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Recent Developments in Arbitration in Japan

*Toshio Matsumoto**

In 2003, we experienced some epoch-making events in Japan. First, the new Arbitration Law was promulgated on August 1. Second, the Tokyo Maritime Arbitration Commission (TOMAC) amended its arbitration rules aiming at more user-friendly procedure. Third, the Japan Association of Arbitrators (JAA) was established on October 16.

New Arbitration Law and TOMAC Rules

The arbitration law was replaced by new law which came into force on March 1, 2004. The new Arbitration Law (hereinafter referred to as "the Law") was in principle based on the UNCITRAL Model Law.

The former arbitration law was enacted in 1890 as a part of the former Code of Civil Procedure with insufficient provisions. On the other hand, the new Law contains many non-compulsory and practical provisions. While the former law cited the articles concerning civil procedure, the new Law does not in principle refer to other Japanese laws. Accordingly, arbitrators and other persons concerned hardly need to research Code of Civil Procedure and other Japanese laws in order to conduct the arbitral procedure.

(1) The scope of application

The provisions of the Law, with a few exceptions, apply only if the place of arbitration is in the territory of Japan. The Law applies irrespective of the nature of arbitration : commercial or non-commercial and international or domestic arbitrations (Art. 3).

(2) Intervention by court is same as the Model Law.

As for the extent to which national court can intervene with arbitral proceedings, the Law clearly provides that no court shall intervene except where so provided in the Law (Art. 4).

(3) Arbitration Agreement

According to the Model Law, an arbitration agreement shall be in writing and if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement,

* Executive Director of JSE

an agreement is in writing. Article 13 (2) of the Law modified such provisions of the Model Law as follows:

> "The arbitration agreement shall be in the form of a document signed by all the parties, letters or telegrams exchanged between the parties (including those sent by facsimile device or other communication device for parties at a distance which provides the recipient with a written record of the transmitted content), or other written instrument."

A contract of adhesion such as a Bill of Lading is, as a matter of course, neither a document signed by all the parties nor letters or telegrams exchanged between the parties. Then the Law added "or other written instrument". So, an arbitration clause printed in a Bill of Lading corresponds to "arbitration agreement in writing".

In addition. Article 13(4) allows the arbitration agreement to be electromagnetic records, e.g. e-mail. This is in line with recommendations made by the UNCITRAL Working Group on Arbitration.

(4) Commencement of Arbitral Proceedings and Protecting Time Bar

While the article 21 of the Model Law stipulates only for the commencement of arbitral proceedings, article 29 of the Law provides, in addition, the relation between the commencement of arbitral proceedings and protecting time. Thus, TOMAC Rules provide that an application for arbitration shall protect time when such application has arrived at the office of the JSE, subject to the acceptance thereof by its secretariat. However, if the arbitral proceedings have been terminated for a reason other than the arbitral award, this shall not apply (Art. 7).

(5) Quick Procedure

In recent years it seems that arbitral proceedings take a longer time than ten years ago. We have recognized that sometimes the attorneys for the parties delayed submission of their documents. Fundamentally what all the parties want with the tribunal must be saving of time and money. Furthermore as it is said that the court proceedings have been shortened in general, we have to compete with the court.

a) Timetable of Proceedings

Article 24 of the Rules provides as follows:

> (1) An arbitral tribunal shall require the parties to confirm the issues to be determined, evidence to be filed, timetable, etc. at the first oral hearing. If no oral hearing is held, such confirmation shall be made in accordance with the statement of claim, the defense and other statements.
>
> (2) The tribunal and parties shall as a rule make an attempt to facilitate the arbitral

proceedings in accordance with the said confirmation.

I believe that this provision will be useful and effective for rapid proceedings in order to satisfy parties' needs.

b) Documents only proceedings

According to the Law, it is clear that oral hearings need not be held by the tribunal unless the parties so required. TOMAC proceedings may be made on documents only irrespective of the amount of claims (Art. 22).

c) Challenge of Arbitrators

Further if an arbitrator is challenged TOMAC shall constitute an Arbitrator Challenge Committee of three persons whom TOMAC will appoint. This Committee shall carry out its duty to decide the question within 30 days of the establishment of the Committee (Art. 20).

(6) Appointment of Arbitrators

Each party shall nominate an arbitrator from among the persons who are listed on the Panel of TOMAC Arbitrators and who have no connection with either of the parties or with the matter in dispute. And then two persons thus nominated shall nominate a third arbitrator (Art. 15). In the near future we are going to include some non-Japanese arbitrators in the Panel of Arbitrators. When a party nominates a person as its arbitrator residing outside Japan, the traveling charge for it shall be paid by such party.

(7) Recovery of Attorney's Fee

TOMAC Rules introduced a new provision (Art. 44(2)). If a party applied for recovery from the other party of its attorneys' fee and other procedural costs of the arbitration, the Tribunal, may in the arbitral award or by a separate order, permit such recovery to a reasonable extent, taking into consideration of the contents of the arbitral award.

Generally speaking, Japanese people are not familiar with such recovery and the new Law does not mention this matter. However, as the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the arbitral proceedings, provided it shall not violate the provision of this Law relating to public policy (Art. 26 of the Law), the TOMAC Rules so provide.

(8) Settlement

The Law provides that an arbitral tribunal or one or more arbitrators designated by it may attempt to settle the dispute in the arbitral proceedings, if consented by both parties

(Art. 38). Model Law does not have such provision. And the TOMAC Rules provided that the tribunal may, at any stage of the arbitral proceedings, mediate between the parties for the whole or a part of the dispute. In case mediation fails, the tribunal resumes the arbitration proceedings, provided that it must not issue an award based on any of the information it gained during the mediation proceedings (Art. 32).

Those who did not recognize the usefulness of such proceedings told me that arbitrators should not become mediators. But my experience makes it clear that such combination of arbitration and mediation has very often resulted in success.

(9) Med-arb or Arb-med

TOMAC introduced the med-arb system in 2001(Art. 8). In almost all cases, however, the parties to disputes who had applied for TOMAC arbitration did not want to settle by mediation at the beginning of the arbitral proceedings. Usually disputants come to the TOMAC after the long time negotiations. Once the parties decided to apply for arbitration, they do not like mediation any longer.

Generally speaking, Japanese people are apt to do their utmost to settle amicably their disputes through the negotiations with other party even if they are non-Japanese parties, and rarely resort to arbitration or ADR nor litigation. However, I often heard that it took a very long time for such amicable settlement. So, businesspersons are requested to understand merits of med-arb.

Before the new Arbitration Law was enacted, some Japanese people said that there were very few arbitration cases in Japan because of the old arbitration law. But that may be a mere excuse for their being idle. I think that we have to aim at arbitration of high quality.

Japan Association of Arbitrators

A number of arbitration practitioners, lawyers and professors established the Japan Association of Arbitrators (hereinafter referred to as “JAA”) on October 16, 2003. One of the main activities of JAA is education and training of candidates of arbitrators and other ADR neutrals. I expect a lot of trained arbitrators will be born in due course in Japan.

Lastly I am confident that as far as the maritime arbitrators are concerned, they can now efficiently and effectively handle cases with the assistance of the TOMAC secretariat.

■

THE RULES OF ARBITRATION OF TOKYO MARITIME ARBITRATION COMMISSION (TOMAC) OF THE JAPAN SHIPPING EXCHANGE, INC.

[ORDINARY RULES]

Made 13th September, 1962
Last amended 25th November, 2003
In force 1st March, 2004

Article 1. [Purpose of these Rules]
These Rules apply to arbitrations to be held at The Japan Shipping Exchange, Inc. (hereinafter referred to as "JSE").

Article 2. [Arbitral Tribunal]
(1) Arbitration described in the preceding Article shall be performed by the Arbitral Tribunal (including the case of a sole arbitrator, hereinafter referred to as "the Tribunal") to be constituted by arbitrators appointed in accordance with Article 15 or 16 hereof.
(2) The Tribunal shall perform arbitration independently of JSE and the Tokyo Maritime Arbitration Commission (hereinafter referred to as "TOMAC").
(3) The Tribunal may continue the arbitral proceedings notwithstanding the assertion by a party of the invalidity or non-existence of the arbitration agreement. In such a case, the Tribunal may determine prior to the arbitral award that the arbitration agreement is valid.

Article 3. [Relation between an Arbitration Agreement and these Rules]
Where the parties to a dispute have, by an arbitration agreement entered into between them or by an arbitration clause contained in any other contract between them, stipulated that any dispute shall be referred to arbitration of JSE or arbitration in accordance with its rules, these Rules (or such version of these Rules in force at the time the application for arbitration is referred) shall be deemed to constitute part of such arbitration agreement or arbitration clause.

Article 4. [Secretariat of Arbitration]
The Secretariat of JSE shall assume and conduct for TOMAC or the Tribunal all

administrative matters provided for in these Rules or directed by TOMAC or the Tribunal.

Article 5. [Documents to be Filed for Application for Arbitration]

(1) Any party desirous to apply for arbitration (hereinafter referred to as "the Claimant") shall file with the Secretariat the following documents:
   1. The Statement of Claim;
   2. A document evidencing the agreement that any disputes shall be referred to arbitration of JSE or arbitration in accordance with its rules;
   3. Documentary evidence in support of the claim, if any;
   4. Where the Claimant is a body corporate, a document evidencing the capacity of its representative;
   5. Where an agent or attorney is nominated by the Claimant, a document empowering that person to act on behalf of the Claimant.

(2) The documents under the preceding Article shall be submitted in the number of copies as instructed by the Secretariat.

Article 6. [Particulars to be Specified in Statement of Claim]

The following items must be included in the Statement of Claim:

1. The names and addresses of the parties (in case of a body corporate, the address of its head office or main place of business, its legal name, the name of its representative and such representative's capacity);
2. The relief or remedy sought and grounds thereof.

Article 7. [Acceptance of Application for Arbitration]

(1) Where the Secretariat has acknowledged that the application for arbitration conforms with the requirements of the preceding two Articles, the Secretariat shall accept it, provided that where special circumstances are acknowledged, the Secretariat may accept the application for arbitration on condition that the documents required in items 3, 4, or 5 of Article 5 shall be filed later.

(2) Where an application for arbitration is accepted under the preceding paragraph, a claim made in arbitral proceedings shall give rise to an interruption of limitation (protection of time bar) as of the day on which such application has arrived at the office of JSE. Provided, this shall not apply where the arbitral proceedings have been terminated for a reason other than the arbitral award.

Article 8. [Attempt of Conciliation]

(1) The Secretariat may, after accepting a application for arbitration, recommend in the interest of a simple, speedy and amicable resolution of the parties' dispute the parties

to first conciliate the dispute which is the subject of arbitration.

(2) Where the parties agree to conciliate their dispute in accordance with the preceding paragraph, TOMAC shall suspend the arbitral proceedings until the termination of conciliation proceedings.

(3) The conciliation shall be conducted by one conciliator, who shall be appointed by Chairman of TOMAC, within 60 days from the day on which the agreement referred to in the preceding paragraph is reached between the parties.

(4) The conciliation proceedings shall be in accordance with the Conciliation Rules of JSE (hereinafter referred to as the "Conciliation Rules") unless otherwise provided for in this Article.

