

[Legislative proposal on the modernization of The Netherlands Arbitration Act, ~~in force as of 1 December 1986~~ published by the Dutch Ministry of Justice and Security dated 16 April 2013](#)

CODE OF CIVIL PROCEDURE

BOOK FOUR: ARBITRATION

## **Title One. Arbitration in the Netherlands**

### **Section One. The Arbitration Agreement and the Arbitrator Appointment**

Article 1020

1. Parties may agree to submit to arbitration disputes which have arisen or which may arise between them out of a defined legal relationship, whether contractual or not.
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.
3. The arbitration agreement shall not serve to determine legal consequences of which the parties cannot freely dispose.
4. Parties may also agree to submit the following matters to arbitration:
  - (a) the determination only of the quality or condition of goods;
  - (b) the determination only of the quantum of damages or a monetary debt; and
  - (c) the filling of gaps in, or modification of, the legal relationship between the parties referred to in paragraph (1).
5. The term "arbitration agreement" includes an arbitration clause which is contained in articles of association or rules which bind the parties.
6. Arbitration rules referred to in an arbitration agreement shall be deemed to form part of that agreement.

Article 1021

The arbitration agreement shall be evidenced by an instrument in writing. For this purpose a document which provides for arbitration or which refers to general conditions which provide for arbitration and which has been expressly or implicitly accepted by or on behalf of the other party. The arbitration agreement may also be evidenced by electronic means. Article 6: 227a(1) of the Dutch Civil Code shall apply accordingly.

[Article 1021a](#)

[An arbitration agreement is valid if it is valid according to Dutch law or according to the applicable law as mentioned in article 1054\(2\).](#)

[Article 1021b](#)

[If a state, other legal entity covered by public law or a state-owned company, is a party to an arbitration agreement, it may not rely upon its legislation or regulations for the purpose of contesting its capacity or power to enter into the arbitration agreement or the susceptibility to submit the dispute to arbitration.](#)

## Section One A. The Arbitration Agreement and the Jurisdiction of the Court

### Article 1022

~~1.~~ A court before which an action is brought in a matter which is the subject of an arbitration agreement shall declare that it has no jurisdiction if a party invokes the existence of the said agreement before submitting a defense, unless the agreement is invalid.

### Article 1022a

~~2.~~ An arbitration agreement shall not preclude a party from requesting from a court a conservatory interim measure, or from applying to the President of the District Court or the Subdistrict Court for a decision in summary proceedings in accordance with article 254. ~~In the latter case, the President of the District Court shall decide the case in accordance with the provisions of article 1051.~~

### Article 1022b

~~3.~~ An arbitration agreement shall not preclude a party from requesting a court to order a preliminary witness examination, a preliminary expert report or a preliminary site visit, ~~unless at the time of this request arbitrators have been appointed. Article 187(1) is applicable as if no arbitration agreement has been concluded.~~ or review, copy or excerpt of certain records.

### Article 1022c

1. In the event that in cases mentioned in articles 1022a and 1022b, a party invokes the existence of said agreement before submitting a defense, the court shall declare that it has no jurisdiction, unless the requested decision cannot, or not in a timely manner be obtained or the arbitration agreement is invalid.

2. The provisions of paragraph (1) shall apply according to interim measures as mentioned in article 1043b.

## Section One B. The Arbitral Tribunal

### Article 1023

Any natural person of legal capacity may be appointed as arbitrator. No person shall be precluded by reason of his nationality from appointment, unless otherwise agreed by the parties in view of the impartiality and independence of the arbitral tribunal.

### Article 1024

1. The submission agreement shall describe the dispute which the parties wish to submit to arbitration.
2. The arbitration shall be deemed to have been commenced by the conclusion of the submission agreement, unless otherwise agreed by the parties.

~~3. If the parties have agreed that a third party shall appoint the arbitrator or arbitrators, or any of them, either party shall send to the third party a copy of the submission agreement.~~

### Article 1025

1. In the case of an arbitration clause, the arbitral proceedings shall commence on the date of receipt of a written notice in which a party informs the other party that it is commencing arbitration. The said notice shall contain a description of the dispute which the party commencing the arbitration wishes to submit to arbitration.

~~2. If the parties have agreed that a third party shall appoint the arbitrator or arbitrators, or any of them, the party who commences arbitration shall send to the third party a copy of the notice mentioned in paragraph (1).~~

~~32~~. The parties may agree that the arbitration shall be commenced in a different manner than provided for in this article.

#### Article 1026

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

2. If the parties fail to agree on the number of arbitrators, or if the agreed method of determining that number is not carried out and the parties are unable to reach an agreement on the number, the number shall, upon request of any party, be determined by the President of the District Court.

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

4. If the arbitrators fail to agree on the appointment of an additional arbitrator, such arbitrator shall, unless the parties have agreed otherwise, be appointed upon request of any party, by the President of the District Court.

5. Article 1027(4) applies according to the provisions of paragraphs (2) and (4).

#### Article 1027

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

2. The appointment shall be made within ~~two~~-three 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.

3. If the appointment of the arbitrator or arbitrators is not made within the period prescribed in the preceding paragraph, the missing arbitrator or arbitrators shall, upon the request of any party, be appointed by the President of the District Court. The other party shall be given an opportunity to be heard.

4. The President of the District Court or the third party shall appoint the arbitrator or arbitrators without regard to the question of whether the arbitration agreement is valid. By participating in the appointment of the arbitrator or arbitrators, 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.

#### Article 1028

~~1. If by~~ agreement ~~gives or otherwise~~ one of the parties is given a privileged position with regard to the appointment of the arbitrator or arbitrators, either party may, despite the agreed appointment procedure, request the President of the District Court to appoint the arbitrator or arbitrators ~~within one month after the commencement of the arbitration.~~

2. A party shall be required to file the request as mentioned in paragraph (1) within three months after the commencement of the arbitration, upon forfeiture of the right to rely upon the privileged position with regard to the appointment of the arbitrator or arbitrators at a later stage in the arbitral proceedings or before the court. The parties may agree to extend the said period.

3. The other party shall be given an opportunity to be heard. The provisions of article 1027(4) shall apply accordingly.

#### Article 1029

1. An arbitrator shall accept his mandate in writing. An arbitrator may only be released from his mandate in the cases mentioned in paragraphs (2) to (5) of this article, unless otherwise agreed by the parties.

2. An arbitrator who has accepted his mandate may, at his own request, be released from his mandate either with the consent of the parties or a third party designated 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 released from his mandate by agreement between the parties.

4. An arbitrator who has accepted his mandate may, if he has become de jure or de facto unable to perform his mandate, upon request of any party, be released from his mandate by a third party designated by the parties, or in the absence thereof, by the President of the District Court.

