CHOOSING GERMANY AS A SEAT FOR YOUR INTERNATIONAL ARBITRATION

Part I: Arbitration – The Preferred Option

Commercial Arbitration is a popular method of dispute resolution for businesses. It enables parties to resolve disputes arising out of even the most complex transactions across different industries, jurisdictions and cultures. It is a consensual method of dispute resolution with a binding outcome.

The last decade has seen extraordinary growth in the use of international arbitration, reflecting enormous changes especially in international trade. Advances in technology and falling trade barriers have led to an expansion of cross-border commercial activities, giving rise, in turn, to greater real or perceived risk. The need to manage this risk by providing for an appropriate dispute resolution mechanism has led many companies to turn to international arbitration.

Factors accounting for the popularity of international arbitration include the prospect of a final and easily enforceable decision, as well as the many options available in terms of the arbitrators themselves and the procedural framework. This freedom even extends to allowing the parties to select their own decision-maker with the requisite expertise. The fact that parties can go some way in resolving their disputes privately, rather than in the public arena, is another factor which makes arbitration so attractive. Finally, in order to ensure neutrality, parties to international transactions usually prefer to avoid the home courts of their counterparties.

Ease of enforcement

Arbitral awards are often easier to enforce in another state than the judgments of national courts. At the time of writing (2015), the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), commonly referred to as the New York Convention, had been ratified by an overwhelming more than 150 states.

Information correct in October 2014. For a current list of parties see:
http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html

By virtue of the New York Convention, arbitral awards can be enforced even in countries where it would be impossible to enforce national court judgments. Where

the assets of a potential defendant are located in another state, arbitration is the obvious choice.

The wide acceptance of the New York Convention is recognised as one of the greatest achievements of public international law. There is not yet a comparable global instrument for enforcing the judgments of national courts abroad. While a complex web of regional and bilateral conventions on the enforcement of national court judgments exists, these conventions are not harmonised and do not apply in as many jurisdictions.

Neutrality

Arbitration is an attractive alternative to litigation before state courts. National courts are perceived by parties as potentially having an inherent national prejudice. They are maintained by the state and are a manifestation of state power. When parties agree to arbitration, they remove their relationship and disputes from the jurisdiction of national courts. By doing so, parties to international cross-border transactions avoid being subject to the home jurisdiction of their counterparties and thereby steer clear of any problems with unfamiliar or unpredictable local court proceedings.

Finality

The decision of the arbitrators is final and binding on the parties, unless otherwise agreed. In most cases, this is the result both of a contractual commitment by the parties and the applicable procedural law at the seat of arbitration. As a rule, an agreement to arbitrate implies that the parties accept strict rules of procedure and exclude the right to appeal to domestic courts, subject to very limited but essential protections. For instance, in many jurisdictions the right to ask for an annulment of the arbitral award on grounds of serious procedural irregularity is mandatory and cannot be excluded, even by agreement of all the parties. By contrast, most jurisdictions do not allow appeals of arbitral awards on fact or law. As a result, arbitration proceedings can often be concluded faster than proceedings before state courts, the decisions of which are generally subject to appeal.

Privacy

Just as state court proceedings are generally public, arbitration is generally private. In the same way that a contract is a confidential matter between the parties, arbitration provides for a platform where parties can resolve their disputes privately. However, this privacy may be lost if one of the parties makes information public (for instance, by informing the media, by challenging an arbitral award in state courts, by providing information to regulatory authorities, etc.). If confidentiality is important to the parties, it might be sensible, to the extent permitted, to include a tailor-made confidentiality clause in the contract.

Party Control and Choice

In an arbitration-friendly legal environment, party autonomy is the ultimate factor in determining the way a dispute is resolved. German arbitration law and the German judiciary are arbitration-friendly. Part III of this brochure sets out the legal framework for arbitration in Germany.

Pro-arbitration legislation is largely permitted and is designed to support and enforce the parties' agreement to arbitrate rather than to intervene. In particular, parties are permitted to substitute their own rules for non-mandatory provisions in domestic law. They are free to choose arbitrators with the required specialisation, and may determine the language of the proceedings. They may agree on details of how to conduct the arbitration proceedings. The parties are also free to allow their arbitration proceedings to be administered by an arbitral institution by incorporating the institution's own arbitration rules into their agreement. However, even in such an arbitration-friendly environment, domestic law will govern arbitration where the parties' agreement does not regulate the details of the arbitration process.

As a general rule, state courts may not intervene in arbitration proceedings and can only be approached by the parties for assistance in certain cases, e.g. for the taking of evidence or challenging an arbitrator. Under German arbitration law, court assistance may be requested only under very limited circumstances.

Part II: Germany, Your Forum of Choice for International Arbitration – First Class Service at a Competitive Price

Choosing the seat of arbitration is an essential factor in ensuring the success of arbitration proceedings. From a legal perspective, mandatory procedural rules at the seat of arbitration to ensure due process, and potential recourse to state courts either during arbitral proceedings or for the recognition and enforcement of arbitral awards, are of particular practical relevance.

Apart from the advantages provided by German arbitration law as a modern procedural framework, practical considerations also play an important role in the selection of an arbitration venue. These include a modern and efficient infrastructure, ease of access for all parties, and the availability of suitable premises for the proceedings. Furthermore, other services such as the provision of technical equipment on site, or the organisation of interpreters, are of paramount importance.

Central Location: At the Crossroads of Europe

Source: Germany Trade & Invest, Economic Overview Germany: Market, Productivity, Innovation www.gtai.com - Cartography: www.fotolia.de, ©Antonio Duarte

Feldfunk

Germany's central location in Europe makes it a hub for goods and services. Germany has particularly benefitted from EU enlargement. As a result, it is the only country among the seven most industrialised nations to have increased its share of world trade since 1995.

Germany has a close-knit network of roads, railway lines and international airports, which guarantees swift travel connections. Frankfurt's centrally located airport is an international hub and the Port of Hamburg is one of the largest container transshipment centers in Europe. Furthermore, Germany boasts an exceptionally well-developed communications infrastructure, guaranteeing coverage nationwide.

