

Table of Contents

Foreword to the First Edition	v
Foreword to the Second Edition	vii
Preface	ix
Contributing Authors	xxi
List of Abbreviations	xxix
PART I: GERMANY AS A PLACE FOR INTERNATIONAL AND DOMESTIC ARBITRATIONS – GENERAL OVERVIEW	1
General Overview	3
<i>Karl-Heinz Böckstiegel / Stefan Kröll / Patricia Nacimiento</i>	
PART II : COMMENTARY ON THE GERMAN ARBITRATION LAW (10TH BOOK OF THE GERMAN CODE OF CIVIL PROCEDURE)	51
Chapter I	
General Provisions	53
§ 1025 – Scope of Application	53
<i>Gerhard Wagner</i>	
§ 1026 – Extent of Court Intervention	67
<i>Gerhard Wagner</i>	
§ 1027 – Loss of Right to Object	71
<i>Gerhard Wagner</i>	
§ 1028 – Receipt of Written Communications in Case of Unknown Whereabouts	76
<i>Gerhard Wagner</i>	
Chapter II	
Arbitration Agreement	79
§ 1029 – Definition	79
<i>Rolf Trittmann / Inka Hanefeld</i>	
§ 1030 – Arbitrability	94
<i>Rolf Trittmann / Inka Hanefeld</i>	

§ 1031 – Form of Arbitration Agreement <i>Rolf Trittmann / Inka Hanefeld</i>	105
§ 1032 – Arbitration Agreement and Substantive Claim Before Court <i>Peter Huber / Ivo Bach</i>	116
§ 1033 – Arbitration Agreement and Interim Measures by Court <i>Richard Kreindler / Johannes Schmidt</i>	133
Chapter III	
Constitution of the Arbitral Tribunal	147
Introduction to §§ 1034–1039 ZPO* <i>Patricia Nacimiento / Amelie Abt / Max Stein</i>	147
§ 1034 – Composition of Arbitral Tribunal <i>Patricia Nacimiento / Amelie Abt / Max Stein</i>	154
§ 1035 – Appointment of Arbitrators <i>Patricia Nacimiento / Amelie Abt / Max Stein</i>	164
§ 1036 – Challenge of an Arbitrator <i>Patricia Nacimiento / Amelie Abt / Max Stein</i>	179
§ 1037 – Challenge Procedure <i>Patricia Nacimiento / Amelie Abt / Max Stein</i>	194
§ 1038 – Failure or Impossibility to Act <i>Patricia Nacimiento / Amelie Abt / Max Stein</i>	203
§ 1039 – Appointment of Substitute Arbitrator <i>Patricia Nacimiento / Amelie Abt / Max Stein</i>	209
Chapter IV	
Jurisdiction of Arbitral Tribunal	215
§ 1040 – Competence of Arbitral Tribunal to Rule on its Jurisdiction <i>Peter Huber / Ivo Bach</i>	215
§ 1041 – Interim Measures of Protection <i>Jan Schäfer</i>	226
Chapter V	
Conduct of the Arbitral Proceeding	239
Introduction to §§ 1042–1050 ZPO <i>Klaus Sachs / Torsten Lörcher</i>	239
§ 1042 – General Rules of Procedure <i>Klaus Sachs / Torsten Lörcher</i>	241

