



LAW no. 34, 18 March 1999

REPUBLIC OF SAN MARINO

ON ARBITRATION

**We, the Captains Regent
of the Most Serene Republic of San Marino**

promulgate and make public the following law approved by the Great and General Council during its session of 18 March 1999

Art. 1

Arbitration

1. In alternative to the ordinary jurisdiction, arbitration is an instrument to settle disputes arising between two or more parties that fall, in accordance with the law, within the competence of the ordinary judicial authority and that concern disposable rights.

Art. 2

Arbitration agreement

1. With an arbitration agreement, the parties shall agree to submit to arbitrators for the settlement of any dispute arising between them.
2. To be valid, the arbitration agreement shall be stipulated in writing and indicate the subject matter of the dispute.

Art. 3

Arbitration clause

1. The parties may include in the arbitration agreement or in a separate agreement an arbitration clause, under which they agree to submit to an arbitral court for the settlement of any dispute arising out of the arbitration agreement.
2. The arbitration clause shall be drafted in the same form as the arbitration agreement under Art. 2.
3. The power to stipulate an arbitration agreement shall also include the power to stipulate an arbitration clause, unless the parties have otherwise agreed.
4. The validity of the arbitration clause shall be examined separately from the arbitration agreement to which it refers.

Art. 4

Place of arbitration

1. The parties shall establish in the arbitration agreement or in the arbitration clause that arbitration take place in the territory of the Republic. Failing any indication thereof, the arbitrators shall indicate the place of arbitration during their first session.

Art. 5

Number and appointment of arbitrators

1. Either foreign or national arbitrators, having legal capacity under San Marino law may be appointed.
2. The arbitration agreement or the arbitration clause shall indicate the names of the arbitrators appointed or their number and terms of appointment.
3. Where the parties have agreed on an even number of arbitrators, the supplementary arbitrator, unless otherwise agreed, shall be appointed by the Law Commissioner within 15 days from the filing in of the request. Failing any agreement between the parties as to the number or appointment of arbitrators, the dispute shall be settled by three arbitrators appointed by the Law Commissioner within the same period of time, unless otherwise agreed.

Art. 6

Appointment of arbitrators

1. Where the parties provide for the appointment of the arbitrators, each of them shall inform the other of the arbitrator or arbitrators appointed by means of a notice drafted under the terms established by the legislation in force on the service of judicial acts. The notice of appointment shall also invite the other party to proceed with the appointment of his own arbitrators, which shall be made under the same terms within the following twenty days, or within a shorter period of time indicated by the parties, in the arbitration agreement or the arbitration clause.
2. Unless the parties have otherwise agreed, where the party invited to appoint his arbitrators fails to do so, the other may formally request the Law Commissioner to provide for the appointment. The Law Commissioner, having heard the other party if necessary, shall proceed accordingly by issuing an unopposable act within 15 days from the filing in of the request.
3. The same provision shall apply should the arbitration agreement or the arbitration clause envisage the appointment of one or more arbitrators by a third party, the latter failing to do so within twenty days from the service of the request.

Art. 7

Replacement of arbitrators

1. Any arbitrator unable to serve for any reason shall be replaced under the same terms of appointment set forth in the arbitration agreement or the arbitration clause. In the absence of relevant provisions, those referred to in Art. 6 shall apply.

Art. 8

Arbitrators' acceptance

1. The arbitrators shall serve the parties in writing their acceptance within 10 days from the communication of their appointment, or within a shorter period of time if so established in the arbitration agreement or the arbitration clause.
2. Once they have accepted to serve, the arbitrators may not resign except for serious and unexpected reasons.

Art. 9

Rights of arbitrators

1. Arbitrators shall be entitled to the reimbursement of costs and payment of fees, unless they have expressly renounced.
2. The parties shall jointly provide for payment, unless there is a recourse between them.
3. The fixation of costs and fees directly made by the arbitrators shall not be binding on the parties if they fail to accept. In such a case, costs and fees shall be fixed, at the request of the arbitrators and having heard the parties, by the Law Commissioner who shall issue an act within 30 days from the filing in of the request.
4. The act shall constitute an instrument for the purposes of the documentary summary procedure governed by Section VII, paragraph 154, Book II of the *Leges Statutae*.

Art. 10

Challenge of arbitrators

1. Any arbitrator may be challenged by the parties if circumstances exist that give rise to reasonable doubts as to the arbitrator's impartiality and independence.
2. The challenge shall be proposed to the Law Commissioner within 15 days from the communication of the appointment, or from the moment in which the cause of the challenge has become known.
3. The Law Commissioner shall issue a final decision on the challenge within 30 days, after having heard the arbitrator or arbitrators.

Art 11.

