Turkish International Arbitartion Law, Law no. 4686, 2001

International Arbitration Law (Law No. 4686 of 21 June 2001) in Jan Paulsson (ed), *International Handbook on Commercial Arbitration*, (Kluwer Law International 1984 Last updated: March 2005 Supplement No. 43) pp. Annex I - 1 - Annex I - 14

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Chapter One. General Provisions

Article 1

Purpose and scope

The purpose of this Law is to set forth the procedures and principles concerning international [commercial] arbitration.

This Law shall be applicable where a dispute has a foreign element and the place of arbitration is determined to be in Turkey or where the Law is chosen as the governing law [of arbitration] by arbitrating parties or their sole arbitrator or arbitral tribunal.

Articles 5 and 6 of this Law are applicable even if the place of arbitration is determined to be a place not in Turkey.

This Law shall not be applicable to disputes related to real rights concerning immovables and to disputes that are not within the parties' disposal.

This Law shall also be applicable to the resolution, through international arbitration, of disputes concerning concession contracts which are related to public services and which contain a foreign element in accordance with Law No. 4501 of 21 January 2000 concerning Principles That Shall Be Complied with When There Is Access to Arbitration for Disputes Arising from Concession Contracts.

The provisions of international conventions to which Turkey is a party are reserved.

Article 2

Foreign element

The existence of any of the following circumstances demonstrates that the dispute has a foreign element and, under such circumstances, arbitration is considered as international:

1. where the parties to the arbitration agreement have their domiciles or habitual residences or places of business in different States;
2. where one of the following is situated outside the State in which the parties have their domiciles or habitual residences or places of business;
   a. the place of arbitration, which is determined in, or pursuant to, the arbitration agreement; [or]
   b. a place where a substantial part of the obligations arising from the underlying contract is performed or a place where the dispute has the closest connection;
3. where a shareholder of the company which is a party to the underlying contract that constitutes the basis for the arbitration agreement has brought foreign capital [into Turkey] in accordance with the laws concerning the encouragement of foreign capital or where a loan and/or guarantee agreement needs to be signed for the execution of the underlying contract;
4. where, in accordance with the underlying contract or with the underlying legal relationship, the movement of capital or of goods shall be made from one country to another.

The provisions of Law No. 4501 of 21 January 2000 are reserved.

Article 3

Competent Court and Extent of Court Intervention

A reference to a court in this Law shall be the reference to the civil court of first instance (*asliye hukuk mahkemesi*) of the respondent's domicile, habitual residence or place of business; where none of these is in Turkey, to the İstanbul Civil Court of First Instance (*İstanbul Asliye Hukuk Mahkemesi*).

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

Chapter Two. Arbitration Agreement

Article 4

Definition and Form

“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.

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. The reference in a contract 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.

The validity of the arbitration agreement is subject to the law agreed by the parties, failing such agreement to Turkish Law.

No objection could be made against the arbitration agreement by arguing that the underlying contract is invalid or that the arbitration agreement is related to a dispute, which has not yet arisen.

Article 5

Objection as to arbitration before the court and agreement to arbitrate

If an action is brought before the court in a matter, which is the subject of an arbitration agreement, the respondent may make an objection as to the arbitration. The acceptance [or denial by the court] of that objection and disputes concerning the validity of the arbitration agreement are subject to the provisions of the Code of Civil Procedure concerning initial objections. If such objection is accepted, then the court shall dismiss the action on procedural grounds.

If the parties agree to arbitrate during the court proceedings, the case file shall be sent to the arbitral tribunal by the court.

Article 6

Interim measures of protection and interim attachments

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 or an interim attachment and for a court to grant such measure or attachment.

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order an interim measure of protection or an interim attachment during arbitral proceedings. The arbitral tribunal may require any party to provide appropriate security in connection with such measure or attachment. The arbitral tribunal shall not grant interim measures or interim attachments [a] that are required to be enforced through execution offices or to be executed through other official authorities or [b] that bind third parties.

If a party does not comply with the interim measure or attachment, the other party may request the assistance of the competent court for taking an interim measure of protection or an interim attachment. The competent court, if necessary, may hear [the case in question] through a substitute court.