§ 1043 – Place of Arbitration <i>Klaus Sachs / Torsten Lörcher</i>	260
§ 1044 – Commencement of Arbitral Proceedings <i>Klaus Sachs / Torsten Lörcher</i>	264
§ 1045 – Language of Proceedings <i>Klaus Sachs / Torsten Lörcher</i>	268
§ 1046 – Statements of Claim and Defence <i>Klaus Sachs / Torsten Lörcher</i>	272
§ 1047 – Oral Hearings and Written Proceedings <i>Klaus Sachs / Torsten Lörcher</i>	278
§ 1048 – Default of a Party <i>Klaus Sachs / Torsten Lörcher</i>	287
§ 1049 – Experts Appointed by Arbitral Tribunal <i>Klaus Sachs / Torsten Lörcher</i>	292
§ 1050 – Court Assistance in Taking Evidence and Other Judicial Acts <i>Klaus Sachs / Torsten Lörcher</i>	297
Chapter VI	
Making of the Award and Termination of the Proceedings	301
§ 1051 – Rules Applicable to Substance of Dispute <i>Bettina Schmalz</i>	301
§ 1052 – Decision Making by Panel of Arbitrators <i>Fabian von Schlabrendorff / Anke Sessler</i>	318
§ 1053 – Settlement <i>Fabian von Schlabrendorff / Anke Sessler</i>	325
§ 1054 – Form and Contents of Award <i>Fabian von Schlabrendorff / Anke Sessler</i>	339
§ 1055 – Effect of Arbitral Award <i>Fabian von Schlabrendorff / Anke Sessler</i>	348
§ 1056 – Termination of Proceedings <i>Fabian von Schlabrendorff / Anke Sessler</i>	360
§ 1057 – Decision on Costs <i>Fabian von Schlabrendorff / Anke Sessler</i>	365
§ 1058 – Correction and Interpretation of Award; Additional Award <i>Fabian von Schlabrendorff / Anke Sessler</i>	378

Chapter VII	
Recourse against the Award	383
§ 1059 – Application for Setting Aside	383
<i>Stefan Kröll / Peter Kraft</i>	
Chapter VIII	
Recognition and Enforcement of Awards	421
Introduction to §§ 1060, 1061 ZPO	421
<i>Stefan Kröll</i>	
§ 1060 – Domestic Awards	428
<i>Stefan Kröll</i>	
§ 1061 – Foreign Awards	443
<i>Stefan Kröll</i>	
Chapter IX	
Court Proceedings	505
Introduction to §§ 1062–1065 ZPO	505
<i>Hans-Patrick Schroeder / Wiebke Wortmann</i>	
§ 1062 – Jurisdiction	524
<i>Hans-Patrick Schroeder / Wiebke Wortmann</i>	
§ 1063 – General Provisions	532
<i>Hans-Patrick Schroeder / Wiebke Wortmann</i>	
§ 1064 – Particularities Regarding the Enforcement of Awards	538
<i>Hans-Patrick Schroeder / Wiebke Wortmann</i>	
§ 1065 – Legal Remedies	543
<i>Hans-Patrick Schroeder / Wiebke Wortmann</i>	
Chapter X	
Arbitral Tribunals Not Established by Agreement	549
§ 1066 – <i>Mutatis Mutandis</i> Application of the Provisions of the 10th Book	549
<i>Ulrich Haas</i>	
PART III: COMMENTARY ON THE ARBITRATION RULES OF THE GERMAN INSTITUTION OF ARBITRATION (DIS RULES)	583
DIS Introduction	585
<i>Francesca Mazza</i>	
Section 1 – Scope of Application	593
<i>Jens Bredow / Isabel Mulder</i>	

Section 2 – Selection of Arbitrators <i>Siegfried Elsing</i>	598
Section 3 – Number of Arbitrators <i>Siegfried Elsing</i>	601
Section 4 – Requisite Copies of Written Pleadings and Attachments <i>Jens Bredow / Isabel Mulder</i>	604
Section 5 – Delivery of Written Communications <i>Jens Bredow / Isabel Mulder</i>	606
Section 6 – Commencement of Arbitral Proceedings <i>Siegfried Elsing</i>	610
Section 7 – Costs upon Commencement of Proceedings <i>Jens Bredow / Isabel Mulder</i>	614
Section 8 – Delivery of Statement of Claim to Respondent <i>Jens Bredow / Isabel Mulder</i>	616
Section 9 – Statement of Defence <i>Siegfried Elsing</i>	618
Section 10 – Counterclaim <i>Siegfried Elsing</i>	620
Section 11 – Costs of Filing Counterclaim <i>Jens Bredow / Isabel Mulder</i>	623
Section 12 – Arbitral Tribunal with Three Arbitrators <i>Jens Bredow / Isabel Mulder</i>	625
Section 13 – Multiple Parties on Claimant or Respondent Side <i>Jens Bredow / Isabel Mulder</i>	629
Section 14 – Sole Arbitrator <i>Klaus-Peter Berger</i>	632
Section 15 – Impartiality and Independence <i>Klaus-Peter Berger</i>	634
Section 16 – Acceptance of Mandate as Arbitrator <i>Klaus-Peter Berger</i>	638
Section 17 – Confirmation of Arbitrators <i>Jens Bredow / Isabel Mulder</i>	644
Section 18 – Challenge of Arbitrator <i>Jens Bredow / Isabel Mulder</i>	647

