

International Commercial Arbitration

This SSL draft is based on Florida [Chapter 2010-60](#), which codifies the Model International Commercial Arbitration Law.

A [Florida House Legislative Staff Analysis](#) of Chapter 2010-60 notes, “Arbitration is an alternative to litigation, under which parties agree to have their disputes settled by a neutral third party. Arbitration has become favored for disputes involving international trade, where results of litigation can hinge on where the suit is brought and judgments can be difficult to enforce internationally.”

The Florida legislative analysis states that Florida’s law (and therefore, this SSL draft) applies to international arbitration and would be subject to any agreement between the United States and any other country. However, such legislation only applies to arbitration conducted in the state, except provisions relating to court-enforcement of arbitration awards, requests for interim measures of protection, and grounds for refusing award recognition or enforcement.

This SSL draft defines the scope of international arbitration to include:

- agreements between parties who have their places of business, or for nonbusinesses, residences in different countries at the time of the agreement’s conclusion;
- agreements between parties, where one of the following is situated in a different country than a party’s place of business:
 - the seat of arbitration,
 - the place where a substantial part of the agreement’s obligation is to be performed, or
 - the place where the subject matter of the dispute is most closely connected, and
- agreements under which the parties have expressly agreed that the matter relates to more than one country.

The bill defines arbitration, arbitration agreement, and court, and provides rules of interpretation. Arbitration agreements are deemed separate and independent from the underlying contract and may survive even if the contract is deemed invalid.

Disputes shall be determined pursuant to substantive rules of law chosen by the parties. If the parties fail to choose the applicable law, a tribunal may determine the applicable law by the choice-of-law provision it deems applicable. There are to be three arbitrators, unless the parties agree otherwise, and a procedure for appointment is provided. Arbitrators shall have the same immunity as a judge.

Absent an agreement otherwise, an arbitral tribunal may conduct proceedings as it sees fit, in the language it chooses. It has the authority to determine matters of evidence, choose the place of arbitration, and to appoint experts.

All parties are to be treated equally and given equal opportunity to present their cases. Under the Act, a claimant submits a statement of its claim, including the remedy sought. The respondent then submits a statement of its defense. Parties may amend their statements. If a claimant, without a showing of sufficient cause, fails to provide its statement of claim, the tribunal shall terminate the arbitration. If a respondent fails to provide its defense, the tribunal shall continue the arbitration. The tribunal shall also continue the arbitration if a party fails to appear or produce evidence.

An arbitral tribunal has the ability to rule on its own jurisdiction, including any challenges to the validity of the parties’ agreement to arbitrate. Jurisdictional challenges must be submitted with the statement of defense. Claims that the tribunal is exceeding its authority must

be raised as soon as such matter arises. The tribunal has discretion to hear justifiably untimely challenges. A party may appeal the tribunal's decisions on jurisdiction to a circuit court.

Unless otherwise agreed by the parties, the tribunal has the ability to issue interim measures at the request of a party. Interim measures are binding on the parties and may be enforced in any court, in any country. The court may only refuse to enforce a measure if the tribunal's order of security has not been met, on one of the grounds for refusing to enforce an arbitration award, or if the court finds that the measure is incompatible with the powers of the court. A court also shares the same authority to issue interim measures as the tribunal.

Interim measures are temporary and may include orders to maintain or restore the status quo, prevent current or imminent harm or prejudice to the arbitral process, preserve assets out of which a subsequent award may be satisfied, or preserve evidence. The requesting party must prove that harm not adequately reparable by money damages is likely to result and such harm substantially outweighs harm likely to result from issuing the measure, and there is a reasonable possibility that the requesting party will succeed on the merits.

The tribunal may require the requesting party post security and to disclose any change in the circumstances supporting the measure. The requesting party is liable for costs and damages arising from a granted interim measure that the tribunal later determines should not have been granted.

A party requesting an interim measure may also request a preliminary order prohibiting a party from frustrating the purpose of the interim measure. The tribunal may grant such a request if it finds that prior disclosure of the request for the interim measure risks frustrating the measure's purpose and the request meets the same conditions as those applicable for interim measures. A specific process for issuing preliminary orders is detailed. A preliminary order, while binding on the parties, is not enforceable by a court and does not constitute an award.

The tribunal must require the requesting party post security and to disclose any change in the circumstances supporting the measure. The requesting party is liable for costs and damages arising from a granted preliminary order that the tribunal later determines should not have been granted.

An arbitral tribunal may modify, suspend or terminate an interim measure or preliminary order at the request of any party or, in exceptional circumstances and with notice to the parties, at its own initiative.

Parties may settle during the arbitration, and if they do so, the tribunal is to terminate the proceeding and, if requested by the parties and not objected to by the tribunal, shall record the settlement as an arbitral award.