(5) If the dispute is resolved by conciliation, the Filing Fee for arbitration shall be appropriated as part of the preliminary investigation fee and conciliation fee under the Conciliation Rules.

(6) The conciliator may become an arbitrator in the arbitral proceedings subsequent to the failure of the conciliation attempt only if the parties so agree.

(7) The Arbitration Fee for the resumed arbitral proceedings shall be the sum in accordance with the Tariff of Fees for Arbitration, minus any conciliation fee paid.

Article 9. [Instruction for Filing of Defense and Supplementary Statements]

(1) Where the Secretariat has accepted the application for arbitration, it shall forward to the other party (hereinafter referred to as "the Respondent") a copy of the Statement of Claim together with copies of the documentary evidence submitted, and shall instruct the Respondent to send to the Secretariat and the Claimant respectively the Defense and documents in support of the defense, if any, as well as a document evidencing the capacity of the Respondent if it is a body corporate within 21 days from the day of receipt of such instruction, provided that an allowance of a reasonable longer period will be granted to the Respondent in cases where its address, its head office or main place of business is located in a foreign country, or special circumstances are acknowledged.

(2) Where the Respondent nominates an agent or attorney, the Respondent shall file, on filing of the Defense, a document empowering the agent or attorney to act on its behalf.

(3) When the Claimant has received the Defense and documentary evidence, if any, the Claimant shall, if it has any objection to the Defense, send its Supplementary Statement and further documentary evidence, if any, to the Secretariat and the Respondent, respectively, so that such Supplementary Statement and further documentary evidence, if any, are received within 14 days from the day of receipt by the Claimant of the Defense and documentary evidence, if any.

(4) In the event of any further Supplementary Statement and documentary evidence being filed, the procedures provided in the preceding paragraph shall be repeated.
(5) The Defense, Supplementary Statements and documentary evidence may be submitted via e-mail, fax or similar method, provided that the sending party shall bear the burden of proving that the copies are identical to the originals and that it has in fact forwarded such documents to the other party.
(6) The documents under this Article shall be submitted in the number of copies as instructed by the Secretariat.

Article 10. [Service of Documents]

Documents relating to arbitration shall, unless handed in person to the other party or its agent, be served to the address, habitual residence, place of business or office of the party indicated in the Statement of Claim, to the address of its agent or attorney or to the place where the party designates.

Article 11. [Counterclaim by the Respondent]

(1) If the Respondent wishes to apply for arbitration of a counterclaim arising out of the same cause or matter, as a rule, he must do so within the period stipulated in Article 9(1).
(2) Counterclaim applications made within the period specified in the preceding paragraph shall, in principle, be heard concurrently with the arbitration applied for by the Claimant.

Article 12. [Amendment of the Claim]

Amendment of the claim, if any, must be made prior to appointment of the arbitrators, provided, however, that such amendment may be made even after the arbitrators are appointed where approval of the Tribunal is obtained.

Article 13. [Place of Arbitration]

(1) The place of arbitration shall be Tokyo or Kobe.
(2) Where no place of arbitration is designated in the arbitration agreement or the arbitration clause, Tokyo shall be the place of arbitration.
(3) Where it is not clear whether the arbitration agreement or the arbitration clause designates Tokyo or Kobe as the place of arbitration, and no mutual consent of the parties is obtained, arbitration shall be performed in Tokyo.

Article 14. [Qualification of Arbitrators]

The arbitrator(s) shall be appointed from among the persons who are listed on the Panel

of TOMAC Arbitrators and who have no connection with either of the parties or with the matter in dispute. However, TOMAC may appoint a person or persons not on the Panel if TOMAC deems such appointment necessary.

Article 15. [Appointment of Arbitrators in Two Parties' Case]

(1) Each party shall nominate an arbitrator from among the persons satisfying the requirement under the preceding Article and the two arbitrators thus nominated shall, unless otherwise agreed, nominate a third arbitrator who satisfies such requirement. Provided, however, the two nominees may by agreement nominate a person who is not listed on the Panel of TOMAC Arbitrators.

(2) The Claimant, within 15 days from the date of its application for arbitration and the Respondent, within 15 days from the receipt of the application for arbitration, shall nominate an arbitrator. Each party shall notify the other party and the Secretariat of the name of the nominee. The two nominees shall nominate the third arbitrator within 30 days of their nomination and notify each party and the Secretariat of the name of the nominee of the third arbitrator.

(3) TOMAC shall appoint the persons nominated pursuant to the preceding paragraph as arbitrators. When the parties have nominated the same person and have no objection to a sole arbitrator, such person shall be a sole arbitrator.

(4) Where a party does not make the nomination in accordance with the preceding paragraphs (1) and (2), or where the arbitrators nominated do not nominate the third arbitrator, or where the parties entrust thereto the appointment of arbitrators or the third arbitrator, TOMAC shall make such appointments taking into account the parties' intention.

(5) The appointment of arbitrators by TOMAC shall be made by consultations of the Chairman and Vice-Chairmen thereof.

Article 16. [Appointment of Arbitrators in Multi-parties Case]

Unless otherwise agreed by the parties, where there are more than two parties to an arbitration, TOMAC shall appoint an arbitrator or arbitrators taking into account all parties' intention.

Article 17. [Appointment of Substitute Arbitrators]

Where a vacancy occurs amongst the arbitrators due to death, resignation or other reasons, a substitute arbitrator shall be appointed in accordance with the provisions of the preceding two Articles.

Article 18. [Obligations and Punitive Provisions for Arbitrators]

(1) Arbitrators shall carry out their duties fairly and justly, treating the parties equally.
(2) Arbitrators shall not privately associate with the parties, their agent, attorney or other related persons in regard to the matter in question.
(3) Arbitrators shall not reveal to third parties the contents of the arbitration, the names of the parties or anything else related to the matter in question.
(4) An arbitrator in violation of any of the preceding three paragraphs shall resign immediately.
(5) TOMAC may remove the arbitrator in the preceding paragraph from the Panel of Arbitrators.

Article 19. [Disclosure by Arbitrators]

(1) Arbitrators appointed in accordance with Sections 14 to 16, shall, within 7 days of being appointed, provide to the Secretariat a document indicating any circumstances which may give rise to doubts concerning their impartiality or independence, and the Secretariat shall forward copies of same to the parties.
(2) An arbitrator, during the course of the arbitral proceedings, shall without delay submit a document disclosing any such circumstances described in the preceding paragraph to the Secretariat, who shall send a copy of such document to all parties and other members of the Tribunal.
(3) The disclosure in the preceding two paragraphs shall include whether the arbitrator has any close personal, commercial or other relationship with the following:
    1. Parties to the arbitration
    2. Subsidiary companies or other companies related to the parties
    3. Parties' agents
    4. Other appointed arbitrators
(4) When a party does not file a motion to challenge the arbitrator within 7 days from the day of receipt of the disclosure document referred to in the preceding paragraph (1) or (2), it shall be deemed that the party has no objection to the disclosure in the preceding paragraph (1) or (2).

Article 20. [Challenge of an Arbitrator]

(1) Where a party desires to challenge an arbitrator, it must do so by making a motion of challenge to TOMAC in writing showing the name of the arbitrator to be challenged and the grounds for challenge.
(2) Where the motion of the preceding Article is made, the arbitral proceedings shall be suspended until the advice provided in paragraph (4) is given. TOMAC shall constitute an Arbitrator Challenge Review Committee (hereinafter referred to as "the Committee") of three persons whom TOMAC shall, by consultations of Chairman

and Vice-Chairmen, appoint from among those on the Panel of TOMAC to decide whether the challenge to the arbitrator shall be accepted or dismissed.

(3) The Committee shall, in principle, give an answer to approve or not the challenge within 30 days of the establishment of the Committee.

(4) Where the Committee decides that the grounds for challenge exist in respect of the arbitrator in question, a substitute arbitrator shall be appointed in accordance with the provisions of Article 17.

(5) Where a substitute arbitrator is appointed in accordance with the preceding paragraph or where the Committee concludes that the challenge of the arbitrator is not approved, the Secretariat shall so advise the parties.

(6) Where a challenge has been filed, the arbitrator may voluntarily resign from its office. However, in such case it shall not be deemed that there exists any ground for challenge.

Article 21. [Parties' Obligations]

(1) The parties must follow the instructions the Tribunal gives for the purpose of facilitating the arbitral proceedings.

(2) Where a party, whether willfully or in gross negligence, fails to submit its statements or documentary evidence within a reasonable period or delays in applying for the hearing of a witness or expert witness such that the Tribunal deems it will unreasonably delay the conclusion of the proceedings, the Tribunal may dismiss such submission or application.

(3) The arbitral proceedings and record are not public information and the parties, their agents or attorneys or any other persons concerned shall not reveal to third parties the contents of the arbitration, the names of the parties or anything else related to the pending matter in question.

Article 22. [Oral Hearings]

(1) The Tribunal shall conduct oral hearings, at which the parties shall have an opportunity to attend. However, where it deems it unnecessary, the Tribunal may examine only documents submitted without any oral hearing.

(2) The Tribunal shall fix the date and time (hereinafter referred to as "the fixed date") and the place for the oral hearing, if any, and give notice thereof to the parties at least 7 days prior to the fixed date, unless prevented by special circumstances.

Article 23. [Appearance of Parties, Witnesses, etc.]

(1) The parties (in case of a body corporate, representative thereof) or their agents or attorneys must appear in person before the Tribunal at the fixed date, in order to gain

hearing.

(2) Any party may have the person in charge of the matter in dispute appear at the hearing and testify orally. If the other party has doubts as to the power of such person, the party concerned must prove that such person is empowered to act on its behalf.

(3) The parties must communicate to the Secretariat in writing, by e-mail or fax prior to the fixed date, the names of the parties, agents, witnesses or expert witnesses who are expected to appear, and in case of witnesses or experts, the contents of testimonies or appraisals to be given by them.

(4) Where any party, agent or attorney, or person provided in the preceding paragraph (2) does not appear before the Tribunal, at the fixed date, the Tribunal may make its award on the basis of the documentary evidence or other documents filed by the parties.

(5) The Tribunal may, when it deems appropriate, and after taking into consideration the views of the parties, hold a hearing of any of the parties or persons concerned or witnesses, experts in such a manner as to enable the absentee and all the attendees to communicate with each other through two-way telecommunications technology. In this case, the person who has provided evidence through such telecommunications shall be deemed to have attended the hearing.

Article 24. [Issue to be determined and Schedule of Proceedings]

(1) The Tribunal shall require the parties to confirm the issues to be determined, evidence to be filed, timetable, etc. at the first hearing held pursuant to Article 22. If no oral hearing is held, such confirmation shall be made in accordance with the statement of claim, defense and other statements.

(2) The Tribunal and parties shall as a rule make an attempt to facilitate the arbitral proceedings in accordance with the said confirmation.

Article 25. [Hearings of Witnesses by the Tribunal]

The Tribunal may, irrespective of there being any request by either party, request from the witnesses their voluntary appearance, or appoint expert witnesses, and examine them by hearing.

