

LEGISLATIVE DECREE OF 2 FEBRUARY 2006, No. 40

**CHAPTER II:
MODIFICATIONS OF THE CODE OF CIVIL PROCEDURE REGARDING
ARBITRATION**

*Unofficial translation by Prof. Piero Bernardini
in Jan Paulsson (ed.) "International Handbook on Commercial Arbitration" Kluwer
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Article 20 – Modifications of Chapter I, Title VIII, Book IV

**1. Chapter I of Title VIII of Book IV of the Code of Civil Procedure is replaced by
the following:**

“Chapter I – The arbitration agreement

806 (*Arbitrable disputes*) – The parties may have disputes which have arisen between them decided by arbitrators provided the subject matter does not concern rights which may not be disposed of, except in case of express prohibition by law.

Disputes provided for in Article 409 may be decided by arbitrators only if so provided by law or by collective labour contracts or agreements.

807 (*Submission to arbitration*) – The submission to arbitration must, under sanction of nullity, be made in writing and must indicate the subject matter of the dispute.

The written form requirement is considered complied with also when the will of the parties is expressed by telegram, telex, telecopier or telematic message in accordance with the legal rules, which may also be issued by regulation, regarding the transmission and receipt of documents which are teletransmitted.

808 (*Arbitration clause*) – The parties may establish, in their contract or in a separate document, that disputes arising out of the contract be decided by arbitrators, provided such disputes may be made subject to an arbitration agreement. The arbitration clause must be contained in a document meeting the form required for a submission agreement by Article 807. The validity of the arbitration clause must be evaluated independently of the underlying contract: nevertheless, the authority to enter into the contract includes the authority to agree to the arbitration clause.

808 *bis* (*Arbitration agreement in non-contractual matters*) – The parties may establish, in a specific agreement, that future disputes relating to one or more specific non-contractual relations be decided by arbitrators. The agreement must be contained in a document meeting the form required for the submission agreement by Article 807.

808 *ter* (*'Arbitrato irrituale'*) – The parties may establish in writing—that the dispute be

settled by the arbitrators through a contractual determination as an exception to the provision of Article 824-*bis*. Failing this, the provisions of this Title shall apply.

The contractual award may be set aside by the competent court according to the provisions of Book I:

- 1) if the arbitration agreement is invalid or the arbitrators have decided questions exceeding its limits and the relevant objection has been raised during the arbitral proceedings;
- 2) if the arbitrators have not been appointed in the form and manner contemplated by the arbitration agreement;
- 3) if the award has been rendered by a person which could not be appointed as arbitrator according to Article 812;
- 4) if the arbitrators have not applied the rules prescribed by the parties as a condition for the validity of the award;
- 5) if the principle of contradictory proceedings (*'principio del contraddittorio'*) has not been respected in the arbitral proceedings.

Article 825 is not applicable to the contractual award.

808 *quater* (*Interpretation of the arbitration agreement*) – In case of doubt, the arbitration agreement shall be in the sense that the arbitral jurisdiction extends to all disputes arising from the contract or from the relationship to which the agreement refers.

808 *quinquies* (*Efficacy of the arbitration agreement*) – The conclusion of the arbitral proceedings without a decision on the merits shall not deprive the arbitration agreement of its efficacy.”

Article 21 – Modifications of Chapter II, Title VIII, Book IV

1. Chapter II of Title VIII of Book IV of the Code of Civil Procedure is replaced by the following:

“Chapter II – The arbitrators.

809 (*Number of arbitrators*) – There may be one or more arbitrators, provided their number is uneven.

The arbitration agreement must contain the appointment of the arbitrators or establish their number and the manner by which they are to be appointed.

Where an even number of arbitrators is indicated, an additional arbitrator shall be appointed by the president of the tribunal in the manner specified by Article 810, unless the parties have agreed otherwise. Where the number of arbitrators is not indicated and the parties do not agree in that regard, there shall be three arbitrators; failing their appointment, the president of the tribunal shall proceed to such appointment in the manner specified in Article 810, unless the parties have agreed otherwise.

