

The Netherlands Arbitration Act, as adopted by Dutch Parliament on 27 May 2014

The date of entry into force shall be determined by the Minister of Security and Justice by royal decree. We assume that this will be 1 January 2015.

CODE OF CIVIL PROCEDURE

BOOK FOUR: ARBITRATION

Title One. Arbitration in the Netherlands

Section One. The Arbitration Agreement

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 suffices. The arbitration agreement may also be evidenced by electronic means. Article 6: 227a(1) of the Dutch Civil Code shall apply accordingly.

Section One A. The Arbitration Agreement and the Jurisdiction of the State Courts

Article 1022

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

An arbitration agreement shall not preclude a party from requesting the court to order 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.

Article 1022b

An arbitration agreement shall not preclude a party from requesting the court to order a preliminary witness examination, a preliminary expert report or a preliminary site visit, or review, copy or excerpt of certain records.

Article 1022c

If in cases mentioned in articles 1022a and 1022b a party invokes the existence of an arbitration agreement before submitting a defense, the court shall only declare that it has jurisdiction, if the requested decision cannot, or not in a timely manner, be obtained in arbitral proceedings.

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.

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. 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 accordingly 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 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 three months shall start to run on the day on which the number of arbitrators is determined. 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 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.

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 can agree to extend this 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. Upon request of one of the parties and having regard to all circumstances, an arbitral tribunal that has accepted its mandate may, if, despite being repeatedly summoned, it carries out its mandate in an unacceptably slow manner, 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.

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

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

Article 1032

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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.

2. A party may challenge an arbitrator it appointed 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 who is approached in connection with his possible appointment as an arbitrator presumes that he could be challenged, he 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 shall upon his appointment make the disclosure referred to in the preceding paragraph to the parties, 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 the possible grounds for such challenge 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 arbitrator concerned, the other 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 referred to in paragraph (1), the President of the District Court shall, at the request of either party, decide on the merits of the challenge. The request shall be made within two weeks after the day of receipt of the written notification of the challenged arbitrator that he does not withdraw from the tribunal, or failing which, within six weeks after the day of receipt of the notification.
3. If the challenged arbitrator withdraws from the tribunal, 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 a challenged arbitrator withdraws, this 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 found inadmissible or meritless, the arbitral proceedings, if suspended, shall resume where they had been left off.
6. By agreement the parties may shorten or extend the time periods as mentioned in paragraphs (1) or (2) of this article.
7. By agreement parties may provide for a request for challenge of an arbitrator to be heard by an independent third party instead of the President of the District Court .
8. A party who has reasons to challenge an arbitrator, shall in accordance with the provisions of this article base the request to challenge an arbitrator on these reasons failing which the party will be barred from raising such reasons at a later stage of the arbitral proceedings or in proceedings before the court.

Article 1035a

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

Section Two. The Arbitral Proceedings

Article 1036

1. Without prejudice to the provisions of mandatory law of this title, the arbitral proceedings shall be conducted in such manner as agreed between the parties. To the extent that the parties have not agreed upon the conduct of the arbitral proceedings, the arbitral proceedings shall, without prejudice to the provisions of this title, be conducted in such a manner as 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 arguments and to comment on all records and other pieces of information that have been submitted to the arbitral tribunal during the arbitral proceedings. In its decision, the arbitral tribunal shall not to the detriment of one of the parties base its decision on records and other pieces of information on which the other party has not sufficiently been able to comment.

3. The arbitral tribunal shall ensure that there will be no unreasonable delay of the proceedings and, if necessary, take measures 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. The arbitral tribunal shall have the power to designate one of its members to hold a hearing as referred to in the preceding sentence, unless otherwise agreed by the parties.

Article 1038

1. The parties may appear 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 1038a

1. Unless otherwise agreed by the parties, the arbitral tribunal shall give the claimant and the respondent an opportunity to submit a statement of claim and a statement of defense respectively.

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

Article 1038b

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

Article 1038c

1. A counterclaim is admissible if the same arbitration agreement on which the claim is based also applies to that counterclaim, or if that same arbitration agreement is expressly or tacitly declared applicable by the parties.

2. Unless otherwise agreed by the parties, a counterclaim as referred to in paragraph (1) 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 rendered unreasonably difficult or the proceedings will not be unreasonably delayed.