The excellence of Germany's infrastructure has been confirmed by a number of recent studies, including the Swiss IMD's World Competitiveness Yearbook and various investor surveys conducted by institutions, including UNCTAD and Ernst&Young. By way of example, the 2014-2015 Global Competitiveness Report of the World Economic Forum (WEF) ranked Germany fifth worldwide ahead of the United Kingdom, Sweden and France. It singled out Germany's extensive infrastructure, praising its highly efficient goods and passenger transportation network.

One Country and a Wealth of Options

In Germany, the most popular seats of arbitration include Frankfurt, Düsseldorf, Cologne, Hamburg, Munich and Stuttgart. Berlin has the potential to become a key arbitration center, as is the case in many other countries, where the capital city is the most important seat.

Clear and Arbitration-Friendly Legislative Framework

General Remarks

At first glance, arbitration may be considered more complex in structure than national court litigation, since a number of regulatory layers apply. However, an arbitration-friendly legal framework places strong emphasis on party autonomy and recognises the parties' choices, respecting the way in which they intend to conduct their dispute. Thus, in those countries with a pro-arbitration stance, such as Germany, arbitration often offers a more flexible platform for resolving disputes, and allows parties to tailor the proceedings to their needs.

The laws and rules relevant to arbitral proceedings include:

- **Procedural law at the seat of arbitration (often called *lex arbitri*):** Usually the law applicable to domestic or international arbitration proceedings at the seat of arbitration, including supportive measures and measures to set aside arbitration awards, will constitute the applicable procedural law. The applicable procedural law thus follows from the parties' choice of seat (or, for example, upon determination by an arbitral institution). For arbitration in Germany, the Tenth Book of the German Code of Civil Procedure (or "ZPO", as abbreviated in German, sections 1025-1066) applies.

- **Procedural rules of arbitration, e.g. rules of an arbitral institution:** Rules of arbitration, institutional or non-institutional, are considered to have contractual force and do not technically constitute statutory law. However, in practice they play an important role in the conduct of arbitration proceedings. This is because only few provisions of the applicable procedural law are typically mandatory. In practice, parties often make use of the flexibility offered by the arbitral system by agreeing on alternatives. The German ZPO provides generous scope for parties to reach deviating agreements.

- **Law governing the substance or merits of the dispute:** The law governing the substance or merits of the dispute is the law that the arbitral tribunal will apply to determine the outcome of the dispute. This law, in practice, is very often selected by the parties in their contract. The law applicable to the merits of the dispute may, but does not have to be, the law of the country where the arbitration takes place. Accordingly, parties may select the seat of the

arbitration as Germany without agreeing that German law applies to the merits of the dispute.

- **Law governing enforcement measures:** The law applicable in the state where enforcement is requested will govern the enforcement proceedings (exequatur and forced execution). In Germany, the ZPO allows for easy enforcement of arbitral awards. The authority of the arbitrators is founded in the parties' contractual agreement to arbitrate. The arbitrators' powers are set out in the relevant procedural rules and regulations and will therefore differ depending on the choices made by the parties. Equally, the extent to which domestic courts can intervene in arbitral proceedings or provide support depends on the parties' choice of venue.

To help parties exercise their choice, the following sections set out the benefits of choosing a venue in Germany as the seat of an arbitration process.

Legal Framework in Germany

- **Arbitration Act (within the German Code of Civil Procedure)**

As mentioned above, arbitration in Germany is governed by the special legal provisions contained in the Tenth Book of the ZPO (sections 1025-1066). The German Arbitration Act is based on the UNCITRAL Model Law, which it broadly follows both in substance and structure. This makes German arbitration law predictable and convenient for foreign users. The ZPO provisions apply to both domestic and international arbitration and cover commercial matters, as well as other types of disputes, provided that the seat of the arbitration is in Germany. Sections 1025-1066 ZPO are available in English, French, German, Russian and Spanish on the homepage of the DIS.

The provisions of the German Arbitration Act apply in the absence of an agreement between the parties to depart from these provisions (to the extent legally permitted). They are self-contained and provide a complete framework for the conduct of arbitration proceedings. The provisions of the Tenth Book of the ZPO may therefore be used as a procedural framework for "ad-hoc" arbitration proceedings.

In practice, in their arbitration agreement, parties often decide to adopt the rules of an arbitral institution (for instance the Deutsche Institution für Schiedsgerichtsbarkeit (DIS) = German Institution of Arbitration) as the procedural framework for their arbitration. German law fully recognises the effect of such agreements. Only very few provisions of the German Arbitration Act are mandatory.

See Appendix A for more information on the ZPO provisions governing arbitration proceedings.

There are no laws or rules restricting the involvement of foreign lawyers in arbitration proceedings in Germany. It is therefore not necessary, but is nevertheless common, to hire a lawyer admitted to the German Bar.

- **International Conventions**

Germany ratified the New York Convention in 1961 without any reservation of reciprocity. Germany is also a party to a number of treaties, including the European (Geneva) Convention on International Commercial Arbitration of 1961 and the Agreement Relating to the Application of the European (Geneva) Convention on International Commercial Arbitration of 1962.

Arbitral Institutions/Seat of Arbitration in Germany

Germany may be selected as the seat of arbitration proceedings conducted under the rules of an arbitration institution located in or outside Germany, such as, for instance, the International Chamber of Commerce (ICC). In practice, parties often agree on Germany as the seat of an international arbitration process for good reason.

The most commonly applied institutional rules for arbitration in Germany are the DIS Arbitration Rules. These can be used for resolving disputes on any scale, in any sector and by parties from any part of the world, both in the context of domestic and international arbitration. They are available in German, English, French, Spanish, Russian, Arabic, Chinese and Turkish on the DIS website. The DIS also offers a wide range of consensual dispute resolution services for commercial disputes (mediation,

adjudication, expert determination, expertise, conciliation). Since 2008, the DIS has hosted a Court of Arbitration for Sport devoted to the resolution of sports-related disputes.

