

**DRAFT LAW ON INTERNATIONAL COMMERCIAL
ARBITRATION
OF REPUBLIC OF MACEDONIA¹**

¹ Based on: UNCITRAL Model Law on International Commercial Arbitration (United Nations document A/40/17, Annex I), Adopted on 21 June 1985.
Additions are in italic.

CHAPTER I. GENERAL PROVISIONS

Article 1 Scope of Application

1) The present Law applies to international commercial arbitration if the place of arbitration is in the territory of the Republic of Macedonia. *However, the provisions of articles 8, 9 and 37 apply also if the place of arbitration is abroad.*

2) *The international commercial arbitration, resolves disputes concerning matters in respect of which the parties may reach a settlement, only if:*

a) *at least one of the parties is a natural person with domicile or habitual residence abroad, or a legal person whose place of business is abroad; or*

b) *any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or*

c) *the parties have expressly agreed that their dispute will be resolved by an arbitration according to the provisions of this Law.*

3) For the purposes of paragraph 2 of this article:

a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

b) if a party which is a legal person does not have a place of business, reference is to be made to *its branch office.*

4) *Disputes from paragraph 2, subparagraphs b) and c) of this Article, may only be submitted to arbitration that has place in the Republic of Macedonia. Parties are free to submit the disputes from paragraph 2, subparagraph a) of this Article, also to an arbitration that has place outside the territory of the Republic Macedonia.*

5) This Law shall not affect any other law of Republic of Macedonia by virtue of which certain disputes *may be subject only to the jurisdiction of a court in the Republic of Macedonia.*

6) *A state, state agency, legal person controlled by the state, and the units of self-government can be a party to international commercial arbitration.*

7) *Article headings in this Law are for reference purposes only and are not to be used for purposes of interpretation.*

Article 2

Definitions and rules of interpretation

For the purposes of this Law:

a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

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

c) *"arbiter" means single arbitrator or member or president of an arbitral tribunal.*

d) *"arbitral award" means a decision of the arbitral tribunal on the merits of the dispute;*

e) "court" means an organ of the judicial system of Republic of Macedonia, *founded according to its Laws;*

f) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

g) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

h) where a provision of this Law, other than in articles 25 (1)(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3
Receipt of written communications

1) *Unless otherwise agreed by the parties, any written communication shall be deemed to have been delivered on the day when it is delivered to the mailing address of the addressee or to the person designated to receive written communications.*

2) *Mailing address is the address at which the addressee regularly receives mail. If the addressee has not expressly defined any other address or if the circumstances of the case do not indicate otherwise, the mailing address shall be the address of the seat or the branch office of the addressee, his habitual residence or the address referred to in the main contract or in the arbitration agreement.*

3) *If none of the addresses referred to in paragraph 2 of this article is known, a written communication shall be deemed to have been served on the day when its delivery has been attempted to the last known address, provided it has been properly forwarded by registered mail with return receipt or in any other way that can provide evidence of attempted delivery.*

4) *A written communication shall be deemed to have been served if the addressee to whom delivery was attempted in the above described manner refuses to receive it.*

5) *Provisions of this article shall not apply to delivery of communications in court proceedings.*

Article 4
Waiver of right to object

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

Article 5
Extent of court intervention

1) In matters governed by this Law, no court shall intervene except where so provided in this Law.

2) *Court proceedings in matters of paragraph 1 of this Article, shall be governed by the rules of non-contentious procedure, except upon applications for setting aside the arbitral award.*

Article 6
Court or other authority for certain functions of arbitration assistance and supervision

1) 1) The functions referred to in articles 11 paragraph 3), 11 paragraph 4), 13 paragraph 3), 14, 16 paragraph 3) shall be performed by the President of the Court of First Instance Skopje I - Skopje.

2) *Activities of the President of the court referred to in paragraph 1 of this article shall not be construed as activities in a court or administrative procedure.*

3) *The Court of First Instance Skopje I - Skopje shall have the jurisdiction to rule on the application for setting aside (Article 35, paragraph 2). The activities on the application for setting aside of the arbitral award shall be performed by a single judge.*

4) *A court competent ratione causae designated by a separate law shall be competent to carry out the enforcement of the award.*

CHAPTER II. ARBITRATION AGREEMENT

Article 7

Definition and form of arbitration agreement

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An 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, or in 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.

3) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

4) An arbitration agreement may also be concluded by the issuance of a bill of lading, if the bill of lading contains an express reference to an arbitration clause in a charter party.

5) Notwithstanding the provisions of Paragraphs 2-4 of this Article, if a dispute has arisen or could arise out of a consumer contract, the arbitration agreement must be contained in a separate document signed by both parties. In such a document no agreements may be contained other than those referring to the arbitral proceedings, except if the document was drawn up by a notary public.