Article 1039

1. The production, admissibility and weight of evidence and the burden of proof lie within the discretion of the arbitral tribunal, unless agreed otherwise by the parties.

2. The arbitral tribunal shall have the power to designate one of its members to hear witnesses or experts or, as the case may be, to conduct a site visit or site viewing, unless otherwise agreed by the parties.

Article 1040

1. Unless otherwise agreed by the parties, the statements referred to in article 1038a shall, to the extent possible, be accompanied by, the records on which the parties rely.

2. The arbitral tribunal may, at the request of one of the parties or on its own initiative, order to inspect, or to obtain a copy or excerpt of certain records relating to the dispute from the party that disposes of these records, unless otherwise agreed by the parties. The arbitral tribunal determines the conditions subject to which inspection, copies or excerpts of records will be provided.

Article 1041

1. The arbitral tribunal may, at the request of one of the parties or on its own initiative, order parties to provide evidence 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.

3. 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

1. If a witness does not appear voluntarily or, having appeared, refuses to make a statement, the arbitral tribunal may allow the party which 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 before which the witness examination shall take place.

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 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. 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 mandate confined to the experts. 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 with the information required and to provide the necessary cooperation.

3. At the request of one of the parties, the experts shall be heard during a hearing of the arbitral tribunal. If a party intends to make such a request, it shall notify the arbitral tribunal and the other party thereof without delay.

4. Without prejudice to the provisions of paragraph (3), the arbitral tribunal shall provide the parties with the opportunity to 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 on 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 site visit or inspection.

Article 1043

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.

Article 1043a

1. Should the claimant without providing valid reasons therefor fail to submit or sufficiently substantiate its claim, despite having had sufficient opportunity to do so, the arbitral tribunal may, by issuing an award or in another manner the arbitral tribunal deems appropriate, terminate the arbitral proceedings.

2. Should the respondent without providing valid reasons therefor fail to submit its defense, despite having had sufficient opportunity to do so, the arbitral tribunal may continue to render its award.

3. In the award as mentioned in paragraph (2), the claim shall be awarded, unless the arbitral tribunal deems it 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 statements.

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, 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.

2. Parties may, within the limits provided for in Article 254(1) and irrespective of the arbitral proceedings on the merits being pending, agree that a separate arbitral tribunal be appointed, vested with the power to award interim relief at the request of one of the parties, except for conservatory measures as described in the fourth title of the third Book.

3. The arbitral tribunal as referred to in paragraphs (1) and (2), may, in connection with the interim measure, demand either party to provide sufficient security .

4. Unless the arbitral tribunal determines otherwise, the decision of the arbitral tribunal on the demand for an interim measure is considered to be an arbitral award; the provisions of section 3 up to and including section 5 of this title shall apply thereto.

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

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

Article 1044

1. 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. 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, 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 without delay 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 permission of the joinder or the intervention, the arbitral tribunal determines the further course of the arbitral proceedings, unless otherwise agreed by the parties.

Article 1045a

1. At the written request of a party, the arbitral tribunal may 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 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 deems on a prima facie basis that the third party shall not be liable for the negative consequences of a possible award rendered against 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. With respect to pending arbitral proceedings with a seat of arbitration in the Netherlands, a party may request a third party designated thereto by the parties to order consolidation with other arbitral proceedings in or outside the Netherlands, unless agreed otherwise by the parties. In the absence of a third party having been designated thereto by the parties, either party may request the President of the District Court in Amsterdam to order consolidation of arbitral proceedings pending in the Netherlands 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 of the pending arbitral proceedings, also taking into consideration the stage of the pending proceedings and whether there is such a close connection between the arbitral proceedings that a proper process of justice requires them to be dealt with in separate proceedings in order to avoid that incompatible decisions will be rendered.

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

4. If the third party or the President of the District Court orders consolidation, 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 a third party or the President of the District Court, the 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 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.

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 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 to determine the moment at which the award shall be rendered.

Article 1048a

A party that appears before the arbitral tribunal shall file its objection without unreasonable delay with the arbitral tribunal with a copy to the other party as soon as it 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 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 State courts.

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 concluded in the operative part of the award.

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

Article 1050

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Article 1051

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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 in conjunction with the challenge of a subsequent final or partial final award.

5. 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 and to the extent that the arbitral tribunal has declared that it lacks jurisdiction on another ground, the arbitration agreement remains valid, unless the parties have agreed otherwise.