The parties' right to make a request [for interim measures of protection or interim attachments to a court] in accordance with the Code of Civil Procedure and the Code of Execution is reserved.

Any decision of a court, with respect to interim measures of protection or interim attachments, that is given upon a request of a party prior to commencement of arbitration or during arbitral proceedings, shall automatically cease to have effect where the decision of the arbitral tribunal becomes enforceable or where the arbitral tribunal denies [to hear] the case in its decision.

Chapter Three. Appointment, Challenge, and Responsibility of Arbitral tribunal, Termination of its Duties and its Competence

Article 7

Appointment, challenge, and responsibility of arbitral tribunal, termination of its duties and its competence

A) The parties are free to determine the number of arbitrators. However, the number shall be odd.

If the number of arbitrators is not determined by the parties, three arbitrators shall be appointed.

B) Unless otherwise agreed by the parties, the following principles shall be applicable to the appointment of the arbitrators:

1. Only real persons can be appointed as arbitrators.
2. 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 civil court of first instance.
3. 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 civil court of first instance. The third arbitrator appointed shall be the chairman of the arbitral tribunal.
4. In an arbitration with more than three arbitrators, the arbitrators who will appoint the last arbitrator shall be appointed by the parties in equal numbers in accordance with the procedure set forth in the above paragraph.

Where under an appointment procedure agreed upon by the parties

1. a party fails to act as required under such procedure;
2. the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; [or]
3. a third party, including an institution, that is empowered to appoint arbitrators fails to perform any function entrusted to it under such procedure

the appointment of the arbitral tribunal shall be made, upon a party request, by the civil court of first instance.

The civil court of first instance's decision given, if necessary, upon hearing the parties, shall be final. The court, in appointing an arbitrator, shall give due regard to: [1] any qualifications of the arbitrator that is contained in the agreement of the parties, [2] securing the appointment of an independent and impartial arbitrator, and [3] the principles as to: [i] in the case of appointment of the sole arbitrator [or the third arbitrator], the advisability of appointing an arbitrator of a nationality other than those of the parties, and [ii] in case of appointment of a panel of three arbitrators, the advisability of making sure that two of the arbitrators do not have the same nationality as any of the parties. In case of appointment of more than three arbitrators, the above principles shall also be applicable.

C) 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.

An arbitrator may be challenged if: [1] he does not possess the qualifications that were agreed to by the parties, [2] if there exists a reason for challenge in accordance with the arbitration procedure agreed by the parties, or [3] if the existing circumstances give rise to justifiable doubts as to his impartiality or independence.

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

A party who intends to challenge an arbitrator shall, within thirty days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance that may give rise to a challenge, send a written statement of the reasons for the challenge to the arbitral tribunal.

A party who challenged one or more arbitrators before the arbitral tribunal shall provide its request and reasoning [for that purpose]. A party who becomes aware that the challenge is not successful may, within thirty days after having received notice of the decision rejecting the challenge, apply to the civil court of first instance for lifting such decision and removal of the arbitrator or the arbitrators.

A challenge to the [sole] arbitrator appointed, or all members of the arbitral tribunal, or a challenge to the number of arbitrators that may remove the decision-making majority of the tribunal, shall only be made to the civil court of first instance. The court's decision under this paragraph is final.

The arbitration will come to an end, if the court accepts the challenge to the [sole] arbitrator appointed, all members of the arbitral tribunal, or the part of the arbitral tribunal that may remove the decision-making majority. However, unless the arbitral tribunal is designated by name in the arbitration agreement, a new tribunal shall be appointed.

E) Unless otherwise agreed by the parties, an arbitrator who accepts his office shall be responsible to indemnify any damages that are related to the failure of the arbitrator to perform his duties without a justifiable reason.

F) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, if he withdraws from his office, or if the parties agree on the termination, his mandate shall be terminated.

If a controversy remains concerning any ground with respect to the arbitrator's withdrawal from the office, any party may request the civil court of first instance to decide on the termination of the arbitrator's mandate. The decision [of the court] shall be final.

