

# CODEX FRIDERICIANUS OF 4 APRIL 1748\*

## - TENTH BOOK -

### Chapter 1. General provisions

#### *Section 1025 Scope of application*

(1) The provisions of this Book apply if the place of arbitration as referred to in section 1043 subs. 1 is situated in Germany.

(2) The provisions of sections 1032, 1033 and 1050 also apply if the place of arbitration is situated outside Germany or has not yet been determined.

(3) If the place of arbitration has not yet been determined, the German courts are competent to perform the court functions specified in sections 1034, 1035, 1037 and 1038 if the respondent or the claimant has his place of business or habitual residence in Germany.

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

#### *Section 1026 Extent of court intervention*

In matters governed by sections 1025 to 1061, no court shall intervene except where so provided in this Book.

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

If any provision of this Book from which the parties may derogate or any agreed requirement of the arbitral procedure has not been complied with, a party not stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, may not raise that objection later. This does not apply if the party did not know of the defect.

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\* The Codex is an Adaptation of the German Arbitration Law, the Tenth Book of the *Zivilprozessordnung* (Code of Civil Procedure). This translation has been taken from the homepage of the German Arbitration Institute (DIS).

*Section 1028 Receipt of written communications in case of unknown whereabouts*

(1) Unless otherwise agreed by the parties, if the whereabouts of a party or of a person entitled to receive communications on his behalf are not known, any written communication shall be deemed to have been received on the day on which it could have been received at the addressee's last-known mailing address, place of business or habitual residence after proper transmission by registered mail/return receipt requested or any other means which provides a record of the attempt to deliver it there.

(2) Subsection 1 does not apply to communications in court proceedings.

**Chapter 2. Arbitration agreement**

*Section 1029 Definition*

(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.

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

*Section 1030 Arbitrability*

(1) Any claim involving an economic interest ("*vermögensrechtlicher Anspruch*") can be subject to an arbitration agreement. An arbitration agreement concerning claims not involving an economic interest shall have legal effect to the extent that the parties are entitled to conclude a settlement on the issue in dispute.

(2) An arbitration agreement relating to disputes over the existence of a lease of residential accommodations within Germany shall be null and void. This does not apply to residential accommodations as specified in section 549 subs. 2, nos. 1 to 3 of the Civil Code.

(3) Statutory provisions outside of this Book regarding which disputes may not be submitted to arbitration, or which disputes may be submitted to arbitration only under certain conditions, remain unaffected.

*Section 1031 Form of arbitration agreement*

(1) The arbitration agreement shall be contained either in a document signed by the parties or in an exchange of letters, telefaxes, telegrams or other means of telecommunication which provide a record of the agreement.

(2) The form requirement of subsection 1 shall be deemed to have been complied with if the arbitration agreement is contained in a document transmitted from one party to the other party or by a third party to both parties and – if no objection was timely raised – the contents of such document are considered to be part of the contract in accordance with common usage.

(3) The reference in a contract complying with the form requirements of subsection 1 or 2 to a document containing an arbitration clause constitutes an arbitration agreement provided that the reference is such as to make that clause part of the contract.

(4) (repealed)

(5) Arbitration agreements to which a consumer is a party must be contained in a document which has been personally signed by the parties. The written form pursuant to sentence 1 may be substituted by electronic form pursuant to section 126a of the Civil Code (“Bürgerliches Gesetzbuch – BGB”). No agreements other than those referring to the arbitral proceedings may be contained in such a document or electronic document; this shall not apply in the case of a notary certification.

(6) Any non-compliance with the form requirements is cured by entering into argument on the substance of the dispute in the arbitral proceedings.

*Section 1032 Arbitration agreement and substantive claim before court*

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if the respondent raises an objection prior to the beginning of the oral hearing on the substance of the dispute, reject the action as inadmissible unless the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

(2) Prior to the composition of the arbitral tribunal, an application may be made to the court to declare whether or not arbitration is admissible.

(3) Where an action referred to in subsection 1 or 2 is pending, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

*Section 1033 Arbitration agreement and interim measures by court*

It is not incompatible with an arbitration agreement for a court to grant, before or during arbitral proceedings, a provisional or conservatory measure of protection relating to the subject-matter of the arbitration upon request of a party.