810 (*Appointment of arbitrators*) – Where in accordance with the arbitration agreement the arbitrators are to be appointed by the parties, each party, by written notice, shall inform the other party of its appointment of an arbitrator or arbitrators and request said other party to name its own arbitrators. The party so requested shall, within the following twenty days, serve written notice of the personal data of the arbitrator or arbitrators appointed by it.

Failing this, the party which has made the request may, through a recourse, petition the president of the tribunal in whose district the arbitration has its seat to make the appointment. If the parties have not yet determined the seat of the arbitration, the petition shall be to the president of the tribunal of the place where the arbitration agreement has been concluded or, if such place is abroad, to the president of the tribunal of Rome.

The president of the competent tribunal shall make the requested appointment unless the arbitration agreement is manifestly non-existent or provides manifestly for a foreign arbitration.

The same provisions shall apply in case the arbitration agreement has entrusted the appointment of one or more arbitrators to the judicial authority or where, if entrusted to a third person, that third person has failed to act.

811 (*Replacement of arbitrators*) – Where, for whatever reason, all or some of the appointed arbitrators are unable to act, they shall be replaced in accordance with the procedures established for their appointment in the arbitration agreement. If the party, or the third party, responsible for the appointment fails to act or if the arbitration agreement does not provide in that regard, the provisions of the preceding Article shall apply.

812 (*Incapacity to act as arbitrator*) – A person who, in whole or in part, has no legal capacity to act cannot be arbitrator.

813 (*Acceptance of the arbitrators*) – The acceptance of the arbitrators must be in writing and may be evidenced by their signature of the submission to arbitration or of the minutes of the first session

The arbitrators are not public officials or persons entrusted with a public service.

813 *bis* (*Removal of the arbitrators*) – Unless the parties have agreed otherwise, the arbitrator who omits or delays to carry out an act related to his or her office may be replaced by agreement between the parties or by the third party so empowered in the arbitration agreement. Failing this, after a period of fifteen days from a notice requiring action, sent by registered mail to the arbitrator, each of the parties may petition the president of the tribunal according to Article 810, paragraph 2. The president, having heard the arbitrators and the parties, shall issue an order against which there shall be no recourse and, if he or she finds that there has been such omission or delay, shall declare the arbitrator removed and shall replace him or her.

813 *ter* (*Liability of arbitrators*) – The arbitrator shall be liable for damages caused to the

parties if he or she:

- 1) has fraudulently ('*dolo*') or with gross negligence ('*colpa grave*') omitted or delayed acts that he or she was bound to carry out and has been removed for this reason, or has renounced the office without a justified reason;
- 2) has fraudulently or with gross negligence omitted or prevented the rendering of the award within the time limit fixed according to Articles 820 and 826.

Outside these cases, the arbitrators shall be liable only for fraud or gross negligence within the limits foreseen by Article 2, paragraphs 2 and 3, of Law no. 117 of 13 April 1988.

An action for liability may be filed during the arbitral proceedings only in the case foreseen by the first paragraph, n. 1).

In case the award has been rendered, the action for liability may be filed only after the recourse against the award has been upheld by a final judgment and for the reasons for which the recourse was upheld.

If the liability is not due to the arbitrator's fraud, the amount of damages may not exceed a sum equal to three times the agreed fee or, failing an agreed determination, three times the fee established by the applicable tariff.

In cases of liability of the arbitrator, neither the fee nor the reimbursement of expenses shall be due to the arbitrator; in case of partial nullity of the award, they shall be subject to reduction.

Each arbitrator shall be liable only for his or her own actions.

814 (*Rights of the arbitrators*) – The arbitrators shall be entitled to the reimbursement of their expenses and to a fee for the services rendered, except where they have waived their right thereto at the time of their acceptance or in a subsequent written document. The parties shall be jointly and severally liable for payment, subject to the right of mutual recovery.

Where the arbitrators themselves fix the amount of the expenses and of the fee, their decision shall not be binding upon the parties if the latter do not accept it. In this case, the amount of the expenses and of the fee shall be determined, upon the arbitrators' petition and after hearing the parties, by an order of the president of the tribunal indicated in Article 810, paragraph 2.