5. An arbitral tribunal that has accepted its mandate may, if the arbitral tribunal, despite repeated demands, carries out its mandate in an unacceptably slow manner, having regard to all circumstances upon request of any party, be released from its mandate by a third party designated by the parties, or in the absence thereof, by the President of the District Court.

#### Article 1030

1. An arbitrator who has been released from his mandate in accordance with the provisions of articles 1029(2), (3) or (4) ~~-, or an arbitral tribunal that has been released from its mandate in accordance with the provisions of article 1029(5),~~ shall be replaced pursuant to the rules applicable to the initial appointment, unless otherwise agreed by the parties. The same shall apply to an arbitrator who has died.

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.

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

#### Article 1031

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

~~2.- At the request of either party and after having heard the other party and the arbitrator or arbitrators, the third party 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

~~1.- Unless otherwise agreed by the parties, neither the arbitration agreement nor the mandate of the arbitral tribunal shall terminate due to the death of one of the parties.~~

~~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.~~

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

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#### Article 1033

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 tribunal may be challenged on the same grounds; the provisions of article 1035 shall apply accordingly to such a challenge.~~
2. A party may challenge an arbitrator appointed by it only for reasons of which it has become aware after the appointment has been made, unless agreed otherwise by the parties.
3. A party may not challenge an arbitrator appointed by a third party or the President of the District Court if he has acquiesced in his appointment, unless he has become aware of the reason for challenge after the appointment has been made.

#### Article 1034

1. When a person is approached in connection with his possible appointment as an arbitrator, ~~or secretary,~~ he presumes that he could be challenged, and shall disclose in writing to the person who has approached him of the existence of such possible grounds.
2. A person who has been appointed as arbitrator ~~or secretary~~ shall upon his appointment notify the parties as prescribed in the preceding paragraph, unless such parties have already received such notification.
3. An arbitrator who, pending the arbitral proceedings, presumes that he could be challenged, shall disclose in writing the existence of such grounds to the parties and, if the arbitral tribunal is composed of more than one arbitrator, his co-arbitrators.

#### Article 1035

1. The challenging party shall give notification of the challenge and the reasons therefor in writing to the challenged arbitrator, the other ~~members of the arbitral tribunal, the other party and, if a third party has appointed the challenged arbitrator, this third party. The arbitral tribunal may suspend the arbitral proceedings as of the day of receipt of the notification~~ party and, if the tribunal is composed of more than one arbitrator, the co-arbitrators. The notification shall be made within four weeks after the day of receipt of the disclosure as mentioned in article 1034 or, in the absence thereof, within four weeks after the day the challenged party has become aware of the grounds for challenge.
2. If the challenged arbitrator does not withdraw within two weeks after the day of receipt of the timely notification as prescribed in the preceding paragraph, the President of the District Court shall, at the request of either party, decide on the merits of the challenge. ~~If such a request is not shall be made within four two weeks after the day of receipt of the written notification disclosure of the challenged arbitrator that he does not withdraw from his office, the right to challenge shall be barred and the arbitral proceedings, if suspended, shall continue from the stage they had reached. or failing which, within six weeks after the day of receipt of notification.~~
3. If the challenged arbitrator withdraws from office, or if the challenge is upheld by the President of the District Court, the arbitrator shall be replaced in accordance with the rules that were applicable to his initial appointment, unless otherwise agreed by the parties. The provisions of articles 1030(2) and (3) shall apply accordingly.
4. ~~If Withdrawal of the challenged arbitrator or one or both of the parties is domiciled, or has his actual residence, outside the Netherlands, the periods mentioned in paragraph (2) above shall be six and eight weeks respectively. shall not imply the challenged arbitrator's acceptance of the reasons for the challenge.~~
5. The arbitral tribunal may suspend the arbitral proceedings as of the day of receipt of the timely notification as mentioned in paragraph (1) or, afterwards, pending the challenge proceedings, as of the moment the arbitral tribunal deems appropriate. If the challenge is inadmissible or not successful, the arbitral proceedings, if suspended, shall continue from the stage they had reached.
6. The parties may shorten or extend by agreement the periods as mentioned in paragraphs (1) or (2) of this article.

7. By agreement parties may agree that instead of the President of the District Court an independent third party shall hear the challenge of an arbitrator.

8. A party who has reasons to challenge an arbitrator, shall base the request to challenge an arbitrator in accordance with the provisions of this article on these reasons failing which the party will be barred from raising such a plea in the arbitral proceedings or in proceedings before the court.

#### Article 1035a

If the arbitral tribunal is assisted by a secretary, the provisions of articles 1033 up to and including 1035 shall apply accordingly.

## **Section Two. The Arbitral Proceedings**

### Article 1036

1. Subject to the provisions of mandatory law of this title, the arbitral proceedings shall be conducted in such manner as agreed between the parties ~~or, to~~. To the extent that the parties have not agreed upon the conduct of the arbitral proceedings, ~~as the arbitral proceedings shall, without prejudice to the provisions of this title, be conducted in a manner~~ determined by the arbitral tribunal.

2. The arbitral tribunal shall treat the parties with equality. The arbitral tribunal shall give each party an opportunity of presenting and explaining its case and to respond to the other party's argument and to comment on all documents and other data that have been submitted to the arbitral tribunal. In its decision, the arbitral tribunal shall not to the detriment of one of the parties base its decision on documents and other data on which the other party has not sufficiently been heard.

3. The arbitral tribunal shall guard against unreasonable delay of the proceedings and, if necessary, take action at the request of a party or on its own initiative. The parties have an obligation towards each other to prevent unreasonable delay of the proceedings.

### Article 1037

1. The place of arbitration shall be determined by agreement of the parties, or failing that, it shall be determined by the arbitral tribunal. The determination of the place of arbitration will also establish the place where the award shall be made.

2. If the place of arbitration has neither been determined by the parties nor the arbitral tribunal, the place where the award was rendered as stated by the arbitral tribunal in the award ~~shall~~ be deemed to be the place of arbitration.

3. The arbitral tribunal may meet at any other place, within or outside the Netherlands, which it considers appropriate to hold hearings, to consult among its members and to examine witnesses and experts, unless otherwise agreed by the parties.

### Article 1038

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

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

### Article ~~1039~~ 1038a

1. ~~The~~ Unless otherwise agreed by the parties shall be treated equally. The, the arbitral tribunal shall give ~~each party the claimant and the respondent~~ an opportunity to ~~substantiate his claims and to present his case~~ submit a statement of claim and a statement of defense respectively.

~~2~~ 2. Unless otherwise agreed by the parties, the arbitral tribunal shall have discretion to decide on the submission of the further briefs.

#### Article 1038b

The arbitral tribunal shall, at the request of either party or on its own initiative, give the parties an opportunity to make an oral presentation at a hearing, unless otherwise agreed by the parties.

