

Book 10
Arbitration proceedings

Chapter 1
General regulations

Section 1025
Scope of application

- (1) The rules of the present Book are to be applied where the venue of the arbitration proceedings in the sense as defined by section 1043 (1) is located in Germany.
- (2) The stipulations of sections 1032, 1033 and 1050 are to be applied also in those cases in which the venue of the arbitration proceedings is located abroad or has not yet been determined.
- (3) For as long as the venue of the arbitration proceedings has not yet been determined, the German courts shall be competent for exercising the court tasks designated in sections 1034, 1035, 1037, and 1038, provided the defendant or the plaintiff has its registered seat or his habitual place of abode in Germany.
- (4) Sections 1061 to 1065 shall apply to the recognition and enforcement of foreign arbitration awards.

Section 1026
Scope of the activities that a court may pursue

A court may take action in the matters provided for by sections 1025 to 1061 only insofar as provided for by this Book.

Section 1027
Loss of the right to file objections

Insofar as a provision of the present Book, from which the parties to a dispute may deviate, has not been complied with, or a requirement agreed in the arbitration proceedings has not been met, a party that has failed to object to this irregularity without undue delay, or within a period set for such objections, may not assert this objection later. This shall not apply where the party was not aware of the irregularity.

Section 1028
Receipt of written communications by a party whose whereabouts are unknown

- (1) Should the whereabouts of a party or of a person authorised to receive written communications be unknown, such communications shall be deemed to have been received, unless the parties to the dispute agree otherwise, on the date on which they could have been received at the last known postal address or place of business, or at the last known habitual place

of abode of the recipient if mailed properly by registered letter with return receipt, or by any other means providing proof of service.

(2) Subsection (1) is not to be applied to communications sent in court proceedings.

Chapter 2 **Arbitration agreement**

Section 1029 **Definition**

(1) An arbitration agreement is an agreement by the parties that they subject themselves to the decision passed by an arbitral tribunal on all or individual disputes that have arisen between them or may arise in future as regards a specific legal relationship that is contractual or non-contractual in nature.

(2) An arbitration agreement may be concluded in the form of an independent agreement (agreement as to arbitration) or in the form of a clause of an agreement (arbitration clause).

Section 1030 **Eligibility for arbitration**

(1) Any claim under property law may become the subject matter of an arbitration agreement. An arbitration agreement regarding non-pecuniary claims has legal effect insofar as the parties to the dispute are entitled to conclude a settlement regarding the subject matter of the dispute.

(2) An arbitration agreement regarding legal disputes arising in the context of a tenancy relationship for residential space in Germany is invalid. This shall not apply to the extent the residential premises concerned are of the type determined in section 549 subsection (2) numbers 1 to 3 of the Civil Code (Bürgerliches Gesetzbuch, BGB).

(3) Any stipulations of the law outside of the present Book, according to which disputes may not be subjected to arbitration proceedings, or only if specific prerequisites have been met, shall remain unaffected hereby.

Section 1031 **Form of the arbitration agreement**

(1) The arbitration agreement must be set out either in a document signed by the parties, or in letters, telefax copies, telegrams, or other forms of transmitting messages as exchanged by the parties, and that ensure proof of the agreement by supporting documents.

(2) The requirement as to form stipulated by subsection (1) shall be deemed to have been met also in those cases in which the arbitration agreement is contained in a document transmitted by one party to another party, or by a third party to both parties, the content of which document is

regarded, in the event an opposition is lodged late and in accordance with customary standards, to be the content of an agreement.

(3) Where an agreement that is in compliance with the requirements as to form set out in subsection (1) or (2) makes reference to a document containing an arbitration clause, this establishes an arbitration agreement wherever the reference is made such that this clause is included as a component part of the agreement.

(4) (repealed).

(5) Arbitration agreements in which a consumer is involved must be contained in a record or document signed by the parties in their own hands. The written form as set out in the first sentence may be replaced by the electronic form pursuant to section 126a of the Civil Code (Bürgerliches Gesetzbuch, BGB). The record or document, or the electronic document may not contain agreements other than those making reference to the arbitration proceedings; this shall not apply if the agreement is recorded by a notary.