**Chapter 3. Composition of arbitral tribunal**

*Section 1034 Constitution of arbitral tribunal*

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

(2) If the arbitration agreement grants preponderant rights to one party with regard to the constitution of the arbitral tribunal which place the other party at a disadvantage, that other party may request the court to appoint the arbitrator or arbitrators in deviation from the nomination made, or from the agreed nomination procedure. The request must be submitted at the latest within two weeks of the party becoming aware of the constitution of the arbitral tribunal. Section 1032 subs. 3 applies mutatis mutandis.

*Section 1035 Appointment of arbitrators*

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

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

(3) Failing an agreement between the parties on the appointment of the arbitrators, a sole arbitrator shall, if the parties are unable to agree on his appointment, be appointed, upon request of a party, by the court. In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator who shall preside over the arbitral tribunal. If a party fails

to appoint the arbitrator within one month 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 one month of their appointment, the arbitrator shall be appointed, upon request of a party, by the court.

(4) Where, under an appointment procedure agreed upon by the parties, a party fails to act as required under such procedure, or if the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or a third party fails to perform any function entrusted to it under such procedure, any party may request the court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) The court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. In the case of appointment of a sole or third arbitrator, the court shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

*Section 1036 Challenge of an arbitrator*

(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 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. 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.

*Section 1037 Challenge procedure*

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

(2) 1 Failing such agreement, a party who intends to challenge an arbitrator shall, within two weeks after becoming aware of the constitu-

tion of the arbitral tribunal or after becoming aware of any circumstance referred to in section 1036 subs. 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) 1 If a challenge under any procedure agreed upon by the parties or under the procedure of subsection 2 is not successful, the challenging party may request, within one month after obtaining knowledge of the decision rejecting the challenge, the court to decide on the challenge; the parties may agree on a different time-limit. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

*Section 1038 Failure or impossibility to act*

(1) 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. If the arbitrator does not withdraw from his office or if the parties cannot agree on its termination, any party may request the court to decide on the termination of the mandate.

(2) If, under subsection 1 or section 1037 subs. 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 for withdrawal referred to in subsection 1 or section 1036 subs. 2.

*Section 1039 Appointment of substitute arbitrator*

(1) 1 Where the mandate of an arbitrator terminates under sections 1037, 1038 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties, a substitute arbitrator shall be appointed. The appointment shall follow the rules that were applicable to the appointment of the arbitrator being replaced.

(2) The parties are free to agree on another procedure.

## Chapter 4. Jurisdiction of arbitral tribunal

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

(1) The arbitral tribunal may rule on its own jurisdiction and in this connection on the existence or validity of the arbitration agreement. For that purpose, an arbitration clause shall be treated as an agreement independent of the other terms of the contract.

(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 in which this is alleged is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers that the party has justified the delay.

(3) If the arbitral tribunal considers that it has jurisdiction, it rules on a plea referred to in sub-section 2 in general by means of a preliminary ruling. In this case, any party may request, within one month after having received written notice of that ruling, the court to decide the matter. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

### *Section 1041 Interim measures of protection*

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order such provisional or conservatory measures of protection as the arbitral tribunal may consider necessary in respect of the subjectmatter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

(2) The court may, at the request of a party, grant leave of enforcement of a measure referred to in subsection 1, unless application for a corresponding interim measure has already been made to a court. It may recast such an order if necessary for the purpose of enforcing the measure.

(3) The court may, upon request, repeal or amend the decision referred to in subsection 2.

(4) If a measure ordered under subsection 1 proves to have been unjustified from the outset, the party who obtained its enforcement is obliged to compensate the opposing party for damage resulting from

the enforcement of such measure or from his providing security in order to avoid enforcement. This claim may be put forward in the pending arbitral proceedings.

## **Chapter 5. Conduct of arbitral proceedings**

### *Section 1042 General rules of procedure*

(1) The parties shall be treated with equality. Each party shall be given a full opportunity of presenting his case.

(2) Lawyers (“Rechtsanwälte”) may not be excluded from acting as authorised representatives.