In addition, Germany is home to a number of specialised arbitral institutions which each have their own set of rules, for example (in alphabetical order), the Arbeitsgemeinschaft Bau- und Immobilienrecht (ARGE Baurecht), Chinese European Arbitration Centre (CEAC), Deutscher Beton- und Bautechnik-Verein e.V. (DBV), Deutsche Gesellschaft für Baurecht e.V.), German Association of Wholesale Traders in Oils, Fats and Oil Raw Materials (GROFOR), German Coffee Association at the Hamburg Chamber of Commerce, German Maritime Arbitration Association (GMAA), Grain Traders Association of the Hamburg Exchange (VdG), and Waren-Verein der Hamburger Börse e.V.

Furthermore, many of Germany's chambers of commerce have their own arbitration rules (Germany has no central chamber of commerce – 80 separate chambers form the German Association of Chambers of Commerce and Industry, DIHK). Some of them refer to the DIS Arbitration Rules and select the DIS as the administrative body. Others maintain their own arbitral institution, such as the Düsseldorf and Hamburg chambers of commerce. In addition, many of the German overseas chambers of commerce (so-called "Auslandshandelskammern" or AHKs) operating under the auspices of the Association of German Chambers of Commerce and Industry (DIHK) administer arbitration proceedings under their own arbitration rules.

See Appendix B for contact details of the above arbitral institutions.

Neutral Forum for International Disputes

With its experienced, arbitration-friendly, comparatively fast and inexpensive state courts, Germany offers the judicial environment necessary for efficient and successful arbitral proceedings. German courts are supportive of arbitration and are reluctant to intervene in arbitral proceedings except in circumstances provided for under the German Arbitration Act.

- **Support of arbitration by the German judiciary**

Court intervention is limited to the areas set forth in the German Arbitration Act. In addition, where court intervention is permitted, restrictions apply in respect of the right to appeal against the resulting judgments. This minimises potential disruption caused by judicial intervention (section 1065 ZPO). German state courts are generally willing to support arbitral proceedings by exercising the powers granted to them to issue certain orders (e.g. section 1050 ZPO, which relates to the taking of evidence). Finally, where state court intervention becomes necessary, parties can generally count on speedy and relatively inexpensive proceedings.

With very few exceptions, the courts competent to hear matters relating to arbitration are the Higher Regional Courts ("Oberlandesgerichte"), acting as courts of first instance (section 1062 ZPO). Granting jurisdiction for arbitration-related matters to the few Higher Regional Courts of the German judicial system ensures consistently arbitration-friendly decisions. It should be noted that the parties' choice of seat for the arbitration will determine which Higher Regional Court exercises jurisdiction.

See DIS database for German court decisions pertaining to arbitration-related matters.

- **Supervision of Arbitrators and their Awards**

Each arbitrator must be impartial and independent. German state courts may review decisions rejecting challenges against arbitrators and, in practice, they make use of their powers to remove arbitrators who are not impartial, thereby performing a useful supervisory role.

At the end of an arbitration procedure, the arbitration tribunal renders the final award. In principle, this award cannot be appealed. It is, however, possible to seek an annulment of the award before the state courts, or to resist enforcement of the award on very limited grounds. German state courts have a consistently good track record with respect to the enforcement of arbitral awards rendered in Germany and abroad.

High Quality of the Legal Profession

Excellence and efficiency are trademarks of German legal culture. Germany is home to a highly skilled and world-renowned legal profession, which includes arbitrators,

judges, legal advisors and, in particular, a large number of international litigation and arbitration lawyers. Most of them are members of the German Institution of Arbitration (DIS) and are listed on the DIS website.

High Profile Arbitral Infrastructure

Germany boasts a sophisticated infrastructure for arbitral proceedings, whether institutional or ad-hoc. This benefits not only the parties, but also their counsel and the arbitrators themselves. Every commercial centre and major city in Germany is easily accessible by high-speed train or by plane. Berlin, Düsseldorf, Frankfurt, Hamburg, Munich and Stuttgart all boast international airports. The German Institution of Arbitration (DIS) may be contacted for support concerning the organisation of arbitral hearings in Germany (location, court reporters, translators, interpreters, etc.). This service is free of charge.

Flexible Schemes for Legal Fees

German law firms mostly bill on the basis of the time spent on a particular case. The hourly rates of law firms in Germany tend to be lower than those in many other sophisticated jurisdictions in the global market. More importantly, teams are relatively small by international standards (mostly no more than one partner, one senior associate and one junior associate, depending on the complexity of the case). Hiring a smaller team of highly qualified, skilled and efficient lawyers usually results in significant cost savings.

Alternative fee arrangements may be agreed, depending on the circumstances of the case. Possible agreements include blended hourly rates, fixed hourly rates for certain parts of the proceedings or the entire case, and – to the limited extent permitted by law – partial no-win-no-fee arrangements.

Precise cost monitoring and thorough documentation of the work invested in a case are standard practice in Germany.

Appendix A: German Arbitration Act
Appendix B: Arbitral Institutions in Germany

Appendix A: German Arbitration Act

I. Overview

The German Arbitration Act comprises the Tenth Book of the German Code of Civil Procedure (ZPO) and entered into force on 1 January 1998. It applies to all arbitral proceedings having their seat in Germany, provided that the relevant arbitration agreement was entered into after 1 January 1998. The provisions of the Tenth Book apply regardless of whether the parties reside in or are domiciled in or outside Germany.

The German Arbitration Act is largely based on the UNICITRAL Model Law on International Commercial Arbitration of 1985 (UNCITRAL Model Law) and thus reflects international standards in the field of arbitration.

Party autonomy is one of the key underpinnings of international arbitration. Consistent with this concept, most provisions of the German Arbitration Act are not mandatory. To this extent, the German Arbitration Act may be considered a set of default rules applicable where parties have not agreed on their own rules governing a particular issue – either in their own arbitration agreement or, more commonly, as a result of agreeing on a set of institutional rules. The few limits imposed by mandatory provisions in the German Arbitration Act are intended to safeguard the principle of due process – in particular, that the parties are treated equally and that each side has the opportunity to present its case.