(6) Any failure to comply with formal requirements shall be remedied by an appearance being made, in the hearing before the arbitral tribunal, on the merits of the case.

Section 1032

Arbitration agreement and proceedings brought before the courts

(1) Should proceedings be brought before a court regarding a matter that is subject to an arbitration agreement, the court is to dismiss the complaint as inadmissible provided the defendant has raised the corresponding objection prior to the hearing on the merits of the case commencing, unless the court determines the arbitration agreement to be null and void, invalid, or impossible to implement.

(2) Until the arbitral tribunal has been formed, a petition may be filed with the courts to have it determine the admissibility or inadmissibility of arbitration proceedings.

(3) Where proceedings are pending in the sense as defined by subsection (1) or (2), arbitration proceedings may be initiated or continued notwithstanding that fact, and an arbitration award may be handed down.

Section 1033

Arbitration agreement and preliminary measures taken by the court

An arbitration agreement does not rule out that a court may order, before or after arbitration proceedings have commenced, and upon a party having filed a corresponding petition, that a provisional measure or one serving to provide security be taken with regard to the subject matter of the dispute being dealt with in the arbitration proceedings.

Chapter 3

Formation of the arbitral tribunal

Section 1034
Composition of the arbitral tribunal

(1) The parties may agree on the number of arbitral judges. Absent such agreement, the number of arbitral judges shall be three.

(2) If the arbitration agreement provides for one party to be more strongly represented in the composition of the arbitral tribunal, and this places the other party at a disadvantage, the latter party may file a petition with the court that it appoint the arbitral judge(s) in derogation from the appointment(s) made or the appointment provisions agreed. The petition is to be filed no later than the expiry of two (2) weeks after the party has become aware of the composition of the arbitral tribunal. Section 1032 (3) shall apply mutatis mutandis.

Section 1035
Appointment of arbitral judges

(1) The parties may agree on a procedure for the appointment of one or several arbitral judges.

(2) Unless the parties to the dispute have agreed otherwise, a party shall be bound by the appointment of an arbitral judge that it has made as soon as the respective other party has received the notice of that arbitral judge's appointment.

(3) Absent an agreement by the parties providing for the appointment of the arbitral judges, the court shall appoint the individual arbitral judge, upon a party having filed a corresponding petition, if the parties to the dispute are unable to come to agreement regarding his appointment. In arbitration proceedings in which three (3) arbitral judges are involved, each of the parties shall appoint one (1) arbitral judge; these two (2) arbitral judges shall in turn appoint the third arbitral judge, who shall preside over the arbitral tribunal. Should a party have failed to appoint the arbitral judge within one (1) month of having received a corresponding notice from the other party, or should the two (2) arbitral judges be unable to come to agreement, within one (1) month of their having been appointed, regarding the third arbitral judge, the court is to appoint the third arbitral judge upon a party having filed a corresponding petition.

(4) Where the parties to the dispute have agreed on a procedure for the appointment, and where one party does not adhere to this procedure, or where the parties to the dispute or the two (2) arbitral judges are unable to come to an agreement in accordance with the said procedure, or where a third party does not fulfil the tasks conferred upon it under the procedure, each party may file a petition with the court for it to order the required measure, unless the appointment procedure provides otherwise for ensuring an appointment.

(5) In appointing an arbitral judge, the court is to consider all of the prerequisites required by the parties' agreement for the arbitral judge and is to take account of all aspects by which the appointment of an independent and impartial arbitral judge is ensured. In appointing an individual arbitral judge or a third arbitral judge, the court is to also deliberate the option of whether appointing an arbitral judge of a different nationality than that of the parties might serve the intended purpose.

Section 1036
Recusal of an arbitral judge

(1) A person asked to serve as an arbitral judge is to disclose any and all circumstances that might give rise to doubts as to his impartiality. An arbitral judge is under obligation to disclose such circumstances to the parties without undue delay, also after his appointment and until the close of the arbitration proceedings, if he has failed to so inform them previously.

(2) The appointment of an arbitral judge may be refused only if any circumstances give rise to justified doubts as to his impartiality or independence, or if he does not meet the prerequisites established by the parties. A party may recuse an arbitral judge whom it has itself appointed, or in the appointment of whom it has assisted, only for reasons of which it became aware only after he was appointed.

