schiedsrichtern unterzeichnete Abschriften des Beschlusses über die Einstellung des Schiedsverfahrens oder des Schiedsspruchs mit vereinbartem Wortlaut. Ergeht ein Schiedsspruch mit vereinbartem Wortlaut, so findet Art. 36 Abs. 1 und 3 bis 5, Anwendung.

The powers of the Secretary of the Court and the Court

Article 43.

1. The Secretary of the Court may be present at all hearings and sittings of any arbitral tribunal on which decision have to be made.
2. The Secretary of the Court shall be present at all hearings and sittings mentioned in paragraph 1, if the sole arbitrator or a member of the arbitral panel is not a lawyer by education.
3. The Secretary of the Court may warn the arbitrators to pay attention on legal issues of importance for decision making, and especially on the issues concerning the substance and the form of the procedural actions which have to be taken.
4. Before signing an award, the arbitral tribunal shall submit it in draft form to the Court.
5. The Court may lay down modifications as to the form of the draft. The Court may, without affecting the liberty of decision of the arbitral tribunal, draw it's attention to points of substance.
6. Arbitral tribunal may not pass an award before it has been, in respect to its form, approved by the Court.

Die Befugnisse des Sekretärs des Schiedsgerichtshofes und des Schiedsgerichtshofes

Artikel 43.

1. Der Sekretär des Schiedsgerichtshofes kann an allen Schiedsgerichtsverhandlungen und -sitzungen, an denen die Entscheidungen zu treffen sind, anwesend sein.
2. Der Sekretär des Schiedsgerichtshofes hat an den in Abs. 1 erwähnten Verhandlungen und Sitzungen anwesend zu sein, wenn mindestens ein Schiedsrichter kein Jurist ist.
3. Der Sekretär des Schiedsgerichtshofes kann auf für die Entscheidung wichtige rechtliche Fragen aufmerksam zu machen, insbesondere auch auf solche, die den Inhalt und die Form des prozessualen Vorgehens betreffen.
4. Bevor der Schiedsspruch unterzeichnet wird, hat das Schiedsgericht dessen Entwurf dem Schiedsgerichtshof zu erbringen.
5. Der Schiedsgerichtshof kann die Änderungen in der Form der Entwurf bestimmen. Der Schiedsgerichtshof kann, unter Wahrung der Entscheidungsfreiheit des Schiedsgerichts, auf Fragen hinweisen, die den sachlichen Inhalt des Schiedsspruches betreffen.
6. Kein Schiedsspruch kann ergehen, ohne daß er vom Schiedsgerichtshof in Form genehmigt worden ist.

CONCILIATION

Article 44.

At the request of a party, conciliation proceedings may take place within the jurisdiction of the Court as to the subject matter. The valid arbitration agreement is not needed for the institution of the conciliation proceedings.

Article 45.

The request for the institution of the conciliation proceedings shall be submitted to the Secretariat of the Court, which shall invite the opposing party to reply within 30 days after service of the request. If the other party does not accept the request or fails to reply within that period, the conciliation proceedings are deemed to be failed.

Article 46.

1. If the opposing party accepts the request for the institution of the conciliation proceedings, the Presidium of the Court shall appoint one of its members or other qualified person to act as a conciliator.
2. The mediatior shall examine the statements and proposals of the parties, and, if necessary, collect certain informations and invite the parties for oral hearings.
3. After the case has been sufficiently examined, the conciliator shall make a written proposal of the settlement and communicate it to the parties.

Article 47.

If a settlement has been concluded between parties, it shall be noted in a record signed by the parties and the conciliator. At the request of the parties, and if the parties submit the valid arbitration agreement, the Presidium shall appoint the conciliator as an arbitrator, which shall, at the request of the parties, make the award by consent.

Article 48.

If the parties fail to conlude a settlement, the mediation proceedings are deemed to be failed.

SCHLICHTUNG

Artikel 44.

Auf Antrag einer Partei kann im Rahmen der sachlichen Zuständigkeit des Schiedsgerichtshofes ein Schlichtungverfahren durchgeführt werden. Hierfür ist das Vorliegen einer gültigen Schiedsvereinbarung nicht erforderlich.

Artikel 45.

Der Antrag auf Einleitung des Schlichtungsverfahrens ist beim Sekretariat des Schiedsgerichtshofes einzubringen. Dieses fordert die Gegenpartei auf, sich innerhalb einer Frist von 30 Tagen ab Zustellung zu äußern, ob sie damit einverstanden ist. Weigert sich eine Partei, an dem Schlichtungsverfahren teilzunehmen, oder gibt innerhalb der gesetzten Frist keine Äußerung ab, so ist die Schlichtung als gescheitert anzusehen.

Artikel 46.

