

**ZAKON  
O POTVRĐIVANJU KONVENCIJE O RJEŠAVANJU INVESTICIONIH SPOROVA IZMEĐU  
DRŽAVA I DRŽAVLJANA DRUGIH DRŽAVA**

**Član 1**

Potvrđuje se Konvencija o rješavanju investicionih sporova između država i državljana drugih država, sačinjena u Vašingtonu 18. marta 1965. godine, u originalu na engleskom, francuskom i španskom jeziku.

**Član 2**

Tekst Konvencije iz člana 1 ovog zakona, u originalu na engleskom i u prevodu na crnogorski jezik glasi:

**CONVENTION ON THE  
SETTLEMENT OF INVESTMENT DISPUTES  
BETWEEN STATES AND NATIONALS  
OF OTHER STATES**

**Preamble**

**The Contracting States**

**Considering** the need for international cooperation for economic development, and the role of private international investment therein;

**Bearing in mind** the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States;

**Recognizing** that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

**Attaching particular importance** to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

**Desiring** to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

**Recognizing** that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration

be given to any recommendation of conciliators, and that any arbitral award be complied with; and

**Declaring** that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration,

**Have agreed** as follows:

**Chapter I  
International Centre for  
Settlement of Investment Disputes**

**Section 1  
Establishment and Organization**

## **Article 1**

(1) There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre).

(2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

## **Article 2**

The seat of the Centre shall be at the principal office of the International Bank for Reconstruction and Development (hereinafter called the Bank). The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

## **Article 3**

The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

## **Section 2**

### **The Administrative Council**

## **Article 4**

(1) The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.

(2) In the absence of a contrary designation, each governor and alternate governor of the Bank appointed by a Contracting State shall be *ex officio* its representative and its alternate respectively.

## **Article 5**

The President of the Bank shall be *ex officio* Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.

## **Article 6**

(1) Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall:

- (a) adopt the administrative and financial regulations of the Centre;
- (b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;
- (c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);
- (d) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;
- (e) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;

(f) adopt the annual budget of revenues and expenditures of the Centre;

(g) approve the annual report on the operation of the Centre.

The decisions referred to in sub-paragraphs (a), (b), (c) and (f) above shall be adopted by a majority of two-thirds of the members of the Administrative Council.

(2) The Administrative Council may appoint such committees as it considers necessary.

(3) The Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of this Convention.

### **Article 7**

(1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members of the Council.

(2) Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast.

(3) A quorum for any meeting of the Administrative Council shall be a majority of its members.

(4) The Administrative Council may establish, by a majority of two-thirds of its members, a procedure whereby the Chairman may seek a vote of the Council without convening a meeting of the Council. The vote shall be considered valid only if the majority of the members of the Council cast their votes within the time limit fixed by the said procedure.

### **Article 8**

Members of the Administrative Council and the Chairman shall serve without remuneration from the Centre.

## **Section 3**

### **The Secretariat**

### **Article 9**

The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

### **Article 10**

(1) The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for re-election. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.

(2) The offices of Secretary-General and Deputy Secretary-General shall be incompatible with the exercise of any political function. Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Administrative Council.

(3) During the Secretary-General's absence or inability to act, and during any vacancy of the office of Secretary-General, the Deputy Secretary-General shall act as Secretary-General. If there shall be more than one Deputy Secretary-General, the Administrative Council shall determine in advance the order in which they shall act as Secretary-General.

## **Article 11**

The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.

## **Section 4**

### **The Panels**

## **Article 12**

The Panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

## **Article 13**

- (1) Each Contracting State may designate to each Panel four persons who may but need not be its nationals.
- (2) The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

## **Article 14**

- (1) Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.
- (2) The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

## **Article 15**

- (1) Panel members shall serve for renewable periods of six years.
- (2) In case of death or resignation of a member of a Panel, the authority which designated the member shall have the right to designate another person to serve for the remainder of that member's term.
- (3) Panel members shall continue in office until their successors have been designated.

## **Article 16**

- (1) A person may serve on both Panels.
- (2) If a person shall have been designated to serve on the same Panel by more than one Contracting State, or by one or more Contracting States and the Chairman, he shall be deemed to have been designated by the authority which first designated him or, if one such authority is the State of which he is a national, by that State.

(3) All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received.

## **Section 5**

### **Financing the Centre**

#### **Article 17**

If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

## **Section 6**

### **Status, Immunities and Privileges**

#### **Article 18**

The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity:

- (a) to contract;
- (b) to acquire and dispose of movable and immovable property;
- (c) to institute legal proceedings.

#### **Article 19**

To enable the Centre to fulfill its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section.

#### **Article 20**

The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity.

#### **Article 21**

The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat

- (a) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;
- (b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

## **Article 22**

The provisions of Article 21 shall apply to persons appearing in proceedings under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

## **Article 23**

- (1) The archives of the Centre shall be inviolable, wherever they may be.
- (2) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favourable than that accorded to other international organizations.

## **Article 24**

- (1) The Centre, its assets, property and income, and its operations and transactions authorized by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.
- (2) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Centre to the Chairman or members of the Administrative Council, or on or in respect of salaries, expense allowances or other emoluments paid by the Centre to officials or employees of the Secretariat.
- (3) No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed pursuant to paragraph (3) of Article 52, in proceedings under this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place where such proceedings are conducted or the place where such fees or allowances are paid.

## **Chapter II**

### **Jurisdiction of the Centre**

## **Article 25**

- (1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.
- (2) "National of another Contracting State" means:
  - (a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and
  - (b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have

agreed should be treated as a national of another Contracting State for the purposes of this Convention.

(3) Consent by a constituent subdivision or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required.

(4) Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1).

## **Article 26**

Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.

## **Article 27**

(1) No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

(2) Diplomatic protection, for the purposes of paragraph (1), shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

## **Chapter III**

### **Conciliation**

#### **Section 1**

#### **Request for Conciliation**

### **Article 28**

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

#### **Section 2**

#### **Constitution of the Conciliation Commission**

## **Article 29**

(1) The Conciliation Commission (hereinafter called the Commission) shall be constituted as soon as possible after registration of a request pursuant to Article 28.

(2) (a) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the president of the Commission, appointed by agreement of the parties.

## **Article 30**

If the Commission shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 28, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the conciliator or conciliators not yet appointed.

## **Article 31**

(1) Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments by the Chairman pursuant to Article 30.

(2) Conciliators appointed from outside the Panel of Conciliators shall possess the qualities stated in paragraph (1) of Article 14.

## **Section 3**

### **Conciliation Proceedings**

## **Article 32**

(1) The Commission shall be the judge of its own competence.

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

## **Article 33**

Any conciliation proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Conciliation Rules in effect on the date on which the parties consented to conciliation. If any question of procedure arises which is not covered by this Section or the Conciliation Rules or any rules agreed by the parties, the Commission shall decide the question.

## **Article 34**

(1) It shall be the duty of the Commission to clarify the issues in dispute between the parties and to endeavour to bring about agreement between them upon mutually acceptable terms. To that end, the Commission may at any stage of the proceedings and from time to time recommend

terms of settlement to the parties. The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.