Article 26. [Participation in Proceedings]

(1) Any person who is not a party to the arbitration, upon the consent of all parties, may request to the Tribunal to participate in such arbitral proceedings as a party.

(2) Each party to the arbitration may, upon the consent of other parties and a person who is not a party to such arbitration, request to the Tribunal to make the said person to participate as a party in such arbitral proceedings.

(3) If said person who is not a party asserts a claim for its own independent relief or remedy, the Tribunal shall consolidate and examine such claim as a new arbitral demand.
(4) When a third person comes to participate in the arbitral proceedings pursuant to the provisions of the foregoing paragraphs, as a result of transfer of the rights or duties of the object of arbitration, a party or parties may, upon the consent of all other parties inclusive of the said third person, withdraw from the arbitral proceedings.

Article 27. [Consolidation of Proceedings]
(1) Upon the commencement of multiple arbitral proceedings where the issues of law or fact are mutually related, TOMAC may determine to consolidate such multiple proceedings to one proceedings, unless any party communicate its objection.
(2) Notwithstanding the foregoing paragraph, TOMAC may by order, if it deems appropriate, entrust one arbitral tribunal with multiple arbitral proceedings to one proceeding without the consent of all parties.

Article 28. [Pronouncement of Conclusion of Hearings]
The Tribunal shall, if it deems appropriate, declare the hearings closed. Provided the Tribunal may, if it deems it necessary, re-open the hearing at any time before an award is given.

Article 29. [Immunity of TOMAC and the Arbitrators]
TOMAC, the Arbitrators and the Secretariat have complete civil immunity from liability regarding the arbitral proceedings and the arbitration award.

Article 30. [Language]
The language employed in the Statement of Claim, the Defense, the Supplementary Statements, the hearings and the arbitral award in domestic arbitrations shall be the Japanese language, and that in international arbitrations shall, in principle, be the English language. However, except where the Tribunal has specified otherwise, it is not necessary to translate documentary evidence.

Article 31. [Interpreting]
The parties who will need interpreters at the oral hearings may, at their own expense, arrange for interpreters to be present at the hearings.

Article 32. [Settlement]
(1) The parties shall be allowed to settle the dispute amicably during the course of the

arbitral proceedings.

(2) The Tribunal may, at any stage of the arbitral proceedings, attempt to settle the whole or a part of the dispute between the parties.

(3) In case settlement conducted in accordance with the preceding paragraph fails, the Tribunal shall resume the arbitral proceedings, provided however that it must not issue an award based on any of the information it gained during the settlement proceedings.

Article 33. [Dismissal of Application for Arbitration or Other Decisions]

In any of the following cases the Tribunal may, without examining the merits of the dispute, dismiss the application for arbitration or make such other decisions as it deems appropriate:

1. Where it is found that the arbitration agreement is not validly made or is void, or the arbitration agreement has been rescinded by mutual agreement;
2. Where it is found that either of the parties is not lawfully represented or its agent or attorney has no authority to act on its behalf;
3. Where both parties fail to appear without cause at the fixed date for oral hearing;
4. Where both parties fail to comply with such directions or requirement of the Tribunal as it deems necessary for a proper performance of the arbitral proceedings;
5. Where the Tribunal finds that the Claimant has wrongfully delayed the prompt prosecution of the arbitral proceedings (where the Respondent has filed a counterclaim the same applies to the Respondent's counterclaim).

Article 34. [Assessment of Damages]

Where it is recognized that a loss was incurred, but it is extremely difficult to prove the amount of the loss due to the nature of such loss, the Tribunal may assess a reasonable amount on the basis of the results of examination.

Article 35. [When Award Given]

Where the Tribunal has pronounced the conclusion of hearings in accordance with Article 28, it shall, in principle, make the arbitral award within 30 days thereof.

Article 36. [How Award, etc. to be Determined]

The award and other decisions by multiple arbitrators must be made by a majority vote of the arbitrators.

Article 37. [Written Award and Items to be Described]

(1) When the Tribunal decides its award, it shall make the award in writing including the

following items. The award shall be signed by all arbitrators. However, where for an unavoidable reason an arbitrator cannot sign the award, the reason for any omitted signature shall be stated:

1. The names and addresses of the parties (in case of a body corporate, the address of its head office or main place of business, its name, the name of the representative and the capacity), and in case an agent or attorney is nominated, its name;
2. The decision made;
3. The summary of the facts and points at issue;
4. The reason for the decision;
5. The date on which the written award is prepared and place of arbitration;
6. The costs of arbitration and proportion thereof to be borne by respective parties;

(2) The Tribunal may omit item 4 of the preceding paragraph, if otherwise agreed by the parties.

Article 38. [Amicable Settlement of Dispute]

Where the parties have settled amicably the whole or part of the dispute by themselves during the arbitral proceedings, the Tribunal may, if requested by the parties, describe the contents of such settlement in the text of the award.

Article 39. [Service of Award]

The Secretariat shall such number of copies of the award signed by the arbitrators equal to the number of parties plus one. The Secretariat shall send a copy thereof to each party and keep one copy in its office.

Article 40. [Correction of Award]

If any miscalculation, mistyping, miswriting or any other apparent error is discovered on the face of the written award within 30 days after its service, the Tribunal may correct it.

Article 41. [Publication of Award]

The award given by the Tribunal may be published unless both parties beforehand communicate their objections.

Article 42. [Documents not Returnable]

Documents filed by the parties shall, as a rule, not be returned. Where any document is desired to be returned, it must be marked to that effect at the time of its filing, and a copy thereof must be attached thereto.

Article 43. [Costs of Arbitration]

(1) The Claimant shall pay a Filing Fee of One Hundred Thousand Japanese Yen (¥100,000) to the Secretariat on its application for arbitration. This provision shall also apply where an application for counterclaim is filed.

(2) Each party shall, within 7 days after the receipt of notice from the Secretariat, pay to the Secretariat as part of the expenses of the arbitration a fee (hereinafter referred to as "the Arbitration Fee") which the Tribunal shall determine in accordance with the Tariff of Fees for Arbitration.

When no amount of claim has been stated at the time of filing, the Tribunal shall determine the Arbitration Fee taking into consideration the contents of the claim, subject to further adjustment in accordance with the Tariff of Fees for Arbitration as soon as an amount can be determined.

In case the amount of claim cannot be finally determined, the Arbitration Fee as provided in the foregoing paragraph shall be deemed the final one.

(3) Where the sum claimed is in a foreign currency, such sum shall, for the purpose of calculating the prescribed Arbitration Fee of the preceding paragraph, be converted into Japanese currency by calculation at the average rate on the Tokyo Foreign Exchange Market at 5.00p.m. on the date when the application is filed.

(4) Where the Respondent files its application for arbitration of a counterclaim and the Tribunal considers that such arbitration can be performed concurrently with the Claimant's application, the amounts claimed and counterclaimed respectively shall be aggregated and the aggregate sum shall be taken as the amount of claim in the Tariff of Fees for Arbitration.

(5) The Tribunal may direct the Claimant to advance the Arbitration Fee due from the Respondent on its behalf.

(6) Where the number of oral hearings held exceeds four, beginning with the fifth hearing, each party must pay a fee of Fifty Thousand Japanese Yen (¥50,000) per additional hearing to the Secretariat. Regardless, however, of the number of oral hearings held on one day, hearings held on one calendar day shall be counted cumulatively as only one hearing.

(7) The expenses caused by the particular nature of the subject of dispute and the expenses incurred on account of calling for witnesses or expert by requirement of the Tribunal shall be additionally paid by the parties.

(8) The Filing Fee shall not be returned after the application for arbitration is accepted. The Tribunal may, upon its determination, return a part of the Arbitration Fee, on the ground that the application for arbitration was abandoned or the dispute was settled by mediation.

(9) Each party* shall pay any consumption tax imposed on the amount of the each fee as

*** No foreign parties are imposed the consumption tax.**

provided in the preceding paragraphs (1) through (7).

Article 44. [Apportionment of Costs of Arbitration and Attorney's Fee]

(1) The costs of arbitration shall be paid from the Filing Fee and Arbitration Fee paid to the Secretariat under the preceding Article and the ratio in which they shall be borne by the parties shall be decided by the Tribunal.

(2) Upon application by a party for recovery from the other party of attorneys' fees and other procedural costs of the arbitration, the Tribunal may in the arbitral award or by a separate order permit, to a reasonable extent and in consideration of the contents of the arbitral award, such recovery.

Article 45. [Remunerations for Arbitrators]

The remunerations for arbitrators shall be paid out of the Arbitration Fee of Article 43. The amount of the said remunerations shall be determined by consultations of Chairman and Vice-Chairmen of TOMAC considering the degree of difficulty of the case and other circumstances.

Article 46. [TOMAC]

Any matter relating to TOMAC shall be governed by the Rules of the Tokyo Maritime Arbitration Commission.

Article 47. [Interpretation of these Rules]

The Tribunal shall determine the interpretation of these Rules and the procedural matters not provided for in these Rules.

Article 48. [Amendment of these Rules]

Any amendment of these Rules shall be made by TOMAC at the initiative of Chairman of TOMAC.

Article 49. [Bylaws]

Bylaws shall be made to put these Rules into practice.

Supplementary Provisions (25th November, 2003)

Section 1. These Rules shall be put into force as from 1st March, 2004.

Section 2. The former Rules shall apply to the case of which application for arbitration is filed prior to the enforcement of these Rules.

The Tariff of Fees for Ordinary Arbitration

The amount of the Arbitration Fee to be paid by each party shall be as follows:
When the amount of claim is ¥20,000,000 or less, the fee is ¥450,000;
When the amount of claim exceeds ¥20,000,000 but is ¥120,000,000 or less, the fee is the fee to be paid for ¥20,000,000 plus ¥10,000 for each additional ¥1,000,000 in excess of ¥20,000,000 up to ¥120,000,000;
When the amount of claim exceeds ¥120,000,000, the fee is the fee to be paid for ¥120,000,000 plus ¥20,000 for each additional ¥10,000,000 in excess of ¥120,000,000.

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THE RULES OF SIMPLIFIED ARBITRATION OF TOMAC

[SIMPLIFIED RULES]

Made 25th April, 1985
Last amended 25th November, 2003
In force 1st March, 2004

Article 1. [Definition]
Simplified Arbitration in the present Rules shall mean arbitration which is performed with speed and simplicity, regarding a dispute over a claim not exceeding Twenty Million Yen (¥20,000,000), under the present Rules in place of the Ordinary Rules of TOMAC, by agreement between both parties.

Article 2. [Relation between the present Rules and the Ordinary Rules]
All matters which are not covered by the present Rules shall be governed by the Ordinary Rules. In the event of a conflict between the two sets of Rules, the present Rules shall prevail over the Ordinary Rules to the extent of such conflict.

Article 3. [Application for Simplified Arbitration]
Any party wishing to apply for Simplified Arbitration under the present Rules (hereinafter referred to as "the Claimant"), shall file with the Secretariat the documents stipulated in article 5 of the Ordinary Rules. The Statement of Claim shall be marked with the note to specify that the application is for Simplified Arbitration.

