

Netherlands - Arbitration Act * 1 December 1986 Code of Civil Procedure - Book Four: Arbitration

Netherlands

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Code of Civil Procedure - Book Four: Arbitration**

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1 **Netherlands - Arbitration Act * 1 December 1986**
Code of Civil Procedure - Book Four:
Arbitration

2 **Title One: - Arbitration in the Netherlands**

3 **Section One. - Arbitration Agreement and**
Appointment of Arbitrators

4 **Article 1020 - Arbitration Agreements in General**

**

5 1. Parties may agree to submit to arbitration disputes
which have arisen or may arise between them out of
a defined legal relationship, whether contractual or
not.

6 2. The arbitration agreement mentioned in paragraph
(1) includes both a submission by which the parties bind
themselves to submit to arbitration an existing dispute
between them and an arbitration clause under which
parties bind themselves to submit to arbitration disputes
which may arise in the future between them.

7 3. The arbitration agreement shall not serve to deter-
mine legal consequences of which the parties cannot
freely dispose.

8 4. Parties may also agree to submit the following mat-

ters to arbitration:

(a) the determination only of the quality or condition of 9
goods;

(b) the determination only of the quantum of damages 10
or a monetary debt;

(c) the filling of gaps in, or modification of, the legal re- 11
lationship between the parties referred to in paragraph
(1).

5. The term “arbitration agreement” includes an arbitra- 12
tion clause which is contained in Articles of association
or rules which bind the parties.

6. Arbitration rules referred to in an arbitration 13
agreement shall be deemed to form part of that
agreement.

Article 1021 - Form of Arbitration Agreement 14

The arbitration agreement must be proven by an instru- 15
ment in writing. For this purpose an instrument in writing
which provides for arbitration or which refers to standard
conditions providing for arbitration is sufficient, provided
that this instrument is expressly or impliedly accepted by
or on behalf of the other party.

Article 1022 - Arbitration Agreement and Substantive Claim Before Court; Arbitration Agreement and Interim Measures by Court

- 17 1. A court seized of a dispute in respect of which an arbitration agreement has been concluded shall declare that it has no jurisdiction if a party invokes the existence of the said agreement before submitting a defence, unless the agreement is invalid.
- 18 2. An arbitration agreement shall not preclude a party from requesting a court to grant interim measures of protection, or from applying to the President of the District Court for a decision in summary proceedings in accordance with the provisions of article 289. In the latter case the President shall decide the case in accordance with the provisions of article 1051.

19 **Article 1023 - Who may be Appointed as an Arbitrator**

- 20 Any natural person of legal capacity may be appointed as arbitrator. Unless the parties have agreed otherwise, no person shall be precluded from appointment by reason of his nationality.

21 16 **Article 1024 - Submission Agreement: Commencement of Arbitral Proceedings**

- 22 1. The submission agreement shall describe the matters which the parties wish to submit to arbitration.
- 23 2. The arbitration shall be deemed to have been commenced by the conclusion of the submission agreement, unless the parties have agreed to another method of commencement.
- 24 3. If the parties have agreed that a third person shall appoint the arbitrator or arbitrators, or any of them, either party shall send to the third person a copy of the submission agreement.

25 **Article 1025 - Arbitration Clause: Commencement of Arbitral Proceedings**

- 26 1. In the case of an arbitration clause, the arbitration shall be deemed to have been commenced on the day of receipt of a notice in writing in which a party informs the other that he is commencing arbitration. The said notice shall contain a description of the matters which the party commencing the arbitration wishes to submit to arbitration.
- 27 2. If the parties have agreed that a third person shall appoint the arbitrator or arbitrators, or any of them, the

party who commences arbitration shall send to the third person a copy of the notice mentioned in paragraph (1).

- 28 3. The parties may agree that the arbitration shall be commenced in a different method from that provided for in this article.

29 **Article 1026 - Number of Arbitrators**

30 1. The arbitral tribunal shall be composed of an uneven number of arbitrators. The arbitral tribunal may also consist of a sole arbitrator.

31 2. If the parties have not agreed on the number of arbitrators, or if the agreed method of determining that number is not carried out and the parties cannot reach agreement on the number, the number shall, at the request of either party, be determined by the President of the District Court.

32 3. If the parties have agreed on an even number of arbitrators, the arbitrators shall appoint an additional arbitrator who shall act as the chairman of the arbitral tribunal.

33 4. Failing agreement between the arbitrators in appointing the additional arbitrator, such arbitrator shall, unless the parties have agreed otherwise, be appointed, at the

request of either party, by the President of the District Court.

Article 1027 - Appointment of Arbitrators

34

1. The arbitrator or arbitrators shall be appointed by any method agreed by the parties. The parties may entrust to a third person the appointment of the arbitrator or arbitrators or any of them. If no method of appointment is agreed upon, the arbitrator or arbitrators shall be appointed by consensus between the parties.

35

2. The appointment shall be made within two months after the commencement of the arbitration, unless the arbitrator or arbitrators have already been appointed. In the event, however, that any of the cases mentioned in article 1026(2) occurs, the period of two months shall start to run on the day on which the number of arbitrators is determined. The period for appointment shall be extended to three months if at least one of the parties is domiciled or has his actual residence outside the Netherlands. These periods may be shortened or extended by agreement between the parties.