(2) If the parties reach agreement, the Commission shall draw up a report noting the issues in dispute and recording that the parties have reached agreement. If, at any stage of the proceedings, it appears to the Commission that there is no likelihood of agreement between the parties, it shall close the proceedings and shall draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. If one party fails to appear or participate in the proceedings, the Commission shall close the proceedings and shall draw up a report noting that party's failure to appear or participate.

## **Article 35**

Except as the parties to the dispute shall otherwise agree, neither party to a conciliation proceeding shall be entitled in any other proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

## **Chapter IV**

### **Arbitration**

#### **Section 1**

#### **Request for Arbitration**

### **Article 36**

(1) Any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

#### **Section 2**

#### **Constitution of the Tribunal**

### **Article 37**

(1) The Arbitral Tribunal (hereinafter called the Tribunal) shall be constituted as soon as possible after registration of a request pursuant to Article 36.

(2) (a) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each

party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

#### **Article 38**

If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 36, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. Arbitrators appointed by the Chairman pursuant to this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.

#### **Article 39**

The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

#### **Article 40**

- (1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.
- (2) Arbitrators appointed from outside the Panel of Arbitrators shall possess the qualities stated in paragraph (1) of Article 14.

### **Section 3**

#### **Powers and Functions of the Tribunal**

#### **Article 41**

- (1) The Tribunal shall be the judge of its own competence.
- (2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

#### **Article 42**

- (1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.
- (2) The Tribunal may not bring in a finding of *non liquet* on the ground of silence or obscurity of the law.
- (3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute *ex aequo et bono* if the parties so agree.

#### **Article 43**

Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings,

(a) call upon the parties to produce documents or other evidence, and

(b) visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate.

#### **Article 44**

Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.

#### **Article 45**

(1) Failure of a party to appear or to present his case shall not be deemed an admission of the other party's assertions.

(2) If a party fails to appear or to present his case at any stage of the proceedings the other party may request the Tribunal to deal with the questions submitted to it and to render an award. Before rendering an award, the Tribunal shall notify, and grant a period of grace to, the party failing to appear or to present its case, unless it is satisfied that that party does not intend to do so.

#### **Article 46**

Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counterclaims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.

#### **Article 47**

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

### **Section 4**

#### **The Award**

#### **Article 48**

(1) The Tribunal shall decide questions by a majority of the votes of all its members.

(2) The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it.

(3) The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.

(4) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

(5) The Centre shall not publish the award without the consent of the parties.

#### **Article 49**

(1) The Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

(2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

### **Section 5**

#### **Interpretation, Revision and**

#### **Annulment of the Award**

#### **Article 50**

(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.

(2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

#### **Article 51**

(1) Either party may request revision of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence.

(2) The application shall be made within 90 days after the discovery of such fact and in any event within three years after the date on which the award was rendered.

(3) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter.

(4) The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

## **Article 52**

(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:

- (a) that the Tribunal was not properly constituted;
- (b) that the Tribunal has manifestly exceeded its powers;
- (c) that there was corruption on the part of a member of the Tribunal;
- (d) that there has been a serious departure from a fundamental rule of procedure; or
- (e) that the award has failed to state the reasons on which it is based.

(2) The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered.

(3) On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an *ad hoc* Committee of three persons. None of the members of the Committee shall have been a member of the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the Panel of Arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (1).

(4) The provisions of Articles 41-45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply *mutatis mutandis* to proceedings before the Committee.

(5) The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

(6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.

## **Section 6**

### **Recognition and Enforcement of the Award**

## **Article 53**

(1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.

(2) For the purposes of this Section, "award" shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

#### **Article 54**

(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.

#### **Article 55**

Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

### **Chapter V**

#### **Replacement and Disqualification of Conciliators and Arbitrators**

#### **Article 56**

(1) After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

(2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.

(3) If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy.

#### **Article 57**

A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.

#### **Article 58**

The decision on any proposal to disqualify a conciliator or arbitrator shall be taken by the other members of the Commission or Tribunal as the case may be, provided that where those members are equally divided, or in the case of a proposal to disqualify a sole conciliator or arbitrator, or a majority of the conciliators or arbitrators, the Chairman shall take that decision. If

it is decided that the proposal is well-founded the conciliator or arbitrator to whom the decision relates shall be replaced in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

## **Chapter VI**

### **Cost of Proceedings**

#### **Article 59**

The charges payable by the parties for the use of the facilities of the Centre shall be determined by the Secretary-General in accordance with the regulations adopted by the Administrative Council.

#### **Article 60**

(1) Each Commission and each Tribunal shall determine the fees and expenses of its members within limits established from time to time by the Administrative Council and after consultation with the Secretary-General.

(2) Nothing in paragraph (1) of this Article shall preclude the parties from agreeing in advance with the Commission or Tribunal concerned upon the fees and expenses of its members.

#### **Article 61**

(1) In the case of conciliation proceedings the fees and expenses of members of the Commission as well as the charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceedings.

(2) In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

## **Chapter VII**

### **Place of Proceedings**

#### **Article 62**

Conciliation and arbitration proceedings shall be held at the seat of the Centre except as hereinafter provided.

#### **Article 63**

Conciliation and arbitration proceedings may be held, if the parties so agree,

(a) at the seat of the Permanent Court of Arbitration or of any other appropriate institution, whether private or public, with which the Centre may make arrangements for that purpose; or

(b) at any other place approved by the Commission or Tribunal after consultation with the Secretary-General.

## **Chapter VIII**

### **Disputes between Contracting States**

#### **Article 64**

Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement.

## **Chapter IX**

### **Amendment**

#### **Article 65**

Any Contracting State may propose amendment of this Convention. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days prior to the meeting of the Administrative Council at which such amendment is to be considered and shall forthwith be transmitted by him to all the members of the Administrative Council.

#### **Article 66**

(1) If the Administrative Council shall so decide by a majority of two-thirds of its members, the proposed amendment shall be circulated to all Contracting States for ratification, acceptance or approval. Each amendment shall enter into force 30 days after dispatch by the depositary of this Convention of a notification to Contracting States that all Contracting States have ratified, accepted or approved the amendment.

(2) No amendment shall affect the rights and obligations under this Convention of any Contracting State or of any of its constituent subdivisions or agencies, or of any national of such State arising out of consent to the jurisdiction of the Centre given before the date of entry into force of the amendment.

## **Chapter X**

### **Final Provisions**

#### **Article 67**

This Convention shall be open for signature on behalf of States members of the Bank. It shall also be open for signature on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, shall have invited to sign the Convention.

#### **Article 68**

(1) This Convention shall be subject to ratification, acceptance or approval by the signatory States in accordance with their respective constitutional procedures.

(2) This Convention shall enter into force 30 days after the date of deposit of the twentieth instrument of ratification, acceptance or approval. It shall enter into force for each State which subsequently deposits its instrument of ratification, acceptance or approval 30 days after the date of such deposit.

#### **Article 69**

Each Contracting State shall take such legislative or other measures as may be necessary for making the provisions of this Convention effective in its territories.