The order shall be enforceable against the parties and is subject to recourse according to Article 825, paragraph 4 [to be read: 3]. Article 830, paragraph 4, is applicable.

815 (*Challenge of the arbitrators*) – An arbitrator may be challenged:

- 1) if he or she does not have the qualifications expressly agreed by the parties;
- 2) if he or she or an entity, association or company of which he or she is a director, has an interest in the case;
- 3) if he or she or his or her spouse is a relative up to the fourth degree or a cohabitant or a habitual table-companion of a party, one of its legal representatives or counsel;
- 4) if he or she or his or her spouse has a pending suit against or a serious enmity to one of the parties, one of its legal representatives or counsel;

5) if he or she is linked to one of the parties, to a company controlled by that party, to its controlling entity or to a company subject to common control by a subordinate labour relationship or by a continuous consulting relationship or by a relationship for the performance of remunerated activity or by other relationships of a patrimonial or associative nature which might affect his or her independence; furthermore, if he or she is a guardian or a curator of one of the parties;

6) if he or she has given advice, assistance or acted as legal counsel to one of the parties in a prior phase of the same case or has testified as a witness.

A party may not challenge the arbitrator appointed by it or that it has contributed to appoint unless for reasons which become known after the appointment.

The challenge shall be made by recourse to the president of the tribunal indicated in Article 810, paragraph 2, within the peremptory time limit of ten days after the notification of the appointment or the supervening knowledge of the ground for the challenge. The president shall decide by an order which is not subject to recourse, after having heard the challenged arbitrator and the parties and, where necessary, after having acquired summary information.

The president shall decide on costs by an order. In case of manifest inadmissibility or groundlessness of the application for challenge, the president shall condemn the party having made the application to the payment, in favour of the other party, of a sum to be equitably determined but not higher than three times the compensation to which a single arbitrator is entitled based on the lawyers' tariff.

The application for a challenge does not suspend the arbitral proceedings, except in case the arbitrators decide otherwise. However, if the application is granted, the activity performed by the challenged arbitrator or with his or her cooperation is without effects."

Article 22 – Modifications of Chapter III, Title VIII, Book IV

1. Chapter III of Title VIII of Book IV of the Code of Civil Procedure is replaced by the following:

"Chapter III – The proceedings

816 (*Seat of the arbitration*) – The parties shall determine the seat of the arbitration in the territory of the Republic; failing this, the arbitrators shall decide.

If neither the parties nor the arbitrators have determined the seat of the arbitration, the seat shall be in the place where the arbitration agreement was concluded. If such a place is not in the national territory, the seat shall be in Rome.

Unless the arbitration agreement provides otherwise, the arbitrators may hold hearings, perform procedural activities, deliberate and affix their signatures on the award also in places other than the seat of the arbitration and also abroad.

816 *bis* (*Course of the proceedings*) – The parties may establish in the arbitration agreement or in a separate document, prior in any case to the commencement of the

arbitral proceedings, the rules that the arbitrators must apply in the proceedings and the language of the arbitration. In the absence of such rules, the arbitrators are free to regulate the course of the proceedings and to determine the language of the arbitration in the manner they deem most convenient. They must respect in any case the principle of contradictory proceedings (*'principio del contraddittorio'*) by granting both parties reasonable and equivalent opportunities to present their case. The parties may take part in the proceedings through counsel. Failing an express limitation, the power of attorney granted to counsel shall extend to any procedural activities, including the waiver of the proceedings and the determination and extension of the time limit for rendering the award. In any case, counsel may receive communication of the notification of the award and of the notification of the recourse against it.

The parties or the other arbitrators may authorize the president of the arbitral tribunal to issue the orders relating to the course of the proceedings.

All issues arising in the course of the proceedings shall be decided by the arbitrators with an order which is not subject to deposit and may be revoked, unless they elect to decide by an interim award.

816 *ter* (Taking of evidence) – The taking of evidence or individual activities to that purpose may be delegated by the arbitrators to one of them.

The arbitrators may hear the witness directly before them or may decide to hear his or her deposition at his or her home or office, if he or she agrees. They may also decide to hear the witness by requesting him or her to give written answers to questions within the time-limit they establish.