Noteworthy features of the German Arbitration Act include the following:

- Formal requirements for arbitration agreements: Section 1031 ZPO requires that the arbitration agreement must be in writing. In effect, this means that the arbitration agreement must either be (i) contained in a single document signed by the parties; (ii) made by an exchange of communications evidencing the agreement; (iii) contained within a document sent from one party to another – or by a third party to both parties – in circumstances where no timely objection is raised and the contents of such document are considered to be part of the contract in accordance with common usage; (iv) a written contract referring to a document containing an arbitration clause where such reference makes that agreement part of the contract; or (v) a bill of lading containing an express reference to an arbitration clause in a charter party. As a general rule, arbitration involving consumers must be contained in a document personally signed by the parties (section 1031 ZPO). It should be noted, however, that a lack of compliance with these formal requirements may be remedied at a later stage by an appearance being made, in the hearing before the arbitral tribunal, on the merits of the case.

- Types of disputes subject to arbitration: The notion of "eligibility for arbitration" as set forth in the ZPO is broad and, indeed, consistent with most progressive arbitration jurisdictions. Specifically, any claims involving an “economic interest” may, according to section 1030 ZPO, be subject to arbitration. The scope is therefore fairly broad, as this also includes, for

instance, rights of revocation and rights to injunctive relief that serve an economic interest. Furthermore, claims that do not involve an economic interest can be arbitrated as well, provided that the parties are legally entitled to conclude a settlement on the disputed issue(s).

- Enforcement of the arbitration agreement by the courts: Under Section 1032 ZPO, the state courts are obligated to reject an action as inadmissible if such action pertains to a matter that is covered by an arbitration agreement and the respondent raises an objection to court jurisdiction prior to commencement of the hearing on the merits. An exception applies, however, where the court finds that the arbitration agreement is null and void, invalid or impossible to implement.

- Arbitrator appointments: Where the parties have failed to agree on the manner in which the arbitrators are to be appointed, section 1035 ZPO provides that such issue may be referred to a state court. Unless the parties have agreed otherwise, section 1034 ZPO foresees a tribunal comprising three arbitrators. If the parties do not agree on the number of arbitrators and manner of the appointment, a sole arbitrator will – by request of one of the parties – be appointed by the court. Where the arbitral tribunal consists of three arbitrators, each party shall appoint one arbitrator. Both of these so-called party-appointed arbitrators shall in turn attempt to agree on the third arbitrator, i.e. the chairman. If a party has failed to appoint its arbitrator within a month, or the two party-appointed arbitrators have failed to agree on a chairman, the selection shall – upon the request of one of the parties – be made by the court.

- Challenging arbitrators: An arbitrator is at any time obliged to disclose any circumstances likely to give rise to doubts as to his or her impartiality or independence. He or she can be challenged under section 1036 CCP if he or she does not have the qualifications agreed upon by the parties and/or if there are circumstances justifying doubts as to his or her impartiality or independence. If the parties have not agreed on the mechanism for challenge, the procedure set forth in section 1037 ZPO applies. In such case, the party challenging the arbitrator in question must file a written statement containing the reasons for the challenge, which is then submitted to the arbitral tribunal. If the challenged arbitrator does not withdraw voluntarily, the tribunal makes a decision on the challenge. If the challenging party does not prevail before the tribunal, that party may make an application to the court seeking a ruling, usually within one month following notification of the arbitral tribunal's ruling.

- Enforcement of the arbitral award: The enforcement of domestic awards (in other words, those awards rendered in arbitration proceedings with their seat in Germany) may be refused if one or more of the grounds for setting aside an award as set out in section 1059 (2) ZPO exists. These grounds are the same as those set out in Art. V of the New York Convention (see *Appendix A*, above), albeit with some limitations as stipulated in section 1060 ZPO.

In addition to the key elements of the Tenth Book of the Civil Code described above, the German Arbitration Act strongly supports arbitration as a matter of principle, and in some respects goes even further than the UNCITRAL Model Law. For example:

- Broader scope: The German Arbitration Act has a broader scope of application than the provisions of the UNCITRAL Model Law insofar as the German Arbitration Act generally applies – with the exception of provisions relating to the recognition and enforcement of awards – to both "international" and "domestic" commercial arbitration proceedings with their seat in Germany. This means that unlike some other jurisdictions, there is no dual-track mechanism for national and international arbitral proceedings. Furthermore, whereas the UNCITRAL Model Law is limited to "commercial" arbitration, the German Arbitration Act applies irrespective of whether or not the underlying dispute is "commercial".

- Less onerous formal requirements for the arbitration agreement: Compared to the UNCITRAL Model Law, the formal requirements of section 1031 ZPO, which apply for the purposes of determining that an arbitration agreement exists and is valid, are less onerous. For example, section 1031 ZPO provides for deemed consent to arbitration in the case of silence.

- More judicial support, if necessary, for arbitral proceedings: As a general rule, judicial support for arbitral proceedings under the Tenth Book of the Civil Code is more far-reaching than that envisaged by the UNCITRAL Model Law. Most court functions are assigned to the Higher Regional Courts ("Oberlandesgerichte"). This allows jurisdiction over arbitral matters to be concentrated at a limited number of tribunals, making court proceedings more efficient and effectively limiting the scope for decisions rendered by the court to be reviewed. Court assistance under section 1050 ZPO also goes further than that foreseen under the UNCITRAL Model Law insofar as it includes not only the taking of evidence but "other judicial acts", such as service of process. Furthermore, in the area of interim measures, section 1041 ZPO contains additional provisions designed to facilitate enforcement by the state courts of interim relief measures ordered by the arbitral tribunal. In particular, the state court may recast an interim measure of the arbitral tribunal in order to compel enforcement.

II. Tenth Book of the Code of Civil Procedure

Arbitration Procedure
Sections 1025 - 1066

Chapter I
General provisions

Section 1025 Scope of application

(1) The provisions of this Book apply if the seat of arbitration as referred to in section 1043 subs. 1 is situated in Germany.

(2) The provisions of sections 1032, 1033 and 1050 also apply if the seat of arbitration is situated outside Germany or has not yet been determined.

(3) If the seat of arbitration has not yet been determined, the German courts are competent to perform the court functions specified in sections 1034, 1035, 1037 and 1038 if the respondent or the claimant has his place of business or habitual residence in Germany.