36

3. If the appointment of the arbitrator or arbitrators is not made within the period prescribed in the preceding paragraph, the arbitrator shall, at the request of either party, be appointed by the President of the District

37

Court. The other party shall be given an opportunity to⁴¹
be heard.

38 4. The President or the third person shall appoint the
arbitrator or arbitrators without regard to the question
whether or not there is a valid arbitration agreement. By
participating in the appointment of the arbitrator or ar-
bitrators, the parties do not forfeit the right to challenge
the jurisdiction of the arbitral tribunal on the ground of
absence of a valid arbitration agreement.

39 **Article 1028 - Privileged Position of a Party in
Appointing Arbitrators**

40 If the arbitration agreement gives one of the parties a
privileged position with regard to the appointment of the
arbitrator or arbitrators, the other party may, despite the
method of appointment laid down in that agreement,
request the President of the District Court within one
month after the commencement of the arbitration to ap-
point the arbitrator or arbitrators. The other party shall
be given an opportunity to be heard. The provisions of
article 1027(4) shall apply accordingly.

**Article 1029 - Arbitrator's Acceptance and Release
of Mandate**

1. An arbitrator shall accept his mandate in writ- 42
ing.

2. An arbitrator who has accepted his mandate may, at 43
his own request, be released from his mandate either
with the consent of the parties or a third person desig-
nated by the parties, or in the absence thereof, by the
President of the District Court.

3. An arbitrator who has accepted his mandate may be 44
released from his mandate by agreement between the
parties.

4. An arbitrator who has accepted his mandate and who 45
has become de jure or de facto unable to perform his
mandate, may, at the request of either party, be released
from his mandate by a third person designated by the
parties, or in the absence of such third person, by the
President of the District Court.

**Article 1030 - Appointment of a Substitute
Arbitrator**

1. Unless the parties have agreed otherwise, an arbitra- 47
tor who has been released from his mandate in accor-
dance with the provisions of article 1029(2), (3) or (4)

shall be replaced pursuant to the rules applicable to the initial appointment. The same shall apply to an arbitrator who has died.

48 2. If the parties have named the arbitrator or arbitrators in the arbitration agreement, their replacement shall also take place in the cases prescribed in paragraph (1) above, unless the parties have agreed that the arbitration agreement shall terminate in such a case.

49 3. Unless the parties have agreed otherwise, the arbitral proceedings shall be suspended by operation of law in case of replacement. Unless the parties have agreed otherwise, the arbitral proceedings shall, after the suspension ceases, continue from the stage they had reached.

50 **Article 1031 - Termination of the Arbitral Tribunal's Mandate; Tribunal's Failure to Proceed**

51 1. The parties may agree to terminate the mandate of the arbitral tribunal.

52 2. At the request of either party and after having heard the other party and the arbitrator or arbitrators, the third person designated by the parties, or in the absence thereof, the President of the District Court, may, having regard to all circumstances, terminate the mandate of the arbitral tribunal if, despite repeated reminders, the

arbitral tribunal carries out its mandate in an unacceptably slow manner. In these circumstances, the jurisdiction of the court shall revive, unless the parties have agreed otherwise.

Article 1032 - Death of a Party

53

54 1. Unless the parties have agreed otherwise, neither the arbitration agreement nor the mandate of the arbitral tribunal shall terminate by reason of the death of one of the parties.

55 2. The arbitral tribunal shall suspend the arbitral proceedings for such period as may be determined by it. The arbitral tribunal may, at the request of the legal successors of the deceased party, extend such period. The arbitral tribunal shall give the other party an opportunity to be heard in respect of such request.

56 3. Unless the parties have agreed otherwise, the arbitral proceedings shall, after any suspension, continue from the stage they had reached.

Article 1033 - Challenge of an Arbitrator: Grounds

57

58 1. An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his impartiality

or independence. A secretary engaged by an arbitral tri-⁶⁴
bunal may be challenged on the same grounds; the pro-
visions of article 1035 shall apply accordingly to such a
challenge.

⁵⁹ 2. A party may only challenge an arbitrator appointed
by him on grounds of which he has become aware after
the appointment has been made.

⁶⁰ 3. A party may not challenge an arbitrator appointed
by a third person or the President of the District Court
if he has acquiesced in this appointment, unless he has
become aware of the ground for challenge after the ap-
pointment has been made.

⁶¹ **Article 1034 - Duty to Disclose**

⁶² 1. A prospective arbitrator or secretary who presumes
that he could be challenged shall disclose in writing to
the person who has approached him the existence of
such grounds.

⁶³ 2. A person who has been appointed as arbitrator or
secretary shall, if the parties have not previously been
notified, immediately notify the parties as prescribed in
the preceding paragraph.

**Article 1035 - Challenge of an Arbitrator:
Procedure**

1. The challenge and the grounds therefor shall be noti-⁶⁵
fied in writing by the challenging party to the challenged
arbitrator, the other members of the arbitral tribunal, the
other party and, if a third person has appointed the chal-
lenged arbitrator, this third person. The arbitral tribunal
may suspend the arbitral proceedings as of the day of
receipt of the notification.

2. If the challenged arbitrator does not withdraw within⁶⁶
two weeks after the day of receipt of the notification, the
President of the District Court shall, at the request of
either party, decide on the merits of the challenge. If
such request is not made within four weeks after the day
of receipt of the notification, the right to challenge shall
be barred and the arbitral proceedings, if suspended,
shall continue from the stage they had reached.