Section 1037
Recusal procedure

(1) Subject to the provisions made in subsection (3), the parties may agree on a procedure for the recusal of an arbitral judge.

(2) Absent such agreement by the parties, the party intending to recuse an arbitral judge is to submit to the arbitral tribunal its grounds for wishing his recusal in writing, doing so within two (2) weeks of having become aware of the composition of the arbitral tribunal or of a circumstance in the sense as defined by section 1036 (2). Should the arbitral judge so recused refuse to resign from office, or should the other party not consent to the recusal, the arbitral tribunal shall rule on the recusal.

(3) Should the recusal in accordance with the procedure agreed by the parties, or in accordance with the procedure set out in subsection (2) fail to meet with success, the party intending to recuse the arbitral judge may file a petition that the court take a decision on the recusal, doing so within one (1) month of having become aware of the decision by which the recusal was refused; the parties to the dispute may also agree on a different period. For the period during which such a petition is pending, the arbitral tribunal, including the arbitral judge who is to be recused, may continue the arbitration proceedings and may deliver an arbitration award.

Section 1038
Failure to act or impossibility of performing the tasks assigned

(1) Should an arbitral judge be unable to perform the tasks assigned to him, either legally or factually, or should he fail to perform the tasks assigned to him within a reasonable period for other reasons, then his appointment shall end upon his resigning from office or upon the parties to the dispute agreeing on his termination. Where the arbitral judge does not resign, or where the parties to the dispute are unable to agree on his termination, each of the parties may file a petition with the court to obtain a decision as to the termination of the arbitral judge's appointment.

(2) If an arbitral judge resigns in the cases set out in subsection (1) or section 1037 (2), or if a party consents to terminating his appointment as arbitral judge, this does not entail the recognition of the grounds for resignation set out in subsection (1) or section 1036 (2).

Section 1039

Appointment of a substitute arbitral judge

(1) In cases in which the appointment of an arbitral judge ends pursuant to sections 1037 or 1038, or due to his having resigned from office for another reason, or due to his having been recused by agreement of the parties, a substitute arbitral judge is to be appointed. The appointment shall be made in accordance with the rules that were to be applied to the appointment of the arbitral judge for whom a substitute is being appointed.

(2) The parties may make an agreement in derogation herefrom.

Chapter 4

Competence of the arbitral tribunal

Section 1040

Authority of the arbitral tribunal to decide on its own competence

(1) The arbitral tribunal may decide on its own competence, and in this context also regarding the existence or the validity of the arbitration agreement. In this context, an arbitration clause is to be treated as an agreement independent of the other provisions of the agreement.

(2) The objection as to a lack of competence of the arbitral tribunal is to be submitted by no later than the time at which the reply to the request for arbitration is made. A party shall not be prevented from raising such an objection because of its having appointed an arbitral judge, or because of its having assisted in his appointment. The objection as to the arbitral tribunal having exceeded its authorities is to be raised as soon as the matter with regard to which this allegation is being made is discussed in the arbitration proceedings. In either case, the arbitral tribunal may permit such an objection to be raised later if the party raising it provides sufficient excuse for such delay.

(3) Where the arbitral tribunal believes it has competence, it shall rule on an objection raised pursuant to subsection (2) in an interim decision as a matter of principle. In such event, each of the parties may apply for a court decision to be taken, doing so within one (1) month of having received the written notice as to the interim decision. For the period during which such a petition is pending, the arbitral tribunal may continue the arbitration proceedings and may deliver an arbitration award.

Section 1041

Measures of temporary relief

(1) Unless the parties to the dispute have agreed otherwise, the arbitral tribunal may direct, upon a party having filed a corresponding petition, provisional measures or measures serving to

provide security as it deems fit with a view to the subject matter of the litigation. The arbitral tribunal may demand, in connection with such measure, that each of the parties provide reasonable security.

(2) Upon a party having filed a corresponding petition, the court may permit the enforcement of a measure pursuant to subsection (1), unless a corresponding measure of temporary relief has already been petitioned with a court. It may issue a differently worded order if this is required for the enforcement of the measure.

(3) Upon corresponding application being made, the court may reverse or modify the order pursuant to subsection (2).