The arbitrator's withdrawal from his office or the acceptance of the other party of the termination of the arbitrator's mandate does not imply acceptance of the validity of any ground concerning the challenge.

G) Where the mandate of an arbitrator terminates for any reason, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

The replacement of one or more arbitrators will not suspend the term of arbitration.

If, in the arbitration agreement, the arbitral tribunal is designated by name, upon the termination for any reason of the mandate of the whole arbitral tribunal or part of it that would remove the decision-making majority, the arbitration shall be terminated.

H) 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 agreement, 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.

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 not be valid if it is not raised without undue delay.

The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

The arbitral tribunal shall rule on an objection as to its jurisdiction as a preliminary question. If the arbitral tribunal considers itself competent then it shall proceed with arbitration and shall render its decision.

Chapter Four. Arbitration Procedure

Article 8

Determination of the rules of procedure, equal treatment of parties and their representation

A) Subject to the mandatory provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. They may, in the determination of such procedure, make a reference to any law or international or institutional arbitration rules. If there is no such agreement between the parties, the arbitral tribunal shall conduct the proceedings in accordance with the provisions of this Law.

B) The parties shall have the same rights and powers. Each party shall be given a [full] opportunity to assert his petitions and defences. The parties may also be represented in the arbitration proceedings by foreign real or legal persons. This provision shall not be applicable to requests to a court concerning arbitration.

Article 9

Place of arbitration

The parties or an arbitration institution chosen by the parties are free to determine the place of arbitration. Failing such agreement or determination, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The arbitral tribunal may meet upon notification in advance to the parties at any place where the circumstances of the arbitration so require.

Article 10

Commencement, term and language of arbitration, statement of claim and defence, terms of reference

A) Unless otherwise agreed by the parties, an arbitration commences on the date on which a request for the appointment of arbitrators is made to the civil court of first instance or to a person or institution which, according to the parties' agreement, appoints arbitrators or, in case both of the parties are responsible for the appointment of the arbitrators in accordance with the arbitration agreement, on the date on which, following the appointment of his arbitrator, the claimant's notification to the respondent of appointment of the respondent's arbitrator or, in case the arbitration agreement contains the name of the sole arbitrator or the names of the members of the arbitral tribunal, on the date of receipt of the request for arbitration.

In a case where a party has obtained an interim measure of protection or an interim attachment from a court, the party shall commence arbitration within thirty days from the date of the measure or attachment. Otherwise, the interim measure or the interim attachment shall automatically be lifted.

B) Unless otherwise agreed by the parties, an award shall be rendered within one year, in the case of a sole arbitrator, from the date of his appointment or, in the case where there is an arbitral tribunal, from the date when the minutes of the tribunal's first meeting are kept.

The term of arbitration may be extended, upon agreement of the parties, or, in case of failure, upon a party request, by the civil court of first instance Upon denial of the request, arbitration shall come to an end at the date of the expiry of the term of arbitration.

The court's decision shall be final.

C) The language of the arbitration shall be Turkish or any other language, which is the formal language of a state that is recognized by the Republic of Turkey. 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. The 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.

The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages used in the arbitration proceedings.

D) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall submit to the arbitral tribunal its statement of claim containing the parties' names, titles, addresses and its representatives, the arbitration agreement, the underlying contract or legal relationship, the circumstances upon which the claim is based, the subject matter of the dispute, the amount in dispute and its request. The respondent too shall submit within the same period to the arbitral tribunal its statement of defence. The parties may submit with their statements all documents they consider to be relevant and may add a reference to the documents or other evidence they will submit.

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 or to whether or not it creates an unjust difficulty for the other party or to other circumstances. The claim or defence shall not be amended or supplemented so as to extend beyond the scope of the arbitration agreement.

E) Unless otherwise agreed by the parties, the arbitral tribunal, following the submissions as to the claim and defence shall draw up its terms of reference.

The terms of reference may contain such particulars as the parties' names and titles, their addresses for notification during the arbitration, a summary of their claims or defences, their requests, explanations on the dispute in question, the names, surnames, titles, and addresses of the arbitrators, the place of arbitration, the term of arbitration, the commencement of the term, explanations as to the procedural law or rules applicable to the dispute, and whether or not the arbitrators are competent to act as *amiable compositeur*.