3. If the challenged arbitrator withdraws, or if the chal-⁶⁷
lenge is upheld by the President of the District Court,
the arbitrator shall, unless the parties have agreed oth-
erwise, be replaced in accordance with the rules gov-
erning his initial appointment. The provisions of article
1030(2) and (3) shall apply accordingly.

4. If the challenged arbitrator or one or both of the par-⁶⁸
ties is domiciled or has his actual residence outside the

Netherlands, the periods mentioned in paragraph (2) above shall be six and eight weeks respectively.

69 **Section Two. - The Arbitral Proceedings**

70 **Article 1036 - Determination of Rules of Procedure**

71 Subject to the provisions of this Title, the arbitral proceedings shall be conducted in such manner as agreed between the parties or, to the extent that the parties have not agreed, as determined by the arbitral tribunal.

72 **Article 1037 - Place of Arbitration**

73 1. The place of arbitration shall be determined by agreement of the parties, or failing such agreement, as determined by the arbitral tribunal. The determination of the place of arbitration establishes also the place where the award shall be made.

74 2. If the place of arbitration has not been determined either by the parties or the arbitral tribunal, the place of making the award as stated by the arbitral tribunal in the award shall be deemed to be the place of arbitration.

3. The arbitral tribunal may hold hearings, deliberate, and examine witnesses and experts at any other place, within or outside the Netherlands, which it deems appropriate.

75

Article 1038 - Representation and Assistance

76

1. The parties may appear before the arbitral tribunal in person, be represented by a practising lawyer, or be represented by any other person expressly authorised in writing for this purpose.

77

2. The parties may be assisted in the arbitral proceedings by any persons they may choose.

78

Article 1039 - Equal Treatment of Parties; Hearing; Right to Produce Witnesses and Experts; Production of Documents; Rules of Evidence

79

1. The parties shall be treated with equality. The arbitral tribunal shall give each party an opportunity to substantiate his claims and to present his case.

80

2. The arbitral tribunal shall, at the request of either party or on its own initiative, give the parties an opportunity of making an oral presentation.

81

3. The arbitral tribunal may, at the request of either party, allow a party to produce witnesses or experts. The arbitral tribunal shall have the power to designate one of its members to examine witnesses or experts.

83 4. The arbitral tribunal shall have the power to order the production of documents.

84 5. Unless the parties have agreed otherwise, the arbitral tribunal shall have discretion in the rules of evidence to be applied.

85 **Article 1040 - Default of a Party**

86 1. If the claimant, without showing good cause, fails to communicate his statement of claim or duly to explain the claim, in spite of having had a reasonable opportunity to do so, the arbitral tribunal may terminate the arbitral proceedings by means of an arbitral award.

87 2. If the respondent, without showing good cause, fails to submit his defence, in spite of having been given a reasonable opportunity to do so, the arbitral tribunal may render an award forthwith.

88 3. In the circumstances mentioned in paragraph (2) above, the arbitral tribunal shall render an award in favour of the claimant, unless it considers the claim

82 to be unlawful or unfounded. Before rendering an award, the arbitral tribunal may require the claimant to produce evidence in support of one or more of his allegations.

Article 1041 - Examination of Witnesses

89 1. If an examination of witnesses takes place, the arbitral tribunal shall determine the time and place of the examination and the manner in which the examination shall proceed. If the arbitral tribunal deems it necessary, it shall examine the witnesses on oath or affirmation as provided in article 107(1).

90 2. If a witness does not appear voluntarily or, having appeared, refuses to give evidence, the arbitral tribunal may allow a party who so requests, within a period of time determined by the arbitral tribunal, to petition the President of the District Court to appoint a judge-commissary before whom the examination of the witness shall take place. The examination shall take place in the same manner as in ordinary court proceedings. The Clerk of the District Court shall give the arbitrator or arbitrators an opportunity of attending the examination of the witness.

91 3. The Clerk of the District Court shall communicate 92

without delay to the arbitral tribunal and the parties a copy of the record of the examination.

93 4. The arbitral tribunal may suspend the proceedings until the day on which it has received the record of the examination.

94 **Article 1042 - Experts Appointed by Arbitral Tribunal**

95 1. The arbitral tribunal may appoint one or more experts to give advice. The arbitral tribunal shall communicate as soon as possible to the parties a copy of the appointment and the terms of reference of the experts.

96 2. The arbitral tribunal may require a party to provide the experts with the information required by them and to give them the necessary cooperation.

97 3. Upon receipt of the expert's report, the arbitral tribunal shall provide a copy of the report to the parties without delay.

98 4. At the request of either party, the experts shall be examined at a hearing. A party wishing to make such request shall inform the arbitral tribunal and the opposing party thereof without delay.

99 5. The arbitral tribunal shall give the parties an oppor-

tunity to examine the experts and to produce their own experts.

6. The provisions of article 1041(1) shall apply accordingly. 100

Article 1043 - Order for Personal Appearance of the Parties 101

At any stage of the proceedings the arbitral tribunal may order the parties to appear in person for the purpose of providing information or attempting to arrive at a settlement. 102

Article 1044 - Request for Information on Foreign Law 103

1. The arbitral tribunal may, through the intervention of the President of the District Court at The Hague, ask for information as mentioned in article 3 of the European Convention on Information on Foreign Law, concluded at London, 7 June 1968 (Dutch Treaty Series 1968, 142). The President shall, unless he considers the request to be without merit, send the request without delay to the agency mentioned in article 2 of said Convention and notify the arbitral tribunal thereof. 104

2. The arbitral tribunal may suspend the proceedings 105

until the day on which it has received the answer to its request for information.