#### **Article 70**

This Convention shall apply to all territories for whose international relations a Contracting State is responsible, except those which are excluded by such State by written notice to the depositary of this Convention either at the time of ratification, acceptance or approval or subsequently.

#### **Article 71**

Any Contracting State may denounce this Convention by written notice to the depositary of this Convention. The denunciation shall take effect six months after receipt of such notice.

#### **Article 72**

Notice by a Contracting State pursuant to Articles 70 or 71 shall not affect the rights or obligations under this Convention of that State or of any of its constituent subdivisions or agencies or of any national of that State arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.

#### **Article 73**

Instruments of ratification, acceptance or approval of this Convention and of amendments thereto shall be deposited with the Bank which shall act as the depositary of this Convention. The depositary shall transmit certified copies of this Convention to States members of the Bank and to any other State invited to sign the Convention.

#### **Article 74**

The depositary shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

#### **Article 75**

The depositary shall notify all signatory States of the following:

- (a) signatures in accordance with Article 67;
- (b) deposits of instruments of ratification, acceptance and approval in accordance with Article 73;
- (c) the date on which this Convention enters into force in accordance with Article 68;
- (d) exclusions from territorial application pursuant to Article 70;
- (e) the date on which any amendment of this Convention enters into force in accordance with Article 66; and
- (f) denunciations in accordance with Article 71.

DONE at Washington, in the English, French and Spanish languages, all three texts being equally authentic, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfill the functions with which it is charged under this Convention.

**KONVENCIJA  
O RJEŠAVANJU INVESTICIONIH SPOROVA IZMEĐU DRŽAVA I DRŽAVLJANA DRUGIH  
DRŽAVA  
PREAMBULA**

Države potpisnice

s obzirom na potrebu međunarodne saradnje u ekonomskom razvoju, i na ulogu međunarodnih privatnih investicija u tome;

imajući u vidu mogućnost da s vremena na vrijeme nastanu sporovi u vezi s tim investicijama između država potpisnica i državljana drugih država potpisnica;

uviđajući da se tako takvi sporovi obično podvrgavaju nacionalnom pravnom postupku, međunarodni metodi rješavanja mogu biti pogodni u nekim slučajevima;

pridajući naročitu važnost mogućnosti i olakšicama za međunarodno posredovanje ili arbitražu pred koje bi države potpisnice i državljanima drugih država potpisnica mogli iznositi ovakve sporove ako to žele;

želeći da stvore takve olakšice pod okriljem Međunarodne banke za obnovu i razvoj; smatrajući da uzajamni pristanak stranaka da takve sporove podvrgnu posredovanju ili arbitraži pomoću tih olakšica predstavlja obavezni sporazum, koji naročito traži da se svaka preporuka posrednika pažljivo prouči i da se sprovede odluka arbitraže; i

izjavljujući da se nijedna država potpisnica neće samom ratifikacijom, prihvatanjem ili odobrenjem ove konvencije smatrati, bez svog pristanka, obaveznom da podvrgne neki spor posredovanju ili arbitraži,

saglasile su se o sljedećem:

**I. MEĐUNARODNI CENTAR ZA RJEŠAVANJE INVESTICIONIH SPOROVA**

**1. Ustanovljenje i organizacija**

**Član 1**

(1) Ovim se ustanovljava Međunarodni centar za rješavanje investicionih sporova (u daljem tekstu: Centar).

(2) Zadatak Centra je da pruži olakšice za posredovanje i arbitražu investicionih sporova između država potpisnica i državljana drugih država potpisnica saglasno odredbama ove konvencije.

**Član 2**

Sjedište Centra biće u glavnim prostorijama Međunarodne banke za obnovu i razvoj (u daljem tekstu: Banka). Sjedište se može premjestiti u drugo mjesto, odlukom Administrativnog savjeta, donijetom dvotrećinskom većinom članova.

**Član 3**

Centar ima Administrativni savjet i Sekretarijat i vodiće spisak posrednika i spisak arbitara.

## **2. Administrativni savjet**

### **Član 4**

- (1) Administrativni savjet sastoji se od po jednog predstavnika svake države potpisnice. Može se odrediti i zamjenik predstavnika koji će vršiti njegovu dužnost u slučaju odsutnosti ili spriječenosti.
- (2) Ako se drukčije ne odredi, svaki guverner i zamjenik guvernera Banke koga je imenovala država potpisnica biće po svom položaju njen predstavnik odnosno zamjenik predstavnika.

### **Član 5**

Predsjednik Banke je po svom položaju predsjednik Administrativnog savjeta (u daljem tekstu: predsjednik), ali bez prava glasa. Za vrijeme njegove odsutnosti ili spriječenosti i kad je položaj predsjednika Banke upražnjen, lice koje u to vrijeme vrši dužnost predsjednika vršiće dužnost predsjednika Administrativnog savjeta.

### **Član 6**

- (1) Pored ovlašćenja i funkcija dodijeljenih drugim odredbama ove konvencije, Administrativni savjet:

- (a) donosi administrativne i finansijske propise Centra;
- (b) donosi pravila o pokretanju postupka posredovanja i arbitraže;
- (c) donosi pravila postupka posredovanja i arbitraže (u daljem tekstu: Pravilnik posredovanja i Pravilnik arbitraže);
- (d) odobrava sporazume sa Bankom o korišćenju bančnih administrativnih olakšica i usluga;
- (e) utvrđuje uslove službe generalnog sekretara i zamjenika generalnog sekretara;
- (f) usvaja godišnji budžet prihoda i rashoda Centra;
- (g) odobrava godišnji izvještaj o radu Centra.

Odluke iz tač. (a), (b), (c) i (f) donose se većinom od dvije trećine članova Administrativnog savjeta.

- (2) Administrativni savjet može obrazovati odbore, ukoliko smatra da su potrebni.
- (3) Administrativni savjet će isto tako imati druga ovlašćenja i vršiće druge funkcije koje smatra potrebnim, radi sprovođenja odredaba Konvencije.

### **Član 7**

- (1) Administrativni savjet održava godišnji sastanak i druge sastanke koje zakaže Savjet, ili sazove predsjednik ili generalni sekretar na zahtjev najmanje pet članova Savjeta.
- (2) Svaki član Administrativnog savjeta ima jedan glas, a sva pitanja pred Savjetom rješavaju se većinom datih glasova, izuzev ako je ovdje drukčije predviđeno.
- (3) Kvorum za sastanke Administrativnog savjeta sačinjava većina njegovih članova.
- (4) Dvotrećinskom većinom svojih članova, Administrativni savjet može ustanoviti postupak, prema kome predsjednik može tražiti glasanje Savjeta bez sazivanja sastanka Savjeta. Glasanje će se smatrati punovažnim, samo ako većina članova Savjeta glasa, u roku određenom postupkom.

### **Član 8**

Članovi Administrativnog savjeta i predsjednik ne dobijaju od Centra nadoknadu za svoj rad.

## **3. Sekretarijat**

### **Član 9**

Sekretarijat sačinjavaju generalni sekretar, jedan ili više zamjenika generalnog sekretara i osoblje.