Article 4. [Acceptance of Application for Simplified Arbitration]
When the Secretariat acknowledges that the application complies with the requirements of the preceding article, it shall accept the application.

Article 5. [Filing of Defense and Supplementary Statement in Simplified Arbitration]
(1) When the Secretariat has accepted the application for Simplified Arbitration, it shall forward to the other party (hereinafter referred to as "the Respondent") a copy of the Statement of Claim in Simplified Arbitration together with the respective copies of the documentary evidence submitted, and shall instruct the Respondent to send to the Secretariat and the Claimant respectively the Defense in Simplified Arbitration and

any supporting evidence within 15 days from the day of receipt of such instruction.

(2) Where there is no document evidencing the agreement to refer a dispute to arbitration under these Rules, the Secretariat shall forward to the Respondent, together with those documents specified in the preceding paragraph, a notice in writing to the effect that TOMAC shall proceed with the Simplified Arbitration unless the Respondent submits an objection in writing thereto within the period stipulated in the preceding paragraph. Where the Respondent has not submitted an objection in writing within the said period, the Respondent shall be deemed to have confirmed that the dispute should be submitted to the Simplified Arbitration under these Rules.

(3) When the Claimant has received the Defense and documentary evidence (if any), the Claimant shall, if it has any objection to the Defense, send its Supplementary Statement and further documentary evidence, if any, to the Secretariat and the Respondent respectively so that such Supplementary Statement and further documentary evidence, if any, are received within 10 days from the day of receipt by the Claimant of the Defense and documentary evidence (if any).

(4) If the Respondent has any objection to the Supplementary Statement provided in the preceding paragraph, it shall send its Supplementary Statement and further documentary evidence, if any, to the Secretariat and the Claimant respectively so that such Supplementary Statement and further documentary evidence, if any, are received within 10 days from the day of receipt by Respondent of the Supplementary Statement provided for in the preceding paragraph.

Article 6. [Counterclaim by Respondent]

(1) If the Respondent wishes to apply for Simplified Arbitration of a counterclaim arising out of the same cause or matter, it must do so within the period stipulated in paragraph (1) of the preceding Article.

(2) When such an application is made within the period stipulated, Simplified Arbitration of such counterclaim shall, in principle, be performed concurrently with the Simplified Arbitration applied for by the Claimant.

Article 7. [Appointment of Arbitrators]

The TOMAC shall, within 10 days from the day when the Respondent's Defense is filed, appoint an uneven number of arbitrators or a sole arbitrator from among persons listed on the Panel of TOMAC Arbitrators who have no connection with either of the parties or with the matter in dispute.

Article 8. [Oral Hearings]

(1) The Tribunal shall hold oral hearings, if any, within 35 days from the day when the

Supplementary Statement under Article 5(4) was filed or should have been filed, whichever is sooner, unless prevented by special circumstances.

Article 9. [Settlement]
The Tribunal may attempt to settle the dispute within 30 days of commencement thereof.

Article 10. [Description of Items in the Award]
In the Simplified Arbitration Award, items 3 and 4 of Article 37(1) of the Ordinary Rules shall be fully satisfied by as brief a description as practicable of the matters referred to therein.

Article 11. [Costs of Simplified Arbitration]
(1) The Claimant shall, when applying for Simplified Arbitration, pay to the Secretariat a Filing Fee of One Hundred Thousand Yen (¥100,000). This provision shall also apply where an application for Simplified Arbitration of a counterclaim is filed.
(2) Each party shall, within seven (7) days after the receipt of notice from the Secretariat, pay to the Secretariat the fee (hereinafter referred to as "the Arbitration Fee") which the Tribunal shall determine in accordance with the Tariff of Fees for Simplified Arbitration.
(3) If the Respondent applies for Simplified Arbitration of a counterclaim arising out of the same cause or matter and the Tribunal considers that such Simplified Arbitration can be performed concurrently with the Claimant's application, the amounts claimed and counterclaimed respectively shall be aggregated and the aggregate sum shall be taken as the amount of claim in the Tariff of Fees for Simplified Arbitration.
(4) Each party shall pay the consumption tax imposed on the amount of the each fee as provided in the preceding paragraphs (1) to (3).

The Tariff of Fees for Simplified Arbitration

The amount of the Simplified Arbitration Fee to be paid by each party shall be as follows:
When the amount of claim is ¥10,000,000 or less, the fee to be paid is ¥300,000;
When the amount of claim exceeds ¥10,000,000, but does not exceed ¥20,000,000, the fee to be paid is ¥350,000;
When the amount of claim exceeds ¥20,000,000, the fee to be paid is the amount equal to 90% of the fee determined in accordance with the Tariff of Fees for Ordinary Arbitration.

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THE RULES OF THE SMALL CLAIMS ARBITRATION PROCEDURE (SCAP) OF TOMAC

Made 3rd February, 1999
Last amended 25th November, 2003
In force 1st March, 2004

Article 1. [Definition]
The Small Claims Arbitration Procedure in these Rules means arbitration procedure which is performed with expedition and simplicity, regarding a dispute over a claim not exceeding, in principle, Five Million Yen (¥5,000,000), under these Rules in place of the Ordinary Rules, by agreement between both parties.

Article 2. [Relation between these Rules and the Ordinary Rules]
All matters which are not covered by these Rules shall be governed by the Ordinary Rules.

Article 3. [Application for the Small Claims Arbitration Procedure]
An applicant for the Small Claims Arbitration Procedure under these Rules (hereinafter referred to as "the Claimant"), shall file with the Secretariat the following documents in three copies (in respect of items 4 and 5, one copy each is sufficient):

1. Statement of Claim in the Small Claims Arbitration Procedure;
2. A document evidencing the agreement that any dispute shall be referred to arbitration of the JSE or arbitration in accordance with these Rules;
3. Documentary evidence in support of the claim, if any;
4. Where a party is a body corporate, a document evidencing the capacity of its representative;
5. Where an attorney is nominated by the Claimant, a document empowering the attorney to act on behalf of the Claimant.

Article 4. [Acceptance of Application for the Small Claims Arbitration Procedure]
When the Secretariat acknowledges that the application complies with the requirements of Section 3, it shall accept the application.

Article 5. [Filing of Defense and Supplementary Statement in the Small Claims Arbitration Procedure]

(1) When the Secretariat has accepted the application for the Small Claims Arbitration Procedure, the Secretariat shall forward to the other party (hereinafter referred to as "the Respondent") a copy of the Statement of Claim in the Small Claims Arbitration Procedure together with copies of the documentary evidence, and instruct the Respondent to send to the Secretariat and the Claimant respectively within 15 days from the day of receipt of such instruction a Defense in the Small Claims Arbitration Procedure and any supporting evidence.

(2) Where there is no document evidencing the agreement to refer a dispute to arbitration under these Rules, the Secretariat shall forward to the Respondent, together with those documents specified in the preceding Sub-Section, a notice in writing to the effect that TOMAC shall proceed with the Small Claims Arbitration Procedure unless the Respondent submits an objection in writing thereto within the period stipulated in the preceding Sub-Section. Where the Respondent has not submitted an objection in writing within the said period, the Respondent shall be deemed to have confirmed that the dispute should be submitted to the Small Claims Arbitration Procedure under these Rules.

(3) When the Claimant has received the Defense and documentary evidence (if any), the Claimant shall, if it has any objection to the Defense, send its Final Supplementary Statement and further documentary evidence, if any, to the Secretariat and the Respondent, respectively, so that such Final Supplementary Statement and further documentary evidence, if any, are received within 10 days from the day of receipt by the Claimant of the Defense and documentary evidence, if any.

(4) When the Respondent has received the Final Supplementary Statement and documentary evidence (if any), the Respondent shall, if it has any objection thereto, send its Final Supplementary Statement and further documentary evidence, if any, to the Secretariat and the Respondent, respectively, so that such Final Supplementary Statement and further documentary evidence, if any, are received within 10 days from the day of receipt by the Claimant of the Defense and documentary evidence, if any.

Article 6. [Counterclaim by Respondent]

(1) If the Respondent wishes to apply for the Small Claims Arbitration Procedure of a counterclaim arising out of the same cause or matter, the Respondent must do so within the period stipulated in Article 5(1).

(2) When such an application has been made within the period stipulated in Article 5(1), the Small Claims Arbitration Procedure of such counterclaim shall, in principle, be performed concurrently with the Small Claims Arbitration Procedure applied for by the Claimant.

Article 7. [Costs of Arbitration]

(1) The Claimant shall, when applying for the Small Claims Arbitration Procedure, pay to the Secretariat a Filing Fee in the amount of Thirty Thousand Yen (¥30,000) together with the amount defined in the Tariff of Fees for the Small Claims Arbitration Procedure (hereinafter referred to as "the Arbitration Fee").

(2) The provision in the preceding Sub-Section shall also apply to an application for the Small Claims Arbitration Procedure of a counterclaim.

(3) Each party shall pay the consumption tax imposed on the amount of the each fee as provided in the preceding paragraphs.

(4) The Filing Fee shall not be refunded after the application for arbitration has been accepted.

Article 8. [Appointment of Arbitrator]

TOMAC shall, within 10 days from the day when the Respondent's Defense was filed or should have been filed, whichever is earlier, appoint a sole arbitrator from among persons listed on the Panel of TOMAC Arbitrators who have no connection with either of the parties or the matter in dispute.

Article 9. [Hearings]

(1) The Tribunal shall conduct a hearing by way of the examination of documents, in principle, within fifteen (15) days from the day of appointment. There shall be no oral hearing unless the Arbitrator deems it necessary.

(2) Where the Tribunal deems it necessary to give an oral hearing, the Arbitrator shall, in principle within 15 days from the day of appointment, hold the hearing in the presence of all parties. In the absence of exceptional circumstances, there must be only one oral hearing.

Article 10. [Disclosure of Documents]

The Tribunal may require from the parties production of the following documents which are certain to exist but have not been produced by the parties as evidence:

1. A document signed by the parties and having a connection with the dispute;
2. Any document which is usually created in the ordinary course of dealings between the parties;
3. Any document which the party who bears the burden of proof is legally entitled to request the production of from the party holding such document, and any other documents which the Tribunal deems necessary or appropriate.

Article 11. [The Award]

(1) The Tribunal shall issue an award on the case promptly after conclusion of the hearing pursuant to Article 9.
(2) In the Award of the Small Claims Arbitration Procedure, items 3 and 4 of Article 35(1) of the Ordinary Rules may be described as briefly as practicable.

Article 12. [Period of Grace]

(1) Where the Tribunal awards the claim in whole or in part to the Claimant, the Arbitrator may, having considered the Respondent's solvency, the trade relationship between the parties and/or other pertinent circumstances, grant the Respondent such terms of payment including but not limited to the following: (a) a period of grace for payment; (b) payment by instalments within a period not exceeding 3 years without incurring default interest for so long as such payments are being timely made pursuant to the installment schedule; and/or (c) issuance of promissory notes on such instalments.
(2) If the Tribunal grants such payment method, it must state in the award that in the event of nonfulfilment of the obligations by the Respondent in respect of such payment the Respondent shall forfeit the benefit of the period of payment and must pay any outstanding balance immediately together with interest which the Claimant would have earned had the Arbitrator not granted such payment method.
(3) Where the Arbitrator awards the counter-claim in whole or in part to the Respondent, the preceding Sub-Sections shall also apply thereto.