Should a witness refuse to appear before the arbitrators the latter, if they deem it convenient in the light of the circumstances, may petition the president of the tribunal of the seat of the arbitration to order his or her appearance before them.

In the case foreseen by the previous paragraph the time limit for the rendering of the award is suspended from the date of the order until the date of the hearing fixed for the taking of the testimonial evidence.

The arbitrators may provide for their assistance by one or more expert witnesses. Both physical persons and entities may be appointed expert witnesses.

The arbitrators may request the public administration (*"pubblica amministrazione"*) to provide written information related to activities and documents of the administration in question that they deem necessary to acquire to the proceedings.

816 *quarter* (Multiple parties) – Should more than two parties be bound by the same arbitration agreement, each party may request that all or some of them be summoned in the same arbitral proceedings, if the arbitration agreement defers to a third party for the appointment of the arbitrators, if the arbitrators are appointed by agreement of all parties or if the other parties, following the appointment by the first party of an arbitrator or the arbitrators, appoint by common agreement an equal number of arbitrators or entrust to a third party their appointment.

Except in the cases foreseen in the previous paragraph, the proceedings initiated by a party against other parties shall be divided into as many proceedings as there are the latter parties.

If the situation contemplated by the first paragraph does not occur and if the joining of parties to the proceedings be necessary by law (*'litisconsorzio necessario'*), the arbitration cannot proceed.

816 *quinquies* (*Third party intervention and succession in the disputed right*). – The voluntary intervention or the joining of a third party in the arbitration is admissible only with the agreement of the third party and the parties and with the arbitrators' consent.

The intervention foreseen by Article 105, paragraph 2, and the intervention of the party whose joinder is necessary by law (*'litisconsorte necessario'*) are always admissible.

Article 111 shall be applicable.

816 *sexies* (*Death, extinction or loss of capacity of the party*) – Should a party cease to exist because of death or other reasons or should it lose its legal capacity, the arbitrators shall adopt the appropriate measures to guarantee the respect of contradictory proceedings (*'contraddittorio'*) for the continuation of the proceedings. They may suspend the proceedings.

Should none of the parties abide by the arbitrators' orders for the continuation of proceedings, the arbitrators may renounce their office.

816 *septies* (*Advance on expenses*) – The arbitrators may make the continuation of the proceedings subject to the advance payment of the foreseeable expenses. Except if the parties have agreed otherwise, the arbitrators shall fix the amount of the advance to be charged to each party.

Should one party fail to pay the requested advance, the other may advance the totality of the expenses. Should the parties fail to provide for the advance within the time limit established by the arbitrators, they are no longer bound by the arbitration agreement with regard to the dispute out of which the arbitral proceedings originated.

817 (*Objection to jurisdiction*) – Should the validity, content or scope of the arbitration agreement or the regularity of the arbitrators' appointment be challenged in the course of the arbitration, the arbitrators shall decide on their own jurisdiction.

This provision shall apply also in case the arbitrators' powers are challenged in any venue for whatever reason which has supervened in the course of the proceedings. The party that does not object in the first statement of defense subsequent to the arbitrators' acceptance that they lack jurisdiction by reason of the non-existence, invalidity or ineffectiveness of the arbitration agreement, may not challenge the award on this ground, except in case of a non-arbitrable dispute.

The party which, during the arbitration proceedings, fails to raise the objection that the other parties' pleadings exceed the limits of the arbitration agreement may not, on this ground, challenge the award.

817 *bis* (*Set-off*) – The arbitrators shall be competent to decide on the objection of set-off, within the limits of the value of the main claim, also if the counterclaimed amount does not fall within the scope of the arbitration agreement.

818 (*Interim measures of protection*) – The arbitrators may not grant attachments or other interim measures of protection, except if otherwise provided by the law.

819 (*Preliminary issues on the merits*) – The arbitrators shall decide without force of *res judicata* all issues which are relevant for the decision of the dispute, even if they relate to matters that may not be the subject of an arbitration agreement, unless such issues have by law to be decided with force of *res judicata*.

Upon a party's request, preliminary issues shall be decided with force of *res judicata* if they relate to matters that may be the subject of an arbitration agreement. Should such issues not be covered by the arbitration agreement, the decision with force of *res judicata* is conditioned upon a request by all parties.