An arbitration award must be made in writing, signed by a majority of the arbitrators, and state the date and place it was made. An award also states the reasons upon which it is based, unless the parties agree otherwise. An award is binding on the parties and enforceable in any court of competent jurisdiction.

A final award terminates the arbitration. A tribunal may also terminate the arbitration by order, if the claimant withdraws their claim, absent objection by the respondent, and the tribunal finds the respondent has an interest in a final settlement; the parties agree; or the tribunal finds that continuation of the arbitration has become unnecessary or impossible.

Either party may request the tribunal correct any computation, clerical or typographical errors and a detailed process for correction is provided. Either party may also request interpretation of any part of the award.

A party may request a court set an award aside within three months. A party may also apply to the court to enforce the award.

The bill provides rules governing the circumstance where both arbitration and a court action are initiated. A court hearing a claim that is subject to an arbitration agreement shall, if

requested by a party in its initial answer, refer the agreement to arbitration, unless it finds the agreement is null and void, inoperative, or incapable of performance. Or, if an action has been brought, arbitration may also be commenced or continued, and an arbitration award may be made, while the issue is pending in the court.

The bill provides for supervisory oversight by a circuit court in the county where the arbitration is occurring. The court may, at a party's request and unless the parties agree otherwise, appoint an arbitrator, if the party, or arbitrators appointed by the parties, fails to do so as the agreement or Act requires. The court's decision is not appealable. The court may hear a challenge to an arbitrator that the arbitral tribunal rejected. The court's decision is not appealable, and the arbitration may continue while the court hears the challenge. The court may determine whether an arbitrator's mandate should be terminated if the arbitrator becomes actually or legally unable to perform or fails to act without undue delay. The party may only make such a request if the parties fail to agree on the arbitrator's termination and the arbitrator fails to withdraw from office. The court's decision is not appealable. The court may decide jurisdictional issues of the arbitral tribunal. The court's decision is not appealable, and the arbitration may continue while the court hears the issue. A court can issue an interim measure of protection (injunction) before or during the arbitration. The court may set aside an arbitral award under certain circumstances. The court may suspend such a hearing to give the tribunal an opportunity to resume arbitration or cure the grounds to set aside the award. The court may enforce or refuse to enforce an arbitral award.

The bill provides grounds for setting aside or refusing to enforce an arbitration award. These are limited to the complaining party to the agreement was under some incapacity; the arbitration agreement is invalid under the law the parties designated or state law, if no law has been designated; the complaining party was not given notice of the appointment of an arbitrator or the proceedings, or was unable to present its case; the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; less the agreement violated law; the court finds that the subject matter of the dispute may not be arbitrated under state law or the award is contrary to the public policy of the state; or in the case of refusing to enforce an award, a finding that the award has not yet become binding on the parties or has previously been set aside.

Submitted as:

Florida

[Chapter 2010-60](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as “The [State] International Commercial
2 Arbitration Act.”

3

4 Section 2. [*Service of Process in Connection with Actions under The (State) International*
5 *Commercial Arbitration Act*.]

6

(1) Any process in connection with the commencement of an action before the
7 courts of this state under this Act shall be served:

8

(a) In the case of a natural person, by service upon:

9

1. That person;

10 2. Any agent for service of process appointed in, or pursuant to,
11 any applicable agreement or by operation of any law of this state; or

12 3. Any person authorized by the law of the jurisdiction where
13 process is being served to accept service for that person.

14 (b) In the case of any person other than a natural person, by service upon:

15 1. Any agent for service of process appointed in, or pursuant to,
16 any applicable agreement or by operation of any law of this state;

17 2. Any person authorized by the law of the jurisdiction where
18 process is being served to accept service for that person;

19 3. Any person, whether natural or otherwise and wherever located,
20 who by operation of law or internal action is an officer, business agent, director, general partner,
21 or managing agent or director of the person being served; or

22 4. Any partner, joint venturer, member or controlling shareholder,
23 wherever located, of the person being served, if the person being served does not by law or
24 internal action have any officer, business agent, director, general partner, or managing agent or
25 director.

26
27 Section 3. [*Scope of Application.*]

28 (1) This Act applies to international commercial arbitration, subject to any agreement in
29 force between the United States of America and any other country or countries.

30 (2) This Act, except sections 10, 11, 27, 28, 29, 48 and 49, applies only if the place of
31 arbitration is in this state.