6. The declaration that the arbitral tribunal lacks jurisdiction as referred to in the previous paragraph is an arbitral award to which section 1B up to and including 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 principal agreement 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

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Article 1056

If the court has the power, the arbitral tribunal also has such power to impose a penalty for non-compliance. Without prejudice to the applicability of articles 611a up to and including 611h, in cases as mentioned in article 611d, an application for the revocation, 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 shall be made to the President of the District Court 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, procedural matters of minor importance can be decided by the chairman if empowered thereto by his co-arbitrators, 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. 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. By way of derogation from 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 referred to in article 1020(4)(a);
 - (b) the recording of a settlement as referred to 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) the original copy of the award, or a copy thereof certified by an arbitrator or by a third party designated by the parties, is sent to the parties;
 - (b) the original of the final or partial final award is deposited with the registry of the District Court within whose district the place of arbitration is situated, to the extent the parties have so agreed.
2. The award shall be deemed sent in case four weeks after the date of the award have lapsed.
3. Without prejudice to the provisions of articles 1060, 1061 and 1065a, the mandate of the arbitral tribunal shall terminate upon sending the final award to the parties, or in the case mentioned in paragraph (1)(b), upon deposit of the last final award with the registry of the District Court.
4. Third parties will not be provided with copies or excerpts of deposited awards.
5. Unless the parties have agreed to time periods different from those referred to in articles 1060, 1061, 1061c, a period of three months after the day of deposit of the final award with the registry of the District Court will apply, if parties have 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 the force of res judicata in other legal proceedings between the same parties from the day on which they are rendered. Articles 236(2) and (3) shall apply accordingly.

2. Paragraph (1) does not apply to decisions, as referred to in article 1043(b), regarding an interim measure.

3. A final arbitral award, as mentioned in paragraph (1), shall have the force of *res judicata* between the same parties in other legal proceedings from the day on which it is rendered.

Article 1060

1. Within a time period as agreed upon by the parties, or until three months after the day of the sending of the award, a party may request in writing that the arbitral tribunal corrects in the award a manifest computing, 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 missing from the award, a party may, within a time period as agreed upon by the parties, or until three months after the date of the sending of the award, request the arbitral tribunal in writing to correct 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 until three months after the date of the sending of the award, also perform the correction mentioned in paragraphs (1) and (2) above on its own initiative.

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

6. In the event the arbitral tribunal makes the 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 article 1058(1) shall apply accordingly.

7. If the arbitral tribunal rejects the request for a correction, it shall inform the parties thereof in writing.

8. The request, as mentioned in paragraphs (1) and (2) above, does not suspend the enforcement of the award, unless the President of the District Court deems that there are serious reasons for doing so 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 claims or counterclaims which have been submitted to it, either party may, within a period of time as agreed upon by the parties, or until three months after the day of the sending of the award, 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 the opportunity to comment thereon before deciding on the request.

4. An additional award shall be regarded as an arbitral award to which the provisions of 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, may be deposited with the registry of the District Court, in accordance with article 1058(1)(b).

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 the extent that this section does not provide otherwise or that would be incompatible with the nature of the arbitral appeal.

Article 1061b

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

Article 1061c

Within a time period as agreed upon by the parties or until three months after the date of the sending of the award, parties may lodge an arbitral appeal.

Article 1061d

1. Arbitral appeal can only be lodged against a final award and a last partial final award.
2. Unless otherwise agreed by the parties, arbitral appeal can also be lodged against other partial final awards.
3. With the exception of an award pursuant to article 1043b(1) arbitral appeal against an interim award can only be lodged simultaneously with an arbitral appeal against the full or partial final award, unless otherwise agreed by the parties.

Article 1061e

An arbitral award rendered pursuant to 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 meet the requirements of articles 1020 and 1021, as well as the requirements of articles 166 and 167 of Book 10 of the Dutch Civil Code.

Article 1061f

1. In the event that the arbitral tribunal declares that it lacks jurisdiction as referred to in article 1052(5), second sentence, arbitral appeal is permitted.
2. Both in the event that the arbitral tribunal assumes jurisdiction, as 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 lodged 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 referred to in article 1056 can also be claimed for the first time in arbitral appeal proceedings.