### **Član 10**

- (1) Generalnog sekretara i zamjenika generalnog sekretara bira Administrativni savjet većinom od dvije trećine članova, na prijedlog predsjednika, najviše na šest godina, ali ih može ponovo

izabrati. Nakon konsultacija sa članovima Administrativnog savjeta, predsjednik predlaže jednog ili više kandidata za ove položaje.

(2) Vršanjem funkcije generalnog sekretara i zamjenika generalnog sekretara isključuje se vršenje ma koje političke funkcije. Generalni sekretar i zamjenik generalnog sekretara mogu primiti drugo zaposlenje ili prihvatiti drugo zanimanje samo ako to odobri Administrativni savjet.

(3) Kad je generalni sekretar odsutan ili spriječen da vrši svoju dužnost i kad je položaj generalnog sekretara upražnjen, dužnost generalnog sekretara vršiće zamjenik generalnog sekretara. Ako ima više zamjenika generalnog sekretara, Administrativni savjet će odrediti unaprijed red kojim će oni vršiti dužnost generalnog sekretara.

#### **Član 11**

Generalni sekretar je pravni predstavnik i glavni službenik Centra; on je odgovoran za upravljanje i postavljanje osoblja prema odredbama ove konvencije i pravilima koje donosi Administrativni savjet. On rukovodi registrom i ovlašten je da potvrđuje arbitražne odluke donijete na osnovu Konvencije i ovjerava prepise odluka.

#### **4. Liste**

##### **Član 12**

Lista posrednika i lista arbitara sastoji se od kvalifikovanih lica, određenih na način predviđen ovdje, koja su voljna da služe u tom svojstvu.

##### **Član 13**

(1) Svaka država potpisnica može odrediti četiri lica za svaku listu, koja mogu ali ne moraju biti njeni državljani.

(2) Predsjednik može odrediti deset lica za svaku listu. Lica koja on odredi moraju biti različitog državljanstva.

##### **Član 14**

(1) Lica određena za ovu službu moraju imati visoka moralna svojstva i priznatu stručnost u oblasti prava, trgovine, industrije ili finansija i biti takva da se može računati da će nezavisno odlučivati. Stručnost u oblasti prava je od naročitog značaja kod lica na listi arbitara.

(2) Prilikom određivanja lica za pojedine liste, predsjednik će, pored ostalog, voditi računa o potrebi da obezbijedi da na listama budu zastupljeni glavni svjetski pravni sistemi i glavni oblici privredne djelatnosti.

##### **Član 15**

(1) Posrednici i arbitri ostaju na tom položaju šest godina, ali se mogu ponovo odrediti za isti period.

(2) U slučaju smrti ili ostavke nekog arbitra ili posrednika, vlast koja je odredila to lice ima pravo da odredi drugo lice, koje će služiti do isteka mandata lica na čije mjesto dolazi.

(3) Posrednici i arbitri ostaju na dužnosti dok se ne odrede njihovi nasljednici.

##### **Član 16**

(1) Jedno lice može se nalaziti na obje liste.

(2) Ako više država potpisnica ili jedna ili više država potpisnica i predsjednik odrede isto lice za istu listu, smatraće se da ga je imenovala vlast koja ga je prva odredila, ili ako je takva vlast država čiji je on državljanin - ta država.

(3) Sva imenovanja saopštavaju se generalnom sekretaru i važe od dana prijema saopštenja.

#### **5. Finansiranje Centra**

##### **Član 17**

Ako se rashodi Centra ne mogu pokriti iz naknada za korišćenje njegovih olakšica, ili iz drugih prihoda, višak će snositi države potpisnice koje su članice Banke srazmerno njihovom udjelu u osnovnom kapitalu Banke, a države potpisnice koje nisu članice Banke prema propisima koje donosi Administrativni savjet.

#### **6. Status, imunitet i privilegija**

##### **Član 18**

Centar je punopravno međunarodno pravno lice. Pravna sposobnost Centra obuhvata sposobnost:

- (a) da zaključuje (privredne) ugovore;
- (b) da stiče i raspolaže pokretnom i nepokretnom imovinom;
- (c) da pokreće pravni postupak.

#### **Član 19**

Da bi se omogućilo Centru da obavlja svoje funkcije on će uživati na teritoriji svake države potpisnice zaštitu i privilegiju u ovom odjeljku.

#### **Član 20**

Protiv Centra, njegovog imanja i imovine ne može se pokretati pravni postupak, izuzev kad se Centar odrekne tog imuniteta.

#### **Član 21**

Protiv predsjednika, članova Administrativnog savjeta, lica koja služe kao posrednici ili arbitri ili kao članovi odbora obrazovanog na osnovu stava 3 člana 52, i službenika i radnika Sekretarijata:

- (a) ne može se pokretati pravni postupak u pogledu akata učinjenih u vršenju njihovih funkcija, izuzev kad se Centar odrekne tog imuniteta;
- (b) pošto oni nisu lokalni državljani, uživaju istu zaštitu u pogledu ograničenja imigracije, registrovanja stranaca i vojne obaveze, iste olakšice u pogledu valutnih ograničenja i isti tretman u pogledu putnih olakšica, koje države potpisnice pružaju predstavnicima, službenicima i radnicima odgovarajućeg ranga drugih država potpisnica.

#### **Član 22**

Odredbe člana 21 važe i za lica koja se pojavljuju u postupku prema ovoj konvenciji kao stranke zastupnici, pravozaupnici, advokati, svjedoci ili stručnjaci, s tim da tačka (b) važi samo u pogledu njihovog putovanja do i od mjesta u kome se obavlja postupak i njihovog boravka tamo.

#### **Član 23**

- (1) Arhive centra su nepovrijedive, bez obzira gdje se one nalaze.
- (2) U pogledu službenih saopštenja svaka država potpisnica obezbijediće Centru tretman koji ne može biti manje povoljan nego što je ovaj koji pruža drugim međunarodnim organizacijama.

#### **Član 24**

- (1) Centar, njegova imovina, imanje i prihod i njegov rad i poslovi na koje je ovlašćena ovom konvencijom oslobođeni su svih poreza i carina. Centar se takođe oslobađa odgovornosti za ubiranje ili plaćanje poreza ili carina.
- (2) Izuzev u slučaju lokalnih državljana, naknade izdatka koje Centar plaća predsjedniku ili članovima Administrativnog savjeta, i plate, naknade izdataka i druge nagrade koje Centar daje službenicima i radnicima Sekretarijata ne podliježe nikakvim porezima.
- (3) Ne podliježu porezima nagrade i naknade izdataka koje primaju lica u svojstvu posrednika ili arbitra, ili članovi odbora obrazovanog na osnovu člana 52 stav 3 u postupku prema ovoj konvenciji, ako je jedina osnova nadležnosti za takve poreze sjedište Centra ili mjesto gdje se vodi takav postupak ili mjesto gdje se takve nagrade i naknade isplaćuju.