106 **Article 1045 - Third Parties**

107 1. At the written request of a third party who has an interest in the outcome of the arbitral proceedings, the arbitral tribunal may permit such party to join the proceedings, or to intervene therein. The arbitral tribunal shall send without delay a copy of the request to the parties.

108 2. A party who claims to be indemnified by a third party may serve a notice of joinder on such a party. A copy of the notice shall be sent without delay to the arbitral tribunal and the other party.

109 3. The joinder, intervention or joinder for the claim of indemnity may only be permitted by the arbitral tribunal, having heard the parties, if the third party accedes by agreement in writing between him and the parties to the arbitration agreement.

110 4. On the grant of a request for joinder, intervention, or joinder for the claim of indemnity, the third party becomes a party to the arbitral proceedings. Unless the parties have agreed there on the arbitral tribunal shall determine the further conduct of the proceedings.

Article 1046 - Consolidation of Arbitral Proceedings

111

112 1. If arbitral proceedings have been commenced before an arbitral tribunal in the Netherlands concerning a subject matter which is connected with the subject matter of arbitral proceedings commenced before another arbitral tribunal in the Netherlands, any of the parties may, unless the parties have agreed otherwise, request the President of the District Court in Amsterdam to order a consolidation of the proceedings.

113 2. The President may wholly or partially grant or refuse the request, after he has given all parties and the arbitrators an opportunity to be heard. His decision shall be communicated in writing to all parties and the arbitral tribunals involved.

114 3. If the President orders consolidation in full, the parties shall in consultation with each other appoint one arbitrator or an uneven number of arbitrators and determine the procedural rules which shall apply to the consolidated proceedings. If, within the period of time prescribed by the President, the parties have not reached agreement on the above, the President shall, at the request of any of the parties, appoint the arbitrator or arbitrators and, if necessary, determine the procedural rules which shall apply to the consolidated proceedings. The President

shall determine the remuneration for the work already carried out by the arbitrators whose mandate is terminated by reason of the full consolidation.

115 4. If the President orders partial consolidation, he shall decide which disputes shall be consolidated. The President shall, if the parties fail to agree within the period of time prescribed by him, at the request of any of the parties, appoint the arbitrator or arbitrators and determine which rules shall apply to the consolidated proceedings. In this event the arbitral tribunals before which arbitrations have already been commenced shall suspend those arbitrations. The award of the arbitral tribunal appointed for the consolidated arbitration shall be communicated in writing to the other arbitral tribunals involved. Upon receipt of this award, these arbitral tribunals shall continue the arbitrations commenced before them and decide in accordance with the award rendered in the consolidated proceedings.

116 5. The provisions of article 1027(4) shall apply accordingly in the cases mentioned in paragraphs (3) and (4) above.

117 6. An award rendered under paragraphs (3) and (4) above shall be subject to appeal to a second arbitral tribunal if and to the extent that all parties involved in the consolidated proceedings have agreed upon such an appeal.

Article 1047 - Section Two Not Applicable to Quality Arbitration 118

With the exception of the provisions of article 1037, the provisions of this Section shall not apply to arbitrations concerning the matters mentioned in article 1020(4)(a). In that case the proceedings shall be conducted in the manner agreed upon by the parties or, to the extent that the parties have not agreed thereon, as determined by the arbitral tribunal. 119

Article 1048 - Time Limit for Making the Award 120

The arbitral tribunal is free to determine the time when the award shall be made. 121

Section Three. The Arbitral Award 122

Article 1049 - Types of Award 123

The arbitral tribunal may render a final award, a partial final award, or an interim award. 124

Article 1050 - Appeal to Second Arbitral Tribunal 125

1. An appeal from the arbitral award to a second arbitral tribunal shall be admissible only if the parties have agreed upon such an appeal. 126

tral tribunal is possible only if the parties have agreed thereto.

127 2. Unless the parties have agreed otherwise, an appeal to a second arbitral tribunal from a partial final award can be lodged only in conjunction with an appeal from the last final award.

128 3. Unless the parties have agreed otherwise, an appeal to a second arbitral tribunal from an interim award can be lodged only in conjunction with an appeal from a final or partial final award.

129 4. Unless the parties have agreed otherwise, an appeal to a second arbitral tribunal shall be lodged within three months after the date of deposit of the award with the Registry of the District Court.

130 **Article 1051 - Summary Arbitral Proceedings**

131 1. The parties may agree to empower the arbitral tribunal or its chairman to render an award in summary proceedings, within the limits imposed by article 289(1).

132 2. In the event that, notwithstanding such agreement, the case is brought before the President of the District Court in summary proceedings, he may, if a party invokes the existence of the said agreement, taking into

account all circumstances, declare to have no jurisdiction by referring the case to the agreed summary arbitral proceedings, unless the said agreement is invalid.

133 3. A decision rendered in summary arbitral proceedings shall be regarded as an arbitral award to which the provisions of Sections Three to Five inclusive of this Title shall be applicable.