2. By way of derogation from article 1056, in the cases referred to in article 611d, a request of termination, suspension or reduction of the penalty has to be made to the arbitral tribunal in the arbitral appeal proceedings, if and for as long as 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 by agreement derogate from the provisions of this article.

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 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 lodged 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 has been heard, a decision on this claim will be taken without delay. The second and third sentence of paragraph (1) 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 lodged against that arbitral award, a claim to that effect can be filed with the arbitral tribunal in arbitral appeal proceedings. After the other party has been heard, a decision on this claim shall be taken without delay.

Article 1061j

By way of derogation from the provisions of 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 such arbitral appeal proceedings.

Article 1061k

1. An arbitral award rendered in first instance which has been 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 of article 1061i.

2. An arbitral award rendered in first instance which has not been declared immediately enforceable can only be enforced in accordance with the provisions of section (4) of this title after the period for arbitral appeal has 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 1061I

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. The only means of recourse against a final or partial final arbitral award rendered in first instance are the setting aside and the revocation on the basis of section (5) of this title if the period for arbitral appeal has 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. By way of derogation from 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.

Section Four. Enforcement of the Arbitral Award

Article 1062

1. Enforcement in the Netherlands of an arbitral award can only take place after the President of the District Court 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 the President of the District Court grants leave for enforcement, the means of recourse mentioned in article 1064 shall be the only means of recourse available to the opposing party of the applicant.
4. 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 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 without such application having been made, the President of the District Court may 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 is in violation of article 1065(1)(e).

3. 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.
4. An appeal against the decision in which the leave for enforcement has been refused can be lodged with the Court of Appeal.
5. If the leave for enforcement of the arbitral award is also not granted in appeal, an appeal in cassation can be lodged.
6. If in appeal or after appeal in cassation the leave for enforcement of the arbitral award is granted, the provisions of article 1062(3) shall apply accordingly.

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

Article 1064

The only means of recourse against a final or partially final arbitral award are the setting aside and the revocation on the basis of this section.

Article 1064a

1. The application for setting aside is brought before the Court of Appeal of the district of the seat of arbitration.
2. The right to make an application for the setting aside lapses three months after the day of the sending of the arbitral award. If the parties agreed to apply the provisions of article 1058(1)(b), this right lapses three months after the day of the deposit of the award. However, if the award together with leave for enforcement is officially served on the other party, that party may nonetheless make an application for setting aside within three months after said service, irrespective of whether the period of three months mentioned in the preceding sentence has lapsed.
3. The application for the setting aside of an interim arbitral award may only be brought together with the application for the setting aside of the final or partially final arbitral award.
4. All grounds for setting aside shall, subject to the forfeiture of the right thereto, be set out in the writ of summons.
5. Appeal in cassation can be lodged against a decision pursuant to paragraph (1). The parties may agree to exclude the possibility of appeal in cassation against a decision pursuant to paragraph (1) unless one of the parties is a natural person not acting in the course of his professional practice or business.

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.
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 articles 1028(2) and 1052(3).

4. The ground mentioned in paragraph (1)(c) shall not constitute a ground for setting aside if the non-compliance with the mandate is not serious. Nor shall the ground referred to in paragraph (1)(c) constitute a ground for setting aside if the party who invokes this ground has 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 arbitral 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 is not inextricably linked to the part of the award that is to be set aside.

6. If and to the extent that the arbitral tribunal has failed to decide on one or more 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) has been rendered, or the request for an additional award mentioned in article 1061(1) has wholly or partially been rejected.

7. By way of derogation from the provisions of article 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 rejection, as referred to in article 1061(5). If the parties have agreed to apply the provisions of 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 notification of rejection referred to in article 1061(5). The provisions of the first and second sentence shall apply accordingly to the correction of the award referred to in article 1060.

Article 1065a

1. The Court of Appeal may, at the request of a party or on its own initiative, 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 re-opening 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 a decision.

3. If the arbitral tribunal deems it possible to nullify the ground for setting aside, it shall accordingly render an arbitral award which shall replace the arbitral award against which an application for setting aside has been made.

4. After suspension of the setting aside proceedings, the Court of Appeal shall, taking into account the circumstances, 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 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 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 of the district of the seat of arbitration within three months after the fraud or forgery of documents has become known or the party has obtained the new records. The provisions of article 1066 shall apply accordingly.