32 (3) An arbitration is international if:

33 (a) The parties to an arbitration agreement have, at the time of the conclusion of
34 that agreement, their places of business in different countries;

35 (b) One of the following places is situated outside the country in which the parties
36 have their places of business:

37 1. The place of arbitration if determined in, or pursuant to, the
38 arbitration agreement; or

39 2. Any place where a substantial part of the obligations of the
40 commercial relationship are to be performed or the place with which the subject matter of the
41 dispute is most closely connected; or

42 (c) The parties have expressly agreed that the subject matter of the
43 arbitration agreement relates to more than one country.

44 (4) For the purposes of subsection (3):

45 (a) If a party has more than one place of business, the place of business is that
46 which has the closest relationship to the arbitration agreement.

47 (b) If a party does not have a place of business, reference shall be made to his or
48 her habitual residence.

49 (5) This Act does not affect any law that may prohibit a matter from being resolved by
50 arbitration or that specifies the manner in which a specific matter may be submitted or resolved
51 by arbitration.

52
53 Section 4. [*Definitions and Rules of Interpretation.*]

54 (1) As used in this Act, the term:

55 (a) "Arbitral tribunal" means a sole arbitrator or panel of arbitrators.

56 (b) "Arbitration" means any arbitration whether or not administered by a
57 permanent arbitral institution.

58 (c) “Arbitration agreement” means an agreement by the parties to submit to
59 arbitration all or certain disputes that have arisen or may arise between them in respect of a
60 defined legal relationship, whether contractual or not.

61 (d) “Court” means a circuit court of this state.

62 (2) A provision of this Act, except section 39, which leaves the parties free to determine
63 a certain issue, includes the right of the parties to authorize a third party, including an institution,
64 to make that determination.

65 (3) A provision of this Act which refers to the fact that the parties have agreed or that
66 they may agree to a procedure refers to an agreement of the parties. The agreement includes any
67 arbitration rules referenced in that agreement.

68 (4) A provision of this Act, other than in section 37(1) or section 44(2)(a), which refers to
69 a claim also applies to a counter claim, and a provision that refers to a defense also applies to a
70 defense to such counter claim.

71
72 Section 5. [*International Origin and General Principles.*]

73 (1) This Act shall be interpreted with regard to its international origin and to the need to
74 promote uniformity in its application and the observance of good faith.

75 (2) Questions concerning matters governed by this Act which are not expressly settled
76 pursuant to it shall be settled in conformity with the general principles on which this Act is
77 based.

78
79 Section 6. [*Receipt of Written Communications.*]

80 (1) Unless otherwise agreed by the parties, a written communication is deemed to be
81 received if it is delivered to the addressee personally or if it is delivered to the addressee’s place
82 of business, habitual residence, or mailing address. If one of these locations cannot be found after
83 a reasonable inquiry, the written communication is deemed to be received if it is sent to the
84 addressee’s last known place of business, habitual residence, or mailing address by registered
85 letter or any other means that provides a record of the attempt to deliver it. The communication is
86 deemed to be received on the day it is delivered.

87 (2) This section does not apply to communications in court proceedings.

88
89 Section 7. [*Waiver of Right to Object.*] A party waives its right to object if the party
90 proceeds with the arbitration and fails to object without undue delay or within a provided time
91 limit to noncompliance of any provision of this chapter from which the parties may derogate and
92 have not derogated or noncompliance of any requirement under the arbitration agreement.

93
94 Section 8. [*Extent of Court Intervention.*] In matters governed by this Act, a court may
95 not intervene except to the extent authorized by this Act.

96
97 Section 9. [*Court for Certain Functions of Arbitration Assistance and Supervision.*] The
98 functions referenced in sections 13(3) and (4), section 15(3), section 16, section 18(3), and
99 section 47 (2) shall be performed by the circuit court in the county in which the seat of the
100 arbitration is located.

101
102 Section 10. [*Arbitration Agreement and Substantive Claim before Court.*]

103 (1) A court before which an action is brought in a matter that is the subject of an
104 arbitration agreement shall, if a party so requests not later than when submitting its first
105 statement on the substance of the dispute, refer the parties to arbitration unless it finds that the
106 agreement is null and void, inoperative, or incapable of being performed.

107 (2) If an action described in subsection (1) has been brought, arbitral proceedings may
108 nevertheless be commenced or continued, and an award may be made, while the issue is pending
109 before the court.

110

111 Section 11. [*Arbitration Agreement and Interim Measures by a Court.*] It is not
112 incompatible with an arbitration agreement for a party to request from a court, before or during
113 arbitral proceedings, an interim measure of protection and for a court to grant such a measure.

114

115 Section 12. [*Number of Arbitrators.*]

116 (1) The parties may determine the number of arbitrators.

117 (2) If the parties fail to determine the number of arbitrators, the number of arbitrators
118 shall be [three].

119

120 Section 13. [*Appointment of Arbitrators.*]

121 (1) A person is not precluded by reason of his or her nationality from acting as an
122 arbitrator, unless otherwise agreed by the parties.