134 4. In the case of a referral to the summary arbitral proceedings mentioned in paragraph (2) above, no appeal may be lodged against the decision of the President of the District Court.

135 **Article 1052 - Pleas as to the Jurisdiction of the Arbitral Tribunal**

136 1. The arbitral tribunal shall have the power to decide on its own jurisdiction.

137 2. A party who appeared in the arbitral proceedings shall raise a plea that the arbitral tribunal lacks jurisdiction on the ground that there is no valid arbitration agreement, unless the plea is made on the ground that the dispute is not capable of settlement by arbitration by virtue of article 1020(3), before submitting a defence; thereafter that party will be barred from raising this plea in the arbitral proceedings or in proceedings before the court.

138 3. A party who has participated in the constitution of the arbitral tribunal may not, in the arbitral proceedings or in proceedings before the court, raise the plea that the arbitral tribunal lacks jurisdiction on the ground that the arbitral tribunal is constituted in violation of the applicable rules. A party who has made an appearance in the arbitral proceedings and who has not participated in the constitution of the arbitral tribunal, shall raise the plea that the arbitral tribunal lacks jurisdiction on the ground that the arbitral tribunal is constituted in violation of the applicable rules before submitting a defence; thereafter that party will be barred from raising this plea in the arbitral proceedings or in proceedings before the court.

139 4. Any decision in which the arbitral tribunal declares that it has jurisdiction can be challenged only by the means of recourse mentioned in article 1064(1) in conjunction with the challenge of a subsequent final or partial final award.

140 5. Unless the parties have agreed otherwise, the court shall have jurisdiction to try the case if the arbitral tribunal declares that it lacks jurisdiction.

141 6. Appeal to a second arbitral tribunal shall, if agreed, be allowed against both a decision of the arbitral tribunal that it has jurisdiction and a decision that it lacks jurisdiction. In such event the court shall have jurisdiction under paragraph (4) or (5) above only after a decision is

made on appeal to the second arbitral tribunal or after the time limit for appeal has lapsed without the appeal having been lodged or earlier, if the right to appeal is renounced in writing.

Article 1053 - Separability of the Arbitration Clause

142

An arbitration agreement shall be considered and decided upon as a separate agreement. The arbitral tribunal shall have the power to decide on the validity of the contract of which the arbitration agreement forms part or to which the arbitration agreement is related.

143

Article 1054 - Rules Applicable to the Substance of the Dispute

144

1. The arbitral tribunal shall make its award in accordance with the rules of law.

145

2. If a choice of law is made by the parties, the arbitral tribunal shall make its award in accordance with the rules of law chosen by the parties. Failing such choice of law, the arbitral tribunal shall make its award in accordance with the rules of law which it considers appropriate.

146

147 3. The arbitral tribunal shall decide as amiable compositeur if the parties by agreement have authorised it to do so.

148 4. In all cases the arbitral tribunal shall take into account any applicable trade usages.

149 **Article 1055 - Enforceability of Award Notwithstanding Arbitral Appeal**

150 Where an appeal from the award to a second arbitral tribunal is provided for, the arbitral tribunal may declare its award provisionally enforceable in cases where the court has the power to do so. The arbitral tribunal may determine that such enforceability of the award is subject to the giving of security.

151 **Article 1056 - Penalty for Non-Compliance**

152 The arbitral tribunal has the power to impose a penalty for non-compliance in cases where the court has such power. The provisions of Articles 611 a to 611 i inclusive shall apply accordingly, although in the cases mentioned in article 611 d , an application for the revocation, suspension or reduction of the penalty shall be made to the President of the District Court with whose Registry the

original of the award shall be deposited in accordance with article 1058(1).

Article 1057 - Majority Decision; Refusal of Minority to Sign; Form and Contents of Award 153

1. Unless the parties have agreed otherwise, if the arbitral tribunal is composed of more than one arbitrator, it shall decide by a majority of votes. 154

2. The award shall be in writing and signed by the arbitrator or arbitrators. 155

3. If a minority of the arbitrators refuses to sign, the other arbitrators shall make mention thereof beneath the award signed by them. This statement shall be signed by them. A similar statement shall be made if a minority is incapable of signing and it is unlikely that this impediment will cease to exist within a reasonable time. 156

4. In addition to the decision, the award shall contain in any case: 157

(a) the names and addresses of the arbitrator or arbitrators; 158

(b) the names and addresses of the parties; 159

(c) the date on which the award is made; 160

(d) the place where the award is made; 161

162 (e) the reasons for the decision, unless the award con-
cerns merely the determination only of the quality or
condition of goods as provided in article 1020(4)(a)
or the recording of a settlement as provided in article
1069.

163 **Article 1058 - Notification and Deposit of Award;
Termination of Mandate of Arbitral Tribunal**

164 1. The arbitral tribunal shall ensure that without de-
lay:

165 (a) a copy of any award, signed by an arbitrator or the
secretary of the arbitral tribunal, is communicated to the
parties;

166 (b) the original of the final or partial final award is
deposited with the Registry of the District Court within
whose district the place of arbitration is located.

167 2. Without prejudice to the provisions of Articles 1060
and 1061, the mandate of the arbitral tribunal shall ter-
minate upon the deposit of the last final award with the
Registry.

168 **Article 1059 - Res Judicata of the Award**

169 1. Only a final or partial final arbitral award is capable

of acquiring the force of res judicata . The award shall
have such force from the day on which it is made.