(4) Should the order of a measure pursuant to subsection (1) prove to have been unfounded from the start, the party that has obtained its enforcement is under obligation to compensate the opponent for the damage it has suffered as a result of the measure being enforced, or as a result of his having provided security in order to avert the enforcement. The claim may be asserted in the pending arbitration proceedings.

Chapter 5 **Implementation of the arbitration proceedings**

Section 1042 **General procedural rules**

(1) The parties are to be accorded equal treatment. Each of the parties is to be given an effective and fair legal hearing.

(2) Attorneys may not be prohibited from acting as attorneys-in-fact.

(3) In all other cases, the parties to the dispute may themselves provide for the procedure, subject to the mandatory stipulations set out in the present Book, or by making reference to existing rules of arbitration.

(4) Absent an agreement by the parties, and in those cases regarding which the present Book does not make any provisions, the procedural rules shall be determined by the arbitral tribunal at its sole discretion. The arbitral tribunal is authorised to decide on the admissibility of the taking of evidence, to so take evidence, and to assess the results at its sole discretion.

Section 1043 **Venue of the arbitration proceedings**

(1) The parties may make an agreement as to the venue of the arbitration proceedings. Absent such agreement, the arbitral tribunal shall determine the venue of the arbitration proceedings. In this context, the circumstances of the case including the suitability of the venue for the parties to the dispute are to be taken into account.

(2) Unless otherwise agreed by the parties to the dispute, the arbitral tribunal may convene, notwithstanding the provisions made in subsection (1), at any venue it deems suitable for a hearing, and may do so in order to examine witnesses, experts, or the parties; for deliberations amongst its members; in order to inspect objects; or in order to review documents.

Section 1044

Commencement of the arbitration proceedings

Unless otherwise agreed by the parties to the dispute, the arbitration proceedings regarding a certain dispute shall commence on the date on which the defendant has received the petition to bring the matter before an arbitral tribunal. The petition must designate the parties as well as the subject matter of the litigation, and it must indicate that an arbitration agreement was concluded.

Section 1045

Language of the proceedings

(1) The parties may agree on the language(s) to be used in the arbitration proceedings. Absent such agreement, the arbitral tribunal shall determine the language of the proceedings. Unless otherwise provided for therein, the agreement of the parties or the determination by the arbitral tribunal shall govern regarding the written declarations submitted by a party, the hearings, arbitration awards, other decisions, and other communications of the arbitral tribunal.

(2) The arbitral tribunal may direct that any evidence submitted in writing must be accompanied by a translation into the language(s) that the parties have agreed on or that the arbitral tribunal has determined.

Section 1046

Request for arbitration and reply to the request for arbitration

(1) Within the period determined by the parties or by the arbitral tribunal, the plaintiff is to present his claim and the facts on which this claim is based, and the defendant is to state his position in this regard. In this context, the parties may submit all documents that they deem significant, or they may designate any other evidence of which they intend to avail themselves.

(2) Unless otherwise agreed by the parties to the dispute, each of the parties may modify or amend its request for arbitration in the course of the arbitration proceedings, or the means of challenge or defence it has submitted; this shall not apply if the arbitral tribunal refuses to admit such modifications or amendments due to insufficient excuse having been provided for the delay with which they are submitted.

(3) Subsections (1) and (2) shall apply mutatis mutandis to any countercharges that may be brought.

Section 1047

Hearing for oral argument; proceedings conducted in writing

(1) Subject to an agreement by the parties having been made, the arbitral tribunal shall decide whether the matter is to be dealt with in oral argument, or whether the proceedings are to be implemented on the basis of documents and other records. Where the parties to the dispute have not ruled out a hearing for oral argument, the arbitral tribunal is to hold such a hearing in the course of a suitable phase of the proceedings should a party file a corresponding petition.

(2) The parties are to be informed in due time of any hearing and any assembly of the arbitral tribunal arranged for the purpose of taking evidence.

(3) The respective other party is to be made aware of any written pleadings, documents, and other communications that a party may submit to the arbitral tribunal, while expert reports and other written evidence on which the arbitral tribunal may base its decision are to be sent to both parties for their information.

Section 1048 **Failure by a party to comply with procedural rules**

(1) Should the plaintiff fail to submit his request for arbitration pursuant to section 1046 (1), the arbitral tribunal shall terminate the proceedings.