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

Section Six. Arbitral Award on Agreed Terms

Article 1069

1. If, during arbitral proceedings 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.

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 (5), 1035(2) and 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 to proceedings instituted by way of petition 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 and the arbitral tribunal gives its approval, he may, to the extent a written form for a contract, a procedural document, notice, request 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 in court proceedings, unless this is permitted in the latter proceedings. The attainability by these means applies for the time period of the arbitral proceedings, unless the addressee states to change or, to the extent parties have so agreed, 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. The award as referred to in article 1057(2) can also be made electronically by containing an electronic signature as prescribed by article 15a(1) and (2) of Book 3 of the Dutch Civil Code.

4. Instead of a personal appearance of a witness, expert or a party, the arbitral tribunal may determine that the respective person may be in direct contact with 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 act made by electronic means or a brief submitted by electronic means shall be deemed to have been sent at the moment at which the notice has reached a data processor for which the sender bears no responsibility.

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 where they had been left off, unless otherwise agreed by the parties.

4. If the party that has reason to apply for revocation of an arbitral award dies within the time

periods 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 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 B 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

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

The agreement according to 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 according to 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 according to 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 only declare that it has jurisdiction if the requested decision cannot, or not in a timely manner, be obtained in arbitral proceedings.

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. Articles 985 to 991 inclusive shall apply accordingly to the extent that the treaty does not contain deviating provisions and provided that the Court of Appeal shall replace the District Court and the time limit for appeal in cassation shall be 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:

- (a) absence of a valid arbitration agreement under the law applicable thereto;
- (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 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;
- (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 with the mandate is not serious. Nor shall the ground mentioned in paragraph (1)(A)(c) 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 it that the arbitral tribunal did not comply with 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. Articles 985 up to and including 991 shall apply accordingly, provided that the Court of Appeal shall replace the District Court; the time limit for appeal in cassation shall be three months, and no records need to 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.

8. 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 articles 1066(2) up to and including (6) shall apply accordingly when recognition or enforcement is sought in the Netherlands.

CIVIL CODE

BOOK THREE: PROPERTY LAW IN GENERAL

Title Eleven. Rights of action

Article 316

1. The prescription period of a right of action is interrupted as soon as a legal claim is brought to court by the person entitled to do so as well as by any other legal action from this person instituted in the required form.

2. When a filed legal claim is rejected by the court, the prescription period will only have been interrupted if, within six months after the legal proceedings have ended due to a final and binding decision or because of another reason for its ending, a new legal claim is filed which is awarded after all by the court. If a legal action is withdrawn, then it has not interrupted the prescription period.

3. The prescription period is also interrupted by an act to obtain a binding third-party ruling, provided that this act is reported with convenient speed to the opposite party and that it results in a binding advice. When no binding advice is obtained, paragraph 2 applies accordingly.

4. The prescription period of a right of action is also interrupted by a legal claim brought to court that is not awarded, if:

(a) the arbitral tribunal has declared it lacks jurisdiction on the ground mentioned in article 1052(5) of the Code of Civil Procedure, and its decision has become final; or

(b) the court has declared it lacks jurisdiction on the ground mentioned in article 1022(1), 1067 or 1074d of the Code of Civil Procedure, and its decision has become final.

Article 319

1. When a prescription period for a right of action is interrupted in another way than by the start of a legal action that ultimately has been awarded by the court, then a new prescription period starts to run as of the day following the day of interruption. When a binding third-party ruling has resulted in a binding advice, then the new prescription period starts to run as of the day following the one on which the binding advice has been given to the parties.

2. The new prescription period has the same duration as the original, yet not longer than five years. Nevertheless the prescription will never set in earlier than the moment on which the original period would have expired without interruption.

3. When a prescription period for a right of action is interrupted on the ground of article 316(4), a new prescription period starts to run as of the day following the day of the decision becomes final. The new prescription period has the same duration as the original, yet not longer than five years. Nevertheless the prescription will never set in earlier than the moment on which the original period would have expired without interruption.