819 *bis* (*Suspension of the arbitral proceedings*) – Article 816 *sexies* remaining applicable, the arbitrators shall suspend the arbitral proceedings with a reasoned order in the following cases:

- 1) when the proceedings should be suspended pursuant to Article 75, paragraph 3, of the Code of Criminal Procedure, were the dispute pending before the judicial authority;
- 2) if a preliminary issue arises regarding a matter which may not be the subject of an arbitration agreement and which by law must be decided with force of *res judicata*;
- 3) when they submit to the Constitutional Court an issue of constitutional legitimacy according to Article 23 of Law n. 87 of 11 March 1953.

Should the authority of a judgment be relied upon in the arbitral proceedings and such judgment be challenged, Article 337, paragraph 2, shall be applicable.

Once the suspension of the proceedings has been ordered, the same shall be extinguished if none of the parties files with the arbitrators a request for the continuation within the time limit fixed by the arbitrators or, failing this, within one year from the end of the ground for the suspension. In the case contemplated by the first paragraph, number 2), the proceedings shall also be extinguished if within ninety days from the suspension order none of the parties files with the arbitrators an authentic copy of the act by which the dispute over the preliminary issue is filed with the judicial authority.

819 *ter* (*Relations between arbitrators and judicial authority*) – The arbitrators' jurisdiction shall not be excluded by the pendency of the same dispute before the judge or by the connection between the dispute referred to them and a dispute pending before the judge. The judgment by which the judge upholds or denies his or her own jurisdiction with regard to an arbitration agreement may be challenged according to Articles 42 and 43. The objection to the judge's jurisdiction by reason of the arbitration agreement must be raised, under sanction of lapse, in the statement in reply. If such objection is not raised, arbitral jurisdiction shall be excluded in respect of the dispute decided in that proceedings.

The provisions corresponding to Articles 44, 45, 48, 50 and 295 shall not be applicable to the relations between arbitration and judicial proceedings.

Pending the arbitral proceedings, no requests may be submitted to the judicial

authorities regarding the invalidity or lack of efficacy of the arbitration agreement.”

Article 23 Modifications of Chapter IV, Title VIII, Book IV

1. Chapter IV of Title VIII of Book IV of the Code of Civil Procedure is replaced by the following:

“Chapter IV – The award

820 (*Time-limit for decision*) – The parties may, in the arbitration agreement or by agreement preceding the acceptance of the arbitrators, establish a time-limit for the rendering of the award.

Unless a time-limit has been established for the rendering of the award, the arbitrators must render the award within two hundred and forty (240) days from the acceptance of the appointment.

In any case the time-limit may be extended:

- a) by means of written declarations by all parties addressed to the arbitrators;
- b) by the president of the tribunal indicated in Article 810, paragraph 2, upon reasoned request by one of the parties or the arbitrators, after having heard the other parties; the time-limit may be extended only prior to its expiry.

Unless the parties have provided otherwise, the time-limit shall be extended by one hundred and eighty days in the following cases and for not more than once in each such case:

- a) if evidence must be taken;
- b) if expert advice is required *ex officio*;
- c) if an interim award or a partial award is rendered;
- d) if the composition of the arbitral panel is changed or the sole arbitrator is replaced.

The time-limit for the rendering of the award shall be suspended during the suspension of the proceedings. In any case, after the resumption of the proceedings the residual time-limit, if shorter, shall be extended to ninety days.

821 (*Relevance of the expiry of the time-limit*) – The expiry of the time-limit indicated in the preceding article may not be relied on as a ground for the nullity of the award if the party, before the deliberation of the award as evidenced by the decision (*dispositivo*) signed by the majority of the arbitrators, has failed to notify the other parties and the arbitrators of its intention to rely on the termination of the arbitrators’ authority.

If the party relies on the termination of the arbitrators’ authority, the arbitrators, having verified the expiry of the time-limit, shall declare the proceedings extinguished.

822 (*Rules for the deliberation*) – The arbitrators shall decide according to the rules of law, unless the parties have provided, by any expression, that the arbitrators render the award *ex aequo et bono*.