(2) Should the defendant fail to reply to the request for arbitration pursuant to section 1046 (1), the arbitral tribunal shall continue the proceedings, without the failure to comply with procedural rules as such being deemed to be an acknowledgment of the assertions made by the plaintiff.

(3) Should a party fail to make an appearance at a hearing for oral argument, or should it fail to produce a document as evidence, the arbitral tribunal may continue the proceedings and may issue the arbitration award based on the insights it has obtained.

(4) Where, according to the conviction of the arbitral tribunal, sufficient excuse has been provided by a party for its failure to comply with procedural rules, such failure shall not be taken into account. In all other cases, the parties to the dispute may agree otherwise as concerns the consequence of a failure to comply with procedural rules.

Section 1049 **Expert appointed by the arbitral tribunal**

(1) Unless otherwise agreed by the parties to the dispute, the arbitral tribunal may appoint one or several experts, who are to prepare a report regarding specific questions determined by the arbitral tribunal. Furthermore, the arbitral tribunal may ask a party to provide the expert with any information serving the purpose intended, or to produce or make available to him for his inspection any and all of the documents or objects that are relevant to the proceedings.

(2) Unless otherwise agreed by the parties to the dispute, the expert is to attend a hearing for oral argument should a party file a corresponding petition, or should the arbitral tribunal believe this to be required, after he has submitted his written or oral report. At the hearing, the parties to the

dispute may ask questions of the expert and may have experts they have themselves retained state their position regarding the matters at issue.

(3) Sections 1036, 1037 subsection (1) and 2 shall apply mutatis mutandis to the experts appointed by the arbitral tribunal.

Section 1050

Support provided by the court in taking evidence and other actions reserved for judges

The arbitral tribunal or, with the consent of the arbitral tribunal, a party may file a petition that the court provide support by taking evidence or by taking any other actions reserved for judges that the arbitral tribunal is not authorised to take. The court shall deal with the petition, unless it deems it to be inadmissible, in accordance with its procedural rules as applying to the taking of evidence or any other actions reserved for judges. The arbitral judges are entitled to attend the court hearing at which evidence is taken and to ask questions.

Chapter 6

Arbitration award and conclusion of the proceedings

Section 1051

Applicable laws

(1) The arbitral tribunal is to decide on the matter in dispute in accordance with the statutory provisions that the parties have designated as being applicable to the content of the legal dispute. Unless the parties to the dispute have expressly agreed otherwise, the designation of the laws or the legal system of a specific state is to be understood as a direct referral to the rules of substantive law of this state, and not to its rules relating to the conflict of laws.

(2) Where the parties to the dispute failed to determine which statutory provisions are to be applied, the arbitral tribunal is to apply the laws of that state to which the subject matter of the proceedings has the closest ties.

(3) The arbitral tribunal is to take its decision based on considerations of what is fair and equitable only if the parties to the dispute have expressly authorised it to do so. The authorisation may be granted up until the time the arbitral tribunal takes such decision.

(4) In all cases, the arbitral tribunal is to decide in accordance with the provisions of the agreement and is to take account of any commercial practices that may exist.

Section 1052

Decision by a panel of arbitral judges

(1) Unless otherwise agreed by the parties to the dispute, each decision taken by the arbitral tribunal in arbitration proceedings involving more than one arbitral judge is to be passed by a majority of the votes cast by all members of the tribunal.

(2) Should an arbitral judge refuse to participate in such a vote, the other arbitral judges may decide on the matter without him, provided that the parties to the dispute have not agreed otherwise. The intention to vote on the arbitration award without the arbitral judge so refusing to participate in the vote is to be communicated to the parties beforehand. In the case of other decisions, the parties to the dispute are to be informed of the refusal to participate in the vote retroactively.

(3) The presiding arbitral judge may decide on individual procedural issues alone if the parties to the dispute or the other members of the arbitral tribunal have correspondingly authorised him to do so.

Section 1053 Settlement

(1) Insofar as, in the course of the arbitration proceedings, the parties to the dispute reach a settlement regarding the dispute, the arbitral tribunal shall terminate the proceedings. Upon corresponding application being made by the parties, it shall record the settlement in the form of an arbitration award, the wording of which has been agreed by the parties, provided that the content of the settlement does not violate public order.