Article 8
**Arbitration agreement and substantive claim before court about the same
dispute matter**

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

2) The respondent may raise the objection referred to in paragraph 1 of this article no later than at the preparatory hearing or, if no preparatory hearing is held, at the main hearing before the end of the presentation of the statement of defence.

3) Where an action referred in paragraph 1 of this article has been brought to the court, arbitral proceedings may nevertheless be commenced or continued if they were already commenced, and an award may be made while the issue is still pending before the court.

Article 9
Arbitration agreement and interim measures by court

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

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10 Number of arbitrators

- 1) *The number of arbitrators must be odd.*
- 2) If the parties have failed to determine the number of arbitrators, the number of arbitrators shall be three.

Article 11 Appointment of arbitrators

- 1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- 2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs 4) and 5) of this article.

3) Failing such agreement,

a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

4) Where, under an appointment procedure agreed upon by the parties,

- (a) a party fails to act as required under such procedure, or
- (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
- (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6/1 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any

qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

6) A decision on a matter entrusted by paragraph 3) or 4) of this article to the court or other authority specified in article 6 shall be subject to no appeal.

Article 12

Grounds for challenge

1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

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

3) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13

Challenge procedure

1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph 3) of this Article.

2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in Article 12, paragraph 2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph 2) of this Article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6, paragraph 1 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14
Failure or impossibility to act

1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6, paragraph 1 to decide on the termination of the mandate, which decision shall be subject to no appeal.

2) If, under this article or article 13 paragraph 2, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 paragraph 2.

Article 15
Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16

Competence of arbitral tribunal to rule on its jurisdiction

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

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

3) The arbitral tribunal may rule on a plea referred to in paragraph 2 of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6, paragraph 1 of this Law to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17

Power of arbitral tribunal to order interim measures

1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

2) If a party to which interim measure relates does not agree to undertake it voluntarily, the party that made the motion for such measures may request its enforcement before the competent court.

3) The decision of the court specified in paragraph 2 of this article, is revoked according to the provisions on interim measures of the Code of compulsory enforcement.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18 Equal treatment of parties

1) The parties to proceedings before an arbitral tribunal shall be treated equally.

2) The arbitral tribunal shall give a full opportunity to the parties to present their case and to respond to statements and claims of their adversary.

Article 19 Determination of rules of procedure

1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

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

Article 20 Place of arbitration

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

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

3) If the place of arbitration is not determined pursuant to provisions of paragraph 1 of this article, the place of arbitration shall be deemed to be the place designated in the award as the place where the award was made.

Article 21
Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent. *The request shall state the names of the parties, the subject-matter of the dispute and contain a reference to the arbitration agreement.*

Article 22
Language of the proceedings

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

2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

3) *Until the language of the proceedings has been determined, a claim, a defence and other deeds can be submitted in the language of the main contract, of the arbitration agreement or in the Macedonian language and its Cyrillic letter.*

4) *If neither parties nor arbitrators can reach an agreement on the language of arbitration, the language of arbitration shall be the Macedonian language and its Cyrillic letter.*

Article 23
Statements of claim and defence

1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts **and evidence** supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

3) *Paragraphs 1 and 2 of this Article, apply also to counter-claims.*

Article 24
Hearings and written proceedings

1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents *and of any procedure for taking evidence*.

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

4) *Unless otherwise agreed by the parties, the arbitral proceedings are not public.*

Article 25
Default of a party

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

a) the claimant fails to communicate his statement of claim in accordance with article 23, paragraph 1), the arbitral tribunal shall terminate the proceedings;

b) the respondent fails to communicate his statement of defence in accordance with article 23, paragraph 1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

v) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26
Expert appointed by arbitral tribunal

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

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

b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

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

3) *The provisions of Article 13 paragraphs 1 and 2 and Article 14, paragraphs 1 and 2 of this Law, will appropriately apply to the challenge of experts.*

Article 27
Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence. *The procedure for taking evidence is governed by the provisions of the Code of contentious procedure on taking evidence before a judge commissioned by a rogatory letter.*

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28

Rules applicable to substance of dispute

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

2) Failing any designation by the parties, the arbitral tribunal shall apply the law of a state *with which the subject matter of the dispute is most closely connected*.

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

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

Article 29

Decision making by panel of arbitrators

1) In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

2) *If an arbitrator refuses to take part in the vote on a decision, the other arbitrators may take the decision without him, unless otherwise agreed by the parties.*

3) *The arbitrator who disagrees with the award may give his dissenting opinion in writing.*

4) *If a majority cannot be reached, the award is made by the presiding arbitrator.*

Article 30 Settlement

1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

2) *If the arbitral tribunal finds that the contents of the settlement violate the public order of the Republic of Macedonia, it shall deny the request by the parties to record the settlement in the form of arbitral award on agreed terms from paragraph 1 of this article.*

3) The award on agreed terms *from paragraph 1 of this article*, shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31 Form and contents of award

1) The award shall be made in writing and shall be signed by the *single arbitrator or by the members of the arbitral tribunal*. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

3) The award shall state its date and the place of arbitration as determined in accordance with Article 20, paragraph 1) of this Law. The award shall be deemed to have been made at that place.