### **II. NADLEŽNOST CENTRA**

#### **Član 25**

- (1) Nadležnost Centra obuhvata svaki pravni spor između države potpisnice (ili sastavne oblasti ili organa države potpisnice o kojima je ta država obavijestila Centar) i državljanina druge države potpisnice, koji je nastao neposredno iz investicija i za koji su se stranke u sporu pismeno saglasile da ga iznesu pred Centar. Kad se stranke saglase o tome, nijedna stranka ne može jednostavno povući svoju saglasnost.
- (2) "Državljanin druge države potpisnice" znači:
  - (a) svako fizičko lice koje je bilo državljani neke države potpisnice, izuzev države stranke u sporu, na dan kad su se stranke saglasile da spor iznesu pred posrednike ili arbitre, kao i na dan kad je molba registrovana shodno članu 28 stav 3 ili članu 36 stav 3, ali ne obuhvata lice

koje je ili jednog ili drugog od ova dva dana bilo takođe državljanin države potpisnice koja je stranka u sporu;

(b) svako pravno lice koje je imalo državljanstvo neke države potpisnice, izuzev države stranke u sporu, na dan kad su se stranke saglasile da spor iznesu pred posrednike ili arbitre, i svako pravno lice koje je tog dana imalo državljanstvo države potpisnice stranke u sporu, a koje su se stranke saglasile da, zbog strane kontrole, tretiraju kao državljanina druge države potpisnice za svrhe ove konvencije.

(3) Saglasnost sastavne oblasti ili organa države potpisnice mora odobriti ta država, izuzev ako ta država obavijesti Centar da nije potrebno odobrenje.

(4) Svaka država potpisnica može u vrijeme ratifikacije, ili odobrenja ove konvencije ili docnije u svako doba obavijestiti Centar o vrsti ili vrstama sporova koji dolaze ili ne dolaze u obzir da se stave u nadležnost Centra. Generalni sekretar će takvo obavještenje odmah dostaviti svim državama potpisnicama. Takvo obavještenje ne predstavlja pristanak predviđen u stavu 1.

#### **Član 26**

Pristanak stranaka na arbitražu shodno ovoj konvenciji smatra se pristankom na tu arbitražu sa isključenjem svakog drugog pravnog lijeka, izuzev ako je drukčije ugovoreno. Država potpisnica može zahtijevati da se iscrpe lokalna administrativna ili sudska sredstva kao uslov pristanka na arbitražu shodno ovoj konvenciji.

#### **Član 27**

(1) Država potpisnica ne može pružiti diplomatsku zaštitu ili pokrenuti međunarodni spor u vezi sa sporovima za koji su se njen državljanin i država potpisnica saglasili da iznesu ili su iznijeli na arbitražu shodno ovoj konvenciji, izuzev ako se ta država potpisnica nije povinovala i sprovela odluku donijetu u tom sporu.

(2) Diplomatska zaštita za svrhe iz stava 1 ne obuhvata neformalne diplomatske pregovore koji se vrše jedino radi olakšavanja rješenja spora.

### **III. POSREDOVANJE**

#### **1. Zahtjev za posredovanje**

##### **Član 28**

(1) Svaka država potpisnica ili državljanin države potpisnice koji želi da pokrene postupak posredovanja treba da uputi pismeni zahtjev u tom smislu generalnom sekretaru, koji će prepis zahtjeva dostaviti drugoj stranci.

(2) Zahtjev treba da sadrži podatke o predmetu spora, ime i adrese stranaka i njihov pristanak na posredovanje shodno propisima o pokretanju postupka posredovanja ili arbitraže.

(3) Generalni sekretar će zvesti zahtjev u registar, izuzev ako iz podataka sadržanih u zahtjevu ne utvrdi da spor očividno ne spada u nadležnost Centra. On će odmah obavijestiti stranke da je zahtjev zaveo u registar odnosno odbio da ga zavede.

#### **2. Obrazovanje Komisije za posredovanje**

##### **Član 29**

(1) Komisija za posredovanje (u daljem tekstu: Komisija) obrazovaće se u najkraćem roku poslije registrovanja zahtjeva shodno članu 28.

(2) (a) Komisija se sastoji od jednog posrednika ili ma kog neparnog broja posrednika, koji će se odrediti kako se stranke saglase.

(b) Ako se stranke ne saglase o broju posrednika i načinu njihovog određivanja, Komisija će se sastojati od tri posrednika; svaka stranka imenovaće po jednog posrednika a trećeg, koji će biti predsjednik Komisije, odrediće stranke sporazumno.

##### **Član 30**

Ako se Komisija ne obrazuje u roku od 90 dana od dana kad generalni sekretar obavijesti stranke o registrovanju zahtjeva shodno članu 28 stav 3 ili u drugom roku na koji se stranke saglase, predsjednik će, na zahtjev jedne stranke i pošto se konsultuje sa obje stranke, ukoliko je to moguće, odrediti posrednika odnosno posrednike koji još nisu bili određeni.

##### **Član 31**

- (1) Posrednici se mogu odrediti van liste posrednika, izuzev kad njih određuje predsjednik shodno članu 30.
- (2) Posrednici određeni van liste posrednika moraju ispunjavati uslove predviđene u članu 14 stav 1.

### **3. Postupak posredovanja**

#### **Član 32**

- (1) Komisija sama rješava o svojoj nadležnosti.
- (2) Komisija će razmotriti svaki prigovor stranke u sporu da taj spor ne spada u nadležnost Centra, ili da iz drugih razloga ne spada u nadležnost Komisije, i odlučuje da li će prigovor raspraviti kao prethodno pitanje ili zajedno sa predmetom spora.

#### **Član 33**

Postupak posredovanja vodi se prema odredbama ovog poglavlja, i ako se stranke drugačije ne dogovore, prema pravilniku koji je bio na snazi na dan kad su stranke pristale na posredovanje. Ako se pojavi proceduralno pitanje koje nije obuhvaćeno ovim odjeljkom ili Pravilnikom o posredovanju ili pravilima na koje su se saglasile stranke, to pitanje riješiće Komisija.

#### **Član 34**

- (1) Dužnost je Komisije da riješi sporna pitanja između stranaka i da nastoji da postigne sporazum među njima pod uslovima prihvatljivim za obje stranke. U tom cilju, Komisija može u svakoj fazi postupka i s vremena na vrijeme preporučiti strankama uslove sporazuma. Stranke su dužne da savjesno sarađuju sa Komisijom da bi joj omogućile da izvrši svoj zadatak, i da najbrižljivije razmotre njene preporuke.
- (2) Ako stranke postignu sporazum, Komisija će sastaviti izvještaj u kome će izložiti sporni predmet i konstatovati da su stranke postigle sporazum. Ako u ma kojoj fazi postupka Komisija smatra da nema izgleda da stranke postignu sporazum, ona će zaključiti postupak i sastaviti izvještaj, u kome će izložiti da je spor iznijet na rješavanje i da stranke nisu postigle sporazum. Ako jedna stranka ne dođe ili ne učestvuje u postupku, Komisija će zaključiti postupak i konstatovati u izvještaju da ta stranka nije došla odnosno nije učestvovala u postupku.

#### **Član 35**

Ako se stranke u sporu ne dogovore drugačije, nijedna stranka u postupku posredovanja nema pravo da se u ma kom drugom postupku, bilo pred sudom ili na drugom mjestu, poziva ili oslanja na neko gledište, izjavu ili priznanje ili ponudu sporazuma koju je dala druga stranka u postupku posredovanja, ili na izvještaj ili neku preporuku Komisije.