(2) An arbitration award, the wording of which has been agreed by the parties, is to be delivered pursuant to section 1054 and must specify that it is an arbitration award. Such an arbitration award has the same effect as any other arbitration award regarding the dispute.

(3) Insofar as declarations must be recorded by a notary in order to be effective, this requirement shall be replaced by an arbitration award in which the declarations of the parties are included by way of the parties agreeing on its wording.

(4) Provided that the parties consent to this being done, an arbitration award, the wording of which has been agreed by the parties, may also be declared enforceable by a notary having his official residence in the district of the court that is competent for the declaration of enforceability pursuant to section 1062 subsections (1) and (2). The notary shall refuse to make such a declaration of enforceability where the prerequisites of subsection (1), second sentence, have not been met.

Section 1054 Form and content of the arbitration award

(1) The arbitration award is to be delivered in writing and is to be signed by the arbitral judge(s). In arbitration proceedings in which more than one arbitral judge was involved, the signature of the majority of all members of the arbitral tribunal shall correspond to the present formal requirement, provided that the reasons for which a signature is missing are specified.

(2) The reasons for the arbitration award are to be provided unless the parties to the dispute have agreed that no reasons need be provided, or unless the parties have agreed on the wording of the arbitration award in the sense as defined by section 1053.

(3) The arbitration award is to set out the date on which it was delivered and the venue of the arbitration proceedings determined pursuant to section 1043 (1). The arbitration award shall be deemed to have been delivered on that date and at that venue.

(4) An arbitration award signed by the arbitral judges is to be transmitted to each of the parties.

Section 1055 **Effects of the arbitration award**

Amongst the parties, the arbitration award has the effect of a final and binding judgment handed down by a court.

Section 1056 **Termination of the arbitration proceedings**

(1) The arbitration proceedings are terminated upon the final and conclusive arbitration award being delivered, or by the arbitral tribunal issuing an order pursuant to subsection (2).

(2) The arbitral tribunal determines the termination of the arbitration proceedings by issuing an order if:

1. The plaintiff:

a) Fails to submit his request for arbitration pursuant to section 1046 (1) and no case as provided for in section 1048 (4) is given; or

b) Withdraws the request for arbitration unless the defendant enters an opposition and the arbitral tribunal acknowledges that the defendant has a legitimate interest in conclusively resolving the dispute; or

2. The parties to the dispute agree on terminating the proceedings; or

3. The parties to the dispute no longer pursue the arbitration proceedings in spite of a corresponding request having been made by the arbitral tribunal, or it has become impossible for other reasons to continue the proceedings.

(3) Subject to the stipulations of section 1057 (2) and of sections 1058, 1059 (4), the arbitral tribunal's appointment shall end upon the arbitration proceedings having ended.

Section 1057 **Decision as to costs**

(1) Unless the parties to the dispute have agreed otherwise, the arbitral tribunal is to decide, in its arbitration award, on the share of the costs of the arbitration proceedings that the parties to the dispute are to bear, including the costs accruing to the parties that were necessary in order to appropriately file a request for arbitration proceedings or to defend against such a request. In this

context, the arbitral tribunal shall decide after having duly assessed the circumstances while taking account of the circumstances of the individual case, in particular the outcome of the proceedings.

(2) Insofar as the costs of the arbitration proceedings have been established, the arbitral tribunal is to also decide in which amount the parties to the dispute are to bear such costs. Should the costs not have been determined, or should it be possible to determine them only after the termination of the arbitration proceedings, a separate arbitration award shall rule on that matter.

Section 1058 **Correction, interpretation, and amendment of the arbitration award**

(1) Each of the parties may file a petition with the arbitral tribunal that:

1. It correct computation errors, spelling mistakes, or typographical errors, or errors of a similar nature in the arbitration award;
2. It interpret specific parts of the arbitration award;
3. It deliver an amending arbitration award regarding those claims that, while they had been asserted in the arbitration proceedings, were not addressed in the arbitration award.

(2) Unless the parties to the dispute have agreed a different period, the petition is to be filed within one (1) month of the arbitration award having been received.