Title Five. Agreements in general

Section Three. General terms and conditions

Article 236

In a contract between a user and the other party, who is an individual not acting in the conduct of a business or profession, the following stipulations contained in general terms and conditions are deemed to be unreasonably onerous; a stipulation which

(a) totally and unconditionally excludes that other party's right to claim the performance by the user of the promised performance;

(b) limits or excludes the other party's right to set the contract aside, as provided by Section 5 of Title 5;

(c) limits or excludes the right which, pursuant to the law, the other party has to suspend performance or which gives the user a more extensive power of suspension than that to which he is entitled pursuant to the law;

(d) permits the user himself to determine the question whether he has failed in the performance of one or more of his obligations, or which makes the exercise of the rights which, pursuant to the law, the other party has on account of such failure, dependent upon the condition that the other party must first have taken legal action against a third person;

(e) provides for the other party granting to the user prior consent to the transfer of his obligations under the contract to a third person in a manner referred to in Section 3 of Title 2, unless the other party is entitled to set the contract aside at any time, or the user is liable towards the other party for performance by the third person, or the transmission takes place in connection with the transfer of a business to which both those obligations and the rights stipulated in exchange therefor belong;

(f) is intended to exclude or limit rights or defences which the other party could use, pursuant to the law, against a third person in the event that rights of the user under the contract are transferred to that third person;

(g) shortens a legal prescription period or absolute time limit, as the case may be, within which the other party must exercise any right, to a period of less than one year;

(h) where, on the performance of the contract, damage is caused to a third person by the user or by a person or thing for which he is liable, obliges the other party, either to repair the third person's damage or, in his relationship with the user, to accept a larger share than that required of him by law;

(i) gives the user the right to increase, within three months from entry into the contract, the price stipulated, unless in that case the other party is entitled to terminate the contract;

(j) leads to the automatic extension or renewal of a contract for a fixed term or to the automatic extension of a contract for an indeterminate period for the regular delivery of things, including electricity, and not including daily papers, newspapers, and weekly papers and periodicals, or of the regular performance of services, without the other party having the right to at any time give notice of termination of the extended contract with a term of notice not exceeding one month;

(k) excludes or limits the right of the other party to provide evidence or modifies the apportionment of the burden of proof under the law to the detriment of the other party, either because it contains a declaration of the other party regarding the adequacy of the performance due or because it requires him to prove that a failure of the user can be attributed to him;

(l) derogates from Article 37 of Book 3 to the detriment of the other party, unless it pertains to the form of the declarations to be made by the other party, or provides that the user may continue to consider the address given to him by the other party as such until a new address has been communicated to him;

(m) provides for the election by the other party of an address while at the time of entry into the contract he has his real address in a municipality in the Netherlands, save where the other party may in the future not have such a known real address in that municipality unless the contract pertains to registered property and the address elected is at the office of a notary;

(n) provides for dispute resolution by a person other than the court having jurisdiction under the law, unless it allows the other party a period of at least one month from the date when the user has invoked the stipulation in writing against the other party, to opt for dispute resolution by the court having jurisdiction under the law;

(o) excludes or limits the right of the other party to give notice of termination of a contract which was concluded orally, in writing or by electronic means in a corresponding manner;

(p) leads in the case of a contract for the regular delivery of daily papers, newspapers, weekly papers and periodicals to an automatic extension or renewal of the contract with a duration exceeding three months, without the other party having the right to each time give notice of termination of the contract as at the end of the duration of the extension or the renewal with a notice period not exceeding one month;

(q) leads in the case of a contract for the regular delivery of daily papers, newspapers and weekly papers and periodicals to an automatic extension of a contract for an indeterminate duration, without the other party having the right to at any time give notice of termination of the extended contract with a term of notice not exceeding one month or, in the case of regular delivery for less than once a month, with a term of notice not exceeding three months;

(r) obliges the other party to effectuate the giving of notice of a contract as referred to in subparagraph j, p or q, as the case may be, at a fixed moment;

(s) leads to extension of the contract, in the case of a contract with a limited duration which provides for an opportunity to acquaint oneself with daily papers, weekly papers and periodicals.

BOOK TEN: INTERNATIONAL PRIVATE LAW

Title sixteen. Arbitration

Article 166

In deviation from article 154, an arbitration agreement is substantially valid if it is valid in accordance with the law that the parties have chosen or the law of the place of arbitration, or if the parties made no choice of law, in accordance with the law that is applicable to the legal relationship governed by the arbitration agreement.

Article 167

If a state, legal person under public law or state enterprise is a party to an arbitration agreement, it cannot rely on any of its laws or regulations in order to contest its ability or competence to enter into the arbitration agreement or contest the arbitrability of the dispute, in case the other party was unaware of that law or regulation nor should have been aware.