Article 13. [Notarial Deed]

(1) The Tribunal may, in awarding all or part of the monetary claim to the Claimant, recommend that the parties obtain a notarial deed for compulsory execution of the award.
(2) When the parties agree on such notarial deed, the Secretariat shall perform the notarization work on behalf of the parties. In this case, the Secretariat shall require from the Claimant reimbursement of the fee paid to the Notary Public plus a charge of Ten Thousand Yen (¥10,000) to cover the administrative expenses.
(3) Where the Tribunal awards all or part of the counter-claim to the Respondent, the preceding Sub-Sections shall also apply thereto.

Article 14. [Apportionment of Costs of Arbitration]

The costs of the Small Claims Arbitration Procedure shall be paid from the Filing Fee and Arbitration Fee paid to the Secretariat under Section 7 and the ratio which each party shall bear shall be decided by the Tribunal.

Article 15. [Omission of Procedure by Agreement]
Where the parties agree that a certain part of the arbitral procedure under these Rules is to be omitted, the Tribunal may, in its discretion, omit such part.

The Tariff of Fees for the Small Claims Arbitration Procedure

The amount of the Small Claims Arbitration Procedure Fee to be paid shall be as follows: Five percent (5%) of the amount of the claim and of the counter-claim, if any, but in any event not less than One Hundred Thousand Yen (¥100,000).

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ARBITRATION LAW
(Law No.138 of 2003)

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Chapter I: General Provisions

Article 1. (Purpose)

Arbitral proceedings where the place of arbitration is in the territory of Japan and court proceedings in connection with arbitral proceedings shall, in addition to the provisions of other laws, follow those of this Law.

Article 2. (Definitions)

(1) For the purposes of this Law, "arbitration agreement" shall mean an agreement by the parties to submit to one or more arbitrators the resolution of all or certain civil disputes which have arisen or which may arise in respect of a defined legal relationship (whether contractual or not) and to abide by their award (hereinafter referred to as "arbitral award").

(2) For the purposes of this Law, "arbitral tribunal" shall mean a sole arbitrator or a panel of two or more arbitrators, who, based on an arbitration agreement, conduct proceedings and make an arbitral award in respect of civil disputes subject thereto.

(3) For the purposes of this Law, "written statement" shall mean a document that a party

prepares and submits to an arbitral tribunal in arbitral proceedings and which states the case of that party.

Article 3. (Scope of Application)

(1) The provisions of Chapters II through VII and Chapters IX and X, except the provisions specified in the following paragraph and article 8, apply only if the place of arbitration is in the territory of Japan.

(2) The provisions of article 14, paragraph (1) and article 15 apply when the place of arbitration is in or outside the territory of Japan, or when the place of arbitration is not designated.

(3) The provisions of Chapter VIII apply when the place of arbitration is in or outside the territory of Japan.

Article 4. (Court Intervention)

With respect to arbitral proceedings, no court shall intervene except where so provided in this Law.

Article 5. (Court Jurisdiction)

(1) Only the following courts have jurisdiction over cases concerning court proceedings based on the provisions of this Law:
   (i) the district court designated by the agreement of the parties;
   (ii) the district court having jurisdiction over the place of arbitration (only when the designated place of arbitration falls within the jurisdiction of a single district court); or
   (iii) the district court having jurisdiction over the general forum of the counterparty in the relevant case.

(2) In the event that two or more courts have jurisdiction based on the provisions of this Law, the court to which the request was first made shall have jurisdiction.

(3) The court shall, upon determining that the whole or a part of a case concerning court proceedings based on the provisions of this Law does not fall under its jurisdiction, upon request or by its own authority, transfer such case to a court with jurisdiction.

Article 6. (Voluntary Oral Hearing)

Any decision concerning court proceedings based on the provisions of this Law may be made without an oral hearing.

Article 7. (Appeal against Court Decision)

Any party with an interest affected by the decision concerning court proceedings based on

the provisions of this Law may, only if specifically provided for by this Law, file an immediate appeal against the decision within the peremptory term of two weeks from the day on which notice is given.

Article 8. (Court Intervention in the Event that the Place of Arbitration Has Not Been Designated)

(1) Even if the place of arbitration has not been designated, each of the court applications cited in the following items may be made when there is a possibility that the place of arbitration will be in the territory of Japan and the applicant or counterparty's general forum (excluding designations based on the last address) is in the territory of Japan. In such case, according to the classifications cited in the respective items, the respective provisions shall apply:
   (i) an article 16, paragraph (3) application: same article;
   (ii) an article 17, paragraphs (2) through (5) application: same article;
   (iii) an article 19, paragraph (4) application: articles 18 and 19; or
   (iv) an article 20 application: same article.

(2) Notwithstanding the provisions of article 5, paragraph (1), only the district courts having jurisdiction over the general forum described in the preceding paragraph have jurisdiction over the case relating to the applications cited in each of the items in the preceding paragraph.

Article 9. (Reading of Case Records Relating to Court Proceedings)

A party with an interest in any court proceedings based on the provisions of this Law may request any of the following from the court clerk:

(i) a reading of or a copy of the case records;
(ii) a copy of the records produced by electronic, magnetic or any other means unrecognizable by natural sensory function in the case records;
(iii) the delivery of an authenticated copy, transcript or extract thereof; or
(iv) the delivery of a certificate regarding matters relating to the case.

Article 10. (Application of the Code of Civil Procedure to Court Proceedings)

Except as otherwise provided, the provisions of the Code of Civil Procedure [Law No. 109 of 1996] shall apply to any court proceedings based on the provisions of this Law.

Article 11. (Supreme Court Rules)

In addition to those provided by this Law, particulars necessary in relation to court proceedings based on the provisions of this Law shall be as prescribed by the Rules of the Supreme Court.

Article 12. (Written Notice)

(1) Unless otherwise agreed by the parties, when notice in arbitral proceedings is given in writing, it is deemed to have been given at the time it is delivered to the addressee personally, or, at the time it is delivered to the addressee's domicile, habitual residence, place of business, office or delivery address (which hereafter in this article means the place stipulated by the addressee as the place for delivery of documents from the sender).

(2) With respect to a written notice in arbitral proceedings, where it is possible for the notice to be delivered to the addressee's domicile, habitual residence, place of business, office or delivery address, whereas it is difficult for the sender to obtain materials to certify that the delivery has been made, if the court considers it necessary, it may upon request of the sender decide to serve the notice itself. The provisions of article 104 and articles 110 through 113 of the Code of Civil Procedure shall not apply with respect to service in such an event.

(3) The provisions of the preceding paragraph shall not apply in the event the parties have agreed that the service described in the same paragraph shall not be made.

(4) The case concerning the request described in paragraph (2) shall be, notwithstanding the provisions of article 5, paragraph(1), subject only to the jurisdiction of the courts cited in items (i) and (ii) of the same paragraph and the district court with jurisdiction over the addressee's domicile, habitual residence, place of business, office or delivery address.

(5) When notice in arbitral proceedings is given in writing, if none of the addressee's domicile, habitual residence, place of business, office or delivery address can be found after making a reasonable inquiry, unless otherwise agreed by the parties, it will suffice if the sender sends its notice to the addressee's last-known domicile, habitual residence, place of business, office or delivery address by registered letter or any other means by which the attempt to deliver it can be certified. In such case, a written notice is deemed to have been given at the normally expected time of its arrival.

(6) The provisions of paragraph (1) and the preceding paragraph shall not apply to notices in court proceedings based on the provisions of this Law.

Chapter II: Arbitration Agreement

Article 13. (Effect of Arbitration Agreement)

(1) Unless otherwise provided by law, an arbitration agreement shall be valid only when its subject matter is a civil dispute that may be resolved by settlement between the parties (excluding that of divorce or separation).

(2) The arbitration agreement shall be in the form of a document signed by all the parties, letters or telegrams exchanged between the parties (including those sent by facsimile

device or other communication device for parties at a distance which provides the recipient with a written record of the transmitted content), or other written instrument.

(3) When a written contract refers to a document that contains an arbitration clause and the reference is such as to make that clause part of the contract, the arbitration agreement shall be in writing.

(4) When an arbitration agreement is made by way of electromagnetic record (records produced by electronic, magnetic or any other means unrecognizable by natural sensory function and used for data-processing by a computer) recording its content, the arbitration agreement shall be in writing.

(5) When the parties to the arbitral proceedings exchange written statements in which the existence of an arbitration agreement is alleged by one party and not denied by another, the arbitration agreement shall be in writing.

(6) Even if in a particular contract containing an arbitration agreement, any or all of the contractual provisions, excluding the arbitration agreement, are found to be null and void, cancelled or for other reasons invalid, the validity of the arbitration agreement shall not necessarily be affected.

Article 14. (Arbitration Agreement and Substantive Claim before Court)

(1) A court before which an action is brought in respect of a civil dispute which is the subject of an arbitration agreement shall, if the defendant so requests, dismiss the action. Provided, this shall not apply in the following instances:
   (i) when the arbitration agreement is null and void, cancelled, or for other reasons invalid;
   (ii) when arbitration proceedings are inoperative or incapable of being performed based on the arbitration agreement; or
   (iii) when the request is made by the defendant subsequent to the presentation of its statement in the oral hearing or in the preparations for argument proceedings on the substance of the dispute.

(2) An arbitral tribunal may commence or continue arbitral proceedings and make an arbitral award even while the action referred to in the preceding paragraph is pending before the court.

Article 15. (Arbitration Agreement and Interim Measures by Court)

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure in respect of any civil dispute which is the subject of the arbitration agreement.

Chapter III: Arbitrator

Article 16. (Number of Arbitrators)

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination as provided for in the preceding paragraph, when there are two parties in an arbitration, the number of arbitrators shall be three.

(3) Failing such determination as provided for in paragraph (1), when there are three or more parties in an arbitration, the court shall determine the number of arbitrators upon request of a party.

Article 17. (Appointment of Arbitrators)

(1) The parties are free to agree on a procedure of appointing the arbitrators. Provided, this shall not apply to the provisions of paragraphs (5) and (6).

(2) Failing such agreement as provided for in the preceding paragraph, when there are two parties in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. In such case, if a party fails to appoint an arbitrator within thirty days of a request to do so by the other party who has appointed an arbitrator, the appointment shall be made by the court upon the request of that party, or if the two arbitrators appointed by the parties fail to agree on the third arbitrator within thirty days of their appointment, upon the request of a party.

(3) Failing such agreement as provided in paragraph (1) or any agreement on the appointment of arbitrators between the parties, when there are two parties in an arbitration with a sole arbitrator, the court shall appoint an arbitrator upon the request of a party.

(4) Failing such agreement as provided for in paragraph (1) when there are three or more parties, the court shall appoint arbitrators upon the request of a party.

(5) Where, under an appointment procedure for arbitrators agreed upon by the parties as provided for in paragraph (1), arbitrators cannot be appointed due to a failure to act as requested under such procedure or for any other reason, a party may request of the court the appointment of arbitrators.