#### Article 1038c

1. A counterclaim is admissible in case to said claim the same arbitration agreement is applicable as that to the claim, or if that same arbitration agreement is expressly or tacitly declared effective by the parties.

2. Unless otherwise agreed by the parties, a counterclaim as prescribed in the preceding paragraph shall be submitted in the statement of defense.

#### Article 1038d

A party may, during the arbitration proceedings, amend or increase its claim or counterclaim respectively, or the grounds thereof, provided that as a result the counterparty's defense will not be unreasonably obstructed or the proceedings will not be unreasonably delayed.

#### Article 1039

1. The power conferred upon the arbitral tribunal includes the power to determine the production of, admissibility and weight of evidence and the burden of proof, unless agreed otherwise by the parties.

~~3. The arbitral tribunal may, at the request of either party, allow a party to produce witnesses or experts~~2. The arbitral tribunal shall have the power to designate one of its members to examine witnesses or experts, or, as the case may be, to conduct a site visit or site viewing, unless otherwise agreed by the parties.

~~4. The arbitral tribunal shall have the power to order documents to be produced.~~

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

#### Article 1040

~~1. Should the claimant fail to submit or sufficiently substantiate its claim, having had sufficient opportunity to do so and without showing sufficient cause, the arbitral tribunal may by judgment terminate the arbitral proceedings.~~

~~2. Should the respondent fail to submit its defence, having had opportunity to do so and without showing sufficient cause, the arbitral tribunal may continue to render its award.~~

~~3. In the award as mentioned in paragraph (2), the claim shall be awarded, unless it appears to be unlawful or unfounded. Before rendering its award, the arbitral tribunal may instruct the claimant to produce evidence with respect to one or more allegations.~~

1. Unless otherwise agreed by the parties, the parties shall to the best of their ability submit with the statements referred to in article 1038a, the records on which the parties rely.

2. The arbitral tribunal may, at the request of either party or on its own initiative, order to inspect, or to obtain a copy or extract of certain records relating to the dispute from the party that has these records in its possession, unless otherwise agreed by the parties. The arbitral tribunal determines the conditions that apply to and the manner in which inspection, copies or extracts of documents will be provided.

#### Article 1041

1. The arbitral tribunal may, at the request of either party or on its own initiative, order parties to provide proof by means of hearing witnesses and experts, unless otherwise agreed by the parties.

2. The arbitral tribunal may decide on the form in which the statements of the witnesses and experts will be submitted, unless otherwise agreed by the parties.

~~43.~~ If an oral examination of witnesses or experts is to take place, the arbitral tribunal shall determine the time and place of the examination and the manner in which the examination shall be conducted.

4. If the arbitral tribunal deems ~~it~~-necessary, it shall examine the witnesses after they have sworn an oath to tell the whole truth and nothing but the truth, in the manner determined by the law.

#### Article 1041a

~~21.~~ If a witness does not appear voluntarily or, having appeared, refuses to make a statement, the arbitral tribunal may allow a party who so requests, within a period of time determined by the arbitral tribunal, to request the President of the District Court to appoint an examining judge to examine the witness.

2. The examination shall take place in the same manner as in ordinary court proceedings, provided that the clerk of the District Court shall give the arbitrator or arbitrators an opportunity to attend the examination of the witness and to put questions to the witness.

3. The clerk of the District Court shall send to the arbitral tribunal and the parties without delay ~~a copy of~~ the record of the examination.

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

#### Article 1042

1. ~~The~~Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to render advice. The arbitral tribunal may consult the parties on the terms of reference of the expert. The arbitral tribunal shall send a copy of the appointment and the terms of reference of the experts to the parties as soon as possible.

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

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

~~43.~~ At the request of either party, the ~~experts~~expert shall be ~~examined at~~heard during a hearing of the arbitral tribunal. ~~A~~If a party ~~wishing intends~~ to make such a request, ~~it~~ shall ~~inform~~notify the arbitral tribunal and the ~~opposing other~~ party thereof without delay.

~~54.~~ The~~Notwithstanding the applicability of paragraph (3), the~~ arbitral tribunal shall provide the parties with ~~an~~ the opportunity to ~~examine the experts and to produce their own experts.~~ comment on the advice rendered by the experts appointed by the arbitral tribunal, unless otherwise agreed by the parties.

#### Article 1042a

The arbitral tribunal may, at the request of one of the parties or at its own initiative, conduct a site visit or inspect objects in or outside of the Netherlands, unless otherwise agreed by the parties. The arbitral tribunal shall give the parties the opportunity to be present during the visit or inspection.



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

#### Article 1043

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

2. The arbitral tribunal has the authority to appoint one of its members to conduct the hearing referred to in paragraph (1), unless agreed otherwise by the parties.

#### Article 1043a

1. Should the claimant fail to submit or sufficiently substantiate its claim, having had sufficient opportunity to do so and without showing sufficient cause, the arbitral tribunal may, by judgment or in a manner the arbitral tribunal finds appropriate, terminate the arbitral proceedings.

2. Should the respondent fail to submit its defense, having had sufficient opportunity to do so and without showing sufficient cause, the arbitral tribunal may continue to render its award.

3. In the award as mentioned in paragraph (2), the claim shall be awarded, unless it appears to be unlawful or unfounded. Before rendering its award, the arbitral tribunal may instruct the claimant to produce evidence with respect to one or more of its allegations.

#### Article 1043b

1. During pending arbitral proceedings on the merits the arbitral tribunal may, at the request of one of the parties, order interim measures, unless otherwise agreed by the parties, except for conservatory measures as described in the fourth title of the third Book. The interim measures should relate to the claim or counterclaim in the pending arbitral proceedings. The interim measures shall apply for the duration of the proceedings.

2. Parties may agree that a separate arbitral tribunal may be appointed, within the limits provided for in Article 254 (1), irrespective of the arbitral proceedings on the merits being pending, with the power to award interim relief at the request of one of the parties.

3. The arbitral tribunal as referred to in paragraphs (1) and (2), may demand that security is provided by either party relating to the interim measure.

4. The award of the arbitral tribunal on the demand for an interim measure, is an arbitral award; the provisions of title 3 up to and including title 5 of this chapter apply thereto.

5. The arbitral tribunal may, at a unanimous request of the parties, with reference to this request, immediately render an award on the merits instead of an interim measure. Such an award is considered to be an arbitral award: the provisions of title 3 up to and including title 5 of this chapter apply.

6. The arbitral tribunal may, at a unanimous request of the parties, with reference to this request, convert an award as mentioned in paragraph (4) into an arbitral award as referred to in paragraph (5).

