

Session of Amsterdam – 1957

Arbitration in Private International Law

(Fourteenth Commission, Rapporteur : Mr Etienne Szászy)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Considering that it appears to be of the greatest utility that the conflicts of laws to which private arbitration gives rise should be submitted to a single system of private international law,

Adopts the following Resolution :

A. General Questions

First Article

Parties shall be free in the arbitral agreement (submission or arbitral clause) to exercise their free choice and to indicate the place where the arbitral tribunal must sit ; this choice shall imply that they intend to submit the private arbitration to the law of the seat of the country arbitration, to the extent indicated by the following provisions.

If the parties have expressly chosen the law applicable to the arbitral agreement, without settling the seat of the arbitral tribunal, they shall be deemed tacitly to have agreed that the tribunal shall sit in the territory of the country the law of which has been chosen by them.

If the parties have indicated in the arbitral agreement the country of the seat of the arbitral tribunal, and adopted the law of another country to regulate the arbitral agreement, that seat shall be settled in the following manner :

a) It shall be in the country of which the law has been chosen, when the law in both states establishes the principle that the arbitration should take place in the territory of the state of which the law has been chosen by the parties ;

b) In the country where the seat has been fixed by the parties, when the rule that the arbitration must take place in the territory of the state of which the law has been chosen by the parties is not admitted by the laws of either of these two states, or is only admitted by one of them.

Article 2

Where no seat has been settled by virtue of the first article hereof, the parties shall be deemed to have given the arbitrators the right to choose the place where the arbitral tribunal shall sit, and this choice shall determine the law applicable to the arbitration to the extent indicated in the following provisions.

In the case where the arbitrators are to sit successively in different states, the seat of the arbitral tribunal shall be deemed to be established at the place of their first meeting, unless the arbitrators expressly decide in favour of some other place.

If the arbitrators have their habitual residence in different states, and they proceed by virtue of the law, or of a submission, solely by way of exchange of letters, without meeting, the seat of the arbitral tribunal shall be deemed to be established in the place of the residence of the umpire ; if there is no umpire, the seat of the arbitral tribunal shall be fixed by mutual agreement or by the majority of the arbitrators ; in the case of a single arbitrator, his place of residence shall be the seat of the arbitration. For all these cases the law applicable to private arbitration shall be that of the seat settled by one or other of the methods indicated, to the extent determined by the following provisions.

Article 3

The arbitral award shall be deemed to have been rendered at the seat of the arbitral tribunal and on the day of its signature by the arbitrators, wherever those signatures have been subscribed.

B. Capacity and Power to Submit to Arbitration

Article 4

Capacity to submit to arbitration shall be regulated by the law indicated according to the rules of choice of law in force at the seat of the arbitral tribunal.

Article 5

The validity of an arbitral clause shall be regulated by the law of the seat of the arbitral tribunal.

Subject to this reservation, the power to submit to arbitration shall be regulated by the law applicable to the substance of the difference ; this law shall be determined by the rules of choice of law of the state where the arbitral tribunal shall sit.

C. Independence of the arbitral agreement in relation to the difference

Article 6

The conditions for the validity of a submission and of the arbitral clause shall not necessarily be subject to the same law as that applicable to the difference. These conditions shall be regulated by the law in force in the country of the seat of the arbitral tribunal, without it being necessary to distinguish whether the arbitral clause is or is not an integral part of the contract giving rise to a difference.

D. Form

Article 7

The form of an arbitral agreement shall be regulated by the law in force in the country where it has been concluded. Nevertheless the submission or the arbitral clause which does not fulfill the formal requirements of such law shall be valid if the forms required by the law of the place of the seat of the arbitral tribunal have been observed.

The same principle shall apply to the form of the act nominating the arbitrators taking place after the conclusion of the arbitration contract and to the compromise putting an end to a difference.

The provisions of the public policy of the law of the place where the arbitral tribunal sits shall nevertheless be obligatory.

E. Arbitrators and Procedure

Article 8

The contractual relations between the parties and the arbitrators shall be regulated by the law of the place where the arbitral tribunal shall sit.

This law shall also indicate the composition of the arbitral tribunal and the conditions to be observed by the arbitrators in order to carry out their function. It shall also apply to the reasons for challenging arbitrators, to their removal and to their resignation, to their consequences, as well as to the reasons for putting an end to the arbitration.

The authorities competent to proceed to the nomination of arbitrators or of an umpire, when they have not been designated by the parties, shall be those indicated by the law of the seat of the arbitral tribunal.

Article 9

The law of the place of the seat of the arbitral tribunal shall determine whether the procedure to be followed by the arbitrators may be freely established by the parties, and whether, failing agreement on this subject between the contracting parties, it may be settled by the arbitrators or should be replaced by the provisions applicable to procedure before the ordinary courts.

Article 10

The law of the place of the seat of the arbitral tribunal shall alone be applicable to decide whether arbitrators are competent to determine the nullity of the arbitral agreement when this is invoked before them by one of the parties.

F. *Law Applicable to the Substance of the Difference*

Article 11

The rules of choice of law in force in the state of the seat of the arbitral tribunal must be followed to settle the law applicable to the substance of the difference.

Within the limits of such law, arbitrators shall apply the law chosen by the parties or, in default of any express indication by them, shall determine what is the will of the parties in this respect having regard to all the circumstances of the case.

If the law of the place of the seat of the arbitral tribunal so authorises them, the parties may give the arbitrators power to decide *ex cequo et bono* or according to the rules of professional bodies.

G. *Appeal*

Article 12

The law of the place of the seat of the arbitral tribunal shall apply to the deposit and to the formalities giving the award the effect of *res judicata* and rendering it executory, as well as to the conditions relating to methods of appeal against the award of the arbitrators which shall be open to the parties ; such law shall also determine the authorities before which these different legal measures may be sought.

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(26 September 1957)