DREPT INTERNAŢIONAL PRIVAT

COMPARISON OF UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION, DATED JUNE 21, 1985[140] WITH THE PROVISIONS OF THE NATIONAL LAW IN THIS FIELD

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COMPARAREA PREVEDERILOR LEGII MODEL UNCITRAL CU PRIVIRE LA ARBITRAJUL COMERCIAL INTERNAŢIONAL CU PREVEDERILE LEGII NAŢIONALE ÎN DOMENIU

Arbitrajul comercial internaţional constituie o metodă alternativă de soluţionare a litigiilor atât de către arbitrii numiţi pentru fiecare caz aparte (arbitraj ad-hoc), cât şi de către instituţii permanente de arbitraj.

Arbitrajul comercial internaţional este considerat mijlocul prin care un litigiu sau mai multe litigii ce vor apărea în viitor pot fi soluţionate definitiv de o persoană neinteresată şi nonguvernamentală.

Arbitrajul comercial internaţional poate fi instituţionalizat şi ad-hoc. Arbitrajul instituţionalizat este o formă a arbitrajului comercial internaţional a cărui existenţă nu depinde de soluţionarea unui anumit litigiu şi presupune exercitarea atribuţiilor jurisdicţionale în mod neîntrerupt, fiind organizat într-un cadru instituţionalizat prin lege şi având caracter de permanenţă şi continuitate. Arbitrajul ocazional sau ad-hoc este caracterizat drept modalitatea tradiţională, fiind organizat de părţi şi funcţionând în vederea soluţionării unui litigiu determinat, existenţa lui încetând odată cu pronunţarea hotărârii.

Legea Model UNCITRAL privind arbitrajul comercial internaţional din 1985 a stat la baza elaborării Legii Republicii Moldova Nr. 24-XVI din 22.02.2008 cu privire la arbitrajul comercial internaţional.

СРАВНЕНИЕ ПОЛОЖЕНИЙ ТИПОВОГО ЗАКОНА ЮНСИТРАЛ О МЕЖДУНАРОДНОМ ТОРГОВОМ АРБИТРАЖЕ С ПОЛОЖЕНИЯМИ НАЦИОНАЛЬНОГО ОТРАСЛЕВОГО ЗАКОНА

Арбитраж обозначает разбирательство споров как арбитрами, назначенными по каждому отдельному делу (арбитраж ad hoc), так и постоянными арбитражными органами. По своей юридической природе международный коммерческий арбитраж представляет собой третейский суд, избираемый или создаваемый самими сторонами. Спор рассматривается независимым арбитром, избранным сторонами на основе его профессиональных качеств в целях вынесения окончательного и обязательного для сторон решения.

Различают два вида МКА: институционный (постоянно действующий) и изолированный (ad hoc или разовый). Институционный коммерческий арбитраж создается при национальных торговых и торгово-промышленных палатах, ассоциациях, биржах и т.д., работает постоянно, имеет свой устав (или положение) и регламент, устанавливающий правила арбитражного процесса. При обращении в постоянно действующий арбитраж стороны выбирают арбитров из установленного перечня. Изолированный коммерческий арбитраж (ad hoc) образуется сторонами для рассмотрения конкретного спора, после разбирательства которого и вынесения решения он прекращает свое существование. Стороны самостоятельно выбирают место проведения арбитражного разбирательства, определяют правила избрания арбитров и устанавливают арбитражную процедуру.

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[140] With amendments as adopted in 2006.

International commercial arbitration is the process of resolving business disputes between or among transnational parties through the use of one or more arbitrators rather than through the courts. It requires the agreement of the parties, which is usually given via an arbitration clause that is inserted into the contract or business agreement. The decision is usually binding[141]. Uncertainty about identity of the country and the court in which a dispute may be heard, about procedural and substantive rules to be applied, about the degree of publicity to be given the proceedings and the judgment time needed to settle a dispute, and about the efficacy which may be given to a resulting judgment all have combined to make arbitration the preferred mechanism for solving international commercial disputes[142].

A fundamental distinction is made between ***institutional arbitration*** and ***ad hoc arbitration***. Institutional arbitration means that parties choose to conduct their arbitration procedure in accordance with the rules of, and with the assistance of, an arbitral institution. *Ad hoc* arbitration means that the arbitration is not conducted pursuant to the rules of an arbitral institution; they may largely stipulate their own rules of procedure. In other words[143], ad hoc arbitration is a do it yourself arbitration.