823 (*Deliberation of and requirements for the award*) – The award shall be made by majority vote with the participation of all the arbitrators. It shall then be set down in writing. Any arbitrator may request that the award, or a part thereof, be deliberated by the arbitrators meeting in person (*‘conferenza personale’*).

The award must contain:

- 1) the name of the arbitrators;
- 2) the indication of the seat of the arbitration;
- 3) the indication of the parties;
- 4) the indication of the arbitration agreement and of the claims of the parties as set out in the final pleadings;
- 5) a brief statement of the reasons;
- 6) the decision of the issues (*dispositivo*);
- 7) the signature of the arbitrators. The signature of a majority of the arbitrators shall suffice, provided that mention is made that it was deliberated with the participation of all the arbitrators and that the other arbitrators were either unwilling or unable to sign.
- 8) the date of the signatures.

824 (*Originals and copies of the award*) – The arbitrators shall draw up one or more originals of the award. The arbitrators shall serve notice of the award to each party by delivering, or sending by registered mail, an original or a copy certified as conforming to the original by the arbitrators, within ten days from the date of the signature of the award.

824 *bis* (*Efficacy of the award*) – Except as provided by Article 825, as from the date of its last signature the award shall have the same effects as a judgment rendered by the judicial authority.

825 (*Deposit of the award*) – The party wishing to have the award enforced in the territory of the Republic shall file a request to that effect by depositing an original or a certified copy of the award, together with the original or a certified copy of the arbitration agreement, with the registry of the tribunal of the district in which the arbitration has its seat. The tribunal, after ascertaining that the award meets all formal requirements, shall declare the same enforceable by decree. The award which has been declared enforceable may be registered (*trascritto*) or annotated in all cases where a judgment of the same content would be subject to registration or annotation.

The clerk shall give notice to the parties of the deposit and of the tribunal's decree in the manner provided for in Article 133, paragraph 2.

A recourse against the decree denying or granting the enforcement of the award may be filed by petition to the court of appeal within thirty days of said notice; the court of appeal, having heard the parties, shall decide in chambers by an order.

826 (*Correction of the award*) – Each party may request the arbitrators, within one year from the communication of the award:

- a) to correct any omissions, material errors or miscalculations in the text of the

award, also in case they have caused a divergence among the various originals of the award even if relating to the signature of the arbitrators;

b) to complete the award with one of the elements indicated in Article 823, numbers 1), 2), 3), 4).

The arbitrators, having heard the parties, shall take action within sixty days. The correction shall be communicated to the parties according to Article 824.

Should the arbitrators fail to act, the request for correction shall be filed with the tribunal in whose district the arbitration has its seat.

If the award has already been filed, the request for correction shall be filed with the tribunal of the place where the award has been filed. The provisions of Article 288 shall be applicable in so far as they are compatible. The correction may be made also by the judge before whom the award has been challenged or invoked.”

Article 24 Modifications of Chapter V, Title VIII, Book IV

1. Chapter V of Title VIII of Book IV of the Code of Civil Procedure is replaced by the following:

“Chapter V – Recourses against the award

827 (*Means of recourse*) – The award may be subject to recourse for nullity, ~~for~~ revocation or third party opposition.

The recourse may be filed irrespective of the deposit of the award.

The award which decides partially the merits of the dispute may be challenged immediately, whereas the award which decides some of the issues without resolving the dispute submitted to arbitration may be challenged only together with the final award.

828 (*Recourse for nullity*) – A recourse for nullity may be filed with the court of appeal of the district in which the arbitration has its seat, within ninety days after the notification of the award.

No recourse may be filed after one year from the date of the last signature.

The request to correct the award shall not suspend the time-limit for filing a recourse; however, the parts of the award which have been corrected may be challenged within the ordinary time-limit, which begins to run after notification of the decision on the correction.