Proceedings

1. The rules governing the arbitral proceedings shall be laid down by the parties in the arbitration agreement, in the arbitration clause or in a separate written agreement, provided that the drafting is prior to the arbitral judgement.
2. Failing such rules, these shall be established by the arbitral court, which shall be free to conduct the proceedings in such manner as it deems most appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.
3. The arbitral court shall be assisted by a secretary in charge of drafting the minutes at any stage of the proceedings.
4. The arbitrators shall conduct hearings by notifying the parties within a suitable period of time. The parties may either appear personally or delegate representatives duly authorized, and be assisted by defenders and consultants.

5. If any of the parties, though regularly summoned, fails to appear for an unjustified reason, the arbitrators may proceed with the hearing.

Art. 12

Pleas as to jurisdiction

1. The party failing to object during the arbitral proceedings that the requests made by the other party or parties fall outside the limits of the arbitration agreement or the arbitration clause may not appeal against the nullity of the award.

2. The arbitral court may rule on a duly raised objection even with a partial award.

Art. 13

Accidental issues

1. In the event an issue arises during the proceedings that cannot be settled by arbitration in accordance with the law, the arbitral court shall suspend the proceedings if they deem the issue to be prejudicial to the formulation of a decision.

2. The party concerned shall resume the suspended proceedings, under pain of expiry, within 90 days from the date a final judgement has been passed on the prejudicial issue.

3. Except this case, the arbitral court shall decide on all accidental issues that may have arisen during the proceedings.

Art. 14

Commencement of arbitration

1. The arbitral court shall commence arbitration within as short a time as possible.

2. The arbitral court, *ex officio* or at the request of a party, may fix one or more hearings with the parties, also for the purpose of seeking conciliation, and the witnesses, also in order to acquire any further document or evidence, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

3. The acquisition of evidence may be entrusted by the arbitral court to one arbitrator.

4. The arbitral court may appoint one or more experts, define their functions, receive their reports and hear them.

5. Moreover, the arbitral court may grant the parties time limits for the exchange of memorials, replies and documents, copy of which shall be filed in also for the counterparts.

6. Subsequent to the judicial enquiry, the arbitral court may invite the parties to submit any further document, including copies for the counterparts, and fix a hearing for oral discussions.

Art. 15

Time limits and place of issue of the award

1. Unless the parties have otherwise agreed, the arbitral court shall render the award within 180 days from the date of acceptance of the mandate. In case of more than one arbitrators, such period of time shall start to run on the day of the last acceptance.

2. In case the award is null and void due to non compliance with the said time limit, the arbitrators shall compensate for damages in accordance with art. 20 (f).
3. The time limit shall be suspended in case of: i) a challenge proposal, until a decision is made on the challenge under art. 10 above; ii) a suspension of the arbitral proceedings under art. 13.1 above; and iii) a request of suspension jointly submitted by the parties.
4. The time limit shall be interrupted in case of replacement of the arbitrator or one of the arbitrators for any reason, pursuant to art. 7.
5. Moreover, only once and not exceeding 180 days may an extension of the time limit be agreed by the parties in writing or granted *ex officio* by the arbitral court for justified reasons.
6. The award may be rendered even outside the territory of the Republic of San Marino, unless the parties have excluded it.

Art. 16

Rules for deliberation

1. The arbitral court shall settle the dispute in accordance with the rules of law, unless the parties have authorised them in writing to decide by equity.

Art. 17

Deliberation and requirements of the award

1. The award shall be rendered by a majority of votes of the arbitrators, either in personal or video-phone conference, and drafted in writing in Italian in as many originals as the number of parties.
2. The award shall indicate:
 - a) the parties and their defenders;
 - b) the arbitration agreement or arbitration clause and related issues;
 - c) the reasons of the judgement;
 - d) the arbitral judgement;
 - e) the place of arbitration, the locale and the terms of the award rendered,
 - f) the signature of the arbitrator or arbitrators, and the date of signature; each arbitrator may sign the award at a time and in a place other than those of the award.
3. The award shall become binding on the parties on the day of the last signature.

Art. 18

Deposit of the award

1. Within 10 days from the date of the last signature, the award shall be communicated to the parties by delivery of an original copy.
2. The party having interest may claim the enforcement of the award in the territory of the Republic of San Marino by filing in the original or certified copy of the award, as well as original or certified copies of the arbitration agreement or the arbitration clause annexed thereto, with the Chancery of the Civil and Criminal Court of San Marino. The Law

Commissioner, after having verified the formal regularity of the award, shall enforce the award within 30 days from the deposit, by means of an act to be communicated to the parties by the Chancery.

3. A motivated appeal against the decision not enforcing the award may be filed to the Judge of Civil Appellations within 30 days from the date of its communication; the Judge, having heard the parties, shall issue an act within 90 days from the filing of the appeal.

Art. 19

Correction of the award

1. The award may be corrected by the arbitral court which has rendered it even subsequent to its deposit at the request of one or both parties, should the arbitral court have incurred in omissions or clerical errors or errors in computation.

2. The request of a party to correct the arbitral award shall be proposed, under pain of expiry, within 60 days from the communication of the award by the arbitral court.

3. Where the parties agree to request the same correction, the arbitral court shall proceed accordingly, without any obligation to hold a specific hearing, within 15 days from the filing in of the request.