#### Article 1044

1. ~~The~~ Unless otherwise agreed by the parties, the arbitral tribunal may, through the intervention of the President of the District Court in The Hague, request information as mentioned in article 3 of the European Convention on Information on Foreign Law, concluded in London, 7 June 1968. The President of the District Court 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.

2. The arbitral tribunal may suspend proceedings until the day on which the arbitral tribunal has received the answer to its request for information.

#### Article 1045

1. ~~At the~~ Unless otherwise agreed by the parties, the arbitral tribunal may, upon a written request of a third party who has an interest in the arbitral proceedings, ~~the arbitral tribunal may~~ permit such party to join or to intervene in the proceedings, provided that between the parties and the third party the same arbitration agreement applies or shall apply as between the original parties.

2. The arbitral tribunal shall send ~~it~~ without delay ~~it~~ a copy of the request to the parties.

3. The arbitral tribunal shall give the parties the opportunity to express their opinion. The arbitral tribunal may give the third party the opportunity to express its opinion.

4. By awarding the joinder or the intervention, the third party becomes a party to the arbitral proceedings.

5. After the joinder or the intervention, the arbitral tribunal determines the further course of the arbitral proceedings, unless otherwise agreed by the parties.

#### Article 1045a

~~2. A party who claims to be indemnified by a third party may~~ 1. The arbitral tribunal may, at the written request of a party, allow such party to serve a notice of contribution on a party, provided that between the interested party and the third party the same arbitration agreement applies or shall apply as between the original parties.

2. A copy of the notice shall be sent to the arbitral tribunal and the other party without delay.

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

~~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 thereon, the arbitral tribunal shall determine the further course of the arbitral proceedings.~~

3. The arbitral tribunal shall give the parties and the third party the opportunity to express their opinion.

4. The arbitral tribunal shall not allow the contribution if the arbitral tribunal holds that on a prima facie basis the third party shall not be liable for the detrimental consequences of a possible award to the interested party or if it is expected that the contribution proceedings shall cause an unreasonable or unnecessary delay of the arbitral proceedings.

5. After the admission of a contribution, the arbitral tribunal shall determine the further course of the arbitral proceedings, unless otherwise agreed by the parties.

#### Article 1046

1. If arbitral proceedings are pending before an arbitral tribunal in the Netherlands ~~concerning a subject matter is connected with the subject matter of arbitral proceedings commenced before another arbitral tribunal in the Netherlands~~, either party may request a third party nominated by the parties or, in the absence thereof, the President of the District Court in Amsterdam to order consolidation with other arbitral proceedings pending in the Netherlands, unless otherwise agreed by the parties.

2. Consolidation may be ordered to the extent that it shall not cause unreasonable delay in the pending arbitral proceedings, also taking into consideration the progress of the pending proceedings and whether there is such a close connection between the arbitral proceedings that a proper process of justice is required to hear and decide on the matters simultaneously. For the purpose of avoiding that conflicting awards will be rendered.

~~23.~~ The nominated third party or the President of the District Court may wholly or partially grant or deny the request ~~it~~ after he has given all parties and ~~it~~ if appointed ~~it~~ the arbitrators, an opportunity to be heard. His decision shall be communicated in writing to all parties and the arbitral tribunals involved.

~~34.~~ If the third party or the President of the District Court 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 the parties cannot reach agreement thereon within a period determined by the nominated third party or the President of the District Court, the nominated third party or the President of the District Court shall, at the request of either party, appoint the arbitrator or arbitrators and, if necessary, determine the procedural rules which shall apply to the consolidated proceedings. The nominated third party or the President of the District Court shall determine the remuneration for the work already carried out by said arbitrator or arbitrators whose mandate is terminated by reason of the consolidation. Article 1027 (4) shall apply accordingly.

~~4. If the President of the District Court orders partial consolidation, he shall decide which disputes shall be consolidated. The President of the District Court 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.~~

~~5. Article 1027(4) shall apply accordingly in the cases mentioned in paragraphs (3) and (4) above.~~

~~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

The provisions of this section shall not apply to arbitrations concerning the matters mentioned in article 1020(4)(a) with the exception of ~~article~~ articles 1037 and 1048. In that case the proceedings shall be conducted in a manner agreed upon by the parties or, to the extent that the parties have not agreed thereon, as determined by the arbitral tribunal.

Article 1048

The ~~arbitral tribunal is free~~ authority to determine the moment on which the award shall be rendered is reserved for the arbitral tribunal.

Article 1048a

A party that appears in the arbitral tribunal shall file its objection without unreasonable delay with the arbitral tribunal and send a copy to the other party as soon as he is aware of, or reasonably should have been aware of, any act in violation of or omission to act in accordance with any provision of the second section of this title, the arbitration agreement or an order, decision or a measure of the arbitral tribunal. Should a party fail to do so, it shall forfeit its rights to object on these grounds at a later stage in the arbitral proceedings or before the regular court.

### **Section Three. The Arbitral Award**

Article 1049

1. The arbitral tribunal may render a final award, a partial final award or an interim award. An award is considered to be final or partially final in the case that a claim is fully or partially resolved in the operative part of the award.

2. If an arbitral tribunal renders an award that is partly an interim award and partly a final award, such an award is considered to be a partial final award.

Article 1050

~~4. Arbitral appeal to an arbitral award is possible only if the parties have agreed thereto.~~

~~2. Unless the parties have agreed otherwise, an arbitral appeal over a partial final award can be lodged only in conjunction with an appeal over the last final award.~~

~~3. Unless the parties have agreed otherwise, an arbitral appeal over an interim award can be lodged only in conjunction with an appeal over a final or partial final award.~~

~~4. Unless the parties have agreed otherwise, an arbitral appeal shall be lodged within three months after the date of deposit of the award with the registry of the District Court.~~

~~[Deleted]~~

#### Article 1051

~~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 254(1).~~

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

~~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.~~

~~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.~~

~~[Deleted]~~

#### Article 1052

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

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

3. A party who has participated in the composition 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 composition 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 defense; failing which, that party will be barred from raising said plea in the arbitral proceedings or in proceedings before the court.

4. Any decision in which the arbitral tribunal declares 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.

5. ~~The~~ If and to the extent that the arbitral tribunal has declared that it lacks jurisdiction on the ground that there is no valid arbitration agreement as mentioned in paragraph (2), the court shall have jurisdiction to hear the case if. ~~If and to the extent that the arbitral tribunal declares has declared that it lacks jurisdiction~~ on another ground, the arbitration agreement remains valid, unless the parties have agreed otherwise.

~~6. Arbitral appeal shall, if agreed, be allowed against both a decision of the arbitral tribunal that it has jurisdiction and a decision that it has no jurisdiction. In such event the court shall have jurisdiction under paragraph (4) or (5) above only after an award has been rendered in arbitral appeal, or if the term within~~

~~which arbitral appeal can be brought has lapsed, or prior to that, if the parties have waived their right to arbitral appeal in writing.~~

6. The declaration that the arbitral tribunal lacks jurisdiction as mentioned in the previous paragraph is an arbitral award to which sections 1 to section 5 of this title apply.