## **IV. ARBITRAŽA**

### **1. Zahtjev za arbitražu**

#### **Član 36**

- (1) Država potpisnica ili državljanin države potpisnice koji želi da pokrene arbitražni postupak treba da uputi pismeni zahtjev u tom smislu generalnom sekretaru, koji će prepis zahtjeva dostaviti drugoj stranci.
- (2) Zahtjev treba da sadrži podatke o predmetu spora, imena i adrese stranaka i njihov pristanak na arbitražu shodno propisima za pokretanje postupka posredovanja i arbitraže.
- (3) Generalni sekretar zavešće zahtjev u registar, izuzev ako na osnovu podataka sadržanih u zahtjevu ne utvrdi da taj spor očividno ne spada u nadležnost Centra. On će odmah obavijestiti stranke o zavođenju odnosno odbijanju da zavede zahtjev u registar.

### **2. Obrazovanje Arbitražnog suda**

#### **Član 37**

- (1) Arbitražni sud (u daljem tekstu: Sud) obrazovaće se u najkraćem roku posijle registrovanja zahtjeva shodno članu 36.
- (2) (a) Sud sačinjava jedan arbitar ili ma koji neparni broj arbitara određenih sporazumom stranaka.
- (b) Ako se stranke ne sporazumiju o broju arbitara i načinu njihovog određivanja, Sud će

sačinjavati tri arbitra, od kojih će po jednog odrediti stranke, a trećeg, koji će biti predsjednik Suda, odrediće stranke sporazumno.

#### **Član 38**

Ako se sud ne obrazuje u roku od 90 dana od dana kad je generalni sekretar poslao obavještenje shodno članu 36 stav 3 ili u roku koji su stranke odredile, na zahtjev jedne ili druge stranke i pošto se konsultuje sa obje stranke ukoliko je to moguće, predsjednik će odrediti arbitra odnosno arbitre koji nisu naimenovani. Arbitri koje odredi predsjednik shodno ovom članu ne smiju biti državljani države potpisnice koja je stranka u sporu ili države potpisnice čiji je državljanin stranka u sporu.

#### **Član 39**

Arbitri koji čine većinu ne smiju biti državljani države potpisnice koja je stranka u sporu ili države potpisnice čiji je državljanin stranka u sporu; s tim što gornje odredbe ovog člana neće važiti ako je arbitar pojedinac ili su svi članovi Suda određeni sporazumom stranaka.

#### **Član 40**

(1) Arbitri se mogu određivati van liste arbitara, izuzev kad njih određuje predsjednik shodno članu 38.

(2) Arbitri određeni van liste arbitara moraju ispunjavati uslove iz člana 14 stav 1.

### **3. Ovlašćenja i nadležnosti Suda**

#### **Član 41**

(1) Sud sam odlučuje o svojoj nadležnosti.

(2) Sud će razmotriti svaki prigovor stranke u sporu da taj spor ne spada u nadležnost Centra, ili da iz drugih razloga ne spada u nadležnost Suda, i odlučiće da li će prigovor raspraviti kao prethodno pitanje ili zajedno sa predmetom spora.

#### **Član 42**

(1) Sud će riješiti spor prema pravnim pravilima o kojima se saglase stranke. Ako se stranke ne saglase o tome, Sud će primijeniti pravo države potpisnice koja je stranka u sporu (kao i njene propise o sukobu zakona) i odgovarajuće propise međunarodnog prava.

(2) Sud ne može proglasiti *non liquet* usred ćutanja ili nejasnosti zakona.

(3) Odredbe st. 1. i 2. ne utiču na ovlašćenje Suda da riješi spor ako se stranke s tim saglase.

#### **Član 43**

Ako se stranke ne dogovore drugačije, Sud može, ako smatra za potrebno, u svakoj fazi postupka:

(a) pozvati stranke da podnesu dokumente ili druge dokaze, i

(b) posjetiti mjesto povezano sa sporom i tamo izvršiti ispitivanja koja smatra potrebnim.

#### **Član 44**

Arbitražni postupak vodi se prema odredbama ovog poglavlja i, ako se stranke drugačije ne dogovore, prema Pravilniku o arbitraži koji je bio na snazi na dan kad su stranke pristale na arbitražu. Ako se pojavi neko proceduralno pitanje koje nije obuhvaćeno ovim Odjeljkom ili Pravilnikom o arbitraži ili pravilima na koje su se stranke saglasile, Sud će riješiti takvo pitanje.

#### **Član 45**

(1) Ako stranka ne dođe ili ne izloži svoj slučaj to se neće smatrati kao priznanje navoda druge stranke.

(2) Ako stranka ne dođe ili ne izloži svoj slučaj u ma kojoj fazi postupka, druga stranka može tražiti da sud raspravi pitanja koja su mu podnijeta i donese odluku. Prije nego što donese odluku, Sud će obavijestiti stranku koja nije došla ili nije izložila svoj slučaj i ostaviti joj naknadni rok da to učini, izuzev ako smatra da stranka ne namjerava da postupi tako.

#### **Član 46**

Ako se stranke ne dogovore drugačije, Sud će na zahtjev stranke riješiti sve uzgredne ili naknadne zahtjeve ili protivzahtjeve koji potiču neposredno iz predmeta spora, pod uslovom da su oni u okviru onoga na šta su se stranke saglasile i da inače spadaju u nadležnost Centra.

#### **Član 47**

Ako se stranke drugačije ne dogovore, Sud može, ako smatra da to zahtijevaju okolnosti, preporučiti da se preduzmu određene privremene mjere radi zaštite prava stranaka.

#### **4. Odluka**

##### **Član 48**

- (1) Sud rješava pitanja većinom glasova svih svojih članova.
- (2) Odluka Suda mora biti u pismenoj formi i moraju je potpisati svi članovi Suda koji su glasali za nju.
- (3) U odluci se raspravljaju sva pitanja iznijeta pred Sud i izlažu razlozi na kojima se ona zasniva.
- (4) Svaki član Suda može dodati odluci svoje lično mišljenje, bilo da se on slaže sa većinom ili ne, ili obrazloženje neslaganja.
- (5) Centar neće objaviti odluku bez pristanka stranaka.

##### **Član 49**

- (1) Generalni sekretar mora odmah dostaviti strankama ovjeren prepis odluke. Smatra se da je odluka donijeta na dan kad su ovjereni prepisi poslani.
- (2) Na zahtjev stranke podnijet u roku od 45 dana od donošenja odluke, Sud može, pošto o tome obavijesti drugu stranku, riješiti svako pitanje koje je propustio da riješi u odluci i ispraviti svaku pravopisnu, aritmetičku i sličnu grešku u odluci. Njihovo rješenje sačinjava dio odluke i dostavlja se strankama na isti način kao i odluka. Rokovi predviđeni u članu 51 stav 2 i članu 52 stav 2 počinju da teku od dana kad je rješenje donijeto.