(4) Sections 1061 to 1065 apply to the recognition and enforcement of foreign arbitral awards.

Section 1026 Extent of court intervention

In matters governed by sections 1025 to 1061, no court shall intervene except where so provided in this Book.

Section 1027 Loss of right to object

A party who knows that any provision of this Book from which the parties may derogate or any agreed requirement under the arbitral procedure has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, may not raise that objection later.

Section 1028 Receipt of written communications in case of unknown whereabouts

(1) Unless otherwise agreed by the parties, if the whereabouts of a party or of a person entitled to receive communications on his behalf are not known, any written communication shall be deemed to have been received on the day on which it could have been received at the addressee's last-known mailing address, place of business or habitual residence after proper transmission by registered mail/return receipt requested or any other means which provides a record of the attempt to deliver it there.

(2) Subsection 1 does not apply to communications in court proceedings.

Chapter II
Arbitration agreement

Section 1029 Definition

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of a separate agreement ("separate arbitration agreement") or in the form of a clause in a contract ("arbitration clause").

Section 1030 Eligibility for arbitration

(1) Any claim involving an economic interest ("vermögensrechtlicher Anspruch") can be the subject of an arbitration agreement. An arbitration agreement concerning claims not involving an economic interest shall have legal effect to the extent that the parties are entitled to conclude a settlement on the issue in dispute.

(2) An arbitration agreement relating to disputes on the existence of a lease of residential accommodation within Germany shall be null and void. This does not apply to residential accommodation as specified in section 549 subs. 1 to 3of the Civil Code.

(3) Statutory provisions outside this Book by virtue of which certain disputes may not be submitted to arbitration, or may be submitted to arbitration only under certain conditions, remain unaffected.

Section 1031 Form of arbitration agreement

(1) The arbitration agreement shall be contained either in a document signed by the parties or in an exchange of letters, telefaxes, telegrams or other means of telecommunication which provide a record of the agreement.

(2) The form requirement of subsection 1 shall be deemed to have been complied with if the arbitration agreement is contained in a document transmitted from one party to the other party or by a third party to both parties and - if no objection was raised in good time - the contents of such document are considered to be part of the contract in accordance with common usage.

(3) The reference in a contract complying with the form requirements of subsection 1 or 2 to a document containing an arbitration clause constitutes an arbitration agreement provided that the reference is such as to make that clause part of the contract.

(4) An arbitration agreement is also concluded by the issuance of a bill of lading, if the latter contains an express reference to an arbitration clause in a charter party.

(5) Arbitration agreements to which a consumer is a party must be contained in a document which has been personally signed by the parties. The written form pursuant to sentence 1 may be substituted by electronic form pursuant to section 126 a of the Civil Code ("Bürgerliches Gesetzbuch – BGB"). No agreements other than those referring to the arbitral proceedings may be contained in such a document or electronic document; this shall not apply in the case of a notarial certification.

(6) Any non-compliance with the form requirements is remedied by entering into argument on the substance of the dispute in the arbitral proceedings.

Section 1032 Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if the respondent raises an objection prior to the beginning of the oral hearing on the substance of the dispute, reject the action as inadmissible unless the court finds that the arbitration agreement is null and void, invalid or impossible to implement.

(2) Prior to the constitution of the arbitral tribunal, an application may be made to the court to determine whether or not arbitration is admissible.

(3) Where an action or application referred to in subsection 1 or 2 has been brought, arbitral proceedings may nevertheless be commenced or continued, and an arbitral award may be made, while the issue is pending before the court.

Section 1033 Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a court to grant, before or during arbitral proceedings, an interim measure of protection relating to the subject-matter of the arbitration upon request of a party.

Chapter III
Constitution of arbitral tribunal

Section 1034 Composition of arbitral tribunal

(1) The parties are free to determine the number of arbitrators. Failing such determination, the number of arbitrators shall be three.

(2) If the arbitration agreement grants preponderant rights to one party with regard to the composition of the arbitral tribunal which place the other party at a disadvantage, that other party may request the court to appoint the arbitrator or arbitrators in deviation from the nomination made, or from the agreed nomination procedure. The request must be submitted at the latest within two weeks of the party becoming aware of the constitution of the arbitral tribunal. Section 1032 subs. 3 applies mutatis mutandis.

Section 1035 Appointment of arbitrators

(1) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators.

(2) Unless otherwise agreed by the parties, a party shall be bound by his appointment of an arbitrator as soon as the other party has received notice of the appointment.

(3) Failing an agreement between the parties on the appointment of the arbitrators, a sole arbitrator shall, if the parties are unable to agree on his appointment, be appointed, upon request of a party, by the court. In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator who shall act as chairman of the arbitral tribunal. If a party fails to appoint the arbitrator within one month of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within one month of their appointment, the appointment shall be made, upon request of a party, by the court.

(4) Where, under an appointment procedure agreed upon by the parties, a party fails to act as required under such procedure, or if the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or a third party fails to perform any function entrusted to it under such procedure, any party

may request the court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) The court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. In the case of a sole or third arbitrator, the court shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Section 1036 Challenge of an arbitrator

(1) When a person is approached in connection with his possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to doubts as to his impartiality or independence, or if he or she does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he or she has participated, only for reasons of which he or she becomes aware after the appointment has been made.

Section 1037 Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of subsection 3 of this section.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within two weeks after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 1036 subs. 2, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of subsection 2 of this section is not successful, the challenging party may request, within one month after having received notice of the decision rejecting the challenge, the court to decide on the challenge; the parties may agree on a different time-limit. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Section 1038 Failure or impossibility to act

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he or she withdraws from his office or if the parties agree on the termination. If the arbitrator does not withdraw from his office or if the parties cannot agree on the termination, any party may request the court to decide on the termination of the mandate.

(2) If, under subsection 1 of this section or section 1037 subs. 2, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground for withdrawal referred to in subsection 1 of this section or section 1036 subs. 2.

Section 1039 Appointment of substitute arbitrator

(1) Where the mandate of an arbitrator terminates under section 1037 or 1038 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(2) The parties are free to agree on another procedure.

Chapter IV
Jurisdiction of arbitral tribunal

Section 1040 Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction and in this connection on the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he or she has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers that the party has justified the delay.