829 (*Grounds for nullity*) – Notwithstanding any prior waiver, a recourse for nullity may be filed in the following cases:

1) if the arbitration agreement is invalid, without prejudice to the provision of Article 817, paragraph 3 [to be read: paragraph 2];

2) if the arbitrators have not been appointed in the form and manner laid down in Chapters II and VI of this Title, provided that this ground for nullity has been raised in the arbitral proceedings;

3) if the award has been rendered by a person who could not be appointed as

arbitrator according to Article 812;

4) if the award exceeds the limits of the arbitration agreement, without prejudice to the provision of Article 817, paragraph 4 [to be read: paragraph 3], or has decided the merits of the dispute in all other cases in which the merits could not be decided;

5) if the award does not comply with the requirements of Article 823, numbers (5), (6) and (7);

6) if the award has been rendered after the expiry of the prescribed time-limit, subject to the provisions of Article 821;

7) if during the proceedings the formalities prescribed by the parties under express sanction of nullity have not been observed and the nullity has not been cured;

8) if the award is contrary to a previous award which is no longer subject to recourse or to a previous judgment having the force of *res judicata* between the parties, provided such award or such judgment has been submitted in the proceedings;

9) if the principle of contradictory proceedings (*principio del contraddittorio*) has not been respected in the arbitration proceedings;

10) if the award terminates the proceedings without deciding the merits of the dispute and the merits of the dispute had to be decided by the arbitrators;

11) if the award contains contradictory provisions;

12) if the award has not decided some of the issues and objections raised by the parties in conformity with the arbitration agreement.

The party having caused a ground for nullity or which has waived such a ground or has not objected to the violation of a rule regulating the course of the arbitral proceedings in the first statement or statement in reply subsequent to the violation, cannot challenge the award on this ground.

The recourse for violation of the rules of law relating to the merits of the dispute shall be admitted if so expressly provided by the parties or by the law. The recourse against decisions which are contrary to public policy shall be admitted in any case.

The recourse for violation of the rules of law relating to the merits of the dispute shall always be admitted:

1) with regard to the disputes contemplated by Article 409;

2) if the violation of the rules of law concerns the solution of a preliminary issue over a matter which may not be made subject to an arbitration agreement.

As regards the disputes contemplated by Article 409, the award may be subject to recourse also for violation of the collective contracts and agreements.

830 (*Decision on the recourse for nullity*) – The court of appeal shall decide on the recourse for nullity and, when granting the recourse, shall issue a judgment declaring the award null and void. When the defect affects only a part of the award which is separable from the others, it shall declare the partial nullity of the award.

If the award is annulled on the grounds indicated in Article 829, paragraphs 1, numbers 5), 6), 7) 8), 9), 11) or 12), 3, 4 or 5, the court of appeal shall decide the merits of the dispute, unless the parties have otherwise provided in the arbitration agreement

or in a subsequent agreement. However, if one of the parties has its residence or its actual seat abroad on the date of the signature of the arbitration agreement, the court of appeal shall decide the merits of the dispute only if the parties have so provided in the arbitration agreement or if they make a joint request to that effect.

When the court of appeal does not decide on the merits, the arbitration agreement shall apply to the dispute, except if the nullity depends on its invalidity or inefficacy.

Upon a party's request, also subsequent to the filing of the recourse, the court of appeal may suspend with an order the efficacy of the award, in case of serious reasons.

831 (*Revocation and third party opposition*) – Notwithstanding any waiver, the award may be revoked in the cases indicated in Article 395, numbers 1), 2), 3) and 6), within the time-limits and according to the formalities provided for in Book II.

If the cases mentioned in the first paragraph arise during the nullity proceedings, the time-limit for filing a request for revocation shall be suspended until notification of the judgment deciding on the nullity.

The award shall be subject to third party opposition in the cases indicated in Article 404. The recourses for revocation and third party opposition shall be filed with the court of appeal of the district in which the arbitration has its seat, within the time-limits and according to the formalities provided for in Book II.

The court of appeal may consolidate the recourses for nullity, revocation and third party opposition in the same proceedings, if the stage reached by the proceedings filed first allows an exhaustive discussion and decision of the other recourses.”

Article 25 *Modifications of Chapter VI, Title VIII, Book IV*

1. Chapter VI of Title VIII of Book IV of the Code of Civil Procedure is replaced by the following:

“Chapter VI – Arbitration according to pre-established rules

832 (*Reference to arbitration rules*) – The arbitration agreement may refer to a pre-established arbitration rules.