#### **5. Tumačenje, revizija i ništenje odluke**

##### **Član 50**

- (1) Ako među strankama dođe do spora oko tumačenja ili obima odluke, svaka stranka može uputiti generalnom sekretaru pismenu molbu i tražiti tumačenje odluke.
- (2) Molba će se dostaviti Sudu koji je donio odluku, ako je to moguće. Ako to nije moguće, obrazovaće se nov Sud saglasno odjeljku 2 ove glave. Sud može obustaviti izvršenje odluke dok ne donese rješenje, ako smatra da to zahtijevaju okolnosti.

##### **Član 51**

- (1) Svaka stranka može uputiti pismenu molbu generalnom sekretaru i tražiti reviziju odluke zbog otkrivanja neke činjenice koja bitno utiče na odluku, pod uslovima da Sud i molilac nisu znali za tu činjenicu kad je odluka donijeta i da ta činjenica nije ostala nepoznata moliocu iz njegovog nehata.
- (2) Molbu treba podnijeti u roku od 90 dana od otkrivanja te činjenice, a najkasnije u roku od tri godine od dana kad je odluka donijeta.
- (3) Molba se dostavlja Sudu koji je donio odluku, ako je to moguće. Ako to nije moguće, obrazovaće se novi Sud shodno potpoglavlju 2 ove glave.
- (4) Sud može obustaviti izvršenje odluke dok ne donese rješenje ako smatra da to zahtijevaju okolnosti. Ako molilac zahtjeva u molbi da se obustavi izvršenje odluke, izvršenje će se obustaviti privremeno dok Sud ne riješi taj zahtjev.

##### **Član 52**

- (1) Svaka stranka može uputiti pismeni zahtjev generalnom sekretaru da se odluka poništi iz jednog ili više ovdje navedenih razloga:
  - (a) da Sud nije bio propisno obrazovan;
  - (b) da je sud očividno prekoračio svoje ovlašćenje;
  - (c) da je jedan član Suda bio korumpiran;
  - (d) da je došlo do ozbiljnog skretanja od osnovnih pravila postupka; ili
  - (e) da u odluci nisu iznijeti razlozi na kojima se ona zasniva.
- (2) Zahtjev treba podnijeti u roku od 120 dana od donošenja odluke, a ako se ništenje traži zbog podmićivanja zahtjev treba podnijeti u roku od 120 dana od otkrića korumpcije, a najkasnije od tri godine od dana donošenja odluke.

(3) Po prijemu zahtjeva predsjednik će odmah odrediti ad hoc odbor od tri lica sa liste arbitara. Član odbora ne može biti nijedan član Suda koji je donio tu odluku, niti državljanin iste države kao i član tog Suda, niti državljanin države koja je stranka u sporu ili države čiji je državljanin stranka u sporu, niti lice koje je jedna ili druga od ovih država stavila na listu arbitara, ili ga je primila kao posrednika u tom sporu. Odbor je ovlašten da poništi odluku, odnosno dio odluke, iz ma kog razloga izloženog u stavu 1 ovog člana.

(4) Odredbe čl. 41-45, 48, 49, 53 i poglavlja VI i VII primijeniće se mutatis mutandis u postupku pred odborom.

(5) Odbor može obustaviti izvršenje odluke dok ne donese rješenje, ako smatra da to zahtijevaju okolnosti. Ako molilac traži u molbi da se obustavi izvršenje, izvršenje će se privremeno obustaviti dok odbor ne riješi o zahtjevu.

(6) Ako se odluka poništi, na zahtjev stranke spor će se iznijeti pred novi Sud, koji će se obrazovati shodno potpoglavlju 2 ove glave.

## **6. Priznanje i izvršenje odluke**

### **Član 53**

(1) Odluka je obavezna za obje stranke i ne podliježe žalbi ili kom drugom pravnom lijeku, izuzev onih koje predviđa Konvencija. Obje stranke dužne su da se povinuju i sprovedu odredbe odluke, izuzev ukoliko je izvršenje obustavljeno na osnovu odgovarajućih odredaba Konvencije.

(2) Za svrhe ovog potpoglavlja, "odluka" obuhvata svako rješenje o tumačenju, reviziji ili ništenju odluke iz čl. 50, 51 ili 52.

### **Član 54**

(1) Svaka država potpisnica priznaće kao obaveznu odluku donijetu na osnovu ove konvencije i izvršiće na svojoj teritoriji novčane obaveze određene tom odlukom kao da je to konačna presuda suda te države. Država potpisnica koja ima federalno uređenje može izvršiti takvu odluku preko svog saveznog suda, a može i predvidjeti da savezni sudovi postupaju sa takvom odlukom kao da je ona konačna presuda suda države članice.

(2) Stranka koja traži priznanje ili izvršenje na teritoriji države potpisnice, dostaviće nadležnom sudu ili drugom organu koji ta država odredi za tu svrhu, prepis odluke koji je ovjerio generalni sekretar. Svaka država potpisnica obavijestiće generalnog sekretara koji je nadležni sud ili drugi organ odredila za tu svrhu, kao i o naknadnim promjenama u tom pogledu.

(3) Za izvršenje odluke važe propisi o izvršenju presude koji su na snazi u državi na čijoj se teritoriji traži izvršenje.

### **Član 55**

Neće se tumačiti da član 54 derogira važeće pravo države potpisnice koje se odnosi na imunitet te države ili neke strane države u pogledu izvršenja.

## **V. ZAMJENA I IZUZEĆE POSREDNIKA I ARBITARA**

### **Član 56**

(1) Pošto se Komisija, odnosno Sud, obrazuje i otvori postupak, njegov stav ostaje nepromijenjen, s tim da ako posrednik ili arbitar umre, ili da ostavku, njegovo mjesto će se popuniti prema odredbama potpoglavlja 2 poglavlja III ili potpoglavlja 2 poglavlja IV.

(2) Član Komisije ili Suda ostaje na toj dužnosti čak i kad je izbrisan sa liste.

(3) Ako posrednik ili arbitar koga je odredila stranka podnese ostavku bez saglasnosti Komisije odnosno Suda čiji je član, predsjednik će na njegovo mjesto odrediti lice sa odgovarajuće liste.

### **Član 57**

Stranka može predložiti Komisiji odnosno Sudu da se neki njen član izuzme zbog toga što se iz neke činjenice vidi da on očividno ne ispunjava uslove iz člana 14 stav 1. Stranka u arbitražnom postupku može, osim toga, predložiti izuzeće nekog arbitra zbog toga što on ne ispunjava uslove za člana Suda predviđene u potpoglavlju 2 poglavlja IV.

### **Član 58**

Rješenje o prijedlogu za izuzeće posrednika odnosno arbitra donose ostali članovi Komisije odnosno Suda, u zavisnosti od slučaja, a ako je u pitanju posrednik ili arbitar pojedinac, ili

većina posrednika odnosno arbitara, onda rješenje donosi predsjednik. Ako se utvrdi da je prijedlog potpuno osnovan, posrednik odnosno arbitar na koga se rješenje odnosi zamijenit će se prema odredbama potpoglavlja 2 poglavlja III, odnosno potpoglavlja 2 poglavlja IV.

