WOLF THEISS

THE WOLF THEISS GUIDE TO:

International Arbitration in Central, Eastern & Southeastern Europe

2018 Edition

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This 2018 Wolf Theiss Guide to International Arbitration in Central, Eastern & Southeastern Europe is intended as a practical guide to the general principles and features of the basic legislation and procedures in countries included in the publication.

While every effort has been made to ensure that the content is accurate when finalised, it should be used only as a general reference guide and should not be relied upon as definitive for planning or making definitive legal decisions. In these rapidly changing legal markets, the laws and regulations are frequently revised, either by amended legislation or by administrative interpretation.

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FOREWORD

Wolf Theiss' strength has always been its regional coverage and we believe this is particularly true for our arbitration team. The **Wolf Theiss Competence Center for Arbitration in Central, Eastern and Southeastern Europe** (CEE/SEE) consists of experts across our 13 offices acting as counsel in domestic and international arbitration proceedings. Additionally, several team members have specialized expertise in certain sectors such as energy, construction, post M&A and investment arbitration. This gives us the advantage of providing clients with seamless service and the necessary specialized industry and jurisdictional expertise to meet their business needs.

We are pleased to present the second edition of the **Wolf Theiss Guide to: International Arbitration in Central, Eastern and Southeastern Europe**. The guide is intended to be a resource tool providing you with a brief overview of arbitration procedures and the enforcement of foreign arbitral awards in the 13 CEE/SEE countries where Wolf Theiss provides services. Given the team's extensive regional expertise, we have also included additional chapters covering Kosovo, Macedonia, Moldova, Montenegro and Turkey, as well as chapters on energy, construction and investment arbitration given the growing importance of arbitration in these significant sectors.

We trust that you find the guide helpful. If you have any questions about its content, please do not hesitate to contact us.

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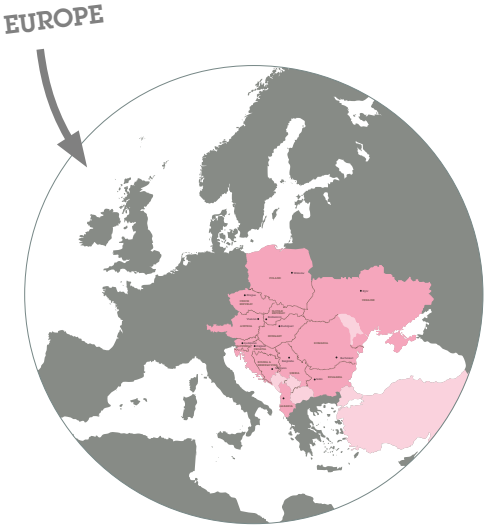
Our special thanks to all the teams at Wolf Theiss and our associated law firms who have enabled us to produce this second edition of what has proven to be a very useful and practical tool providing added value for our clients.



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EUROPE

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ALBANIA

1. ARBITRATION

Arbitration in the Republic of Albania is governed by Part II, Title IV, Articles 400 – 439 of the Albanian Code of Civil Procedure. The chapter contains provisions for the regulation of domestic arbitration proceedings, i.e., when all parties are resident in or have the legal seats of their companies within the territory of the Republic of Albania, and when the seat of arbitration is within this territory. The chapter does not apply to international arbitration proceedings. A draft arbitration law containing provisions for international arbitration proceedings, which is based on the UNCITRAL Model Law and sponsored by the World Bank is still being discussed. Albania currently does not have any domestic arbitral institution.

Generally, an arbitration agreement may be concluded for any monetary claim or dispute arising from a commercial transaction. Public law disputes, such as criminal law cases and family matters, including divorce, alimony or paternity disputes, are not arbitrable. An arbitration clause is deemed valid if it is made in writing and is included in the main agreement as part of this agreement, or in a separate agreement referring back to the main agreement. Although the Code of Civil Procedure does not contain explicit content requirements, the clause should specify that any disputes between the parties will be settled by means of arbitration. In addition, the arbitration clause should indicate the parties to the agreement, the scope of the agreement, the arbitral institution or the basis for forming the arbitral tribunal (in case of ad hoc arbitration).

The parties are free to decide on most aspects of the arbitration proceedings, including the seat of arbitration, the language of arbitration, the substantive law and the procedural rules. The parties are also free to decide on the number of arbitrators, although there may only be an uneven number, and the method of their appointment. Arbitrators are appointed by the court if the parties fail to do so.