(3) The arbitral tribunal is to decide on the correction or interpretation of the arbitration award within one (1) month, and on the amendment of the arbitration award within two (2) months.

(4) The arbitral tribunal may correct the arbitration award also without a petition being filed.

(5) Section 1054 is to be applied to the correction, interpretation, or amendment of the arbitration award.

Chapter 7 **Legal remedies against the arbitration award**

Section 1059 **Petition for reversal of an arbitration award**

(1) Only a petition for reversal of the arbitration award by a court pursuant to subsections (2) and (3) may be filed against an arbitration award.

(2) An arbitration award may be reversed only if:

1. The petitioner asserts, and provides reasons for his assertion, that:

- a) One of the parties concluding an arbitration agreement pursuant to sections 1029 and 1031 did not have the capacity to do so pursuant to the laws that are relevant to such party personally, or that the arbitration agreement is invalid under the laws to which the parties to the dispute have subjected it, or, if the parties to the dispute have not made any determinations in this regard, that it is invalid under German law; or that
- b) He has not been properly notified of the appointment of an arbitral judge, or of the arbitration proceedings, or that he was unable to assert the means of challenge or defence available to him for other reasons; or that
- c) The arbitration award concerns a dispute not mentioned in the agreement as to arbitration, or not subject to the provisions of the arbitration clause, or that it contains decisions that are above and beyond the limits of the arbitration agreement; however, where that part of the arbitration award referring to points at issue that were subject to the arbitration proceedings can be separated from the part concerning points at issue that were not subject to the arbitration proceedings, only the latter part of the arbitration award may be reversed; or where the petitioner asserts, and provides reasons for his assertion, that
- d) The formation of the arbitral tribunal or the arbitration proceedings did not correspond to a provision of this Book or to an admissible agreement between the parties, and that it is to be assumed that this has had an effect on the arbitration award; or if

2. The court determines that

- a) the subject matter of the dispute is not eligible for arbitration under German law; or
- b) The recognition or enforcement of the arbitration award will lead to a result contrary to public order.

(3) Unless the parties to the dispute agree otherwise, the petition for reversal must be filed with the court within a period of three (3) months. The period begins on the day on which the petitioner has received the arbitration award. In cases in which a petition has been filed pursuant to section 1058, the period shall be extended by at most one (1) month following receipt of the decision regarding this petition. The petition for reversal of the arbitration award may no longer be filed once a German court has declared the arbitration award to be enforceable.

(4) If the reversal has been petitioned, the court may remand the matter to the arbitral tribunal where appropriate, as petitioned by a party, while reversing the arbitration award.

(5) In cases of doubt, the reversal of the arbitration award will result in the arbitration agreement once again entering into force concerning the subject matter of the dispute.

Chapter 8

Prerequisites for the recognition and enforcement of arbitration awards

Section 1060
Domestic arbitration awards

(1) Compulsory enforcement is an available remedy provided the arbitration award has been declared enforceable.

(2) The petition for a declaration of enforceability to be issued is to be denied, while reversing the arbitration award, if one of the grounds for reversal designated in section 1059 (2) is given. Such grounds for reversal shall not be taken into account insofar as a petition for reversal based on these grounds has been denied, in a final and binding judgment, at the time the petition for declaration of enforceability is received. Grounds for reversal pursuant to section 1059 (2) number 1 also shall not be taken into account if the periods determined in section 1059 (3) have expired, without the respondent having filed a petition for reversal of the arbitration award.

Section 1061
Foreign arbitration awards

(1) The recognition and enforcement of foreign arbitration awards is governed by the Convention of 10 June 1958 on the recognition and enforcement of foreign arbitral awards (published in Federal Law Gazette (Bundesgesetzblatt, BGBl.) 1961 II page 121). The stipulations of other treaties concerning the recognition and enforcement of arbitration awards shall remain unaffected hereby.

(2) Insofar as the declaration of enforceability is to be denied, the court shall determine that the arbitration award is not to be recognised in Germany.

(3) Where the arbitration award is reversed abroad, after having been declared enforceable, a petition may be filed that the declaration of enforceability be repealed.