Section 19 – Default of an Arbitrator <i>Jens Bredow / Isabel Mulder</i>	651
Section 20 – Interim Measures of Protection <i>Siegfried Elsing</i>	654
Section 21 – Place of Arbitration <i>Jörg Risse</i>	657
Section 22 – Language of Proceedings <i>Jörg Risse</i>	661
Section 23 – Applicable Law <i>Jörg Risse</i>	664
Section 24 – Rules of Procedure <i>Jörg Risse</i>	668
Section 25 – Advance on Costs of Arbitral Tribunal <i>Jörg Risse</i>	672
Section 26 – Due Process <i>Jörg Risse</i>	675
Section 27 – Establishing the Facts <i>Jörg Risse</i>	679
Section 28 – Oral Hearing <i>Jörg Risse</i>	682
Section 29 – Records of Oral Proceedings <i>Jörg Risse</i>	684
Section 30 – Default of a Party <i>Jörg Risse</i>	686
Section 31 – Closing of Proceedings <i>Jörg Risse</i>	688
Section 32 – Settlement <i>Siegfried Elsing</i>	690
Section 33 – Rendering of the Arbitral Award <i>Siegfried Elsing</i>	693
Section 34 – Arbitral Award <i>Siegfried Elsing</i>	696
Section 35 – Decision on Costs <i>Jens Bredow / Isabel Mulder</i>	699

Section 36 – Delivery of the Arbitral Award <i>Jens Bredow / Isabel Mulder</i>	704
Section 37 – Interpretation and Correction of Arbitral Award <i>Siegfried Elsing</i>	706
Section 38 – Effect of Arbitral Award <i>Siegfried Elsing</i>	708
Section 39 – Termination of Arbitral Proceedings <i>Siegfried Elsing</i>	710
Section 40 – Costs of Arbitral Proceedings <i>Jens Bredow / Isabel Mulder</i>	713
Section 41 – Loss of Right to Object <i>Jens Bredow / Isabel Mulder</i>	719
Section 42 – Publication of the Arbitral Award <i>Jens Bredow / Isabel Mulder</i>	721
Section 43 – Confidentiality <i>Jens Bredow / Isabel Mulder</i>	722
Section 44 – Exclusion of Liability <i>Jens Bredow / Isabel Mulder</i>	724
PART IV: SELECTED AREAS AND ISSUES OF ARBITRATION IN GERMANY	725
<i>Ad hoc</i> Arbitration in Germany <i>Stephan Wilske</i>	727
ICC Arbitration in Germany <i>Detlev Kühner / Gustav Flecke-Giammarco</i>	753
Maritime Arbitration in Germany <i>Jan Wölper</i>	787
Trade Arbitration in Germany <i>Rainer Karstaedt / Christian Graf</i>	795
Arbitration of Disputes from Commercial Representation in Germany <i>David Quinke</i>	817
Construction Arbitration <i>Christoph Benedict</i>	829
Arbitration in Germany in the Energy Sector <i>Peter Kraft / Márton Hagner</i>	847

Arbitration of Banking and Finance Disputes in Germany <i>Norbert Horn</i>	875
Arbitration of Insurance Disputes in Germany <i>Hubertus Labes</i>	889
Arbitration of Intellectual Property Related Disputes in Germany <i>Jan Schäfer</i>	907
Arbitration of Corporate Law Disputes in Germany <i>Christian Duve / Philip Wimalasena</i>	927
Privacy and Confidentiality <i>Ulrich Haas / Heiner Kahlert</i>	963
Insolvency and Arbitration – Effects of Party Insolvency on Arbitral Proceedings in Germany <i>Stefan Kröll</i>	981
Investment Arbitration and the Participation of State Parties in Germany <i>Alfred Escher / Patricia Nacimiento / Christoph Weissenborn / Svan Lange</i>	1013
Enforcement of Court Orders Declaring Awards Enforceable in Germany <i>Stefan Rützel / Claudia Krapfl</i>	1061
Annex I	1083
Annex II	1109
Annex III	1115
Bibliography	1123
Index	1137