(3) Otherwise, subject to the mandatory provisions of this Book, the parties are free to determine the procedure themselves or by reference to a set of arbitration rules.

(4) Failing an agreement by the parties, and in the absence of provisions in this Book, the arbitral tribunal shall conduct the arbitration in such manner as it considers appropriate. The arbitral tribunal is empowered to determine the admissibility of taking evidence, to take evidence and assess freely such evidence.

### *Section 1043 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. In this respect, regard is to be had to the circumstances of the case, including the suitability of the place for the parties.

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

### *Section 1044 Commencement of arbitral proceedings*

1 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.

*Section 1045 Language of 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 make this determination. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any oral hearing and any award, other decision and 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.

*Section 1046 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 his claim and the facts supporting the claim, and the respondent shall state his defence in respect of these particulars. The parties may submit with their statements all documents they consider to be relevant or may add a reference to other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or his means of attack and defence during the course of the arbitral proceedings, unless the arbitral tribunal does not allow so having regard to the delay in making it without sufficient justification.

(3) Subsections 1 and 2 apply mutatis mutandis to a counter-claim.

*Section 1047 Oral hearings and written proceedings*

(1) Subject to agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted on the basis of documents and other materials. Unless the parties have agreed that no oral 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 purpose of taking evidence.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party;

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

*Section 1048 Default of a party*

(1) If the claimant fails to communicate his statement of claim in accordance with section 1046 subs. 1, the arbitral tribunal shall terminate the proceedings.

(2) If the respondent fails to communicate his statement of defence in accordance with section 1046 subs. 1, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations.

(3) If any party fails to appear at an oral hearing or to produce documentary evidence within a set time-limit, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

(4) Any default which has been sufficiently justified to the tribunal's satisfaction will be disregarded. Apart from that, the parties may agree otherwise on the consequences of default.

*Section 1049 Expert appointed by arbitral tribunal*

(1) Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal. It may also require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents or 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 an oral hearing. At the hearing, the parties shall have the opportunity to put questions to him and to present expert witnesses of their own in order to testify on the points at issue.

(3) Sections 1036 and 1037 subs. 1 and 2 apply mutatis mutandis to an expert appointed by the arbitral tribunal.

*Section 1050 Court assistance in taking evidence and other judicial acts*

1 The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a court assistance in taking evidence or performance of other judicial acts which the arbitral tribunal is not empowered to carry out. Unless it regards the application as inadmissible, the court shall execute the request according to its rules on taking evidence or other judicial acts. The arbitrators are entitled to participate in any judicial taking of evidence and to ask questions.

**Chapter 6. Making of award and termination of proceedings**

*Section 1051 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 of the applicable rules of law by the parties, the arbitral tribunal shall apply the law of the State with which the subject-matter of the proceedings 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. The parties may so authorize the arbitral tribunal up to the time of its decision.

(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.

*Section 1052 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 the votes of all its members.

(2) If an arbitrator refuses to take part in the vote on a decision, the other arbitrators may make the decision without him, unless otherwise agreed by the parties. The parties shall be given advance notice of the intention to make an award without the arbitrator refusing to participate in the vote. In the case of other decisions, the parties shall be

informed of the refusal to participate in the vote subsequent to the decision.

(3) Individual questions of procedure may be decided by a presiding arbitrator alone if so authorized by the parties or the other members of the arbitral tribunal.

*Section 1053 Settlement*

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. If requested by the parties, it shall record the settlement in the form of an arbitral award on agreed terms, unless the contents of the settlement are in violation of public policy (*ordre public*).

(2) An award on agreed terms shall be made in accordance with section 1054 and shall state that it is an award. Such an award has the same effect as any other award on the merits of the case.

(3) If notarial certification is required for declarations to be effective, it will be substituted, in the case of an arbitral award on agreed terms, by recording the declarations of the parties in the award.

(4) An award on agreed terms may, upon agreement between the parties, also be declared enforceable by a notary whose notarial office is in the district of the court competent for the declaration of enforceability according to section 1062 subs. 1, 2. The notary shall refuse the declaration of enforceability, if the requirements of subsection 1, sentence 2 are not complied with.

*Section 1054 Form and contents of award*

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for 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 section 1053.