123 (2) The parties may agree on a procedure of appointing the arbitrator or arbitrators,
124 subject to subsections (4) and (5).

125 (3) Failing such agreement:

126 (a) In an arbitration having [three] arbitrators, each party shall appoint one
127 arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails
128 to appoint the arbitrator within [30] days after receipt of a request to do so from the other party,
129 or if the two arbitrators fail to agree on the third arbitrator within [30] days after their
130 appointment, the appointment shall be made, upon request of a party, by the court specified in
131 section 9.

132 (b) In an arbitration having a single arbitrator, if the parties are unable to agree on
133 the arbitrator, the arbitrator shall be appointed, upon request of a party, by the court specified in
134 section 9.

135 (4) If, under an appointment procedure agreed upon by the parties:

136 (a) A party fails to act as required under such procedure;

137 (b) The parties, or two arbitrators, are unable to reach an agreement under such
138 procedure; or

139 (c) A third party, including an institution, fails to perform any function entrusted
140 to it under such procedure, any party may request the court specified in section 9 to take the
141 necessary measure, unless the agreement on the appointment procedure provides other means for
142 securing the appointment.

143 (5) A decision on a matter entrusted by subsection (3) or subsection (4) to the court
144 specified in section 9 is not appealable. The court, in appointing an arbitrator, shall have due
145 regard to any qualifications required by the arbitrator by the agreement of the parties and to such
146 considerations that are likely to secure the appointment of an independent and impartial
147 arbitrator. In the case of the appointment of a sole or third arbitrator, the court shall take into
148 account the advisability of appointing an arbitrator of a nationality other than those of the parties.

149

150 Section 14. [*Grounds for Challenge.*]

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

156 (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable
157 doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess
158 qualifications agreed to by the parties. A party may challenge an arbitrator appointed by it, or in
159 whose appointment the party participated, only for reasons of which the party became aware
160 after the appointment was made.

161
162 Section 15. [*Challenge Procedure.*]

163 (1) The parties may agree on a procedure for challenging an arbitrator, subject to
164 subsection (3).

165 (2) Failing such agreement, a party who intends to challenge an arbitrator shall, within
166 [15] days after becoming aware of the constitution of the arbitral tribunal or after becoming
167 aware of any circumstance described in section 14 (2), send a written statement of the reasons for
168 the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his or her
169 office or the other party agrees to the challenge, the arbitral tribunal shall decide on the
170 challenge.

171 (3) If a challenge under any procedure agreed upon by the parties or pursuant to
172 subsection (2) is not successful, the challenging party may request, within [30] days after having
173 received notice of the decision rejecting the challenge, the court specified in section 9 to decide
174 on the challenge. The decision of the court is not appealable. While such a request is pending, the
175 arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and
176 make an award.

177
178 Section 16. [*Failure or Impossibility to Act.*]

179 (1) If an arbitrator becomes de jure or de facto unable to perform his or her functions or
180 for other reasons fails to act without undue delay, his or her mandate terminates if he or she
181 withdraws from office or if the parties agree on the termination. Otherwise, if a controversy
182 remains concerning any of these grounds, any party may request the court specified in section 9
183 to decide on the termination of the mandate. The decision of the court is not appealable.

184 (2) If, under this section or section 15(2), an arbitrator withdraws from his or her office or
185 a party agrees to the termination of the mandate of an arbitrator, such actions do not imply the
186 acceptance of the validity of any ground described in this section or in section 14(2).

187
188 Section 17. [*Appointment of Substitute Arbitrator.*] If the mandate of an arbitrator
189 terminates pursuant to section 15 or section 16 or because of his or her withdrawal from office
190 for any other reason or because of the revocation of the mandate by agreement of the parties or in
191 any other case of termination of the mandate, a substitute arbitrator shall be appointed pursuant
192 to the rules that applied to the appointment of the arbitrator being replaced.

193
194 Section 18. [*Competence of Arbitral Tribunal to Rule on Its Jurisdiction.*]

195 (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with
196 respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration
197 clause that forms part of a contract shall be treated as an agreement independent of the other
198 terms of the contract. A decision by the arbitral tribunal that the contract is not valid does not
199 entail ipso jure the invalidity of the arbitration clause.

200 (2) A plea that the arbitral tribunal does not have jurisdiction must be raised not later than
201 the submission of the statement of defense. A party is not precluded from raising such a plea by
202 the fact that the party appointed, or participated in the appointment of, an arbitrator. A plea that
203 the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter

204 alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The
205 arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

206 (3) The arbitral tribunal may rule on a plea referenced in subsection (2) as a preliminary
207 question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that
208 it has jurisdiction, any party may request, within [30] days after receiving notice of that ruling,
209 that the court specified in section 9 decide the matter. The decision of the court is not appealable.
210 While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and
211 make an award.