#### Article 1053

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

#### Article 1054

1. The arbitral tribunal shall render its award in accordance with the rules of law.
2. If the parties have decided upon a choice of law, the arbitral tribunal shall render its award in accordance with the rules of law chosen by the parties. Failing such choice of law, the arbitral tribunal shall render its award in accordance with the rules of law which it considers appropriate.
3. The arbitral tribunal shall decide as amiable compositeur, if the parties by agreement have authorised it to do so.
4. In all cases the arbitral tribunal shall take into account any applicable trade usages.

#### Article 1055

~~In case an award is subject to arbitral appeal, 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 providing security.~~

[Deleted]

#### Article 1056

If the court has the power, the arbitral tribunal also has such power to impose a penalty for non-compliance. ~~The provisions Notwithstanding the applicability of articles 611a up to and including 611h shall apply accordingly 611h, in cases as mentioned in articles 611d, an application for the revocation, although in the cases meant in article 611d, the termination, suspension or reduction of the penalty shall be made to the arbitral tribunal and in case the mandate of the arbitral tribunal has terminated, an application should 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) of the district of the seat of arbitration.~~

#### Article 1057

1. If the arbitral tribunal is composed of more than one arbitrator, it shall decide by a majority of votes, unless otherwise agreed by the parties. If the arbitral tribunal is composed of more than one arbitrator, issues of minor importance can be decided by the chairman in the case of his co-arbitrators empowered him to do so, unless otherwise agreed by the parties.
2. The award shall be in writing and signed by the arbitrator or arbitrators.
3. If a minority of the arbitrators refuses to sign, the other arbitrators shall make mention thereof in 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.
4. The award shall contain in addition to the decision in any case:
  - (a) the names and addresses of the arbitrator or arbitrators;
  - (b) the names and addresses of the parties;
  - (c) the date on which the award is rendered;

- (d) the place where the award is rendered;
- (e) the reasons for the decision.

5. Notwithstanding paragraph 4(e), the award does not contain grounds for the decision in case:  
(a) the award merely concerns the determination of the quality or condition of goods, as mentioned in article 1020(4)(a);  
(b) the recording of a settlement as mentioned in article 1069; or  
(c) in all other cases, once the arbitration is pending, the parties agree in writing that no grounds for the decision shall be given.

#### Article 1058

1. The arbitral tribunal shall ensure that without delay:  
(a) a the original copy of the award, or a copy thereof, certified by an arbitrator or the secretary of the arbitral tribunal a third party nominated by the parties, is sent to both parties;  
(b) as far as parties have agreed hereto, 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 situated.

2. Without prejudice to the provisions of articles 1060 and 1061, the mandate of the arbitral tribunal shall terminate when the final award has been sent to the parties or upon the deposit of the last final award with the court registry ~~-, as mentioned in under paragraph 1(b).~~

3. No copy or extract of a deposited award will be issued to third parties.

4. Unless parties have agreed to a different period than mentioned in articles 1060, 1061, 1061c, a period of three months after the day the final award has deposited with the court registry will apply, subject to parties having agreed to deposit the award.

#### Article 1059

1. Decisions relating to the legal relationship which is in dispute and are comprised in a final arbitral award, have force of res judicata in another dispute between the same parties from the day on which they are made. Articles 236(2) and (3) shall apply accordingly.

2. The first paragraph does not apply to decisions, as mentioned in article 1043, regarding an interim measure.

~~1. Only a final or partial final arbitral award is capable of acquiring the force of res judicata. The award shall have such force~~ 3. A final arbitral award, as mentioned in the first paragraph, shall have binding force between the same parties in another dispute from the day on which it is made rendered.

~~2. If, however, an appeal to a second arbitral tribunal 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 an appeal has lapsed, or from the day on which an arbitral award in the arbitral appeal proceedings was rendered, if and to the extent, that the first instance arbitral award is confirmed in arbitral appeal.~~

#### Article 1060

1. ~~Not~~ Within a time period as agreed upon by the parties, or not later than ~~30 days~~ three months after the day of ~~deposit~~ sending of the award ~~with the registry of the District Court~~, a party may request in writing that the arbitral tribunal ~~rectifies~~ corrects in the award ~~due to~~ a manifest computing ~~or~~ clerical or ~~any other manifest error which is easily repairable.~~

2. If the details as mentioned in articles 1057(4)(a) up to and including (d) are stated incorrectly or are partially or wholly absent from the award, a party may, within a time period as agreed upon by the parties, or not later than ~~30 days~~ three months after the date of ~~deposit~~ sending of the award ~~with the registry of the District Court~~, request in writing that the arbitral tribunal corrects the mistake or omission.

3. A copy of the request, as mentioned in paragraph (1) or (2) above ~~-,~~ shall be sent by the arbitral tribunal to the other party.

4. An arbitral tribunal may, within a time period as agreed upon by the parties, or not later than 30 days three months after the date of deposit-sending of the award ~~with the registry of the District Court~~, also make on its own initiative the ~~rectification or the~~ correction mentioned in ~~paragraph paragraphs~~ (1) ~~or and~~ (2) above.

5. Before the arbitral tribunal decides on the request, as mentioned in paragraphs (1) and (2) above, or decides on its own initiative on the correction mentioned in paragraph (4), it shall give the parties the opportunity to express themselves on the request.

~~56.~~ In the event the arbitral tribunal makes the ~~rectification or~~ correction, it shall record and sign it on the original award and copies thereof, 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.

~~67.~~ If the arbitral tribunal rejects the request for ~~rectification or a~~ correction, it shall inform the parties thereof in writing.

~~78. A-The request under this article, as mentioned in paragraphs (1) and (2) above,~~ does not suspend the enforcement ~~or setting aside~~ of the award, unless the President of the District Court deems that there are serious reasons for so doing while a decision on the request is pending. The provisions of article 1070 also apply to the decision of the President of the District Court. The same applies in the case that the arbitral tribunal decides on its own initiative on the correction according to paragraph (4).

#### Article 1061

1. If the arbitral tribunal has failed to decide on one or more matters-claims or counterclaims which have been submitted to it, either party may, within a period of time as agreed upon by the parties, or not later than 30 days three months after the date of deposit-day of sending 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 sent by the arbitral tribunal to the other party.

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

4. An additional award shall be regarded as an arbitral award to which the provisions of ~~section~~ sections (3) up to and including (5) of this title shall be applicable.