The UNCITRAL Model Law on International Commercial Arbitration (here in after – the UNCITRAL Model Law) was the basis of the elaboration of the Law No. 24-XVI of February 22, 2008 on International Commercial Arbitration of the Republic of Moldova (here in after – Law on International Commercial Arbitration)[144]. Therefore, almost all the articles of the Moldovan law are harmonized with the provisions of the UNCITRAL Model Law. Moreover, the texts of some of the articles of Moldovan law are identical with the text provided in the UNCITRAL Model Law. At the same time, it has to be mentioned that the provisions of the Moldovan Code of Civil Procedure of the Republic of Moldova, No. 225-XV of May 30, 2003 (here in after - Code of Civil Procedure)[145] regarding the arbitration are in fully conformity with the provisions of the UNCITRAL Model Law. The Law on International Commercial Arbitration is the result of recognition of usefulness of international commercial arbitration as an alternative method of dispute settlement, as well as a result of the need to legally regulate international commercial arbitration in the Republic of Moldova.

The arbitration agreement. The arbitration agreement is regulated in Chapter II of the Law on International Commercial arbitration. The provisions of this Chapter correspond to provisions of Chapter II of UNCITRAL Model Law. Definition and form of arbitration agreement is a takeover of the provisions of UNCITRAL Model Law. So, arbitration agreement is an agreement by the parties to submit to arbitration all of certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. The arbitration agreement shall be in writing. The Law on International Commercial Arbitration provides[146] that, an arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means. The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference. "Electronic communication" means any communication that the parties make by means of data messages. "Data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy. An arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. The reference in a contract to any document containing an

[141] Charlotte L. Bynum. International Commercial Arbitration, in ASIL Guide to Electronic Resources for International Law, March 2001. [on-line]: www.asil.org. (accesat pe 04.07.2011).

[142] Ralph H. Folsom, Michael Wallace Gordon John A. Spanogle JR. International Business Transactions, WEST PUBLISHING COMPANY, P.O. BOX 64526, ST. PAUL, MN. 1991, p. 516.

[143] Christophe Imhoos, Herman Verbist. Arbitration and alternative dispute resolution, How to settle international business disputes. International Trade Center. Geneva, 2001, p. 65.

[144] Published in the Official Gazette of the Republic of Moldova on May 20, 2008.

[145] Published in the Official Gazette of the Republic of Moldova on June 12, 2003.

[146] Art. 7.

arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Art.8 and art.9 of the Law on International Commercial Arbitration deal with two important aspects of the complex relationship between the arbitration agreement and the resort to courts. Modelled on article II (3) of the Convention for Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958 (shall be referred as the New York Convention)[147] and article 8 (1) of the UNCITRAL Model Law, art.8 of the Law on international commercial arbitration places any court under an obligation to refer the parties to arbitration if the court is seized with a claim on the same subject-matter unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

The Law on International Commercial Arbitration provides that a flaw of the arbitration agreement may be removed by filing arbitration by submitting a reference if until the reference is submitted an objection in relation to flaw is not made.

The United Nations Commission on International Trade Law Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session[148] provide:

"*Considering* the wide use of electronic commerce,

Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration[149], as subsequently revised, particularly with respect to article 7[150], the UNCITRAL Model Law on Electronic Commerce[151], the UNCITRAL Model Law on Electronic Signatures[152] and the United Nations Convention. on the Use of Electronic Communications in International Contracts[153],

Taking into account also enactments of domestic legislation, as well as case law, more favourable than the Convention in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. Recommends that article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be applied recognizing that the circumstances described therein are not exhaustive;

2. *Recommends also* that article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement".

In international commercial arbitration the most important factor in arbitral process is the

[147] Based on the Parliamentary Decision No. 87 - XIV dated July 10, 1998, the Republic of Moldova adhered to the Convention.

[148] Issued in Official Records of the General Assembly, Sixty-first Session, Supplement No. 17 (A/61/17), annex II.

[149] Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17), annex I, and United Nations publication, Sales No. E.95.V.18.

[150] Ibid. Sixty-first Session, Supplement No. 17 (A/61/17), annex. I.

[151] Ibid, Fifty-first Session, Supplement No. 17 (A/51/17), annex I, and United Nations publication, Sales No. E.99.V.4, which contains also an additional article 5 bis, adopted in 1998, and the accompanying Guide to Enactment.

[152] Ibid, Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and. Corr. annex. II, and United Nations publication, Sales No. E.02.V.8, which contains also the accompanying Guide to Enactment.