The terms of reference shall be signed by the arbitral tribunal and the parties.

Article 11

Hearing and proceedings in writing, losing capacity to be a party, default of a party to participate in arbitral proceedings

A) The arbitral tribunal shall decide whether to hold oral hearings for presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of the case file. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold hearings at an appropriate stage of proceedings, if so requested by a party.

The arbitral tribunal shall give sufficient advance notice to the parties concerning the date of any site-inspection, examination by an expert, or of any hearing and any meeting of the arbitral tribunal for the purposes of examining other evidence, and of the consequences of the failure to attend any inspection, examination, hearing or meeting.
All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party.

B) Where a party to arbitration loses his capacity to be a party to arbitration, the arbitral tribunal suspends the arbitral proceedings and notifies for the purposes of continuation of the proceedings, the relevant parties of the suspension. In such case, the term of arbitration shall not run. The arbitral proceedings shall come to an end if, within six months, no notification is made [within the meaning of the above paragraph] or a party who is being served the notification does not notify the other party or the arbitral tribunal of his intention to continue with the proceedings.

C) In case of a party's default in participating in the arbitration proceedings, the following provisions shall be applicable:

1. If the claimant fails to timely communicate his statement of claim, the arbitral tribunal shall terminate the proceedings.
2. If the statement of claim is not in accordance with the first sub-paragraph of Article 10(D) and the incompleteness is not remedied within the period to be determined by the arbitral tribunal, the tribunal shall terminate the proceedings.
3. If the respondent fails to communicate his statement of defence, the arbitral tribunal shall continue the proceedings without treating such failure, in itself, as an admission of the claimant's allegations.
4. If any party fails to appear at a hearing or to produce evidence, the arbitral tribunal may continue the proceedings and may make the award on the evidence before it.

Article 12

Expert appointment by arbitral tribunal, taking evidence, rules applicable to substance of dispute and settlement

A) The arbitral tribunal may

1. appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
2. require a party to give the expert any relevant information or to produce or to provide access to, any relevant information or documents;
3. rule on inspection of goods or other property.

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.

B) The parties shall provide their evidence within the term that is determined by the arbitrators. The arbitral tribunal may request from the competent court of first instance assistance in taking evidence. In such case, the provisions of the Code of Civil Procedure shall be applicable.

C) 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. The applicable trade usages under the law shall be taken into account in construing the provisions of the underlying contract and for filling gaps. 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 or its rules of procedure. Failing any designation by the parties of the applicable substantive law, the arbitral tribunal shall apply the substantive law of a State, which has the closest connection with the dispute. The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

D) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. The arbitral tribunal shall, if requested by the parties and accepted by itself, record the settlement in the form of an arbitral award on agreed terms.

Article 13

Decision making by panel of arbitrators, termination of proceedings

A) Any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members.

However, certain issues concerning procedure may be decided by a presiding arbitrator, if so authorized by the parties or the members of the arbitral tribunal.

B) The arbitral proceedings are terminated by the issuance of the final award or by the realization of any of the following circumstances:

1. If 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;
2. If the parties agree on the termination of the proceedings;
3. If the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible;
4. If a request concerning the extension of the term of arbitration in accordance with the second sub-paragraph of Article 10(B) is denied;
5. If, in cases where the parties agree that the arbitral tribunal renders its decision with unanimity, the tribunal could not reach unanimity;
6. If the arbitration proceedings could not be continued in accordance with the second sub-paragraph of Article 11(B);
7. If an advance in accordance with the second sub-paragraph of Article 16(C) is not deposited.

The mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings, subject to the provisions of Article 14(B).

Article 14

Form, content, correction and interpretation of award, additional award, written notification

A) An arbitral award shall contain

1. the names, surnames, titles and addresses of the parties, their representatives and lawyers;
2. the reasons upon which the award is based, with their legal basis, and, in case there is a request for compensation, the amount of compensation;
3. the place of arbitration and the date of the award;
4. the name, signature and a dissenting opinion, if any, of the arbitral tribunal;
5. an indication that an action for setting aside the award could be brought.