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~~ can be deposited with the registry of the District Court, in accordance with the provisions of article 1058(1) ~~-(b), unless otherwise agreed by the parties.~~

### Section Three A. Arbitral Appeal

#### Article 1061a

In case the parties have agreed to arbitral appeal, the provisions of this title will be applicable to that extent that this section does not provide otherwise or would be incompatible with the nature of the arbitral appeal.

#### Article 1061b

Arbitral appeal to an arbitral award is possible only if the parties have agreed thereto. This agreement will have to comply with the requirements of articles 1020 up to and including 1021, as well as the requirements of articles 166 and 167 of Book 10 of the Dutch Civil Code.

#### Article 1061c

Parties may appeal, within a time period as agreed upon by the parties or not later than three months after the date of sending of the award.

#### Article 1061d

1. Arbitral appeal can only be brought against a final award and a most recent partial final award.

2. Unless otherwise agreed by the parties, arbitral appeal can also be brought against other partial final awards.

3. With the exception of an award as mentioned in article 1043b(1) arbitral appeal against an interim award can only be brought simultaneously with an arbitral appeal against the full or partial final award, unless otherwise agreed by the parties.

#### Article 1061e

An arbitral award as mentioned in article 1046(4), is subject to arbitral appeal if, and to the extent that, all parties to the consolidated proceedings have provided for such arbitral appeal in an agreement. This agreement shall comply with the requirements of articles 1020 up to and including 1021, as well as the requirements of articles 166 and 167 of Book 10 of the Dutch Civil Code.

#### Article 1061f

1. In deviation of articles 1061d(2) and (3), arbitral appeal in respect of the tribunal's decision to accept jurisdiction as mentioned in article 1052(4), can only be brought in conjunction with the arbitral appeal against the most recent final award, unless otherwise agreed by the parties.

2. In the event that the arbitral tribunal declares that it lacks jurisdiction as mentioned in article 1052 (5), arbitral appeal is allowed.

3. In the event that the arbitral tribunal assumes jurisdiction and in the event that the arbitral tribunal declares that it has no jurisdiction, the provisions of articles 1052(4) and (5) are applicable after an award has been rendered in arbitral appeal, or if the term within which arbitral appeal can be brought has lapsed, or prior to that, if the parties have waived their right to arbitral appeal in writing, or at a later time, at the moment the arbitral appeal is terminated prematurely.

#### Article 1061g

1. The penalty as mentioned in article 1056 can also be claimed for the first time in arbitral appeal proceedings.

2. In deviation of article 1056, in the cases meant in article 611d the termination, suspension or reduction of the penalty has to be requested of the arbitral tribunal in the arbitral appeal proceedings, if and until the mandate of the arbitral tribunal continues.

#### Article 1061h

The arbitral award rendered in first instance can only be supplemented in arbitral appeal in accordance with article 1061. The request thereto has to be made within the applicable appeal period. The parties may deviate from this article by agreement.

#### Article 1061i

1. Unless the law or the nature of the case requires otherwise, the arbitral tribunal in first instance proceedings may, if it is requested to do so, declare that an arbitral award will be immediately enforceable notwithstanding arbitral appeal proceedings. The declaration of immediate enforceability may relate to the full award or a part thereof. The arbitral tribunal may attach the condition that security shall be provided for an amount to be determined by the arbitral tribunal.

2. If the arbitral award has not been declared immediately enforceable by the first instance arbitral tribunal and arbitral appeal has been brought against that arbitral award, a claim to declare the arbitral award immediately enforceable may be filed with the arbitral tribunal in the arbitral appeal proceedings. After the other party is heard, a decision on this claim will be taken without delay. The second and third sentence of the first paragraph shall apply accordingly.

3. If an arbitral award is declared immediately enforceable by the first instance arbitral tribunal, albeit without a condition to provide security, and in the event that arbitral appeal is brought against that arbitral award, a claim to that effect can be filed with the arbitral tribunal in arbitral appeal proceedings. After the other party is heard, a decision on this claim shall be taken without delay.

#### Article 1061j

In deviation of what is provided in article 1059(3), an arbitral award rendered in first instance is binding on the same parties in other arbitral proceedings from the day that the period for arbitral appeal has lapsed without an appeal being lodged, or prior to that, from the day on which the right to arbitral appeal was waived, or at a later time, at the moment the arbitral appeal is terminated prematurely, or from the day on which an arbitral award in arbitral appeal proceedings was rendered, if and to the extent that the first instance arbitral award is confirmed in arbitral appeal.

#### Article 1061k

1. An arbitral award rendered in first instance which is declared immediately enforceable, and an arbitral award rendered in arbitral appeal, can be enforced in accordance with the provisions of section (4) of this title. In addition to article 1063(1), the President of the District Court may also refuse enforcement of



the arbitral award, if the arbitral award has been declared immediately enforceable in violation with article 1061i.

2. An arbitral award rendered in first instance which is not declared immediately enforceable can only be enforced in accordance with the provisions of section (4) of this title after the period for arbitral appeal lapsed unused, or if and to the extent that the arbitral award is upheld in arbitral appeal, or prior to that, at the moment that the arbitral appeal is terminated prematurely.

#### Article 1061l

1. Recourse against a final or partial final award rendered in arbitral appeal may only be made by an application for setting aside and revocation on the basis of section (5) of this title.

2. The setting aside or revocation of an arbitral award rendered in arbitral appeal implies by operation of law the setting aside or revocation of the arbitral award rendered in first instance, unless the court determines that the arbitral award rendered in first instance remains unaffected.

3. Recourse against a final or partial final arbitral award rendered in first instance may only be made by an application for a setting aside and revocation on the basis of section (5) of this title if the period for arbitral appeal lapsed unused, or if and to the extent that the arbitral award is upheld in arbitral appeal, or prior to that, if the parties have waived their right to arbitral appeal in writing. In deviation of article 1064a (2), the right to make an application for the setting aside of such arbitral award lapses three months after the day on which the period for arbitral appeal has lapsed.

4. Subject to the provisions of this article, article 1064a(3) applies accordingly with respect to an interim award rendered in first instance or in arbitral appeal.

~~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.~~

### **Section Four. Enforcement of the Arbitral Award**

#### Article 1062

1. Enforcement in the Netherlands of ~~a final or partial final~~ an 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 only take place 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,~~ of the district of the seat of arbitration has granted leave for enforcement on the request of one of the parties.

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 court decision. The court clerk shall send 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 court decision in which leave for enforcement is granted.

~~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 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.~~

43. 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 opposing party of the applicant. The setting aside or the revocation of an arbitral award implies, by operation of law, the setting aside or revocation of the leave for enforcement.

#### Article 1063

1. The President of the District Court may only refuse the enforcement of the arbitral award, 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~~ it appears to him after an examination on a prima facie basis that it is likely that the arbitral award will be set aside on one of the grounds as mentioned in article 1065(1) or revoked on one of the grounds as mentioned in article 1068(1), or if a penalty is ordered contrary to article 1056. In the latter case the refusal relates only to the enforcement of the penalty.