(3) If the arbitral tribunal considers that it has jurisdiction, it rules on a plea referred to in subsection 2 of this section in general by means of a preliminary ruling. In this

case, any party may request, within one month after having received written notice of that ruling, the court to decide the matter. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Section 1041 Interim measures of protection

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

(2) The court may, at the request of a party, permit enforcement of a measure referred to in subsection 1, unless application for a corresponding interim measure has already been made to a court. It may recast such an order if necessary for the purpose of enforcing the measure.

(3) The court may, upon request, repeal or amend the decision referred to in subsection 2.

(4) If a measure ordered under subsection 1 proves to have been unjustified from the outset, the party who obtained its enforcement is obliged to compensate the other party for damage resulting from the enforcement of such measure or from his providing security in order to avoid enforcement. This claim may be put forward in the pending arbitral proceedings.

Chapter V
Conduct of arbitral proceedings

Section 1042 General rules of procedure

(1) The parties shall be treated equally and each party shall be given a full opportunity to present his case.

(2) Counsel may not be excluded from acting as authorised representatives.

(3) Otherwise, subject to the mandatory provisions of this Book, the parties are free to determine the procedure themselves or by reference to a set of arbitration rules.

(4) Failing an agreement by the parties, and in the absence of provisions in this Book, the arbitral tribunal shall conduct the arbitration in such manner as it considers appropriate. The arbitral tribunal is empowered to determine the admissibility of taking evidence, take evidence and freely assess such evidence.

Section 1043 Seat of arbitration

(1) The parties are free to agree on the seat of arbitration. Failing such agreement, the seat of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of subsection 1 of this section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for an oral hearing, for hearing witnesses, experts or the parties, for consultation among its members or for inspection of property or documents.

Section 1044 Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent. The request shall state the names of the parties, the subject-matter of the dispute and contain a reference to the arbitration agreement.

Section 1045 Language of proceedings

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Section 1046 Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state his claim and the facts supporting the claim, and the respondent shall state his defence in respect of these particulars. The parties may submit with their statements all documents they consider to be relevant or may add a reference to other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it without sufficient justification.

(3) Subsections 1 and 2 apply mutatis mutandis to counter-claims.

Section 1047 Oral hearings and written proceedings

(1) Subject to agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted on the basis of documents and other materials. Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of taking evidence.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also, any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to both parties.

Section 1048 Default of a party

(1) If the claimant fails to communicate his statement of claim in accordance with section 1046 subs. 1, the arbitral tribunal shall terminate the proceedings.

(2) If the respondent fails to communicate his statement of defence in accordance with section 1046 subs. 1, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations.

(3) If any party fails to appear at an oral hearing or to produce documentary evidence within a set time-limit, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

(4) Any default which has been justified to the tribunal's satisfaction will be disregarded. Apart from that, the parties may agree otherwise on the consequences of default.

Section 1049 Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal. It may also require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents or property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral

report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Sections 1036 and 1037 subs. 1 and 2 apply mutatis mutandis to an expert appointed by the arbitral tribunal.

Section 1050 Court assistance in taking evidence and other judicial acts

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a court assistance in taking evidence or performance of other judicial acts which the arbitral tribunal is not empowered to carry out. Unless it regards the application as inadmissible, the court shall execute the request according to its rules on taking evidence or other judicial acts. The arbitrators are entitled to participate in any judicial taking of evidence and to ask questions.

Chapter VI
Making of award and termination of proceedings

Section 1051 Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law of the State with which the subject-matter of the proceedings is most closely connected.

(3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorised it to do so. The parties may so authorise the arbitral tribunal up to the time of its decision.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Section 1052 Decision making by panel of arbitrators

(1) In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members.

(2) If an arbitrator refuses to take part in the vote on a decision, the other arbitrators may take the decision without him, unless otherwise agreed by the parties. The parties shall be given advance notice of the intention to make an award without the arbitrator refusing to participate in the vote. In the case of other decisions, the parties shall subsequent to the decision be informed of the refusal to participate in the vote.

(3) Individual questions of procedure may be decided by a presiding arbitrator alone if so authorised by the parties or all members of the arbitral tribunal.

Section 1053 Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. If requested by the parties, it shall record the settlement in the form of an arbitral award on agreed terms, unless the contents are in violation of public policy (ordre public).

(2) An award on agreed terms shall be made in accordance with section 1054 and shall state that it is an award. Such an award has the same effect as any other award on the merits of the case.

(3) If notarial certification is required for a declaration to be effective, it will be substituted, in the case of an arbitral award on agreed terms, by recording the declaration of the parties in the award.

(4) An award on agreed terms may, upon agreement between the parties, also be declared enforceable by a notary whose notarial office is in the district of the court competent for the declaration of enforceability according to section 1062 subs. 1, no. 2. The notary shall refuse the declaration of enforceability, if the requirements of subsection 1, sentence 2 are not complied with.

Section 1054 Form and contents of award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 1053.

(3) The award shall state its date and the seat of arbitration as determined in accordance with section 1043 subs. 1. The award shall be deemed to have been made on that date and at that place.

(4) A copy of the award signed by the arbitrators shall be delivered to each party.

Section 1055 Effect of arbitral award

The arbitral award has the same effect between the parties as a final and binding court judgment.

Section 1056 Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with subsection 2 of this section.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when

1. the claimant:

a) fails to state his claim according to section 1046 subs. 1 and section 1048 subs. 4 does not apply, or

b) withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute, or

2. the parties agree on the termination of the proceedings, or

3. the parties fail to pursue the arbitral proceedings in spite of being so requested by the arbitral tribunal or when the continuation of the proceedings has for any other reason become impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of sections 1057 subs. 2, 1058 and 1059 subs. 4.

Section 1057 Decision on costs

(1) Unless the parties agree otherwise, the arbitral tribunal shall allocate, by means of an arbitral award, the costs of the arbitration as between the parties, including those incurred by the parties necessary for the proper pursuit of their claim or defence. It shall do so at its discretion and take into consideration the circumstances of the case, in particular the outcome of the proceedings.