212
213 Section 19. [*Power of Arbitral Tribunal to Order Interim Measures.*] Unless otherwise
214 agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.
215 An interim measure is any temporary measure, whether in the form of an award or in another
216 form, by which, at any time before the issuance of the award by which the dispute is finally
217 decided, the arbitral tribunal orders a party to:

- 218 (a) Maintain or restore the status quo pending determination of the dispute;
219 (b) Take action to prevent, or refrain from taking action that is likely to cause, current or
220 imminent harm or prejudice to the arbitral process;
221 (c) Provide a means of preserving assets out of which a subsequent award may be
222 satisfied; or
223 (d) Preserve evidence that may be relevant and material to the resolution of the dispute.

224
225 Section 20. [*Conditions for Granting Interim Measures.*]
226 (1) The party requesting an interim measure under section 19 must satisfy the arbitral
227 tribunal that:

228 (a) Harm not adequately reparable by an award of damages is likely to result if the
229 measure is not ordered, and such harm substantially outweighs the harm that is likely to result to
230 the party against whom the measure is directed if the measure is granted; and

231 (b) A reasonable possibility exists that the requesting party will succeed on the
232 merits of the claim. The determination on this possibility does not affect the discretion of the
233 arbitral tribunal in making any subsequent determination.

234 (2) With regard to a request for an interim measure under section 19, the requirements in
235 subsection (1) apply only to the extent the arbitral tribunal considers appropriate.

236
237 Section 21. [*Applications for Preliminary Orders and Conditions for Granting*
238 *Preliminary Orders.*]

239 (1) Unless otherwise agreed by the parties, a party may, without notice to any other party,
240 make a request for an interim measure together with an application for a preliminary order
241 prohibiting a party from frustrating the purpose of the interim measure requested.

242 (2) The arbitral tribunal may grant a preliminary order if it considers that prior disclosure
243 of the request for the interim measure to the party against whom it is directed risks frustrating the
244 purpose of the measure.

245 (3) The conditions described in section 20 apply to any preliminary order if the harm
246 assessed under section 20(1)(a) is the harm likely to result from the order being granted or not
247 granted.

248
249 Section 22. [*Specific Regime for Preliminary Orders.*]

250 (1) Immediately after the arbitral tribunal makes a determination in respect of an
251 application for a preliminary order, the arbitral tribunal shall give notice to all parties of the
252 request for the interim measure, the application for the preliminary order, the preliminary order,

253 if any, and all other communications. The notice shall include a description of the content of any
254 oral communication between any party and the arbitral tribunal in relation to any such request or
255 application.

256 (2) At the same time, the arbitral tribunal shall give an opportunity to any party against
257 whom a preliminary order is directed to present its case at the earliest practicable time.

258 (3) The arbitral tribunal must decide promptly on any objection to the preliminary order.

259 (4) A preliminary order expires [20] days after the date on which it was issued by the
260 arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or
261 modifying the preliminary order after the party against whom the preliminary order is directed is
262 given notice and an opportunity to present its case.

263 (5) A preliminary order is binding on the parties but is not enforceable by a court. Such a
264 preliminary order does not constitute an award.

265

266 Section 23. [*Modification, Suspension, or Termination; Interim Measure or Preliminary*
267 *Order.*] The arbitral tribunal may modify, suspend, or terminate an interim measure or a
268 preliminary order it has granted upon application of any party or, in exceptional circumstances
269 and upon prior notice to the parties, on the arbitral tribunal's own initiative.

270

271 Section 24. [*Provision of Security.*]

272 (1) The arbitral tribunal may require the party requesting an interim measure to provide
273 appropriate security in connection with the measure.

274 (2) The arbitral tribunal shall require the party applying for a preliminary order to provide
275 security in connection with the order unless the arbitral tribunal considers it inappropriate or
276 unnecessary to do so.

277

278 Section 25. [*Disclosure.*]

279 (1) The arbitral tribunal may require any party promptly to disclose any material change
280 in the circumstances on the basis of which the interim measure was requested or granted.

281 (2) The party applying for a preliminary order shall disclose to the arbitral tribunal all
282 circumstances that are likely to be relevant to the arbitral tribunal's determination whether to
283 grant or maintain the order, and such obligation continues until the party against whom the order
284 has been requested has had an opportunity to present its case. Thereafter, subsection (1) applies.