2. If the period to make an application for setting aside as mentioned in article 1064a has lapsed, the President of the District Court can only refuse the leave for enforcement of the arbitral award, if it

appears to him after an examination on a prima facie basis that it is likely that the arbitral award will be in violation with article 1065(1)(e).

~~23.~~ The court clerk shall send as soon as possible to the parties a certified copy of the decision of the President of the District Court in which the leave for enforcement has been refused ~~to the parties.~~

4. An appeal against the decision in which the leave for enforcement has been refused can be brought before the Court of Appeal.

~~35.~~ If the leave for enforcement ~~is not granted in appeal either, the period for cassation is two months after the date of the decision in appeal.~~ of the arbitral award is also not awarded in appeal, an appeal in cassation can be lodged.

~~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.~~

~~56.~~ If in appeal or after appeal in cassation the leave for enforcement ~~is still of the arbitral award is granted, the provisions of article 1062(4)1062(3) first sentence shall apply~~ applies accordingly.

## Section Five. The Setting Aside and Revocation of the Arbitral Award

Article 1064

~~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,~~ award may only be made by an application for setting aside and revocation on the basis of this section.

Article 1064a

~~21.~~ ~~An~~ The 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).~~ is brought before the Court of Appeal of the district of the seat of arbitration.

2. The setting aside shall be made within three months after the day that the arbitral award was sent. If the parties agreed to apply the provisions of article 1058(1)(b), this right lapses three months after the day of the disposal of the award.

~~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.~~

~~43.~~ Against an interim arbitral award the application for setting aside may only be brought together with the request to set aside the final or partial final arbitral award.

~~54.~~ All grounds for setting aside shall, subject to the forfeiture of the right thereto, be set out in the writ of summons.

5. Unless agreed otherwise by the parties, appeal in cassation can be brought against a decision as mentioned in paragraph (1).

Article 1065

1. An arbitral award may be set aside only on one or more of the following grounds:

- (a) absence of a valid arbitration agreement;
- (b) the composition of the arbitral tribunal was not in accordance with the rules applicable thereto;
- (c) the arbitral tribunal has not complied with the scope of the submission to arbitration;
- (d) the award has not been signed in accordance with the provisions of article 1057 or does not contain reasons;
- (e) the award, or the manner in which it was made, is in conflict with public policy ~~or good morals.~~

2. The ground mentioned in paragraph (1)(a) shall not constitute a ground for setting aside in the case mentioned in article 1052(2).

3. The ground mentioned in paragraph (1)(b) shall not constitute a ground for setting aside in the cases mentioned in ~~article~~ articles 1028(2) and 1052(3).

4. The ground mentioned in paragraph (1)(c) shall ~~not~~ neither constitute a ground for setting aside if the non-compliance with the scope of the submission to arbitration is not serious, nor shall the ground mentioned under paragraph (1)(c) 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. failed to raise objections against such non-compliance in accordance with the provisions of article 1048a.

5. If a ground for setting aside only concerns a part of the partial award, the remaining part of the arbitral award shall not be set aside, to the extent that, in view of the content and purport of the award, it does not form an integral part of the award.

~~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 on one or more ~~matters-claims or counterclaims~~ submitted to it, the application for setting aside on the ground mentioned in paragraph (1)(c) shall be admissible only if an additional award mentioned in article ~~1061(1)-1061(1)~~ has been rendered, or the request for an additional award mentioned in article 1061(1) has wholly or partially been rejected.

7. In deviation from the provisions of article ~~1064(3)1064a(2)~~, the time limit for making an application for setting aside mentioned in the preceding paragraph shall be three months from the date of sending of the additional award or from the notification of refusal, as meant in article 1061(5). If the parties agreed to apply article 1058(1)(b), the time limit for making an application for setting aside mentioned in the preceding paragraph shall be three months from the date of deposit of the additional award or the copy of the notification of rejection mentioned in article 1061(5)-with the registry of the District Court-. The provisions of the first and second sentence shall apply accordingly to the rectification of the award mentioned in article 1060.

#### Article 1065a

1. The Court of Appeal may, at the request of a party or at its own motion, suspend the setting aside proceedings for such period as may be determined by the Court of Appeal to allow the arbitral tribunal to nullify the ground for setting aside by resuming the arbitral proceedings or by taking another measure that the arbitral tribunal deems appropriate. A decision of the Court of Appeal is not subject to appeal.

2. The arbitral tribunal shall give the parties an opportunity to be heard before it renders an award.

3. If the arbitral tribunal deems it possible to nullify the ground to set aside, it shall render accordingly an arbitral award which shall replace the arbitral award against which setting aside proceedings have been lodged.

4. After suspension of the setting aside proceedings, the Court of Appeal shall, taking all circumstances into account, render a judgment it deems appropriate.

#### Article 1066

1. An application for setting aside shall not suspend the enforcement of the arbitral award.

2. The court which decides on an application for setting aside may, at the request of either party, if it considers the request to be justified, suspend enforcement until a final decision is rendered on the application for setting aside.

3. A copy of the request for suspension shall be sent by the clerk of the ~~District Court~~ of Appeal to the other party without delay.

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

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

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.

#### Article 1067

As soon as a ~~decision-judgment~~ to set aside the award has become final, the jurisdiction of the court shall revive, if and to the extent that the arbitral award has been set aside on the ground of absence of a valid arbitration agreement. If and to the extent the arbitral award is set aside on another ground, the arbitration agreement shall remain valid, unless otherwise agreed by the parties.

## Article 1068

1. An arbitral award may be revoked only on one or more of the following grounds:

(a) the award is wholly or partially based on fraud which has been discovered after the award has been rendered and which was committed during the arbitral proceedings by or with the knowledge of the other party;

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

(c) after the award is made, a party obtains documents 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 made at 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, in corresponding application of article 1064(3) or if this will result in a later date~~ of the court region where the seat of arbitration is situated within three months after the fraud or forgery of documents has become known or the party has obtained the new documents. ~~If the party that has reason to apply for revocation dies within the term mentioned in the first sentence of this paragraph, article 341 shall apply accordingly. The proceedings are commenced with the issuance of a writ of summons in conformity with the requirements of article 111 and are conducted in the manner determined by Book One, title Two records.~~ The provisions of article 1066 shall apply accordingly.

3. If the court considers the ground(s) for revocation to be correct, he shall wholly or partially set aside the arbitral award. The provisions of ~~article~~ articles 1065a and 1067 shall apply accordingly.

## Section Six. The Arbitral Award on Agreed Terms

### Article 1069

1. If, during arbitral proceedings, ~~the~~ the parties settle the dispute, 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.