The arbitral tribunal may, at the request of one of the parties and unless agreed otherwise, order any measure to preserve the interests of the parties in the arbitration. If the parties have not agreed on any rules on this matter, the arbitral tribunal must apply the rules on interim measure that exist in the context of a lawsuit in the court system (Article 418 CPC). Interim measures granted by arbitral tribunals must always be enforced by state courts. The following rules apply:

- at the request of the claimant the arbitral tribunal may grant interim measures to secure the execution of the final award in the arbitration proceedings, if there are reasons to believe that the proper execution of an award in favour of the claimant may become impossible or difficult (Article 202 CPC); and

- a claimant may also request the court to stay the execution of an administrative act (i.e., a decision by ministers or other acts issued by the state administration as provided by the CPC in the section on administrative disputes) (Article 329 CPC). The arbitral tribunal may grant such stay if there is a risk of grave and irreparable harm to the claimant. The arbitral tribunal must provide reasoning for its decision.

Such interim measures are allowed for all kinds of claims and at any stage of the arbitration proceedings, until the decision becomes final and irrevocable. Interim measures preserving rights are also allowed in proceedings before the Court of Appeal, if the award is under its consideration (Article 203 CPC).

The claimant may also request interim measures to preserve its rights in the arbitration even before bringing the claim before an arbitral tribunal. In such a case, the court determines a time period of not more than 15 (fifteen) days within which a request for arbitration must be submitted (Article 204 CPC). If the claimant does not submit a request for arbitration for a claim regarding which a security measure has previously been granted by the court within the relevant time period, the security measure is considered revoked.

If the arbitral tribunal rejects the claim or if the arbitration proceedings are stayed, the arbitral tribunal must also decide on the lifting of the interim measure, which will in any case take effect when the decision to reject the claim or to stay the proceedings becomes final and irrevocable (Article 211 CPC).

Arbitral awards are enforceable in the same way as court decisions. The courts may set aside arbitral awards only under a few conditions, in particular in case of:

- the invalid constitution of the arbitral tribunal;
- an incorrect declaration of the arbitral tribunal of its jurisdiction or lack of jurisdiction;
- the arbitral tribunal has exceeded the scope of the arbitration agreement or has not decided on one or more claims submitted to it;
- the equality of the parties and their right to be heard has not been respected;
- the lack of impartiality and independence of one or more arbitrators; or
- an infringement of Albanian public order.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Regarding the enforcement of foreign awards, Albania is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservation that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state.

Albania is also a party to the European Convention of 1961 on International Commercial Arbitration.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	2–3 years.	
APPROXIMATE COSTS **PROCEDURAL COSTS**	The procedural costs depend on whether a sole arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case, and the administrative charges.	▪ The costs of arbitration depend on the arbitration agreement and the amount in dispute, the amount of documents, number of witnesses, and whether expert opinions are required. The costs of arbitration also include the fees of arbitrators and administrative charges.
ATTORNEYS' FEES (NET) *SIMPLE AND COMPLEX CASES*	Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	▪ The arbitrators have large discretion regarding the award of costs. The award of legal fees is usually not determined by reference to a statutory tariff. ▪ Currently there are no arbitration courts in Albania.
DOCUMENT PRODUCTION	Limited.	

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	The enforcement of arbitral awards varies depending on a series of factors including the identification of the debtors' assets, financial means, the response of the debtor, and the perseverance of the enforcement authorities in the fulfilment of their duties.	▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof, and the original of the arbitration agreement or a duly certified copy thereof.
APPROXIMATE COSTS		
COURT FEES	Court fees range from EUR 25 up to 1% of the contractual amount in dispute.	
ATTORNEYS' FEES (NET)	Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	

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AUSTRIA

1. ARBITRATION

Vienna, Austria's capital city, is a major hub for arbitration in Europe, and the Vienna International Arbitral Centre of the Federal Economic Chamber (VIAC) is not only the most important arbitration institution in Austria, but also one of the leading arbitration institutions in Europe, especially regarding disputes relating to Central, Eastern and Southeastern Europe. In addition to VIAC, Vienna also boasts a specialized arbitral panel established by the Vienna Stock and Commodity Exchange. This is a permanent specialized arbitral panel that has exclusive jurisdiction over disputes arising from exchange transactions, i.e., disputes between members of the Vienna Stock and Commodity Exchange and disputes concerning merchandise contracts related to the Vienna Stock and Commodity Exchange.