285

286 Section 26. [*Costs and Damages.*] The party requesting an interim measure or applying
287 for a preliminary order is liable for any costs and damages caused by the measure or the order to
288 any party if the arbitral tribunal later determines that the measure or the order should not have
289 been granted. The arbitral tribunal may award such costs and damages at any point during the
290 proceedings.

291

292 Section 27. [*Recognition and Enforcement.*]

293 (1) An interim measure issued by an arbitral tribunal shall be recognized as binding and,
294 unless otherwise provided by the arbitral tribunal, enforced upon application to the competent
295 court, irrespective of the country in which it was issued, subject to section 20(1).

296 (2) The party who is seeking or has obtained recognition or enforcement of an interim
297 measure shall promptly inform the court of the termination, suspension, or modification of the
298 interim measure.

299 (3) The court where recognition or enforcement is sought may, if it considers it proper,
300 order the requesting party to provide appropriate security if the arbitral tribunal has not already

301 made a determination with respect to security or if such a decision is necessary to protect the
302 rights of third parties.

303
304 Section 28. [*Grounds for Refusing Recognition or Enforcement.*]

305 (1) Recognition or enforcement of an interim measure may be refused only:

306 (a) At the request of the party against whom it is invoked if the court is satisfied
307 that:

308 1. Such refusal is warranted on the grounds set forth in section 49(1)(a)1.,
309 2., 3., or 4.;

310 2. The arbitral tribunal's decision with respect to the provision of security
311 in connection with the interim measure issued by the arbitral tribunal has not been complied
312 with; or

313 3. The interim measure was terminated or suspended by the arbitral
314 tribunal or, if so empowered, by the court of the state or country in which the arbitration takes
315 place or under the law of which that interim measure was granted; or

316 (b) If the court finds that:

317 1. The interim measure is incompatible with the powers conferred upon
318 the court, unless the court decides to reformulate the interim measure to the extent necessary to
319 adapt it to its own powers and procedures for the purpose of enforcing that interim measure and
320 without modifying its substance; or

321 2. Any of the grounds set forth in section 49(1)(b)1. or 2. apply to the
322 recognition and enforcement of the interim measure.

323 (2) A determination made by the court on any ground in subsection (1) is effective only
324 for the purposes of the application to recognize and enforce the interim measure. The court may
325 not in making that determination undertake a review of the substance of the interim measure.

326
327 Section 29. [*Court-Ordered Interim Measures.*] A court has the same power of issuing an
328 interim measure in relation to arbitration proceedings, irrespective of whether the arbitration
329 proceedings are held in this state, as it has in relation to the proceedings in courts. The court shall
330 exercise such power in accordance with its own procedures and in consideration of the specific
331 features of international arbitration.

332
333 Section 30. [*Equal Treatment of Parties.*] The parties shall be treated with equality and
334 each party shall be given a full opportunity of presenting its case.

335
336 Section 31. [*Determination of Rules of Procedure.*] Subject to the provisions of this Act,
337 the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the
338 proceedings. Failing such agreement, the arbitral tribunal may, subject to the provisions of this
339 chapter, conduct the arbitration in such manner as it considers appropriate. The power conferred
340 upon the arbitral tribunal includes the power to determine the admissibility, relevance,
341 materiality, and weight of evidence.

342
343 Section 32. [*Place of Arbitration.*]

344 (1) The parties may agree on the place of arbitration. Failing such agreement, the place of
345 arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the
346 case, including the convenience of the parties.

347 (2) Notwithstanding subsection (1), the arbitral tribunal may, unless otherwise agreed by
348 the parties, meet at any place it considers appropriate for consultation among its members, for

349 hearing witnesses, experts, or the parties, or for inspection of goods, other property, or
350 documents.

351

352 Section 33. [*Commencement of Arbitral Proceedings.*] Unless otherwise agreed by the
353 parties, the arbitral proceedings in respect of a particular dispute commence on the date on which
354 a request for that dispute to be referred to an arbitration is received by the respondent.

355

356 Section 34. [*Language.*]

357 (1) The parties may agree on the language or languages to be used in the arbitral
358 proceedings. Failing such agreement, the arbitral tribunal shall specify the language or languages
359 to be used in the proceedings. This agreement or determination, unless otherwise specified
360 therein, applies to any written statement by a party, any hearing, and any award, decision, or
361 other communication by the arbitral tribunal.

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

365

366 Section 35. [*Statements of Claim and Defense.*]

367 (1) Within the period of time agreed by the parties or specified by the arbitral tribunal,
368 the claimant shall state the facts supporting its claim, the points at issue, and the relief or remedy
369 sought, and the respondent shall state its defense to the claim, unless the parties have otherwise
370 agreed as to the required elements of such statements. The parties may submit with their
371 statements all documents they consider to be relevant or may add a reference to the documents or
372 other evidence they will submit.