In case of conflict between the provisions of the arbitration agreement and the arbitration rules, the arbitration agreement shall prevail.

Unless the parties have agreed otherwise, the rules in force on the date on which the arbitral proceedings begins shall apply.

Institutions in the nature of associations and those set up for the representation of the interests of professional categories may not appoint arbitrators in disputes where their own associates or members of the professional category are opposed to third parties.

The rules may provide for further cases of replacement or challenge of the arbitrators in addition to those provided by the law.

Should the arbitral institution decline to administer the arbitration, the arbitration

agreement shall remain effective and the preceding Chapters of this Title shall be applicable.”

CHAPTER III: FINAL PROVISIONS

Article 26 – OMISSIS

Article 27 – *-Transitional provisions*

1. OMISSIS
2. OMISSIS
3. The provisions of Article 20 shall apply to arbitration agreements concluded after the date of the coming into force of this decree.
4. The provisions of Articles 21, 22, 23, 24 and 25 shall apply to arbitral proceedings in which the request for arbitration has been filed subsequent to the date of the coming into force of this decree.
5. OMISSIS

Article 28 – *Repeals*

1. On the date of the coming into force of this decree Articles 833, 834, 835, 836, 837, 838 of the Code of Civil Procedure shall be repealed.

Article 29 – *Financial coverage* OMISSIS

The Legislative Decree No. 40/2006 didn't emend the Chapter VII of the Code of Civil Procedure. This Chapter is the same as promulgated by Art. 24, Law 5 January 1994, No. 25

Chapter VII - Foreign Awards

Article 839 (Recognition and enforcement of foreign arbitral awards)

The party wishing to enforce a foreign award in the Republic shall file a petition with the president of the court of appeal of the district in which the other party has its domicile; if that party has no domicile in Italy, the court of appeal of Rome shall have jurisdiction.

The petitioner shall supply the original award or a certified copy thereof, together with the original arbitration agreement or an equivalent document, or a certified copy thereof. If the documents specified in the second paragraph are not written in Italian, the petitioner shall in addition produce a certified translation thereof.

The president of the court of appeal, after having ascertained the formal regularity of the award, shall declare by decree the efficacy of the foreign award in the Republic unless:

- 1) the subject matter is not capable of settlement by arbitration under Italian law;*
- 2) the award contains provisions contrary to public policy.*

Article 840 (Opposition)

An opposition may be filed against the decree granting or denying enforcement of the foreign award by filing a writ of summons with the court of appeal within thirty days of communication of the decree denying enforcement or notification of the decree granting enforcement.

After the filing of the opposition, the proceedings shall be held in accordance with Article 645 and following in so far as they are applicable. The court of appeal decides with a judgment subject to recourse before the supreme court.

The court of appeal shall refuse the recognition or the enforcement of the foreign award if in the opposition proceedings the party against which the award is invoked proves the existence of one of the following circumstances:

- 1) the parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the State where the award was made;*
- 2) the party against which the award is invoked was not informed of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case in the proceedings;*
- 3) the award decided upon a dispute not contemplated in the submission to arbitration or in the arbitration clause, or exceeded the limits of the submission to arbitration or of the arbitration clause; nevertheless, if the decisions in the award which concern questions submitted to arbitration can be separated from those concerning questions not so submitted, the former can be recognized and enforced;*
- 4) the composition of the arbitration tribunal or the arbitration proceedings was not in accordance with the agreement of the parties or, failing such an agreement, with the law of the place where the arbitration took place;*
- 5) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the State in which, or under the law of which, it was made.*

If an application for the setting aside or suspension of the effects of the award has been made to the competent authority indicated at number 5) of the third paragraph, the court of appeal may adjourn the decision on the recognition or enforcement of the award; on the request of the party seeking enforcement it may, in the case of suspension, order the other party to give suitable security.

Recognition or enforcement of a foreign award shall be refused also where the court of appeal shall ascertain that:

- 1) the subject matter is not capable of settlement by arbitration under Italian law;*
- 2) the award contains provisions contrary to public policy.*

In all cases, the provisions of international treaties shall be applicable.