Unless otherwise agreed by the parties, the arbitral tribunal may render [interim and] partial awards.

The arbitral award shall be notified to the parties by the sole arbitrator or the chairman of the arbitral tribunal.

The parties may request that the arbitral award shall be sent to the civil court of first instance provided that the relevant costs and charges are paid. Upon such request, the sole arbitrator or the chairman of the arbitral tribunal shall submit the award and the case file to the court and they shall be kept at the office of the clerk.

B) Within thirty days of receipt of the award, a party, with notice to the other party, may request the arbitral tribunal:

1. to correct in the award any material errors in computation, any clerical or typographical errors or any errors of similar nature;
2. to give an interpretation of a specific point or part or whole of the award.

If the arbitral tribunal considers that, following the receipt of the other party's opinion, the request is justified, it shall make the correction of the material error or give the interpretation within thirty days of receipt of the request.

The arbitral tribunal may correct any material error on its own initiative within thirty days from the date of the award.

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 the 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.

The decision concerning the correction, interpretation and the additional award is notified to the parties and shall form part of the award.

C) Unless otherwise agreed by the parties, any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his domicile, habitual residence, place of business or mailing address.

If none of the above can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known domicile, habitual residence, place of business or mailing address by registered letter or any other means which provides a record of the attempt to deliver it.

The communication is deemed to have been received on the day it is so delivered.

The provisions of this Article do not apply to communications in court proceedings.

Chapter Five. Recourse Against Arbitral Awards

Article 15

Application for setting aside and arbitral award becoming enforceable

A) Recourse to a court against an arbitral award may be made only by an application for setting aside the award. Such recourse shall be made before the civil court of first instance. The application for recourse shall be given priority and shall be handled expeditiously.

An arbitral award may be set aside:

1. where the party making the application furnishes proof that:
   a) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under Turkish law;
   b) the composition of arbitral tribunal is not in accordance with the parties' agreement, or, [failing such agreement] with this Law;
   c) the arbitral award is not rendered within the term of arbitration;
   d) the arbitral tribunal unlawfully found itself competent or incompetent;
   e) 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;
   f) the arbitral proceedings are not in compliance with the parties' agreement [as to the procedure], or, failing such agreement, with this Law provided that such non-compliance affected the substance of the award;
   g) the parties are not treated with equality; or
2. where the court finds that:

a) the subject matter of the dispute is not capable of settlement by arbitration under Turkish law; [or]
b) the award is in conflict with the public policy.

In cases where an application for the setting aside of the award is made on the ground that the award contains matters beyond the scope of submission to arbitration, 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. The application for setting aside an award may be made within thirty days from the date of notification of an award or a decision on correction or interpretation or an additional award. This application shall automatically suspend the execution of the arbitral award.

The parties may, in part or in full, renounce the right to initiate an action for setting aside the award. A party whose domicile or habitual residence is not in Turkey may renounce that right completely in an express clause in the arbitration agreement or in writing, following the signature of the arbitration agreement. Alternatively, in the same manner, the parties may renounce the above right for one or more of the reasons as set forth above for setting aside the award [see Article 15A(2)(1), above].

The application for setting aside shall, unless the competent court requires otherwise, be decided upon examination of the case file.

The judgment on the application for setting aside the award may be appealed in accordance with the provisions of the Code of Civil Procedure, however, no request can be made for reconsideration of the judgment rendered at the appeal level. Any examination at the appeal level shall be limited to the grounds available for setting aside the award. The examination shall be given priority and shall be handled expeditiously.

In cases where: [1] the application for setting aside the award is accepted and no appeal is launched against the judgment concerning the acceptance, or [2] under the circumstances envisaged under sub-paragraphs 1(b), (d), (e), (f), (g) and sub-paragraph 2(b) above, the parties, unless prior agreement exists, may appoint new arbitrators and re-determine a new term of arbitration. The parties may appoint their former arbitrators.