(6) The court, in appointing arbitrators based on the provisions contained in paragraphs (2) through (5), shall have due regard to the following items:

  (i) the qualifications required of the arbitrators by the agreement of the parties;

  (ii) the impartiality and independence of the appointees; and

  (iii) in the case of a sole arbitrator or in the case where the two arbitrators appointed by the parties are to appoint the third arbitrator, whether or not it would be appropriate to appoint an arbitrator of a nationality other than those of the parties.

Article 18. (Grounds for Challenge)

(1) A party may challenge an arbitrator:
   (i) if it does not possess the qualifications agreed to by the parties; or
   (ii) if circumstances exist that give rise to justifiable doubts as to its impartiality or independence.

(2) A party who appointed an arbitrator, or made recommendations with respect to the appointment of an arbitrator, or participated in any similar acts, may challenge that arbitrator only for reasons of which it becomes aware after the appointment has been made.

(3) When a person is approached in connection with its possible appointment as an arbitrator, it shall fully disclose any circumstances likely to give rise to justifiable doubts as to its impartiality or independence.

(4) An arbitrator, during the course of arbitral proceedings, shall without delay disclose any circumstances likely to give rise to justifiable doubts as to its impartiality or independence (unless the parties have already been informed of them by the arbitrator).

Article 19. (Challenge Procedure)

(1) The parties are free to agree on a procedure for challenging an arbitrator. Provided, this shall not apply to the provisions of paragraph (4).

(2) Failing an agreement as provided for in the proceeding paragraph, upon request of a party, the arbitral tribunal shall decide on the challenge.

(3) A party who intends to make a request as provided for in the preceding paragraph shall, within fifteen days of the later of either the day on which it became aware of the constitution of the arbitral tribunal or the day on which it became aware of any circumstance referred to in any item of paragraph (1) of the preceding article, send a written request describing the reasons for the challenge to the arbitral tribunal. In such case, the arbitral tribunal shall decide that grounds for challenge exist when it finds that grounds for challenge exist with respect to the arbitrator.

(4) If a challenge of the arbitrator under the procedure for challenge prescribed in the preceding three paragraphs is not successful, the challenging party may request within thirty days after having received notice of the decision rejecting the challenge, the court to decide on the challenge. In such case, the court shall decide that grounds for challenge exist when it finds that grounds for challenge exist with respect to the arbitrator.

(5) While a case relating to a challenge as prescribed in paragraph (4) is pending before the court, the arbitral tribunal may commence or continue the arbitral proceedings and make an arbitral award.

Article 20. (Request for Removal)

Any party may request the court to decide on the removal of an arbitrator if any of the following grounds exist. In such case, if the court finds that the grounds for the request exist, it shall decide to remove the said arbitrator:

(i) if the arbitrator becomes de jure or de facto unable to perform its functions; or

(ii) for reasons other than those in the proceeding item, if the arbitrator fails to act without undue delay.

Article 21. (Termination of an Arbitrator's Mandate)

(1) An arbitrator's mandate shall terminate upon the occurrence of any of the following:

(i) the death of an arbitrator;

(ii) the resignation of an arbitrator;

(iii) the removal of an arbitrator upon the agreement of the parties;

(iv) a decision that grounds for challenge exist under the procedure for challenge described in the provisions of article 19, paragraphs (1) through (4); or

(v) a decision to remove an arbitrator based on the provisions of the preceding article.

(2) If, during the course of procedure for challenge under the provisions of article 19, paragraphs (1) through (4), or removal proceedings under the provisions of the preceding article, an arbitrator withdraws from its office or is removed upon the agreement of the parties, this alone does not imply the existence of any ground referred to in the items in article 18, paragraph (1) or the items in the preceding article with respect to the arbitrator.

Article 22. (Appointment of Substitute Arbitrator)

Unless otherwise agreed by the parties, where the mandate of an arbitrator terminates under any of the grounds described in each item of paragraph (1) of the preceding article, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

Chapter IV: Special Jurisdiction of Arbitral Tribunal

Article 23. (Competence of Arbitral Tribunal to Rule on its Jurisdiction)

(1) The arbitral tribunal may rule on assertions made in respect of the existence or validity of an arbitration agreement or its own jurisdiction (which hereafter in this article means its authority to conduct arbitral proceedings and to make arbitral awards).

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised promptly in the case where the grounds for the assertion arise during the course of arbitral

proceedings, or in other cases before the time at which the first written statement on the substance of the dispute is submitted to the arbitral tribunal (including the time at which initial assertions on the substance of the dispute are presented orally at an oral hearing). Provided, the arbitral tribunal may admit a later plea if it considers the delay justified.

(3) A party may raise the plea prescribed in the preceding paragraph even if it has appointed an arbitrator, or made recommendations with respect to the appointment of an arbitrator, or participated in any similar acts.

(4) The arbitral tribunal shall give the following ruling or arbitral award, as the case May be, on a plea raised in accordance with paragraph (2):
   (i) a preliminary independent ruling or an arbitral award, when it considers it has jurisdiction; or
   (ii) a ruling to terminate arbitral proceedings, when it considers it has no jurisdiction.

(5) If the arbitral tribunal gives a preliminary independent ruling that it has jurisdiction, any party may, within thirty days of receipt of notice of such ruling, request the court to decide the matter. In such an event, while such a request is pending before the court, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

Article 24. (Interim Measures of Protection)

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.

(2) The arbitral tribunal may order any party to provide appropriate security in connection with such measure as prescribed in the preceding paragraph.

Chapter V: Commencement and Conduct of Arbitral Proceedings

Article 25. (Equal Treatment of Parties)

(1) The parties shall be treated with equality in the arbitral proceedings.

(2) Each party shall be given a full opportunity of presenting its case in the arbitral proceedings.

Article 26. (Rules of Procedure)

(1) The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the arbitral proceedings. Provided, it shall not violate the provisions of this Law relating to public policy.

(2) Failing such agreement as prescribed in the preceding paragraph, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitral proceedings in such

manner as it considers appropriate.

(3) Failing such agreement as prescribed in paragraph (1), the power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 27. (Waiver of right to object)

Unless otherwise agreed by the parties, as to arbitral proceedings, a party who knows that any provision of this Law or any arbitral proceedings rules agreed upon by the parties (to the extent that none of these relate to public policy) has not been complied with and yet fails to state its objection to such non-compliance without delay (if a time limit by which objections should be made is provided for, within such period of time), shall be deemed to have waived its right to object.

Article 28. (Place of arbitration)

(1) The parties are free to agree on the place of arbitration.

(2) Failing such agreement as prescribed in the preceding paragraph, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding the place of arbitration determined in accordance with the provisions of the preceding two paragraphs, the arbitral tribunal may, unless otherwise agreed by the parties, carry out the following procedures at any place it considers appropriate:

(i) consultation among the members of the arbitral tribunal;

(ii) hearing of parties, experts or witnesses; and

(iii) inspection of goods, other property or documents.

Article 29. (Commencement of arbitral proceedings and interruption of limitation)

(1) Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular civil dispute commence on the date on which one party gave the other party notice to refer that dispute to the arbitral proceedings.

(2) A claim made in arbitral proceedings shall give rise to an interruption of limitation. Provided, this shall not apply where the arbitral proceedings have been terminated for a reason other than the issuance of an arbitral award.

Article 30. (Language)

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings and the proceedings to be conducted using that language or those languages.

(2) Failing such agreement as prescribed in the preceding paragraph, the arbitral tribunal

shall determine the language or languages to be used in the arbitral proceedings and the proceedings to be conducted using that language or those languages.

(3) Failing any designation of proceedings to be conducted using the designated language or languages in the agreement prescribed in paragraph (1) or the determination prescribed in the preceding paragraph, the proceedings to be conducted using such language or languages are as follows:
   (i) any oral proceedings;
   (ii) any statement or notice in writing by a party; or
   (iii) any ruling (including an arbitral award) or notice in writing by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages designated in the agreement as prescribed in paragraph (1) or the determination prescribed in paragraph (2) (where designation has been made as to the language or languages to be used for translation, such language or languages).

Article 31. (Time Restrictions on Parties' Statements)

(1) Within the period of time determined by the arbitral tribunal, the claimant (which hereinafter means the party that carried out the act to commence the arbitral proceedings) shall state the relief or remedy sought, the facts supporting its claim and the points at issue. In such case, the claimant may submit all documentary evidence it considers to be relevant or may add a reference to the documentary evidence or other evidence it will submit.

(2) Within the period of time determined by the arbitral tribunal, the respondent (which hereinafter means any party to the arbitral proceedings other than the claimant) shall state its defense in respect of the particulars stated according to the provisions of the preceding paragraph. In such case, the provisions of the latter part of the same paragraph shall apply.

(3) Any party may amend or supplement its statement during the course of the arbitral proceedings. Provided, the arbitral tribunal may refuse to allow such amendment or supplementation if made in delay.

(4) The preceding three paragraphs shall not apply when otherwise agreed by the parties.

Article 32. (Procedure of the Hearing)

(1) The arbitral tribunal may hold oral hearings for the presentation of evidence or for oral argument by the parties. Provided, where a party makes an application for holding oral hearings, including the request in article 34, paragraph (3), the arbitral tribunal shall hold such oral hearings at an appropriate stage of the arbitral

proceedings.

(2) The preceding paragraph shall not apply when otherwise agreed by the parties.

(3) When holding oral hearings for the purposes of oral argument or inspection of goods, other property or documents, the arbitral tribunal shall give sufficient advance notice to the parties of the time and place for such hearings.

(4) A party who supplied written statements, documentary evidence or any other records to the arbitral tribunal shall take necessary measures to ensure that the other party will be aware of their contents.

(5) The arbitral tribunal shall take necessary measures to ensure that all parties will be aware of the contents of any expert report or other evidence on which the arbitral tribunal may rely in making an arbitral award or other rulings.

Article 33. (Default of a Party)

(1) If the claimant violates the provisions of article 31, paragraph (1), the arbitral tribunal shall make a ruling to terminate the arbitral proceedings. Provided, this shall not apply in the case where there is sufficient cause for the violation.

(2) If the respondent violates the provisions of article 31, paragraph (2), the arbitral tribunal shall continue the arbitral proceedings without treating such violation 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, the arbitral tribunal may make the arbitral award on the evidence before it that has been collected up until such time. Provided, this shall not apply in the case where there is sufficient cause with respect to the failure to appear at an oral hearing or to produce documentary evidence.

(4) The preceding three paragraphs shall not apply when otherwise agreed by the parties.

Article 34. (Expert Appointed by Arbitral Tribunal)

(1) The arbitral tribunal may appoint one or more experts to appraise any necessary issues and to report their findings in writing or orally.

(2) In the case of the preceding paragraph, the arbitral tribunal may require a party to do the following acts:

  (i) give the expert any relevant information; or

  (ii) produce, or provide access to, any relevant documents, goods or other property to the expert for inspection.

(3) If a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of its report described in paragraph (1), participate in an oral hearing.

(4) A party may carry out the following acts in the oral hearing described in the preceding paragraph:

(i) put questions to the expert; or
(ii) have experts whom it has personally appointed to testify on the points at issue.