[153] General Assembly resolution 60/21, annex.

independence and impartiality of arbitrators[154], because arbitration is a private justice in which parties volunteer to accept judgement by their nominated arbitrators. Indeed, in case of corruption the confidence of the parties will be lose, and it is necessary that arbitrator must remain independent and impartial to keep this private justice on going. According to A. Radfen and M. Hunter, an impartial arbitrator, by definition, is one who is not biased in favour of, or prejudiced against, a particular party or its case, while an independent arbitrator is one who has no close relationship-financial, professional, or personal-with a party or its counsel[155].

Arbitrators in international commercial arbitrations are subject to obligations of independence and impartiality, these obligations arises from, national law, international statutes and the arbitration agreement, which has been regarded as the fundamental importance to the process of international commercial arbitration as well as selecting arbitrators[156].

It is universally acknowledged that, the quality of arbitration proceeding depends to a large extent on the quality and skill of the arbitrators chosen[157]. The parties have chosen to opt out of litigation where a judge is appointed for them, into arbitration where they choose their own judge. They are the constructors of their dispute resolution mechanism and are therefore presumed to know who best should resolve their dispute. Thus the importance of the selection and appointment of the right arbitrator for the dispute cannot be over emphasized[158].

Composition of Arbitral Tribunal. Chapter III of the Law on International Commercial Arbitration contain detalied provisions on appointment, challenge, replacement and termination of mandate of an arbitrator. Provisions of the Law on International Commercial Arbitration on the composition of arbitral tribunal fully meet the provisions of the Chapter III of UNCITRAL Model Law.

Thus, the parties are free to determine the number of arbitrators. Failing such determination, the number of arbitrators shall be three[159].

Law on International Commercial Arbitration provides[160] that no person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties. The parties are free to agree on a procedure of appointing the arbitrator or arbitrators. Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or by the president of arbitral institution, or by the president of the institution indicated by parties;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or by the president of arbitral institution, or by the president of the institution indicated by parties.

Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

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[154] Lin Yu Hong. Independence, Impartiality and Immunity Of Arbitrators - US And English Perspectives. In: Independent and Comparative Law Quarterly ICLQ 52.4(935). October 2003.

[155] Redfern A., Hunter M. The Law and Practice of International Commercial Arbitration, Sweet &Maxwell: London, 1999, p. 220.

[156] Born Gary B. International Commercial Arbitration, Kluwer Law International, Second edition. p. 626.

[157] J. D. M. Lew, L. A. Mistelis & S. M. Kroll. Comparative International Commercial Arbitration. Kluwer, 2003, p. 232.

[158] Wang Sheng Chang, Formation of the Arbitral Tribunal, 17 Arb Int 401, 2001.

[159] Art. 10.

[160] Art. 11.

any party may request the court or the president of arbitral institution, or the president of the institution indicated by parties to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

According to the provisions of the Law on International Commercial Arbitration, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

The relationship between national courts and arbitral tribunals[161] swings between forced cohabitation and true partnership. In spite of protestations of "party autonomy", arbitration is wholly dependent on the underlying support of the courts who alone have the power to rescue the system when one party seeks to sabotage it.

In the course of international commercial business relationships most companies find it advantageous to include an arbitration clause in their agreements. The agreements are done in the hopes that should a dispute arise the parties can seek a faster, more cost efficient resolution to their dispute without the difficulties of resorting to national courts[162].

Competence of arbitral tribunal. The provisions of art.16 of the Law on International Commercial Arbitration correspond exactly with the provisions of art.16 of UNCITRAL Model Law. So, the arbitral tribunal may independently rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

The arbitral tribunal may rule on a plea either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the Economic Court of Appeal decide the matter, which decision shall be subject to no appeal. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award. Also, the arbitral tribunal may order interim measures.

Chapter V (art.18-27) of the Law on international commercial arbitration, called „Arbitration procedure. Conduct of arbitration procedure" corresponds to the provisions of Chapter V of UNCITRAL Model Law in what the number of articles are concerned as well as the content.

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

The Law on International Commercial Arbitration guarantees[163] the parties' freedom to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, subject to a few mandatory provisions on procedure, and empowers the arbitral tribunal, failing agreement by the parties, to conduct the arbitration in such a manner as it considers appropriate. The power conferred upon the

[161] Kevin T. Jacobs & Matthew G. Paulson. The Convergence of Renewed Nationalization, Rising Commodities, and "Americanization" in International Arbitration and the Need for More Rigorous Legal and Procedural Defenses, 43 Tex. Int.'l J., 2008.

[162] Julian D M Lew, Loukas A Mistelis, Stefan M Kroll. Comparative International Arbitration, 1-5. Kluwer Law International, 2003.

[163] Art. 19.

arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties[164].