B) Upon the finalization of the judgment concerning the denial of the application for setting aside, the civil court of first instance shall give a certificate concerning the enforceability of the award to the party who made a request for it. No court charges are applicable to the issuance of this certificate. At the stage of the award's enforcement, the Code on Charges shall however be applicable.

In cases where the term provided for the application for setting aside has elapsed or where the parties have renounced the right to initiate an action for setting aside, sub-paragraphs (A)2(a) and (b) above shall be automatically taken into consideration by the civil court of first instance for granting the certificate concerning the enforceability of the award. In such case, unless the court decides otherwise, the examination shall be made on the file.

Chapter 6. Costs of Arbitration

Article 16

Fees of arbitrators, costs of proceedings, deposit of advance, payment of costs

A) Unless otherwise agreed by the parties, the fees of the arbitrators shall be fixed between the arbitral tribunal and the parties, by taking into consideration the amount in dispute, the nature of the dispute and the term of arbitral proceedings.

The parties may determine those fees by making a reference to the established international rules or institutional arbitration rules.

If the parties and the arbitral tribunal cannot agree on the determination of the fees or if the arbitration agreement does not contain any provision concerning the determination of the fees or if no reference has been made by the parties in this respect to the established international rules or institutional arbitration rules, the fees of the arbitral tribunal shall be determined in accordance with the schedule of fees determined annually by the Ministry of Justice after the consultation with the relevant professional organizations, which are public establishments in nature.

Unless otherwise agreed by the parties, the fees of the chairman shall be calculated as ten percent more than the fee to be paid to each arbitrator.

No additional fees are payable for the correction or interpretation of the award or issuing an additional award.

B) The arbitral tribunal shall state the costs of arbitration in its arbitral award. The term “costs” refers to:

1. the fees of the arbitrators;
2. the arbitrators' travel and other expenses;
3. the fees paid to the experts, and to the other persons whose assistance is sought and who are, collectively, appointed by the arbitral tribunal, and the costs for the site inspection;
4. the witnesses' travel and other expenses to the extent approved by the arbitral tribunal;
5. if he is represented by an attorney at law, the successful party's attorney fees, which are calculated by taking into account the minimum fee schedule, subject to the arbitral tribunal's approval;
6. the charges to be made for the applications in accordance with this Law, to the courts;
7. the notification expenses with respect to the arbitral proceedings.

C) The arbitral tribunal may request that the claimant deposit an advance for the arbitration costs.

If the advance is not paid within the period determined in an arbitral decision, the arbitral tribunal may suspend the proceedings.

If the advance is paid within thirty days from the notification to the parties of the suspension, the arbitral proceedings shall be continued; otherwise, the arbitration shall come to an end.

After the award is rendered, the arbitral tribunal shall provide to the parties a certificate stating where and how much of the advances deposited were spent and shall return any remaining balance of the advance to the party who paid it.

D) Unless otherwise agreed by the parties, the costs of proceedings shall be borne by the unsuccessful party. If both parties' claims are partially upheld in the arbitral award, the costs of arbitration shall be apportioned among the parties by taking into account the degree of justification of their claims.

The award of the arbitral tribunal that terminates the arbitral proceedings or that settles the case shall also contain the costs of arbitration.

Chapter 7. Final Provisions

Article 17

Repealed and inapplicable provisions

With respect to the matters regarding this Law, unless otherwise stated, the provisions of the Code of Civil Procedure shall not be applicable.

Article 5 of Law No. 4501 of 21 January 2000 concerning Principles That Shall Be Complied with When There Is Access to Arbitration for Disputes Arising from Concession Contracts is repealed.

Transitory Article 1

If the parties and the arbitral tribunal cannot agree on the fees of the arbitrators or the arbitration agreement does not contain any provision regarding the determination of the fees or the parties made no reference in respect of the fees to either internationally established rules or institutional arbitration rules, until the Ministry of Justice determines a fee schedule, the arbitrators' fees shall be assessed by the civil court of first instance by taking into account the nature of the dispute and the term of arbitration.

Article 18

Entry in force

This Law enters into force on the date of its publication.

Article 19

Implementation

The provisions of this Law shall be implemented by the Council of Ministers.