(3) The award shall state the date on which it was made and the place of arbitration as determined in accordance with section 1043 subs. 1. The award shall be deemed to have been made on that date and at that place.

(4) A copy of the award signed by the arbitrators shall be delivered to each party.

*Section 1055 Effects of arbitral award*

The arbitral award has the same effects between the parties as a final and binding court judgment.

*Section 1056 Termination of proceedings*

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

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

1. the claimant

a) fails to state his claim according to section 1046 subs. 1 and no case referred to in section 1048 subs. 4 exists, or

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

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

3. the parties fail to pursue the arbitral proceedings despite requests by the arbitral tribunal or when the continuation of the proceedings has for any other reason become impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of section 1057 subs. 2 and sections 1058, 1059 subs. 4.

*Section 1057 Decision on costs*

(1) Unless the parties agree otherwise, the arbitral tribunal shall allocate, by means of an arbitral award, the costs of the arbitration as between the parties, including those incurred by the parties necessary for

the proper pursuit of their claim or defence. It shall do so at its discretion and take into consideration the circumstances of the case, in particular the outcome of the proceedings.

(2) To the extent that the costs of the arbitral proceedings have been fixed, the arbitral tribunal shall also decide the amount to be borne by each party. If the costs have not been fixed or if they can only be fixed once the arbitral proceedings have been terminated, the decision shall be taken by means of a separate award.

*Section 1058 Correction and interpretation of award; additional award*

(1) Any party may request the arbitral tribunal

1. to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
2. to give an interpretation of specific parts of the award;
3. to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

(2) Unless the parties did agree on another timelimit, the request shall be made within one month of receipt of the award.

(3) The arbitral tribunal should make the correction or give the interpretation within one month and make an additional award within two months.

(4) The arbitral tribunal may make a correction of the award even without request.

(5) Section 1054 shall apply to a correction or interpretation of the award or to an additional award.

**Chapter 7. Recourse against award**

*Section 1059 Application for setting aside*

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

(2) An arbitral award may be set aside only

1. if the applicant shows sufficient cause that

a) a party to the arbitration agreement referred to in sections 1029 and 1031 was under some incapacity pursuant to the law applicable to him; or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under German law; or

b) he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

c) 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 part of the award relating to matters submitted to arbitration can be separated from the part relating to matters not so submitted, only the latter part of the award may be set aside; or

d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with a provision of this Book or with an admissible agreement of the parties and this presumably affected the award; or

2. if the court finds that

a) the subject-matter of the dispute is not capable of settlement by arbitration under German law; or

b) recognition or enforcement of the award leads to a result which is in conflict with public policy (ordre public).

(3) Unless the parties have agreed otherwise, an application to the court for setting aside must be made within a three month time-limit. The time-limit shall commence on the date on which the party making the application had received the award. If a request had been made under section 1058, the time-limit shall be extended by not more than one month from receipt of the decision on the request. No application for setting aside the award may be made once the award has been declared enforceable by a German court.

(4) The court, when asked to set aside an award, may, where appropriate, upon request of a party set aside the award and remit the case to the arbitral tribunal.

(5) Setting aside the arbitral award shall, in the absence of any indication to the contrary, result in the arbitration agreement becoming operative again with respect to the subject-matter of the dispute.

## **Chapter 8. Recognition and enforcement of awards**

### *Section 1060 Domestic awards*

(1) Enforcement of the award takes place if it has been declared enforceable.

(2) An application for a declaration of enforceability shall be refused and the award set aside if one of the grounds for setting aside under section 1059 subs. 2 exists. Grounds for setting aside shall not be taken into account, if at the time when the application for a declaration of enforceability is served, an application for setting aside based on such grounds has been finally rejected. Grounds for setting aside under section 1059 subs. 2, no. 1 shall also not be taken into account if the time-limits set by section 1059 subs. 3 have expired without the party opposing the application having made an application for setting aside the award.

### *Section 1061 Foreign awards*

(1) Recognition and enforcement of foreign arbitral awards follows the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 ([Bundesgesetzblatt BGBI. 1961 Part II p. 121]). The provisions of other treaties on the recognition and enforcement of arbitral awards shall remain unaffected.