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

The Law on International Commercial Arbitration provides[165], that the parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal. The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit. Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

The Law on International Commercial Arbitration provides that[166], subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party. The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents. All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Chapter VI of the Law on International Commercial Arbitration, called „Making of award and termination of arbitration procedure" is consistent with provisions of Chapter VI of UNCITRAL Model Law. Regulating the rules applicable to substance of dispute, the Law on International Commercial Arbitration provides that, the arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable. The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

[164] Art. 20.
[165] Art. 22.
[166] Art. 24.

If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. An award on agreed terms shall be made in accordance with the provisions of article 31 of the Law on International Commercial Arbitration and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Referring to the form and contents of award, the Law on International Commercial Arbitration provides[167] that, the award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated. The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms. The award shall state its date and the place of arbitration. The award shall be deemed to have been made at that place. After the award is made, a copy signed by the arbitrators shall be delivered to each party.

The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal. The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

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

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 35[168] and 37(4)[169].

Additionally to the provisions of the UNCITRAL Model Law, the Law on International Commercial Arbitration is governing the decision on arbitration costs and guarantee of payment of arbitration costs. Thus, unless the parties otherwise agree, the arbitral tribunal shall decide by arbitration decision in what proportions the parties must bear the costs of arbitral proceedings, including their costs of participation to arbitration. The arbitral tribunal shall decide on the division between the parties of arbitration proceedings costs, taking into account the circumstances of each case, in particular the arbitration outcome. Decision on determining the proportion of expenditure to be borne by each party and the obligation to reimburse the expenditure must be in the form of an arbitral award. The arbitral tribunal may order parties to lodge a guarantee for the arbitrators' fees and expenses of the arbitral tribunal. The arbitral tribunal may cease to conduct arbitral proceedings if such security is not provided. If a party fails to provide warranty, either Party may submit a full security.

Recourse against award. The challenge of arbitral award is regulated by Chapter VII of the Law on International Commercial Arbitration[170] and the Code of Civil Procedure[171]. The provisions of both normative acts are perfectly consistent with the UNCITRAL Model Law and New York Convention provisions.

In the Republic of Moldova, application for setting aside is exclusive recourse against arbitral award. According to the Code of Civil Procedure, the arbitral award pronounced on the territory of the Republic of Moldova can be challenged in court by the parties in arbitration by submitting a request to cancel the arbitration award.

Recurs against the arbitral award may be tried by ordinary courts of appeal or, where appropriate, by the Economic Court of Appeal[172].

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[167] Art. 31.
[168] Art. 35 regulates correction and interpretation of award; additional award.
[169] Art. 37 regulates application for setting aside as excusive recourse against arbitral award.
[170] Art. 37.
[171] Art. 477 - 481.
[172] Art. 30 of the Code of Civil Procedure.

The Code of Civil Procedure prohibits the parties to renounce through arbitration agreement to their right to challenge the arbitral award and allow the parties to waive this right only after arbitral award pronouncement.

The request for challenging the arbitral award shall be filed with the court, which in the absence of arbitration agreement, would be competent to hear the case in first instance. The request is submitted by the interested party, within three months from the date of challenged arbitral award receipt.

The request for challenging the arbitral award shall be submitted in writing and signed by the party challenging the decision or its representative. In the request for challenging the arbitral award is indicated:

a) the court to which the request is addressed;

b) the name and the nominal composition of arbitrators who adopted the decision;

c) the name of parties in arbitration, their residence or headquarters;

d) the place and the date of arbitral award pronouncement;

e) the date of arbitral award receipt by the party who request the application for challenging the arbitral award;

f) the request of the interested party to challenge the arbitral decision, the reasons for decision challenging;

The request may also include the phone number, fax, email and other data.

To the arbitral award cancellation request are attached:

a) the arbitral award in original or a certified copy as provided. The copy of arbitral award, adopted by permanent court of arbitration shall be authenticated by the chairman of this court. The copy of the ad-hoc arbitration award must be authenticated by the notary;

b) the arbitration agreement in original or a certified copy as provided;

c) the documents which argue the request for challenging the arbitral award;

d) the proof of state tax payment;

e) the copy of request for challenging the arbitral award;

f) the power of attorney or other document which attests the empowerments of the person signing the request.

The request for challenging the arbitral award submitted under the non compliance with the above mentioned conditions are returned to the applicant or is not followed up.

The request for challenging the arbitral award is examined in hearing session within one month after it submitting to the court.

Within the preparation of cause for legal debates, at the request of both parties in arbitration, the judge has the right to request to the arbitrators, according to the established regulations of Code of Civil Procedure for attack of evidence, file documents, arbitral award, which is contested in original.