Chapter 9
Court proceedings

Section 1062
Jurisdiction

(1) The higher regional court (Oberlandesgericht, OLG) designated in the arbitration agreement or, if no such designation was made, the higher regional court in the district of which the venue of the arbitration proceedings is located, is competent for decisions on petitions and applications regarding:

1. The appointment of an arbitral judge (sections 1034, 1035), the recusal of an arbitral judge (section 1037), or the termination of the office as arbitral judge (section 1038);
2. The determination of the admissibility or inadmissibility of arbitration proceedings (section 1032) or regarding the decision of an arbitral tribunal, in which the latter has affirmed its competence in an interim decision (section 1040);

3. The enforcement, reversal, or modification of orders providing for provisional measures or measures serving to provide security by the arbitral tribunal (section 1041);

4. The reversal (section 1059) or the declaration of enforceability of the arbitration award (sections 1060 et seq.), or the reversal of the declaration of enforceability (section 1061).

(2) If no venue for arbitration proceedings has been arranged in Germany in the cases provided for by subsection (1) number 2 first alternative, number 3 or number 4, that higher regional court (Oberlandesgericht, OLG) shall have jurisdiction in the district of which the respondent has his registered seat or his habitual place of abode, or in which assets of the respondent are located, or in which the object being laid claim to by the request for arbitration proceedings, or affected by the measure, is located; as an alternative, the higher regional court of Berlin (Kammergericht, KG) shall have jurisdiction.

(3) In the cases provided for by section 1025 (3), that higher regional court (Oberlandesgericht, OLG) shall have jurisdiction in the district of which the plaintiff or the defendant has his registered seat or his habitual place of abode.

(4) That local court (Amtsgericht, AG) shall be responsible for providing assistance in taking evidence and other actions reserved for judges (section 1050) in the district of which the said action is to be taken.

(5) Where several higher regional courts (Oberlandesgerichte, OLG) have been established in a Land, the Land government is authorised to assign jurisdiction to a specific higher regional court or to the highest Land court, doing so by statutory instrument; the Land government may confer the authorisation upon the Land department of justice (Landesjustizverwaltung), doing so by statutory instrument. Several Länder may agree on the competence of the higher regional court across the boundaries separating them.

Section 1063

General regulations

(1) The court decides by court order. Prior to the decision, the opponent is to be heard.

(2) The court is to order a hearing for oral argument to be held if the reversal of the arbitration award has been petitioned or if grounds for reversal pursuant to section 1059 (2) are conceivable in the case of a petition having been filed for the recognition or declaration of enforceability of the arbitration award.

(3) The presiding judge of the Division for Civil Matters (Zivilsenat) may direct, without having previously heard the opponent, that the petitioner may pursue compulsory enforcement under the arbitration award until a decision has been delivered regarding the petition, or that he is allowed to enforce the provisional measures, or measures serving to provide security, ordered by the arbitral tribunal pursuant to section 1041. Compulsory enforcement under the arbitration award may not extend beyond measures serving to provide security. The respondent is authorised to

avert compulsory enforcement by providing security in that amount in which the petitioner may pursue compulsory enforcement.

(4) For as long as no hearing for oral argument has been arranged, petitions may be filed with the registry for the files of the court, and declarations may be recorded with it.

Section 1064

Special aspects of declaring arbitration awards enforceable

(1) The arbitration award, or a certified copy of same, is to be enclosed with the petition for a declaration of enforceability of an arbitration award. The certification may also be performed by the attorney retained and authorised for the court proceedings.

(2) The court order by which an arbitration award is declared enforceable is to be declared provisionally enforceable.

(3) Subsections (1) and (2) are to be applied to foreign arbitration awards, unless otherwise provided for in treaties.

Section 1065

Appellate remedies

(1) The complaint on points of law is an available remedy against the decisions set out in section 1062 (1) numbers 2 and 4. In all other cases, the decisions delivered in the proceedings designated in section 1062 (1) are incontestable.

(2) The complaint on points of law may also be based on the fact that the decision is based on a violation of a state treaty. Sections 707, 717 shall apply mutatis mutandis.

Chapter 10

Arbitral tribunals not governed by agreements

Section 1066

Application mutatis mutandis of the provisions made in Book 10

The stipulations of the present Book shall apply mutatis mutandis to the arbitral tribunals established, in a manner permissible under statute, by last wills or other rulings not based on an agreement.