2. If, however, an appeal to a second arbitral tribunal 170
is provided for, the final or partial final award shall have
the force of res judicata from the day on which the time
limit for lodging appeal has lapsed or, if the appeal has
been lodged, the day on which a decision is rendered
on appeal, if and to the extent that the award rendered
at first instance is affirmed on appeal.

**Article 1060 - Rectification and Correction of the
Award**

1. Not later than thirty days after the date of deposit of 172
the award with the Registry of the District Court, a party
may request in writing that the arbitral tribunal rectify in
the award a manifest computing or clerical error.

2. If the details referred to in article 1057(4)(a) to (d) 173
inclusive are stated incorrectly or are partially or wholly
absent from the award, a party may, not later than thirty
days after the date of deposit of the award with the Reg-
istry of the District Court, request in writing that the arbi-
trary tribunal correct the mistake or omission.

3. A copy of the request mentioned in paragraph (1) or 174
(2) above shall be communicated by the arbitral tribunal
to the other party.

175 4. An arbitral tribunal may, not later than thirty days after the date of deposit of the award with the Registry of the District Court, also make on its own initiative the rectification or the correction mentioned in paragraph (1) or (2) above.

176 5. In the event that the arbitral tribunal makes the rectification or correction, it shall record and sign it on the original and copies of the award, or set it out in a separately signed document, which shall be treated as forming part of the award. The provisions of Articles 1057(1) to (3) inclusive and 1058(1) shall apply accordingly.

177 6. If the arbitral tribunal rejects the request for rectification or correction, it shall inform the parties thereof in writing.

178 7. A request under this Article does not suspend the enforcement or setting aside of the award unless the President or the District Court deems that there are serious reasons for so doing while a decision on the request is pending.

179 **Article 1061 - Additional Award**

180 1. If the arbitral tribunal has failed to decide on one or more matters which have been submitted to it, either party may, not later than thirty days after the date of deposit of the award with the Registry of the District

Court, request the arbitral tribunal to render an additional award.

2. A copy of the request shall be communicated by the arbitral tribunal to the other party. 181

3. The arbitral tribunal shall give the parties an opportunity to be heard before deciding on the request. 182

4. An additional award shall be regarded as an arbitral award to which the provisions of Section Three to Five inclusive of this Title shall be applicable. 183

5. If the arbitral tribunal rejects a request for an additional award, it shall inform the parties accordingly in writing. A copy of this notification, signed by an arbitrator or the secretary of the arbitral tribunal, shall be deposited with the Registry of the District Court, in accordance with the provisions of article 1058(1). 184

6. If an appeal to a second arbitral tribunal has been agreed, the arbitral award rendered at first instance may only be supplemented on appeal. Any request for supplementation shall be made within the period of time applicable to the lodging of the appeal. 185

Section Four. - Enforcement of the Arbitral Award

Article 1062 - Granting Leave for Enforcement

- 188 1. Enforcement in the Netherlands of a final or partial final arbitral award which is not open to appeal to a second arbitral tribunal, or which is declared provisionally enforceable, or a final or partial award rendered on arbitral appeal, can take place only after the President of the District Court with whose Registry the original of the award shall be deposited by virtue of article 1058(1), has, in pursuance of a request of one of the parties, granted leave for enforcement.
- 189 2. Leave for enforcement shall be recorded on the original of the arbitral award or, if no deposit of the arbitral award has taken place, shall be laid down in a decision. The Court Clerk shall communicate without delay to the parties a certified copy of the arbitral award on which leave for enforcement is recorded or a certified copy of the decision in which leave for enforcement is granted.
- 190 3. If an appeal can be lodged from the award to a second arbitral tribunal, leave for enforcement of an award rendered at first instance which is not declared provisionally enforceable may be granted only after the time limit

186 for lodging the appeal to a second arbitral tribunal has lapsed without the appeal having been lodged or earlier, if the right to appeal is renounced in writing.

187 4. If the President of the District Court grants leave for enforcement, the means of recourse mentioned in article 1064(1) shall be the only means of recourse available to the respondent. The setting aside or the revocation of an arbitral award causes by operation of law the annulment of any leave for enforcement.

191

Article 1063 - Refusal of Leave for Enforcement

- 192
- 193 1. Enforcement of an arbitral award may be refused by the President of the District Court only if the award or the manner in which it was made is manifestly contrary to public policy or good morals, or if enforcement is ordered notwithstanding the lodging of an appeal in violation of article 1055, or if a penalty for non-compliance is imposed in violation of article 1056. In the latter case, the refusal shall be limited to the enforcement of the penal sum.
- 194 2. The Court Clerk shall without delay send to the parties a certified copy of the President's decision to refuse leave for enforcement.
- 195 3. The petitioner may lodge an appeal to the Court of

Appeal against refusal to grant leave for enforcement within two months after the date on which the decision is signed.

196 4. If refusal to grant leave for enforcement is affirmed on appeal, the time limit for recourse to the Supreme Court shall be two months after the date on which the decision on appeal is signed.

197 5. If leave for enforcement is granted on appeal or after recourse to the Supreme Court, the provisions of the first sentence of article 1062(4) shall apply accordingly.