1. Ist die Gegenpartei mit der Durchführung eines Schlichtungsverfahrens einverstanden, so bestimmt das Präsidium eines seiner Mitglieder oder eine andere geeignete Person zum Schlichter.
2. Der Schlichter prüft die von den Parteien vorgelegten Unterlagen und Vorschläge und, soweit erforderlich, holt die Auskünfte ein und lädt die Parteien zur Erörterung des Streitfalles.
3. Nachdem der Streitfall genügend geprüft worden ist, unterbreitet der Schlichter den Parteien einen schriftlichen Vorschlag zu dessen gütlicher Beilegung.

Artikel 47.

Haben die Parteien einen Vergleich geschlossen, so ist das Ergebnis in einem Protokoll festzuhalten, das von den Parteien und dem Schlichter zu unterschreiben ist. Bei Vorliegen einer gültigen Schiedsvereinbarung ernennt das Präsidium den Schlichter, wenn alle Parteien dies beantragen, zum Einzelschiedsrichter. Dieser hat, wenn die Parteien dies wünschen, aufgrund der Einigung einen Schiedsspruch zu erlassen.

Artikel 48.

Kommt keine Einigung zustande, so ist die Schlichtung gescheitert. Im Rahmen eines

The statements of the parties given during conciliation proceedings cannot be used in following arbitration proceedings. The conciliator may not, except in the case referred to in the article 47, be an arbitrator in the same case.

Schlichtungverfahrens von den Parteien abgegebene Erklärungen sind für ein folgendes Schiedsverfahren nicht bindend. Der Schlichter darf, außer im Falle des Artikel 47, in dem darauffolgenden Schiedsverfahren nicht Schiedsrichter sein.

FINAL PROVISIONS

SCHLUSSBESTIMMUNGEN

Definitions of some keywords

Article 49.

For the purposes of these rules (Zagreb Rules):

(a) "Court" means the Permanent Arbitration Court attached to the Croatian Chamber of Economy;

(b) "arbitral tribunal" means a panel of arbitrators or a sole arbitrator;

(c) "arbitrator" means a sole arbitrator or a member or a presiding arbitrator of the panel of arbitrators;

(d) "conciliator" means a person in charge of conciliation proceedings;

(e) "award" means a decision of the arbitral tribunal concerning the substance of dispute;

(f) "arbitration" means all activities concerning arbitration proceedings.

Definitionen

Artikel 49.

Zum Zweck dieser Schiedsordnung (Zagreber Regeln) ist:

a) unter "Schiedsgerichtshof" Ständiges Schiedsgerichtshof bei der Kroatischen Wirtschaftskammer zu verstehen;

b) unter "Schiedsgericht" drei Schiedsrichter oder der Einzelschiedsrichter;

c) unter "Schiedsrichter" der Einzelschiedsrichter oder der Vorsitzende oder ein anderes Mitglied des Schiedsgerichts.

d) unter "Schlichter" die Person, die das Schlichtungsverfahren durchführen soll;

e) unter "Schiedsspruch" die Entscheidung des Schiedsgerichts in der Hauptsache;

f) unter "Schiedsverfahren" das von dem Schiedsgericht durchzuführende Verfahren.

Application of these rules

Article 50.

These Rules (Zagreb Rules) shall apply in all international proceedings brought before Permanent Arbitration Court attached to the Croatian Chamber of Economy, no matter when they are instituted.

Anwendung dieser Regeln

Artikel 50.

Diese Regeln (Zagreber Regeln) sind auf alle internationalen Schiedsverfahren vor dem Ständigen Schiedsgerichtshof bei der Kroatischen Wirtschaftskammer anzuwenden, unabhängig davon, wann diese eingeleitet wurden.

Costs

Article 51.

The provisions concerning costs of the arbitration of the Permanent Arbitration Court attached to the Croatian Chamber of Economy (fees of the arbitral tribunal, administrative costs, costs of presenting evidence and other costs) shall be determined by an act of the Executive Commitee of the Croatian Chamber of Economy.

Kosten

Artikel 51.

Die Regeln bezüglich der Verfahrenskosten des Ständigen Schiedsgerichtshof bei der Kroatischen Wirtschaftskammer (Honorare der Mitglieder des Schiedsgerichts, Verwaltungskosten, die Kosten des Beweisverfahrens, und anderen Kosten) sind in einer Verordnung des Verwaltungsausschusses der Kroatischen Wirtschaftskammer festzulegen.

Comming into force

Article 52.

These Rules shall come into force upon the expiry of 8 days of the date of their publishing in "Narodne novine".

Inkrafttreten

Artikel 52.

Diese Regeln treten acht Tage nach ihrer Kundmachung in "Narodne novine" in Kraft.