4. Where the correction is requested by one of the parties, the arbitral court shall fix a hearing during which the parties, informed by the secretary within a suitable period of time, shall appear; the arbitral court shall then decide on the request within 15 days from the date of the hearing.

5. In all cases, the arbitral court shall provide for the correction to be communicated to the parties.

Art. 20

Appeal for nullity

1. The award may be appealed for nullity before the Judge of Civil Appellations within 60 days from service.

2. The interim award may be appealed only in conjunction with the final award.

3. Appeals shall be allowed for the following reasons:

a) where the arbitration agreement or the arbitration clause are null and void;

b) where the arbitrators have not been appointed under the terms set forth in articles 5 and 6, provided that the relevant objection has been raised in the arbitral judgement;

c) where the award has been rendered by an arbitrator not complying the requirements set forth in art. 5;

d) where the award has been rendered outside the limits of the arbitration agreement or the arbitration clause, or where the award has not been rendered on any of the subject matters contained in the arbitration agreement or the arbitration clause, except for the provision of art. 12;

e) where the award does not comply with the requirements indicated by art. 17.2 (c), (d), (e) and (f);

f) where the award has been rendered after the expiry of the time limits referred to in art. 15;

g) where the award is in conflict with another prior, unappealable award or a prior final judgement, provided that the relevant objection has been raised in the arbitral judgement;

- h) where each party has not been treated with equality and given a full opportunity of presenting his case at any stage of the arbitral proceedings;
 - i) where the arbitrators have not respected the rules of law, unless the parties have authorised them to decide by equity.
4. The award may be refuted only for invalidity.

Art. 21

Decision on the appeal for nullity

1. The Judge of Civil Appellations accepting the appeal shall decide on the total or partial nullity of the award.
2. Pending judgement, at the request of a party, and in the presence of serious reasons, the Judge of Civil Appellations may suspend the enforcement of the award.

Art. 22

International arbitration

1. The preceding provisions shall apply to arbitration also in case, on the day of the signing of the arbitration agreement or arbitration clause, at least one of the parties resides or is actually based abroad, or where the obligations deriving from the legal relationship out of which the dispute has arisen are to be fulfilled abroad.
2. In all cases, the rules established in international treaties shall apply.

Art. 23

Foreign awards

1. The party wishing the enforcement of a foreign award in the Republic of San Marino shall file a request to the Law Commissioner and submit, attached thereto, the award, the arbitration agreement or arbitration clause, in original or certified copy, with a certified translation.
2. The Law Commissioner, after having verified the formal regularity of the award, shall officially declare its effectiveness in the territory of the Republic of San Marino, except the following cases:
 - a) the dispute, under San Marino law, could not be settled by arbitration;
 - b) the recognition or enforcement of the award would be in contrast with public order in the Republic of San Marino;
3. An appeal against the decision enforcing or rejecting the foreign award may be filed within 30 days from the communication of the decision to the Judge of Civil Appellations, who shall decide thereon.
4. The foreign award shall not be recognized or enforced by the Judge of Civil Appellations if, during the judgement, the party against which the award has been invoked produces evidence that:
 - a) the parties to the arbitration agreement or the arbitration clause were, under the applicable law, affected by incapacity, or that the said arbitration agreement or arbitration clause are not valid under the law to which the parties have made them subject, or, failing any relevant indication, under the law of the country where the award has been rendered, or

- b) the party against which the award has been invoked was not duly informed of the appointment of the arbitrator or of the arbitral proceedings, or was not in a position to submit his claims; or
 - c) the award refers to a dispute not contemplated by the arbitration agreement or not forming the subject matter of the arbitration clause, or contains decisions falling outside the limits of the arbitration agreement or the arbitration clause; nonetheless, where the provisions of the award referring to issues subject to arbitration can be dissociated from those referring to issues not subject to arbitration, the former may be recognized and enforced; or
 - d) the establishment of the arbitral court or the arbitral proceedings were not in accordance with what agreed by the parties, or, failing such agreement, with the law of the country where arbitration took place; or
 - e) the award is not yet binding on the parties, or has been declared null and void, or suspended by a competent authority in the country where, or under the law of which, the award has been rendered.
5. Where the annulment or suspension of the award is requested by the competent authority referred to in paragraph 4 (e) of this article, the Judge of Civil Appellations, if he deems it appropriate, may suspend the enforcement of the award; upon request of the party claiming the enforcement of the award, he may also order the other party to supply adequate guarantees.
6. In all cases, the rules laid down in international treaties shall apply.

Art. 24

Final provision

1. All the rules, including customary ones, that are in contrast with this law shall be repealed.

Art. 25

Coming into force

1. This law shall come into force on the fifteenth day following the date of its legal publication.

San Marino, 22 March 1999/1698 since the Foundation of the Republic

THE CAPTAINS REGENT
Pietro Berti - Paolo Bollini

THE SECRETARY OF STATE
OF THE INTERIOR
Antonio L. Volpinari