198 **Section Five. - Setting Aside and Revocation of the Arbitral Award**

199 **Article 1064 - Setting Aside in General**

200 1. Recourse to a court against a final or partial final arbitral award which is not open to appeal to a second arbitral tribunal, or a final or partial final award rendered on arbitral appeal, may be made only by an application for setting aside or revocation in accordance with this Section.

201 2. An application for setting aside shall be made to the District Court with whose Registry the original

of the award shall be deposited by virtue of article 1058(1).

3. An application for setting aside may be made as soon as the award has acquired the force of res judicata . The right to make an application shall be extinguished three months after the date of deposit of the award with the Registry of the District Court. However, if the award together with leave for enforcement is officially served on the other party, that party may make an application for setting aside within three months after the said service, irrespective of whether the period of three months mentioned in the preceding sentence has lapsed. 202

4. An application to set aside an interim arbitral award may be made only in conjunction with an application for setting aside a final or partial final award. 203

5. All grounds for setting aside shall, on pain of being barred, be mentioned in the writ of summons. 204

205 **Article 1065 - Grounds for Setting Aside**

1. Setting aside of the award can take place only on one or more of the following grounds: 206

(a) absence of a valid arbitration agreement; 207

(b) the arbitral tribunal was constituted in violation of the rules applicable thereto; 208

- 209 (c) the arbitral tribunal has not complied with its man-216
date;
- 210 (d) the award is not signed or does not contain reasons
in accordance with the provisions of article 1057;
- 211 (e) the award, or the manner in which it was made, vio-
lates public policy or good morals.
- 212 2. The ground mentioned in paragraph (1)(a) above
shall not constitute a ground for setting aside in the case
mentioned in article 1052(2).
- 213 3. The ground mentioned in paragraph (1)(b) above
shall not constitute a ground for setting aside in the
cases mentioned in article 1052(3).
- 214 4. The ground mentioned in paragraph (1)(c) above
shall not constitute a ground for setting aside if the party
who invokes this ground has participated in the arbitral
proceedings without invoking such ground, although it
was known to him that the arbitral tribunal did not comply
with its mandate.
- 215 5. If the arbitral tribunal has awarded in excess of, or
differently from, what was claimed, the arbitral award
shall be partially set aside to the extent that the part
of the award which is in excess of or different from the
claim can be separated from the remaining part of the
award.

6. If and to the extent that the arbitral tribunal has failed
to decide one or more matters submitted to it, the ap-
plication for setting aside on the ground mentioned in
paragraph (1)(c) above shall be admissible only if an
additional award mentioned in article 1061(1) is made,
or the request for an additional award mentioned in arti-
cle 1061(1) has wholly or partially been rejected.

7. Notwithstanding the provisions of the second sen- 217
tence of article 1064(3), the time limit for making an ap-
plication for setting aside mentioned in the preceding
paragraph shall be three months from the date of de-
posit of the additional award or the copy of the notifica-
tion mentioned in article 1061(5) with the Registry of the
District Court.

Article 1066 - Suspension of Enforcement 218

1. An application for setting aside shall not suspend the 219
enforcement of the award.
2. However, the court which decides on an application 220
for setting aside may, at the request of either party, if it
considers the request to be justified, suspend enforce-
ment until a final decision is made on the application for
setting aside.
3. A copy of the request for suspension shall be com- 221

municated by the Court Clerk to the other party without delay.

222 4. The court shall decide on the request after the other party has been given an opportunity to be heard.

223 5. Upon granting the request, the court may order the petitioner to give security. Upon denying the request, the court may order the other party to give security.

224 6. If enforcement is suspended, either party may request the court to lift the suspension. The provisions of paragraphs (3) to (5) inclusive shall apply accordingly.

225 **Article 1067 - Consequences of Setting Aside**

226 Unless the parties have agreed otherwise, as soon as a decision setting aside the award has become final, the jurisdiction of the court shall revive.

227 **Article 1068 - Revocation of the Award in Case of Fraud, Forgery or New Documents ***

228 1. Revocation of the award can take place only on one or more of the following grounds:

229 (a) the award is wholly or partially based on fraud which is discovered after the award is made and which is

committed during the arbitral proceedings by or with the knowledge of the other party;

(b) the award is wholly or partially based on documents 230 which, after the award is made, are discovered to have been forged;

(c) after the award is made, a party obtains documents 231 which would have had an influence on the decision of the arbitral tribunal and which were withheld as a result of the acts of the other party.

2. An application for revocation shall be brought before 232 the Court of Appeal which would have had jurisdiction to decide on an appeal relating to the application for setting aside mentioned in article 1064, within three months after the fraud or forgery has become known or the party has obtained the new documents. The provisions of Articles 1066 and 1067 shall apply accordingly.

3. Subject to the provisions of the preceding para- 233 graphs, the provisions of the Articles of Book One, Title Ten, shall apply accordingly.

Section Six. - Arbitral Award on Agreed Terms

Article 1069

236 1. If during the arbitral proceedings the parties reach a settlement, the arbitral tribunal may, at the joint request of the parties, record the contents of the settlement in the form of an arbitral award. The arbitral tribunal may refuse the request without giving reasons.

237 2. An arbitral award on agreed terms shall be regarded as an arbitral award to which the provisions of Sections Three to Five inclusive of this Title shall be applicable, provided that:

238 (a) the award may be set aside only on the ground that it is contrary to public policy or good morals,

239 (b) notwithstanding the provisions of article 1057, the award does not need to contain reasons, and

240 (c) the award is also signed by the parties.