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

5) *Unless otherwise agreed by the parties, the service of the award shall be made pursuant to provisions of Article 3 of this Law. Service of the award may be carried out by the court designated in Article 6, paragraph 1 of this Law, or by a notary public, if the parties have agreed so.*

Article 32
Termination of proceedings

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

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

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute; or

(b) the parties agree on the termination of the proceedings; or

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

3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 35, paragraph 4. *In such cases, the tribunal's mandate will be terminated when the respective decision is rendered.*

Article 33
Correction and interpretation of award; additional award

1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

a) a 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;

b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

2) If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

3) The arbitral tribunal may correct any error of the type referred to in paragraph 1a) of this article on its own initiative within thirty days of the date of the award.

4) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days *of receipt of the request*.

5) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (4) of this article.

6) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

Article 34
Decision on costs

1) Upon a request by a party, the arbitral tribunal shall determine in the award or an order for the termination of the arbitral proceedings which party and in which proportion has to reimburse the other party the necessary costs of arbitration, including expenses of party representation and the fees of arbitrators, and/or has to bear its own expenses.

2) The arbitral tribunal shall decide on the costs of the proceedings according to its free evaluation, taking into account all circumstances of the case, especially the outcome of the dispute.

3) If the arbitral tribunal fails to decide on costs of proceedings, or if such decision is possible only after termination of the arbitral proceedings, the arbitral tribunal will make a separate award on the costs of proceedings.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 35

Application for setting aside as exclusive recourse against arbitral award

1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs 2) and 3) of this Article.

2) An arbitral award may be set aside by the court specified in Article 6, paragraph 3 of This Law only if:

a) the party making the application furnishes proof that:

- (1) a party to the arbitration agreement referred to in Article 7 of this Law was *incapable of concluding the arbitration agreement or to be a party to an arbitration dispute according to the law applicable to its capacity; or*
- (2) the arbitration agreement referred to in Article 7 of this Law is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of Republic of Macedonia; or
- (3) *a party was not duly represented; or*
- (4) the party making the application was not given proper notice of the appointment of an arbitrator or of the commencement of the arbitral proceedings or was otherwise unable to present his case; or
- (5) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- (6) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

b) the court finds, *even if a party has not raised these grounds, that:*

- (1) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Republic of Macedonia; or
- (2) the award is in conflict with the public policy of the Republic of Macedonia.

3) An application for setting aside *of the arbitral award* may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action that will eliminate the grounds for setting aside.

CHAPTER VIII. LEGAL EFFECT OF THE AWARD; RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Legal effect of the award

Article 36

The award of the arbitral tribunal shall have, in respect of the parties, the force of a final judgment (res iudicata), unless the parties have expressly agreed that the award may be contested by an arbitral tribunal of a higher instance.

Article 37

Recognition and enforcement of foreign arbitral awards

1) A foreign arbitral award shall be the arbitral award which was not made in Republic of Macedonia.

2) A foreign arbitral award shall be treated as an award pertaining to the state in which it was made.

3) The recognition and enforcement of foreign arbitral awards shall be carried out according to the provisions of the Convention signed in New York on 10 June 1958 on the recognition and enforcement of foreign arbitral awards (Official gazette of SFRY, International Agreements" no.11/81).

CHAPTER IX. TRANSITORY AND FINAL PROVISIONS

Repealing of particular laws

Article 38

By enactment of this Law, the provisions of the following Laws shall be repealed:

- *Article 439 of the Code of Civil Procedure, (“Official Gazette of Republic of Macedonia” no. 33/98 and 44/2002);*
- *Articles 97 to 100 of the Conflicts of Laws Act (“Official Gazette of SFRY” no. 43/82 and 72/82);*
- *Article 1, Paragraph 1, Subparagraph 2, of the Law on ratification of Convention on the Recognition and enforcement of foreign arbitral awards, of New York, 1958 (“Official Gazette of SFRY, International Contracts” no. 11/81).*

Article 39

Application of this Law

1) Effectiveness of arbitration agreements concluded prior to the coming into force of this Law shall be governed by the legislation previously in force.

2) Pending arbitration proceedings that have not been completed at the time of the coming into force of this Law shall be conducted according to legislation previously in force. Settlements already made will be replaced, upon a joint proposal of the parties, by the arbitral award referred to in Article 30 of this Law. Parties may agree on the application of the new Law to pending proceedings.

3) Judicial proceedings pending at the time of coming into force of this Law shall continue under regulations previously in force.

Article 40

Entry into force

This Law shall come into force on the eighth day following its publication in the “Official Gazette of the Republic of Macedonia”.