373 (2) Unless otherwise agreed by the parties, either party may amend or supplement its
374 claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal
375 considers it inappropriate to allow such amendment having regard to the delay in making it.

376

377 Section 36. [*Hearings and Written Proceedings.*]

378 (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide
379 whether to hold oral hearings for the presentation of evidence or for oral argument, or whether
380 the proceedings shall be conducted on the basis of documents and other materials. However,
381 unless the parties have agreed that no hearings will be held, the arbitral tribunal shall hold such
382 hearings at an appropriate stage of the proceedings, if so requested by a party.

383 (2) The parties shall be given sufficient advance notice of any hearing and of any meeting
384 of the arbitral tribunal for the purposes of inspection of goods, other property, or documents.

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

388

389 Section 37. [*Default of a Party.*] Unless otherwise agreed by the parties, if, without
390 showing sufficient cause:

391 (1) The claimant fails to provide its statement of claim pursuant to section 35(1), the
392 arbitral tribunal shall terminate the proceedings.

393 (2) The respondent fails to communicate its statement of defense pursuant to section
394 35(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as
395 an admission of the claimant's allegations.

396 (3) A party fails to appear at a hearing or to produce documentary evidence, the arbitral
397 tribunal may continue the proceedings and make the award on the evidence before it.

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Section 38. [*Expert Appointed by Arbitral Tribunal.*]

(1) Unless otherwise agreed by the parties, the arbitral tribunal may:

(a) Appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal.

(b) Require a party to give the expert any relevant information or produce or provide access to any relevant documents, goods, or other property for inspection by the expert.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of a written or oral report, participate in a hearing in which the parties have the opportunity to question the expert and to present expert witnesses in order to testify on the points at issue.

Section 39. [*Court Assistance in Taking Evidence.*] The arbitral tribunal, or a party upon the approval of the arbitral tribunal, may request assistance in taking evidence from a competent court of this state. The court may execute the request within its competence and according to its rules on taking evidence.

Section 40. [*Rules Applicable to Substance of Dispute.*]

(1) The arbitral tribunal shall decide the dispute pursuant to the rules of law chosen by the parties to apply to the substance of the dispute. Any designation of the law or legal system of a state or country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state or country and not to its conflict-of-laws rule.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict-of-laws rules that it considers applicable.

(3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur, only if the parties have expressly authorized it to do so.

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

Section 41. [*Decision Making by Panel of Arbitrators.*] In arbitral proceedings having more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Section 42. [*Settlement.*]

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made pursuant to section 43 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Section 43. [*Form and Contents of Award.*]

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings having 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 award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 42.

447 (3) The award shall state its date and the place of arbitration as determined pursuant to
448 section 32(1). The award shall be deemed to have been made at that place.

449 (4) After the award is made, a copy signed by the arbitrators pursuant to subsection (1)
450 shall be delivered to each party.

451
452 Section 44. [*Termination of Proceedings.*]

453 (1) Arbitral proceedings are terminated by the final award or by an order of the arbitral
454 tribunal pursuant to subsection (2).

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

457 (a) The claimant withdraws its claim, unless the respondent objects to the
458 withdrawal of the claim and the arbitral tribunal recognizes that the respondent has a legitimate
459 interest in obtaining a final settlement of the dispute;

460 (b) The parties agree on the termination of the proceedings; or

461 (c) The arbitral tribunal finds that the continuation of the proceedings has for any
462 other reason become unnecessary or impossible.

463 (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral
464 proceedings, subject to section 45 and section 47(4).

465
466 Section 45. [*Correction and Interpretation of Award. Additional Award.*]

467 (1) (a) Within [30] days after receipt of the award, unless another period of time has
468 been agreed upon by the parties:

469 1. A party, with notice to the other party, may request the arbitral tribunal
470 to correct in the award any errors in computation, any clerical or typographical errors, or any
471 errors of similar nature.

472 2. If so agreed by the parties, a party, with notice to the other party, may
473 request the arbitral tribunal to give an interpretation of a specific point or part of the award.

474 (b) If the arbitral tribunal considers the request to be justified, it shall make the
475 correction or give the interpretation within 30 days after the request. The interpretation becomes
476 part of the award.

477 (2) The arbitral tribunal may correct any error described in subparagraph (1)(a)1. on its
478 own initiative within [30] days after the date of the award.

479 (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may
480 request, within [30] days after the receipt of the award, the arbitral tribunal to make an additional
481 award as to claims presented in the arbitral proceedings but omitted from the award. If the
482 arbitral tribunal considers the request to be justified, it shall make the additional award within
483 [60] days after the request.

484 (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall
485 make a correction, interpretation, or additional award pursuant to subsection (1) or subsection
486 (3).

