No. XIII.1.2 - Interpretation of arbitration agreements

An international arbitration agreement must be construed with a view to preserve its validity and to uphold the will of the parties expressed therein to have their dispute decided by international arbitrators and not by domestic courts ("in favorem validitatis").

Commentary:

1 In most modern jurisdictions it is generally acknowledged that the principle of in favorem validitatis must be applied to the interpretation of an international arbitration agreement. According to this Principle, an arbitration agreement should be construed in good faith and in a way that upholds its validity. "[D]oubts about the intended scope of an agreement to arbitrate are [to be] resolved in favor of arbitration" (Kaplan v. First Options of Chicago, Inc., 19 F.3d 1503, 1512 (3rd Cir. 1994). This pro-arbitration approach or in favorem presumption to the construction of arbitration agreements serves to enforce the common intention of the parties to have their dispute decided before an international arbitral tribunal.

2 The in favorem approach is also a consequence of today's arbitration-friendly climate which is based on the understanding that dispute settlement by international arbitral tribunals has the same value and standing as adjudication before domestic courts. This means that a liberal way of construing arbitration agreements has to be pursued even in those cases where in general contract law the ambiguity could not be resolved through the application of traditional means of interpretation.