## **VI. TROŠKOVI POSTUPKA**

### **Član 59**

Naknade koje plaćaju stranke za korišćenje olakšica Centra odrediće generalni sekretar prema propisima koje usvoji Administrativno vijeće.

### **Član 60**

(1) Svaka Komisija i svaki Sud utvrdit će naknade i izdatke svojih članova u granicama koje odredi Administrativni savjet, a poslije konsultovanja sa generalnim sekretarom.  
(2) Stav 1 ovog člana ne spriječava stranke da se unaprijed sporazumiju sa nadležnom Komisijom ili Sudom o naknadama i izdacima njihovih članova.

### **Član 61**

(1) U slučaju postupka posredovanja, naknade i izdatke članova Komisije, kao i nadoknade za korišćenje olakšica Centra snose stranke ravnomjerno. Svaka stranka snosi sve ostale troškove koje je imala u vezi sa postupkom.  
(2) U slučaju arbitražnog postupka Sud će ako se stranke drugačije ne sporazumiju, procijeniti troškove koje su stranke imale u vezi sa postupkom i riješit će kako i ko će platiti te troškove, nagrade i izdatke članova Suda i naknade za korišćenje olakšica Centra. Ovo rješenje čini sastavni dio odluke.

## **VII. MJESTO POSTUPKA**

### **Član 62**

Postupak posredovanja i arbitraže vodi se u sjedištu Centra, izuzev ukoliko je dalje drukčije predviđeno.

### **Član 63**

Postupak posredovanja i arbitraže može se obaviti ako stranke tako odluče:

- (a) u sjedištu Stalnog arbitražnog suda, ili ma koje druge pogodne ustanove, privatne ili javne, sa kojom se Centar sporazumio o tome; ili
- (b) u ma kom drugom mjestu koje odobri Komisija ili Sud poslije konsultovanja sa generalnim sekretarom.

## **VIII. SPOROV IZMEĐU DRŽAVA POTPISNICA**

### **Član 64**

Svi sporovi između država potpisnica o tumačenju ili primjeni Konvencije, koji ne budu riješeni pregovorima, iznjit će se pred Međunarodni sud pravde na molbu stranke u sporu, ukoliko se države ne sporazumiju da spor riješe na drugi način.

## **IX. AMANDMAN**

### **Član 65**

Svaka država potpisnica može predložiti amandman na ovu konvenciju. Tekst predloženog amandmana dostavit će se generalnom sekretaru najmanje 90 dana prije sastanka Administrativnog savjeta na kome taj amandman treba da se razmatra, a on će ga odmah saopštiti svim članovima Administrativnog savjeta.

### **Član 66**

(1) Ako Administrativni savjet tako riješi dvotrećinskom većinom članova, predloženi amandman dostavit će se svim državama potpisnicama na ratifikaciju, prihvatanje ili odobrenje. Amandman stupa na snagu 30 dana od dana kad depozitar ove konvencije pošalje obavještenje državama potpisnicama da su sve države potpisnice ratifikovale, prihvatile ili odobrile amandman.  
(2) Amandman će uticati na prava i obaveze ma koje države potpisnice, ili njene sastavne oblasti ili organa, ili državljanina takve države, koji su prema ovoj konvenciji nastali iz pristanka na nadležnost Centra datog prije stupanja amandmana na snagu.

## **X. ZAVRŠNE ODREDBE**

#### **Član 67**

Ovu konvenciju mogu potpisati države članice Banke. Nju može takođe potpisati svaka druga država potpisnica Statuta Međunarodnog suda pravde, koju Administrativni savjet odlukom donijetom dvotrećinskom većinom članova bude pozvao na potpisivanje.

#### **Član 68**

(1) Ova konvencija podliježe ratifikaciji, prihvatanju ili odobrenju država potpisnica u skladu sa njihovim ustavnim postupkom.

(2) Ova konvencija stupa na snagu 30 dana poslije deponovanja dvadesetog instrumenta ratifikacije, prihvatanja ili odobrenja. Za svaku državu koja docnije dopunjuje instrument ratifikacije, prihvatanja ili odobrenja ona stupa na snagu 30 dana poslije deponovanja.

#### **Član 69**

Svaka država potpisnica preduzeće potrebne zakonodavne ili druge mjere da odredbe ove konvencije postanu punovažne na njenoj teritoriji.

#### **Član 70**

Ova konvencija važi za sve teritorije za čije je međunarodne odnose odgovorna država potpisnica, izuzev onih koje ta država izuzme pismenim saopštenjem depozitara Konvencije, bilo u vrijeme ratifikacije, prihvatanja ili odobrenja ili naknadno.

#### **Član 71**

Svaka država potpisnica može otkazati ovu konvenciju pismenim saopštenjem depozitaru Konvencije. Otkaz stupa na snagu šest mjeseci poslije prijema saopštenja.

#### **Član 72**

Saopštenje države potpisnice iz čl. 70 ili 71 ne utiče na prava i obaveze te države ili njene sastavne oblasti ili organa ili nekog državljanina te države, koji prema ovoj konvenciji potiču iz pristanka na nadležnost Centra datog prije nego što je depozitar primio takvo saopštenje.

#### **Član 73**

Instrumenti ratifikacije, prihvatanja ili odobrenja ove konvencije i amandmana na Konvenciju deponuju se kod Banke, koja će biti depozitar Konvencije. Depozitar će poslati ovjerene primjerke Konvencije državam članicama Banke i svakoj državi koja bude pozvana da potpiše Konvenciju.

#### **Član 74**

Depozitar će registrovati ovu konvenciju u Sekretarijatu Ujedinjenih nacija saglasno članu 102 Povelje Ujedinjenih nacija i propisima koje je na osnovu nje donijela Generalna skupština.

#### **Član 75**

Depozitar će obavijestiti sve države potpisnice o sljedećem:

- (a) potpisima shodno članu 67;
- (b) deponovanim instrumentima ratifikacije prihvatanja ili odobrenja shodno članu 73;
- (c) datumu stupanja na snagu ove konvencije shodno članu 68;
- (d) izuzimanju neke teritorije od primjene shodno članu 70;
- (e) datumu stupanja na snagu amandmana na ovu konvenciju shodno članu 66; i
- (f) otkazu shodno članu 71.

Sačinjeno u Vašingtonu na engleskom, francuskom i španskom jeziku, od kojih su sva tri teksta podjednako autentična, u jednom primjerku koji ostaje deponovan u arhivama Međunarodne banke za obnovu i razvoj, koja je svojim potpisom ovdje dala pristanak da se primi funkcija koje su joj određene ovom konvencijom.

Sačinjeno u Vašingtonu na engleskom, francuskom i španskom jeziku, od kojih su sva tri teksta podjednako vjerodostojna, od kojih će svaki original ostati deponovan u arhivi Međunarodne banke za obnovu i razvoj, koja svojim potpisom potvrđuje da će izvršavati svoje dužnosti koje su joj dodijeljene ovom Konvencijom.

### **Član 3**

Ovaj zakon stupa na snagu osmog dana od dana objavljivanja u "Službenom listu Crne Gore - Međunarodni ugovori".