Section Seven. - Final Provisions

Article 1070 - No Appeal Against Certain Decisions of President of District Court

243 No appeal may be lodged against the decisions of the

234 President of the District Court mentioned in Sections One to Three inclusive of this Title.

Article 1071 - No Attorney Required for Certain Requests

244 In the cases mention in Articles 1026(2) and (4), 1027(3), 1028, 1044(1), and 1062(1), the application and if applicable the answer need not be filed by an attorney. 245

Article 1072 - Agreement on Competent President of District Court in Certain Cases

246 The parties may designate by agreement the President of a specific District Court as the President competent for the matters mentioned in Articles 1026(2) and (4), 1027(3), 1028, 1029(2) and (4), 1031(2), 1035(2) and 1041(2). 247

Article 1073 - Applicability of Title One to Arbitration Within The Netherlands; Appointment of Arbitrators in Case Place of Arbitration is Unknown

248 1. The provisions of this Title shall apply if the place of 249

arbitration is situated within the Netherlands.

250 2. If the parties have not determined the place of arbitration, the appointment or challenge of the arbitrator or arbitrators or the secretary engaged by an arbitral tribunal may take place in accordance with the provisions contained in Section One of this Title if at least one of the parties is domiciled or has his actual residence in the Netherlands.

251 **Title Two: - Arbitration Outside The Netherlands**

252 **Article 1074 - Foreign Arbitration Agreement and Substantive Claim Before Dutch Court; Foreign Arbitration Agreement and Interim Measures by Dutch Court**

253 1. A court in the Netherlands seized of a dispute in respect of which an arbitration agreement has been concluded under which arbitration shall take place outside the Netherlands shall declare that it has no jurisdiction if a party invokes the existence of the said agreement before submitting a defence, unless the agreement is invalid under the law applicable thereto.

254 2. The agreement mentioned in paragraph (1) shall not preclude a party from requesting a court in the Nether-

lands to grant interim measures of protection, or from applying to the President of the District Court for a decision in summary proceedings in accordance with the provisions of article 289.

Article 1075 - Recognition and Enforcement of Foreign Award Under Treaties

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256 An arbitral award made in a foreign State to which a treaty concerning recognition and enforcement is applicable may be recognised and enforced in the Netherlands. The provisions of Articles 985 to 991 inclusive shall apply accordingly to the extent that the treaty does not contain provisions deviating therefrom and provided that the President of the District Court shall be substituted for the District Court and the time limit for appeal from his decision and for recourse to the Supreme Court shall be two months.

Article 1076 - Recognition and Enforcement of Foreign Award Without Treaties

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258 1. If no treaty concerning recognition and enforcement is applicable, or if an applicable treaty allows a party to rely upon the law of the country in which recognition or enforcement is sought, an arbitral award made in a foreign State may be recognised in the Netherlands and

its enforcement may be sought in the Netherlands, upon submission of the original or a certified copy of the arbitration agreement and arbitral award, unless:

259 (A) the party against whom recognition or enforcement is sought, asserts and proves that:

260 (a) a valid arbitration agreement under the law applicable thereto is lacking;

261 (b) the arbitral tribunal is constituted in violation of the rules applicable thereto;

262 (c) the arbitral tribunal has not complied with its mandate;

263 (d) the arbitral award is still open to an appeal to a second arbitral tribunal, or to a court in the country in which the award is made;

264 (e) the arbitral award has been set aside by a competent authority of the country in which that award is made;

265 (B) the court finds that the recognition or enforcement would be contrary to public policy.

266 2. The ground mentioned in paragraph (1)(A)(a) above shall not constitute a ground for refusal of recognition or enforcement if the party who invokes this ground has made an appearance in the arbitral proceedings and, before submitting a defence, has not raised the plea that

the arbitral tribunal lacks jurisdiction on the ground that a valid arbitration agreement is lacking.

3. The ground mentioned in paragraph (1)(A)(b) above shall not constitute a ground for refusal of recognition or enforcement if the party who invokes this ground has participated in the constitution of the arbitral tribunal, or if he has not participated in the constitution of the arbitral tribunal, has made an appearance in the arbitral proceedings and, before submitting a defence, has not raised the plea that the arbitral tribunal lacks jurisdiction on the ground that the arbitral tribunal is constituted in violation of the applicable rules. 267

4. The ground mentioned in paragraph (1)(A)(c) above shall not constitute a ground for refusal of recognition or enforcement if the party who invokes this ground has participated in the arbitral proceedings without raising it, although it was known to him that the arbitral tribunal did not comply with its mandate. 268

5. If the award is in excess of, or different from, what was claimed, the arbitral award shall be capable of partial recognition or enforcement to the extent that the part of the award which is in excess of or different from the claim can be separated from the remaining part of the award. 269

6. The provisions of Articles 985 to 991 inclusive shall 270

apply accordingly, provided that the President of the District Court shall be substituted for the District Court, the time limit for appeal from his decision and for recourse to the Supreme Court shall be two months, and no documents need be submitted evidencing the enforceability of the arbitral award in the country in which it is made.

- 271 7. If an application for the setting aside of an award made in a foreign State is made to a competent authority of the country in which the award is made, the provisions of article 1066(2) to (6) inclusive shall apply accordingly when recognition or enforcement is sought in the Netherlands.

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