487 (5) Section 43, specifying the form and contents of an award, applies to a correction or
488 interpretation of the award or to an additional award.

489
490 Section 46. [*Immunity for Arbitrators.*] An arbitrator serving under this Act shall have
491 judicial immunity in the same manner and to the same extent as a judge.

492
493 Section 47. [*Application to Set Aside as Exclusive Recourse Against Arbitral Award.*]

494 (1) Recourse to a court against an arbitral award may be made only by an application to
495 set aside an arbitral award pursuant to subsections (2) and (3).

496 (2) An arbitral award may be set aside by the court specified in section 9 only if:
497 (a) The party making the application furnishes proof that:
498 1. A party to the arbitration agreement defined in section 4(1)(c) was
499 under some incapacity or the arbitration agreement is not valid under the law to which the parties
500 have subjected it or, failing any indication thereon, under the law of this state;
501 2. The party making the application was not given proper notice of the
502 appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its
503 case;
504 3. The award deals with a dispute not contemplated by or not falling
505 within the terms of the submissions to arbitration, or contains decisions on matters beyond the
506 scope of the submission to arbitration. However, if the decisions on matters submitted to
507 arbitration can be separated from those not so submitted, only that part of the award which
508 contains decisions on matters not submitted to arbitration may be set aside; or
509 4. The composition of the arbitral tribunal or the arbitral procedure was
510 not in accordance with the agreement of the parties, unless such agreement was in conflict with a
511 provision of this Act from which the parties may not derogate, or, failing such agreement, was
512 not in accordance with this Act; or
513 (b) The court finds that the subject matter of the dispute is not capable of
514 settlement by arbitration under the law of this state or the award is in conflict with the public
515 policy of this state.
516 (3) An application to set aside an arbitral award may not be made after [3] months have
517 elapsed after the date on which the party making that application receives the award or, if a
518 request had been made under section 45, after [3] months have elapsed after the date on which
519 that request had been disposed of by the arbitral tribunal.
520 (4) The court, when asked to set aside an award, may, if appropriate and so requested by
521 a party, suspend the proceedings to set aside the award for a period of time determined by it in
522 order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take
523 such other action as in the arbitral tribunal's opinion will eliminate the grounds to set aside the
524 award.

525

526 Section 48. [*Recognition and Enforcement.*]

527 (1) An arbitral award, irrespective of the country in which it was made, shall be
528 recognized as binding and, upon application in writing to the competent court, shall be enforced
529 subject to this section and section 49.

530 (2) The party relying on an award or applying for its enforcement shall supply the
531 original or copy of the award. If the award is not made in the English language, the court may
532 request the party to supply a translation of the award.

533

534 Section 49. [*Grounds for Refusing Recognition or Enforcement.*]

535 (1) Recognition or enforcement of an arbitral award, irrespective of the country in which
536 it was made, may be refused only:

537 (a) At the request of the party against whom it is invoked, if that party furnishes to
538 the competent court where recognition or enforcement is sought proof that:

539 1. A party to the arbitration agreement defined in section 4(1)(c) was
540 under some incapacity or the arbitration agreement is not valid under the law to which the parties
541 have subjected it or, failing any indication thereon, under the law of the country where the award
542 was made;

543 2. The party against whom the award is invoked was not given proper
544 notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable
545 to present its case;

546 3. The award deals with a dispute not contemplated by or not falling
547 within the terms of the submission to arbitration, or it contains decisions on matters beyond the
548 scope of the submission to arbitration. However, if the decisions on matters submitted to
549 arbitration can be separated from those not so submitted, that part of the award which contains
550 decisions on matters submitted to arbitration may be recognized and enforced;

551 4. The composition of the arbitral tribunal or the arbitral procedure was
552 not in accordance with the agreement of the parties or, failing such agreement, was not in
553 accordance with the law of the country where the arbitration took place; or

554 5. The award has not yet become binding on the parties or has been set
555 aside or suspended by a court of the country in which, or under the law of which, that award was
556 made; or

557 (b) If the court finds that the subject matter of the dispute is not capable of
558 settlement by arbitration under the laws of this state or the recognition or enforcement of the
559 award would be contrary to the public policy of this state.

560 (2) If an application for setting aside or suspension of an award has been made to a court
561 referenced in subparagraph (1)(a)5., the court where recognition or enforcement is sought may, if
562 it considers it proper, adjourn its decision and may also, on the application of the party claiming
563 recognition or enforcement of the award, order the other party to provide appropriate security.

564

565 Section 50. [*Severability.*] [Insert severability clause.]

566

567 Section 51. [*Repealer.*] [Insert repealer clause.]

568

569 Section 52. [*Effective Date.*] [Insert effective date.]