(2) To the extent that the costs of the arbitral proceedings have been fixed, the arbitral tribunal shall also decide on the amount to be borne by each party. If the costs have not been fixed or if they can only be fixed once the arbitral proceedings have been terminated, the decision shall be taken by means of a separate award.

Section 1058 Correction and interpretation of award; additional award

(1) Any party may request the arbitral tribunal

1. to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature,

2. to give an interpretation of specific parts of the award,

3. to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

(2) Unless otherwise agreed by the parties, the request shall be made within one month of receipt of the award.

(3) The arbitral tribunal shall make the correction or give the interpretation within one month and make an additional award within two months.

(4) The arbitral tribunal may make a correction of the award on its own initiative.

(5) Section 1054 shall apply to a correction or interpretation of the award or to an additional award.

Chapter VII
Recourse against award

Section 1059 Application for setting aside

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with subsections 2 and 3 of this section.

(2) An arbitral award may be set aside only if:

1. the applicant shows sufficient cause that:

a) a party to the arbitration agreement referred to in sections 1029 and 1031 was under some incapacity pursuant to the law applicable to him; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereof, under German law; or

b) he or she was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

c) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope

of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted to arbitration, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with a provision of this Book or with an admissible agreement of the parties and this presumably affected the award; or

2. the court finds that

a) the subject-matter of the dispute is not eligible for arbitration under German law; or

b) recognition or enforcement of the award leads to a result which is in conflict with public policy (ordre public).

(3) Unless the parties have agreed otherwise, an application for setting aside to the court may not be made after three months have elapsed. This period of time shall commence on the date on which the party making the application received the award. If a request has been made under section 1058, the time-limit shall be extended by no more than one month from receipt of the decision on the request. No application for setting aside the award may be made once the award has been declared enforceable by a German court.

(4) The court, when asked to set aside an award, may, where appropriate, set aside the award and remit the case to the arbitral tribunal.

(5) Setting aside the arbitral award shall, in the absence of any indication to the contrary, result in the arbitration agreement becoming operative again in respect of the subject-matter of the dispute.

Chapter VIII
Recognition and enforcement of awards

Section 1060 Domestic awards

(1) Enforcement of the award takes place if it has been declared enforceable.

(2) An application for a declaration of enforceability shall be refused and the award set aside if one of the grounds for setting aside under section 1059 subs. 2 exists. Grounds for setting aside shall not be taken into account, if at the time when the application for a declaration of enforceability is served, an application for setting aside based on such grounds has been finally rejected. Grounds for setting aside under section 1059 subs. 2, no. 1 shall also not be taken into account if the time-limits set by section 1059 subs. 3 have expired without the party opposing the application having made an application for setting aside the award.

Section 1061 Foreign awards

(1) Recognition and enforcement of foreign arbitral awards shall be granted in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (Bundesgesetzblatt [BGBl.] 1961 Part II p. 121). The provisions of other treaties on the recognition and enforcement of arbitral awards shall remain unaffected.

(2) If the declaration of enforceability is to be refused, the court shall rule that the arbitral award is not to be recognised in Germany.

(3) If the award is set aside abroad after having been declared enforceable, application for setting aside the declaration of enforceability may be made.

Chapter IX
Court proceedings

Section 1062 Competence

(1) The Higher Regional Court ("Oberlandesgericht") designated in the arbitration agreement or, failing such designation, the Higher Regional Court in whose district the seat of arbitration is situated, is competent for decisions on applications relating to

1. the appointment of an arbitrator (sections 1034 and 1035), the challenge of an arbitrator (section 1037) or the termination of an arbitrator's mandate (section 1038);

2. the determination of the admissibility or inadmissibility of arbitration (section 1032) or the decision of an arbitral tribunal confirming its competence in a preliminary ruling (section 1040);

3. the enforcement, setting aside or amendment of an order for interim measures of protection by the arbitral tribunal (section 1041);

4. the setting aside (section 1059) or the declaration of enforceability of the award (section 1060 et seqq.) or the setting aside of the declaration of enforceability (section 1061).

(2) If the seat of arbitration in the cases referred to in subsection 1, no. 2, first alternative, nos. 3 and 4 is not in Germany, competence lies with the Higher Regional Court ("Oberlandesgericht") where the party opposing the application has his place of business or place of habitual residence, or where assets of that party or the property in dispute or affected by the measure is located, failing which the Berlin Higher Regional Court ("Kammergericht") shall be competent.

(3) In the cases referred to in section 1025 subs. 3, the Higher Regional Court ("Oberlandesgericht") in whose district the claimant or the respondent has his place of business or place of habitual residence is competent.

(4) For assistance in the taking of evidence and other judicial acts (section 1050), the Local Court ("Amtsgericht"), in whose district the judicial act is to be carried out, is competent.

(5) Where there are several Higher Regional Courts ("Oberlandesgerichte") in one Land, the Government of that Land may transfer by ordinance competence to one Higher Regional Court, or, where existent, to the highest Regional Court ("oberstes Landesgericht"); the Land Government may transfer such authority to the Department of Justice of the Land concerned by ordinance. Several Länder may agree on cross-border competence of a single Higher Regional Court.

Section 1063 General provisions

(1) The court shall decide by means of an order. The party opposing the application shall be given an opportunity to comment before a decision is taken.

(2) The court shall order an oral hearing to be held, if the setting aside of the award has been requested or if, in an application for recognition or declaration of enforceability of the award, grounds for setting aside in terms of section 1059 subs. 2 are to be considered.

(3) The presiding judge of the civil division ("Zivilsenat") may issue, without prior hearing of the party opposing the application, an order to the effect that, until a decision on the request has been reached, the applicant may pursue enforcement of the award or enforce the interim measure of protection of the arbitration court pursuant to section 1041. In the case of an award, enforcement of the award may not go beyond measures of protection. The party opposing the application may prevent enforcement by providing as security an amount corresponding to the amount that may be enforced by the applicant.

(4) As long as no oral hearing is ordered, applications and declarations may be put on record at the court registry.