2. An arbitral award on agreed terms has the status of an arbitral award to which the provisions of sections (3) to (5) inclusive of this title shall be applicable, provided that:

(a) the award may be set aside only on the ground that it is contrary to public policy; and

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

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

## Section Seven. Final Provisions

### Article 1070

The decisions of the President of the District Court mentioned in sections (1) up to and including (3) of this title are not subject to appeal.

### Article 1071

In the cases mentioned in articles 1026(2) and (4), 1027(3), 1028(1), 1029(2), (4) and (5), 1041a(1), 1044(1), and 1062(1), the application and, if applicable, the statement of reply need not be filed by an attorney.

### Article 1072

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(1), 1029(2) (4) and (45), 1035(2) and ~~1041(2)~~ 1041a(1).

#### Article 1072a

To the extent this title does not provide otherwise, the provisions of articles 261 up to and including 291 shall apply accordingly on proceedings which shall be instituted by application pursuant to the provisions of this title.

#### Article 1072b

1. If the addressee has stated that he may be reached for this purpose by such means, he may, to the extent a written form for a contract, a procedural document or notice or action is required under a provision of this title, also be reached by electronic means, except in the event it relates to an action made in court proceedings, unless this is allowed in the last mentioned proceedings. The attainability by

these means applies for the time period of the arbitral proceedings, unless the addressee states to change or revoke its attainability by these means.

2. Records as mentioned in this title include information stored on a data carrier, as well as data submitted through electronic means.

3. A copy of an electronic award which contains an electronic signature in conformity with the provisions of articles 3:15a(1) and (2) of the Dutch Civil Code shall have the same status as an original and certified copy of an award.

4. Instead of a personal appearance of a witness, expert or a party, the arbitral tribunal may order that the said person may appear before the tribunal and, in so far as applicable, with others by electronic means. The arbitral tribunal determines, in consultation with those involved, which electronic means and in what manner these shall be used.

5. A notice or action made by electronic means or a legal document submitted by electronic means shall be deemed to have been received on the date of dispatch.

#### Article 1072c

1. Neither the arbitration agreement nor the mandate of the arbitral tribunal shall terminate by reason of the death of one of the parties, unless otherwise agreed by the parties.

2. The arbitral tribunal shall suspend the arbitral proceedings for a certain period. 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 the opportunity to be heard in respect of such request.

3. After the suspension, the arbitral proceedings will be continued in the current phase, unless otherwise agreed by the parties.

4. If the party that has reason to apply for revocation of an arbitral award dies within the terms mentioned in articles 1064a(2) and 1065 (7) and article 1068(2) respectively, article 341 shall apply accordingly.

#### Article 1073

1. The provisions of this title shall apply if the place of arbitration is situated ~~within~~ in the Netherlands.

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.

## **Title Two. Arbitration Outside the Netherlands**

#### Article 1074

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

#### Article 1074a

~~2.~~ The agreement ~~mentioned in paragraph (1)~~ mentioned in paragraph (1) under which arbitration shall take place outside the Netherlands, shall not preclude a party from requesting a court in the Netherlands to grant interim measures of protection, or from applying to the President of the District Court or the Subdistrict Court for a decision in summary proceedings in accordance with the provisions of article 254.

#### Article 1074b

An agreement under which arbitration shall take place outside the Netherlands, shall not preclude a party from requesting a court in the Netherlands to order a preliminary witness hearing, a preliminary expert report or a preliminary site visit in the Netherlands.

#### Article 1074c

An agreement under which arbitration shall take place outside the Netherlands, shall not preclude a party from requesting a court to appoint an examining judge if a witness, who lives or resides in the Netherlands, does not appear voluntarily. In such case the provisions of articles 1041a(1) to (3) inclusive shall apply accordingly.

#### Article 1074d

If a party invokes the existence of an arbitration agreement before submitting a defense in the cases mentioned in the articles 1074a to 1074c inclusive, the court shall declare that it has no jurisdiction, unless the arbitration agreement is invalid under the law applicable thereto. The court can also declare that it has no jurisdiction when it deems such appropriate in view of the circumstances.

#### Article 1075

1. An arbitral award rendered in a foreign state to which a treaty concerning recognition and enforcement is applicable, may at the request of one of the parties be recognised and enforced in the Netherlands.
2. 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 and recourse to the Supreme Court shall be ~~two~~ three months.
3. The articles 261 up to and including 291 shall apply accordingly to the application to the extent that the provisions of paragraph (2) do not provide otherwise.

#### Article 1076

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 rendered in a foreign state may be recognised in the Netherlands and its enforcement may be sought in the Netherlands by one of the parties, upon submission of the original or a certified copy of the arbitration agreement and the arbitral award, unless:
  - (A) the party against whom recognition or enforcement is sought, asserts and proves that:
    - ~~(i)a~~ absence of a valid arbitration agreement under the law applicable thereto;
    - ~~(ii)b~~ the composition of the arbitral tribunal was not in accordance with the rules applicable thereto;
    - ~~(iii)c~~ the arbitral tribunal has not complied with the scope of the submission to arbitration;
    - ~~(iv)d~~ the award is still subject to an appeal to a second arbitral tribunal, or to a court in the country in which the award has been rendered;
    - ~~(v)e~~ the arbitral award has been set aside by a competent authority of the country in which that award has been rendered;
  - (B) the court holds that the recognition or enforcement would be contrary to public policy.
2. The ground mentioned in paragraph (1)(A)(a) shall not constitute a ground for refusal of recognition or enforcement if the party who invokes this ground has appeared in the arbitral proceedings and, before submitting a defense, has failed to raise 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) 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 appeared in the arbitral proceedings and, before submitting a defense, has not raised the plea that the arbitral tribunal lacks jurisdiction on the ground that the composition of the arbitral tribunal was not in accordance with the applicable rules.
4. The ground mentioned in paragraph (1)(A)(c) shall not constitute a ground for refusal of recognition or enforcement if non-compliance to the scope of the submission to arbitration is not serious. Nor shall the ground mentioned in Ac of paragraph (1) constitute a ground for refusal of recognition of enforcement if the party who invokes this ground has participated in the arbitral proceedings without raising it in due time, although it was known to him-her that the arbitral tribunal did not comply with the scope of the submission to arbitration its mandate.
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.
6. The provisions of articles 985 up to and including 991 shall 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~~ three months, and no ~~documents~~

records need be submitted evidencing the enforceability of the arbitral award in the country in which it is rendered.

7. Articles 261 up to and including 291 shall apply accordingly to the application to the extent that the provisions of paragraph (6) of this article do not provide otherwise.

~~78.~~ 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 rendered, the provisions of ~~article~~ articles 1066(2) up to and including (6) shall apply accordingly when recognition or enforcement is sought in the Netherlands.

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