The parties in arbitration are legally notified about the place, date and time of the hearing session. Their absence does not prevent the cause debate.

During the cause debate, the court determine, upon the research of evidence presented by the parties to argue their claims and objections, the existence or lack of grounds for the award challenging.

The arbitration award may be set aside by the court only if the party requesting the award challenging furnishes proof that:

a) the litigation examined by the arbitrators can not be subject to arbitration debate according to the law;

b) the arbitration agreement is invalid according to the law;

c) the arbitral award does not include the device and the reasons, the place and date of pronouncement or is not signed by the arbitrators;

d) the arbitral award device includes provisions which can not be executed;

e) the arbitrators were not appointed or the arbitration procedure does not correspond with the arbitration agreement;

f) the interested party was not legally notified about the arbitrators appointment or about the arbitration debates, including location, date and time of the arbitration hearing, or for other well-founded reasons, could not appear before the arbitration to explain;

g) arbitration has pronounced on litigation which is not provided by the arbitration agreement or which does not fall under the arbitration agreement provisions, or arbitral award contains problematic provisions that go beyond the arbitration agreement.

h) the arbitral award violates fundamental principles of law of the Republic of Moldova or good manners.

After examining the request for challenging the arbitral award, the court pronounces a decision on the total or partial cancellation of the arbitral award or on the refusal to challenge it.

The decision shall include:

a) data of challenged arbitral award and place of award pronouncement;

b) the name and the nominal composition of arbitrators who pronounced the challenged award;

c) name of parties in arbitration;

d) total or partial cancellation of the award or total or partial refusal to admit the petitioner's request;

The total or partial cancellation of the award does not preclude the parties to address again to settle the litigation in Court of Arbitration, unless the dispute can not be subject to arbitration debate, or to submit a request to summons under regulations established by the Code of Civil Procedure.

If the arbitration award was abolished totally or partially because of arbitration agreement invalidity or if the decision was issued in a litigation unforeseen by the arbitration agreement, or it does not fall under the agreement provisions, or contains provisions on matters that were not required under the arbitration agreement, the parties in arbitration may address to settle such a dispute in court.

In the Republic of Moldova the necessary legal framework for solving international trade agreements litigations through arbitration is in place. Also, the arbitrators included in the list of The International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Republic of Moldova in 2011 are persons with authority, competent to solve such litigations. Though, it is necessary to raise the awareness within the business environment of the advantages of international commercial arbitration as a way of solving litigations.

Bibliography:

1. Convention for Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958.
2. The United Nations Commission on International Trade Law Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session.
3. The UNCITRAL Model Law on International Commercial Arbitration dated June 21, 1985, with amendments as adopted in 2006.
4. Law of the Republic of Moldova No. 24-XVI of February 22, 2008 on International Commercial Arbitration.
5. Hotărârea Parlamentului Republicii Moldova nr. 87-XIV din 10.07.1998, privind aderarea Republicii Moldova la Convenţia pentru recunoaşterea şi executarea sentinţelor arbitrale străine publicată în Monitorul Oficial al Republicii Moldova nr. 71/471 din 30.07.1998.
6. Ralph H. Folsom, Michael Wallace Gordon, John A. Spanogle JR. International Business Transactions, WEST PUBLISHING COMPANY, P.O. BOX 64526, ST. PAUL, MN, 1991.
7. Born Gary B. International Commercial Arbitration. Kluwer Law International. Second edition.
8. Kevin T. Jacobs & Matthew G. Paulson. The Convergence of Renewed Nationalization, Rising Commodities, and "Americanization, in International Arbitration and the Need for More Rigorous Legal and Procedural Defenses, 43 Tex. Int.'l J., 2008.
9. Christophe Imhoos, Herman Verbist, Arbitration and alternative dispute resolution, How to settle international business disputes, International Trade Center. Geneva, 2001.
10. Gabriel Homotescu. Litigii patrimoniale. Soluţionarea pe calea arbitrajului. Bucureşti: Lumina Lex, 1999.
11. Redfern A., Hunter M. The Law and Practice of International Commercial Arbitration. London: Sweet&Maxwell, 1999.
12. Lin Yu Hong. Independence, Impartiality and Immunity Of Arbitrators - US And English Perspectives. In: Independent and Comparative Law Quarterly ICLQ 52.4 (935), October 2003.
13. Julian D M Lew, Loukas A Mistelis, Stefan M Kroll. Comparative International Arbitration, 1-5. Kluwer Law International 2003.
14. Wang Sheng Chang. Formation of the Arbitral Tribunal, 17 Arb Int 401, 2001.