Section 1064 Particularities regarding the enforcement of awards

(1) At the time of the application for a declaration of enforceability of an arbitral award the award or a certified copy of the award shall be supplied. The certification may also be made by counsel authorised to represent the party in the judicial proceedings.

(2) The order declaring the award enforceable shall be declared provisionally enforceable.

(3) Unless otherwise provided in treaties, subsections 1 and 2 shall apply to foreign awards.

Section 1065 Legal remedies

(1) A complaint on a point of law is available against the decisions mentioned under section 1062 subs. 1, nos. 2 and 4. No recourse against other decisions in the proceedings specified in section 1062 subs. 1 may be made.

(2) The complaint on a point of law can also be based on the ground that the decision is based on a violation of a treaty. Sections 707 and 717 apply mutatis mutandis.

Chapter X
Arbitral tribunals not established by agreement

Section 1066 Mutatis mutandis application of the provisions of the Tenth Book

The provisions of this Book apply mutatis mutandis to arbitral tribunals established lawfully by disposition on death or other dispositions not based on an agreement.

Appendix B: Arbitral Institutions in Germany

The fact that Germany hosts a large number of arbitration institutions reflects the country's pro-arbitration culture. The leading arbitral institution in Germany is the DIS (German Institution of Arbitration). Other arbitral institutions operate on a regional basis (such as the arbitral institutions of the Chambers of Commerce) or specialise in certain types of disputes. The most important arbitral institutions in Germany are listed in alphabetical order in each section and sub-section below (see Section B. Arbitral Institutions – General, and Section C. Arbitral Institutions – Specialised).

A. Arbitral Institutions – General

1. DIS – German Institution of Arbitration

Lennéstraße 9
10785 Berlin
Telephone: +49 (0) 30 41 70 70 70 0
Fax: +49 (0) 30 41 70 70 70 7

Beethovenstraße 5 – 13
50674 Cologne
Telephone: +49 (0) 221 28 55 20
Fax: +49 (0) 221 28 55 22 22

Email: dis@dis-arb.de
Web: www.dis-arb.de

2. IHK - Chambers of Commerce

Most of the chambers of commerce (Industrie-und Handelskammern, IHK) in Germany issue arbitration rules. Many of the IHK arbitration rules refer to the DIS as administering body (more than 20). Others maintain their own arbitration bodies. More information can be found on the websites of the chambers. The competent chamber can be found via the search engine available on the website of the Association of German Chambers of Commerce and Industry (Deutscher Industrie- und Handelskammertag, DIHK: http://www.dihk.de/ihk-finder).

B. Arbitral Institutions - Specialised

1. Commodities

German Association of Wholesale Traders in Oils, Fats and Oil Raw Materials (GROFOR)

Adolphsplatz 1 (Börse)
Kontor 24
20457 Hamburg
Telephone: + 49 (0) 40 369879 0
Fax: +49 (0) 40 369879 20
Email: info@grofor.de
Web: http://www.grofor.de

German Coffee Association at the Hamburg Chamber of Commerce

Court of Arbitration of the German Coffee Association at Hamburg Chamber of Commerce
c/o Hamburg Chamber of Commerce
Claudia Toussaint / Christian Graf
Adolphsplatz 1
20457 Hamburg
Telephone: + 49 (0) 40 36 13 8 – 365 or – 344
Fax: +49 (0) 40 36 13 8 533
Email: claudia.toussaint@hk24.de or christian.graf@hk24.de

Grain Traders Association of the Hamburg Exchange (VdG)

Adolphsplatz 1 (Börse)
Kontor 24
20457 Hamburg
Telephone: + 49 (0) 40 36 9879 0
Fax: +49 (0) 40 36 9879 20
Email: info@vdg-ev.de
Web: http://www.vdg-ev.de

Am Weidendamm 1A
10117 Berlin
Telephone: +49 (0) 30 59 00 99 457
Fax: +49 (0) 30 59 00 99 519
Email: tiemann@vdg-ev.de

Waren-Verein der Hamburger Börse e.V.

Große Bäckerstraße 4
20095 Hamburg
Telephone: + 49 (0) 40 37 47 19 0
Fax: +49 (0) 37 47 19 19
Email: info@waren-verein.de
Web: http://www.waren-verein.de

Schlichtungs- und Schiedsgerichtshof deutscher Notare

Deutscher Notarverein
Kronenstr. 73
10117 Berlin
Telephone: +49 (0) 30 20 61 57 40
Telefax: +49 (0) 30 20 61 57 50
Email: kontakt@dnotv.de
Web:
http://www.dnotv.de/Schiedsgerichtshof/Schlichtungs_und_Schiedsgerichtshof_deutscher_Notare.html

2. Construction

Arbeitsgemeinschaft Bau- und Immobilienrecht im Deutschen Anwaltsverein (ARGE Baurecht)

Littenstraße 11
10179 Berlin
Telephone: +49 (0) 30 72 61 52 0
Fax: +49 (0) 3072 61 52 1 90
Email: dav@anwaltverein.de
Web: http://www.arge-baurecht.com

Deutscher Beton- und Bautechnik-Verein e.V. (DBV)

Kurfürstenstraße 129
10785 Berlin
Telephone: +49 (0) 30 236 096 0
Fax: +49 (0) 30 236 096 23
Email: info@betonverein.de
Web: http://www.betonverein.de/

Deutsche Gesellschaft für Baurecht e.V.

Kettenhofweg 126
60325 Frankfurt am Main
Telephone: +49 (0) 69 74 88 93
Fax: +49 (0) 70 60 98 99
Web: http://www.dg-baurecht.de/

3. Maritime

German Maritime Arbitration Association (GMAA)

Willy-Brandt-Str. 57
20457 Hamburg
Telephone: +49 (0) 40 5 700 70 0
Fax: +49 (0) 40 5 700 70 200
Email: info@gmaa.de
Web: http://www.gmaa.de

4. Regional

Chinese European Arbitration Centre (CEAC)

Chinese European Arbitration Centre GmbH
Adolphsplatz 1
20457 Hamburg
Telephone: +49 (0) 40 66 86 40 - 85
Fax: +49 (0) 40 66 86 40 - 699
Email: contact@ceac-arbitration.com
Web: www.ceac-arbitration.com