(5) Each of the preceding paragraphs shall not apply when otherwise agreed by the parties.

Article 35. (Court Assistance in Taking Evidence)

(1) The arbitral tribunal or a party may apply to a court for assistance in taking evidence by any means that the arbitral tribunal considers necessary as entrustment of investigation, examination of witnesses, expert testimony, investigation of documentary evidence (excluding documents that the parties may produce in person) or inspection (excluding that of objects the parties may produce in person) prescribed in the Code of Civil Procedure. Provided, this shall not apply in the case where the parties have agreed not to apply for all or some of these means.

(2) In making the application described in the preceding paragraph, the party shall obtain the approval of the arbitral tribunal.

(3) Notwithstanding the provisions of article 5, paragraph (1), only the following courts have jurisdiction over cases relating to the application described in paragraph (1):
(i) the court described in article 5, paragraph (1), item (ii);
(ii) the district court having jurisdiction over the domicile or place of residence of the person to be examined or the person holding the relevant documents, or the location of the object for inspection; or
(iii) the district court having jurisdiction over the general forum of the applicant or the counterparty (only if there is no court described in the preceding two items).

(4) An immediate appeal may be made against the decision regarding the application in paragraph (1).

(5) When the court carries out the examination of evidence based on the application in paragraph (1), the arbitrators may peruse the documents, inspect the objects and, with the approval of the presiding judge, put questions to the witness or expert (as prescribed in article 213 of the Code of Civil Procedure).

(6) The court clerk shall enter in the record the matters concerning the examination of evidence carried out by the court following the application prescribed in paragraph (1).

Chapter VI: Arbitral Award and Termination of Arbitral Proceedings

Article 36 (Substantive Law to be Applied in Arbitral Award)

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are agreed by the parties as applicable to the substance of the dispute. In such case, 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 agreement as provided in the preceding paragraph, the arbitral tribunal shall apply the substantive law of the State with which the civil dispute subject to the arbitral proceedings is most closely connected.

(3) Notwithstanding the provisions prescribed in the preceding two paragraphs, the arbitral tribunal shall decide ex aequo et bono only if the parties have expressly authorized it to do so.

(4) Where there is a contract relating to the civil dispute subject to the arbitral proceedings, the arbitral tribunal shall decide in accordance with the terms of such contract and shall take into account the usages, if any, that may apply to the civil dispute.

Article 37. (Proceedings by Panel of Arbitrators)

(1) An arbitral tribunal with more than one arbitrator shall elect a presiding arbitrator from among all its members.

(2) Any decision of the arbitral tribunal shall be made by a majority of all its members.

(3) Notwithstanding the provisions prescribed in the preceding paragraph, procedural matters in arbitral proceedings may be decided by the presiding arbitrator, if so authorized by the parties or all other members of the arbitral tribunal.

(4) The provisions of the preceding three paragraphs shall not apply when otherwise agreed by the parties.

Article 38. (Settlement)

(1) If, during arbitral proceedings, the parties settle the civil dispute subject to the arbitral proceedings and the parties so request, the arbitral tribunal may make a ruling on agreed terms.

(2) The ruling as provided for in the preceding paragraph shall have the same effect as an arbitral award.

(3) The ruling as provided for in paragraph (1) shall be made in writing in accordance with paragraphs (1) and (3) of the following article and shall state that it is an arbitral award.

(4) An arbitral tribunal or one or more arbitrators designated by it may attempt to settle the civil dispute subject to the arbitral proceedings, if consented to by the parties.

(5) Unless otherwise agreed by the parties, the consent provided for in the preceding paragraph or its withdrawal shall be made in writing.

Article 39. (Arbitral Award)

(1) The arbitral award shall be made in writing and shall be signed by the arbitrators who made it. Provided, in arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, if the reason for any omitted signature is stated.
(2) The arbitral award shall state the reasons upon which it is based. Provided, this shall not apply when otherwise agreed by the parties.
(3) The arbitral award shall state its date and place of arbitration.
(4) The arbitral award shall be deemed to have been made at the place of arbitration.
(5) After the arbitral award is made, the arbitral tribunal shall notify each party of the arbitral award by sending a copy of the arbitral award signed by the arbitrators.
(6) The proviso of paragraph (1) shall apply to the copy of the arbitral award described in the preceding paragraph.

Article 40. (Termination of Arbitral Proceedings)

(1) The arbitral proceedings are terminated by the arbitral award or by a ruling to terminate the arbitral proceedings.
(2) Other than rulings based on the provisions of article 23, paragraph (4), item (ii) or article 33, paragraph (1), the arbitral tribunal shall issue a ruling to terminate arbitral proceedings in the case where any of the following grounds exists:
    (i) the claimant withdraws its claim. Provided, this shall not apply in the event that the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on its part in obtaining a settlement of the civil dispute subject to the arbitral proceedings;
    (ii) the parties agree to on termination of the arbitral proceedings;
    (iii) the parties settle the civil dispute subject to the arbitral proceedings (excluding the case where a ruling under article 38, paragraph (1) is issued); or
    (iv) other than the instances in the preceding three items, the arbitral tribunal finds that the continuation of the arbitral proceedings has become unnecessary or impossible.
(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings. Provided, the acts prescribed in the provisions of articles 41 through 43 may be made.

Article 41. (Correction of Arbitral Award)

(1) The arbitral tribunal may upon request of a party or by its own authority correct any errors in computation, any clerical or typographical errors or any errors of similar nature in the arbitral award.
(2) Unless otherwise agreed by the parties, the request described in the preceding

paragraph shall be made within thirty days of the receipt of the notice of the arbitral award.

(3) When making the request described in paragraph (1), a party shall issue advance or simultaneous notice to the other party stating the content of the request.

(4) The arbitral tribunal shall make a ruling with respect to the request described in paragraph (1) within thirty days of such request.

(5) The arbitral tribunal may extend, if it considers it necessary, the period of time provided for in the preceding paragraph.

(6) The provisions of article 39 shall apply to any ruling to correct the arbitral award or any ruling to dismiss the request in paragraph (1).

Article 42. (Interpretation of Arbitral Award by Arbitral Tribunal)

(1) A party may request the arbitral tribunal to give an interpretation of a specific part of the arbitral award.

(2) The request described in the preceding paragraph may be made only if so agreed by the parties.

(3) The provisions of paragraphs (2) and (3) of the preceding article shall apply to the request described in paragraph (1) and the provisions of article 39 and paragraphs (4) and (5) of the preceding article shall apply to any rulings made with respect to the request described in paragraph (1).

Article 43. (Additional Arbitral Award)

(1) Unless otherwise agreed by the parties, a party may request the arbitral tribunal to make an arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award. In such case, the provisions of article 41, paragraphs (2) and (3) shall apply.

(2) The arbitral tribunal shall make a ruling with respect to the request described in the preceding paragraph within sixty days of such request. In such case, the provisions of article 41, paragraph (5) shall apply.

(3) The provisions of article 39 shall apply to the ruling described in the preceding paragraph.

Chapter VII: Setting Aside of Arbitral Award

Article 44.

(1) A party may apply to a court to set aside the arbitral award when any of the following grounds are present:

(i) the arbitration agreement is not valid due to limits to a party's capacity;

(ii) the arbitration agreement is not valid for a reason other than limits to a party's

capacity under the law to which the parties have agreed to subject it (or failing any indication thereon, under the law of Japan);

(iii) the party making the application was not given notice as required by the provisions of the laws of Japan (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to the public policy, such agreement) in the proceedings to appoint arbitrators or in the arbitral proceedings;

(iv) the party making the application was unable to present its case in the arbitral proceedings;

(v) the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings;

(vi) the composition of the arbitral tribunal or the arbitral proceedings were not in accordance with the provisions of the laws of Japan (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to the public policy, such agreement);

(vii) the claims in the arbitral proceedings relate to a dispute that cannot constitute the subject of an arbitration agreement under the laws of Japan; or

(viii) the content of the arbitral award is in conflict with the public policy or good morals of Japan.

(2) The application described in the preceding paragraph may not be made after three months have elapsed from the date on which the party making the application had received the notice by the sending of a copy of the arbitral award (including the document constituting the ruling of the arbitral tribunal described in the provisions of articles 41 through 43), or after an enforcement decision under article 46 has become final and conclusive.

(3) Even where the case for application described in paragraph (1) falls within its jurisdiction, a court may, upon request or by its own authority, if it finds it appropriate, transfer all or a part of said case to another competent court.

(4) An immediate appeal may be filed against a decision made under the provisions of article 5, paragraph (3) or the preceding paragraph regarding the case for application described in paragraph (1).

(5) A court may not make a decision with respect to the application described in paragraph (1), unless and until an oral hearing or oral proceeding at which the parties can attend was held.

(6) Where an application is made under paragraph (1), an arbitral award may be set aside by the court in the event that it finds any of the grounds described in each of the items under the same paragraph to be present (with respect to the grounds described in items (i) through (vi) of the same paragraph, this shall be limited to where the party

making the application has proved the existence of such grounds).

(7) Where the ground described in paragraph (1), item (v) is present, and where the part relating to matters prescribed in the same item can be separated from the arbitral award, only that part of the arbitral award may be set aside by the court.

(8) An immediate appeal may be filed against the decision regarding the application in paragraph (1).

Chapter VIII: Recognition and Enforcement Decision of Arbitral Award

Article 45. (Recognition of Arbitral Award)

(1) An arbitral award (irrespective of whether or not the place of arbitration is in the territory of Japan; this shall apply throughout this chapter) shall have the same effect as a final and conclusive judgment. Provided, an enforcement based on the arbitral award shall be subject to an enforcement decision pursuant to the provisions of the following article.

(2) The provisions of the preceding paragraph do not apply in the case where any of the following grounds are present (with respect to the grounds described in items (i) through (vii), this shall be limited to where either of the parties has proven the existence of the ground in question):

(i) the arbitration agreement is not valid due to limits to a party's capacity;

(ii) the arbitration agreement is not valid for a reason other than limits to a party's capacity under the law to which the parties have agreed to subject it (or failing any indication thereon, the law of the country under which the place of arbitration falls);

(iii) a party was not given notice as required by the provisions of the law of the country under which the place of arbitration falls (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to public policy, such agreement) in the proceedings to appoint arbitrators or in the arbitral proceedings;

(iv) a party was unable to present its case in the arbitral proceedings;

(v) the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings;

(vi) the composition of an arbitral tribunal or the arbitral proceedings were not in accordance with the provisions of the law of the country under which the place of arbitration falls (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to public policy, such agreement);

(vii) according to the law of the country under which the place of arbitration falls (or where the law of a country other than the country under which the place of

arbitration falls was applied to the arbitral proceedings, such country), the arbitral award has not yet become binding, or the arbitral award has been set aside or suspended by a court of such country;

(viii) the claims in the arbitral proceedings relate to a dispute that cannot constitute the subject of an arbitration agreement under the laws of Japan; or

(ix) the content of the arbitral award would be contrary to the public policy or good morals of Japan.