(2) If the declaration of enforceability is to be refused, the court shall rule that the arbitral award is not to be recognized in Germany.

(3) If the award is set aside abroad after having been declared enforceable, application for setting aside the declaration of enforceability may be made.

## **Chapter 9. Court proceedings**

### *Section 1062 Competence*

(1) The Higher Regional Court (“Oberlandesgericht”) designated in the arbitration agreement or, failing such designation, the Higher Regional Court in whose district the place of arbitration is situated, is competent for decisions on applications relating to

1. the appointment of an arbitrator (sections 1034, 1035), the challenge of an arbitrator (section 1037) or the termination of an arbitrator’s mandate (section 1038);
2. the declaration of the admissibility or inadmissibility of arbitration (section 1032) or the decision of an arbitral tribunal confirming its competence in a preliminary ruling (section 1040);
3. the leave of enforcement, setting aside or amendment of an order for provisional or conservative measures of protection by the arbitral tribunal (section 1041);
4. the setting aside (section 1059) or the declaration of enforceability of the award (sections 1060 et seqq.) or the setting aside of the declaration of enforceability (section 1061).

(2) If the place of arbitration in the cases referred to in subsection 1, no. 2, first alternative, nos. 3 or 4 is not in Germany, competence lies with the Higher Regional Court (“Oberlandesgericht”) where the party opposing the application has his place of business or place of habitual residence, or where assets of the party opposing the application or the property in dispute or affected by the measure is located, failing which the Berlin Higher Regional Court (“Kammergericht”) shall be competent.

(3) In the cases referred to in section 1025 subs. 3, the Higher Regional Court (“Oberlandesgericht”) in whose district the claimant or the respondent has his place of business or place of habitual residence is competent.

(4) For assistance in the taking of evidence and other judicial acts (section 1050), the Local Court (“Amtsgericht”), in whose district the judicial act is to be carried out, is competent.

(5) Where there are several Higher Regional Courts (“Oberlandesgerichte”) in one state, the government of that state may transfer the competence by ordinance to one Higher Regional Court, or to the Highest Regional Court (“oberstes Landesgericht”); the state government may transfer such authority to the Department of Justice of the state concerned by ordinance. Several states may agree on crossborder competence of a Higher Regional Court.

*Section 1063 General provisions*

(1) The court shall decide by means of an order. The party opposing the application shall be given an opportunity to comment before a decision is made.

(2) The court shall order an oral hearing to be held, if the setting aside of the award has been requested or if, in an application for recognition or declaration of enforceability of the award, grounds for setting aside in terms of section 1059 subs. 2 are to be considered.

(3) The presiding judge of the civil court senate (“Zivilsenat”) may issue, without prior hearing of the party opposing the application, an order to the effect that, until a decision on the request has been made, the applicant may pursue enforcement of the award or enforce the provisional or conservatory measure of protection of the arbitral tribunal pursuant to section 1041. In the case of an award, enforcement of the award may not go beyond measures of protection. The party opposing the application may prevent enforcement by providing an amount corresponding to the amount that may be enforced by the applicant as security.

(4) As long as no oral hearing is ordered, applications and declarations may be put on record at the court registry.

*Section 1064 Particularities regarding the enforcement of awards*

(1) At the time of the application for a declaration of enforceability of an arbitral award the award or a certified copy of the award shall be supplied. The certification may also be made by counsel authorised to represent the party in the judicial proceedings.

(2) The order declaring the award enforceable shall be declared provisionally enforceable.

(3) Unless otherwise provided in treaties, subsections 1 and 2 shall apply to foreign awards.

*Section 1065 Legal remedies*

(1) An appeal on a point of law is permitted for decisions mentioned under section 1062 subs. 1, nos. 2 and 4. Otherwise, decisions in the proceedings specified in section 1062 subs. 1 may not be challenged.

(2) An appeal on a point of law may be based on the ground that the decision is based on a violation of a treaty. Sections 707, 717 apply *mutatis mutandis*.

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

*Section 1066 Mutatis mutandis application of the provisions of the Book 10*

For arbitral tribunals, established lawfully by dispositions on testamentary or other decrees not based on an agreement, the provisions of this Book apply *mutatis mutandis*.