(3) Where the ground described in item (v) of the preceding paragraph is present, and where the part relating to matters described in the same item can be separated from the arbitral award, said part and any other parts in the arbitral award shall be deemed separate independent arbitral awards and the provisions of the preceding paragraph shall apply accordingly.

Article 46. (Enforcement Decision of Arbitral Award)

(1) A party seeking enforcement based on the arbitral award may apply to a court for an enforcement decision (which hereinafter means a decision authorizing enforcement based on an arbitral award) against the debtor as counterparty.

(2) The party making the application described in the preceding paragraph shall supply a copy of the arbitral award, a document certifying that the content of said copy is identical to the arbitral award, and a Japanese translation of the arbitral award (except where made in Japanese).

(3) If an application for setting aside or suspension of an arbitral award has been made to the court as described in paragraph (2), item (vii) of the preceding article, the court where the application described in paragraph (1) has been made may, if it considers it necessary, suspend proceedings relating to the application described in paragraph (1). In such case, the court may, upon request of the party who made the application described in the same paragraph, order the other party to provide security.

(4) The case for application described in paragraph (1) shall be, notwithstanding the provisions of article 5, paragraph (1), subject only to the jurisdiction of the courts cited in each of the items of the same paragraph and a district court with jurisdiction over the location of the object of the claim or the debtor's seizable assets.

(5) Even where the case for application described in paragraph (1) falls within its jurisdiction, a court may, upon request or by its own authority, if it finds it appropriate, transfer all or a part of said case to another competent court.

(6) An immediate appeal may be filed against a decision made under the provisions of article 5, paragraph (3) or the preceding paragraph regarding the case for application described in paragraph (1).

(7) The court shall, except where it dismisses the application described in paragraph (1)

pursuant to the provisions of the following paragraph or paragraph (9), issue an enforcement decision.

(8) The court may dismiss the application described in paragraph (1) only when it finds any of the grounds described in each of the items under paragraph (2) of the preceding article present (with respect to the grounds described in items (i) through (vii) of the same paragraph, this shall be limited to where the counterparty has proved the existence of the ground in question).

(9) The provisions of paragraph (3) of the preceding article shall apply with respect to the application of the provisions of the preceding paragraph in the event that the ground described in paragraph (2), item (v) of the same article is present.

(10) The provisions of article 44, paragraphs (5) and (8) shall apply with respect to decisions regarding the application described in paragraph (1).

Chapter IX: Miscellaneous

Article 47. (Remuneration of Arbitrators)

(1) The arbitrators may receive remuneration in accordance with the agreement of the parties.

(2) Failing an agreement as described in the preceding paragraph, the arbitral tribunal shall determine the remuneration of the arbitrators. In such case, the remuneration shall be for an appropriate amount.

Article 48. (Deposit for the Costs of the Arbitral Proceedings)

(1) Unless otherwise agreed by the parties, the arbitral tribunal may order that the parties deposit an amount determined by the arbitral tribunal as the roughly estimated amount for costs of the arbitral proceedings within the appropriate period of time determined by the arbitral tribunal.

(2) Where such deposits, as ordered under the provisions of the preceding paragraph, have not been made, unless otherwise agreed by the parties, the arbitral tribunal May suspend or terminate the arbitral proceedings.

Article 49. (Apportionment of the Costs of the Arbitral Proceedings)

(1) The costs disbursed by the parties with respect to the arbitral proceedings shall be apportioned between the parties in accordance with the agreement of the parties.

(2) Failing an agreement as described in the preceding paragraph, each party shall bear the costs it has disbursed with respect to the arbitral proceedings.

(3) In accordance with the agreement of the parties, if any, the arbitral tribunal may, in an arbitral award or in an independent ruling, determine the apportionment between the parties of the costs disbursed by the parties with respect to the arbitral proceedings

and the amount that one party should reimburse to the other party based thereon.

(4) If the matters described in the preceding paragraph have been determined in an independent ruling, such ruling shall have the same effect as an arbitral award.

(5) The provisions of article 39 shall apply to the ruling described in the preceding paragraph.

Chapter X: Penalties

Article 50. (Acceptance of Bribe; Acceptance with Request; Acceptance in Advance of Assumption of Office)

(1) An arbitrator who accepts, demands or promises to accept a bribe in relation to its duty shall be punished by imprisonment with labor for not more than five years. In such case, when the arbitrator agrees to do an act in response to a request, imprisonment with labor for not more than seven years shall be imposed.

(2) When a person to be appointed an arbitrator accepts, demands or promises to accept a bribe in relation to the duty to assume with agreement to do an act in response to a request, imprisonment with labor for not more than five years shall be imposed in the event of appointment.

Article 51. (Bribe to Third Person)

When an arbitrator with agreement to do an act in response to a request, causes a bribe in relation to its duty to be given to a third person or demands or promises such bribe to be given to a third person, imprisonment with labor for not more than five years shall be imposed.

Article 52. (Aggravated Acceptance; Acceptance after Resignation of Office)

(1) When an arbitrator commits a crime described in the preceding two articles and consequently acts illegally or refrains from acting in the exercise of its duty, imprisonment labor for a definite term of not less than one year shall be imposed.

(2) The provisions of the preceding paragraph shall apply when an arbitrator accepts, demands or promises to accept a bribe, or cause a bribe to be given to a third person or demands or promises a bribe to be given to a third person, in relation to having acted illegally or refrained from acting in the exercise of its duty.

(3) When a person who was an arbitrator accepts, demands or promises to accept a bribe in relation to having acted illegally or refrained from acting in the exercise of its duty during its tenure as an arbitrator with agreement thereof in response to a request, imprisonment with labor for not more than five years shall be imposed.

Article 53. (Confiscation and Collection of Equivalent Value)

A bribe accepted by an offender or by a third person with such knowledge shall be confiscated. When the whole or a part of the bribe cannot be confiscated, a sum of money equivalent thereto shall be collected.

Article 54. (Giving a Bribe)

A person who gives, offers or promises to give a bribe as provided for in articles 50 through 52 shall be punished by imprisonment with labor for not more than three years or a fine of not more than two million five hundred thousand yen.

Article 55. (Crimes Committed outside Japan)

(1) The provisions of articles 50 through 53 shall apply to an offender who commits any of the crimes described in articles 50 through 52 outside Japan.
(2) The crime described in the preceding article shall be treated in the same manner as provided in article 2 of the Criminal Code [Law No. 45 of 1907].

Supplementary Provisions

Article 1. (Date of Enforcement)

This Law shall come into force from the date which shall be fixed by a Cabinet Order no later than nine months from the date of the promulgation of this Law.

Article 2. (Transitory Measures Relating to Form of Arbitration Agreement)

The existing Law shall apply to the form for arbitration agreements which have been made prior to the enforcement of this Law.

Article 3. (Exception Relating to Arbitration Agreements Concluded between Consumers and Businesses)

(1) For the time being until otherwise enacted, any arbitration agreements (excluding arbitration agreements described in the following article; hereafter in this article referred to as the "consumer arbitration agreement") concluded between consumers (which hereafter in this article shall mean consumers as described in article 2, paragraph (1) of the Consumer Contract Act [Law No. 61 of 2000]) and businesses (which hereafter in this article shall mean businesses as described in article 2, paragraph (2) of the same law) subsequent to the enforcement of this Law, the subject of which constitutes civil disputes that may arise between them in the future, shall follow the provisions described in paragraphs (2) through (7).
(2) A consumer may cancel a consumer arbitration agreement. Provided, this shall not apply in the event that the consumer is a claimant in arbitral proceedings based on the consumer arbitration agreement.

(3) In the case where a business is the claimant in arbitral proceedings based on a consumer arbitration agreement, following the constitution of an arbitral tribunal the business shall request without delay that an oral hearing be conducted under the provisions of article 32, paragraph (1). In such case the arbitral tribunal shall make a ruling to carry out the oral hearing and notify the parties of the date, time and place therefor.

(4) The arbitral tribunal shall carry out the oral hearing described in the preceding paragraph prior to any other proceedings in the arbitral proceedings.

(5) Notice to the party who is a consumer based on the provisions of paragraph (3) shall be made by the sending of a document stating the following matters. In such case, the arbitral tribunal shall make every effort to use as simple an expression as possible with respect to matters described in items (ii) through (v):
   (i) date, time and place of the oral hearing;
   (ii) that in the case where an arbitration agreement exists, the arbitral award with respect to the civil dispute constituting its subject shall have the same effect as a final and conclusive judgment of the court;
   (iii) that in the case where an arbitration agreement exists, any suit filed with the court in respect of the civil dispute constituting its subject will be dismissed irrespective of the timing when the suit is filed before or after the arbitral award;
   (iv) that the consumer may cancel the consumer arbitration agreement; and
   (v) that in the event that the party who is the consumer fails to appear on the date of the oral hearing described in item (i), said party shall be deemed to have cancelled the consumer arbitration agreement.

(6) On the day of the oral hearing described in paragraph (3), the arbitral tribunal shall explain the matters described in items (ii) through (iv) of the preceding paragraph orally to the party who is a consumer. In such case, where the party does not express an intent to waive its right of cancellation described in paragraph (2), said party shall be deemed to have cancelled the consumer arbitration agreement.

(7) In the event that the party who is a consumer fails to appear on the date of the oral hearing described in paragraph (3), said party shall be deemed to have cancelled the consumer arbitration agreement.

Article 4. (Exception Relating to Arbitration Agreements Concerning Individual Labor-related Disputes)

For the time being until otherwise enacted, any arbitration agreements concluded following the enforcement of this Law, the subject of which constitutes individual labor-related disputes (which means individual labor-related disputes as described in article 1 of the Law on Promoting the Resolution of Individual Labor Disputes [Law No.112 of

2001]) that may arise in the future, shall be null and void.

Article 5. (Transitional Measures Relating to Arbitral Proceedings)
Arbitral proceedings commenced prior to the enforcement of this Law and proceedings conducted by a court relating to such arbitral proceedings (excluding proceedings commenced after the issuance of an arbitral award) shall follow the existing Law.

Article 6. (Transitional Measures Relating to Lawsuits for the Challenge against Arbitrators)
In addition to the provisions in the preceding article, the existing Law shall apply to suits for challenges against arbitrators brought prior to the enforcement of this Law.

Article 7. (Transitional Measures Relating to the Request for the Challenge against Arbitrators to the Arbitral Tribunal)
In addition to the provisions of the preceding two articles, with respect to the request of the provisions of article 19, paragraph (3) in the case where the parties, prior to the enforcement of this Law, were aware of the fact that an arbitral tribunal had been formed and of the existence of any of the grounds referred to in any of the items of article 18, paragraph (1) for any arbitrator, the words “the later of either the day on which it became aware of the constitution of the arbitral tribunal or the day on which it became aware of any circumstance referred to in any item of paragraph (1) of the preceding article” in article 19, paragraph (3) shall be read as “the date on which this Law came into force”.

Article 8. (Transitional Measures Relating to the Force and Effect of Arbitral Awards)
In the case where an arbitral award had been issued prior to the enforcement of this Law, its deposit to a court, its force and effect, suits to set it aside, and enforcement based thereon, shall follow the existing Law.

Articles 9 through 22 [Omitted]

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