Internationally, dispute resolution through arbitration has several advantages. In particular, arbitration allows for expeditious proceedings to obtain a final decision. Arbitral awards rendered in Austria are granted the same effect as a court judgment under Austrian law, while the international treaties signed by Austria facilitate transnational recognition and enforceability of such arbitral awards in more than 150 countries worldwide.

Arbitration in Austria is governed by Chapter 6, Part 4 of the CCP, which defines the prerequisites for arbitration including the validity of arbitration agreements and the minimum standards that must be observed for a fair trial.

The original text of the law dates back to 1895 and, by virtue of the flexibility of the provisions, helped establish Austria as an attractive seat for arbitration proceedings. In order to keep the law in line with international developments in the field of arbitration, these provisions were fully revised on the basis of the United Nations Commission on International Trade Law (UNCITRAL) Model Law in 2006. Thus, arbitration in Austria takes place in a frame-work that is familiar to all international practitioners. The new Arbitration Act applies to arbitration proceedings initiated on or after 1 July 2006 as well as to arbitration agreements concluded on or after this date. In 2013, the Austrian legislator even went a step further to ensure the celerity of arbitral proceedings by, inter alia, providing that challenges to an arbitral award rendered in Austria are to be submitted directly to the Austrian Supreme Court as first and final instance. Effective as of 1 January 2014, this amendment helps prevent lengthy challenge proceedings through all instances of appeal and, in addition, warrants that a highly qualified and specialized judicial senate (consisting of five Supreme Court judges) hears such cases. Furthermore, since the revision of 2013, all matters relating to the constitution of the arbitral tribunal (including challenge and replacement of arbitrators) are also submitted to this specialized senate of the Supreme Court. This will undoubtedly further enhance Austria's international reputation in arbitration.

Generally, an arbitration agreement may be concluded between parties for both existing and future civil claims that may arise out of or in connection with a defined legal relationship. Exceptions include:

- public law matters, including marital and family matters;
- penal law matters;
- tenancy matters, including disputes on the termination of contracts regarding the lease of apartments;
- claims relating to the Non-Profit Housing Act; and
- collective labour matters and social security law matters.

In addition, arbitration agreements relating to an employment contract (except for managing directors of limited liability companies and stock corporations) and arbitration agreements between a business and a consumer have stricter form and content requirements. First, the arbitration agreement may only be concluded for existing disputes. Moreover, the agreement to arbitrate must be contained in a separate document and be personally signed by the consumer/employee (by hand). The seat of arbitration must be explicitly stipulated. Prior to conclusion of the arbitration agreement, the consumer/employee must have been provided with a written notice explaining the significant differences between arbitration and court proceedings. However, individual negotiation of the arbitration agreement is not required.

The standard prerequisites for the valid conclusion of a legally binding arbitration agreement (if neither an employee nor a consumer is involved) are by far more lenient: The arbitration agreement must be in writing and indicate the parties' intention to submit (certain or any) disputes arising out of a defined legal relationship to arbitration. Further, the parties may determine the specifics of the arbitral procedure; this is usually done by referring to the rules of a specific arbitral institution, such as VIAC (Vienna Rules), the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA).

If the parties do not stipulate a specific procedure (be it individually negotiated or by reference to the rules of an arbitral institution), Austrian law contains a number of default provisions regulating the most important procedural aspects. For example, Austrian law foresees that where there is no agreement between the parties, the number of arbitrators shall be three; each party shall appoint one arbitrator and the two party-appointed arbitrators shall appoint the third arbitrator, who shall serve as the chair of the arbitral tribunal. Should (one of) the parties fail to appoint an arbitrator or the two party-appointed arbitrators fail to appoint a chair, either party may file a request to the Supreme Court to make the necessary appointment. Austrian law requires that arbitrators must be impartial and independent. The only other restriction that parties must observe is that Austrian judges may not accept appointments as arbitrators. Otherwise, the arbitrators may be freely chosen by the parties to the dispute.

Regarding interim measures, Austrian law foresees that an arbitral tribunal's competence includes the issuance of interim protective measures, unless the parties have agreed otherwise. Any interim measures shall be issued in writing. However, the arbitral tribunal may ask the requesting party to provide appropriate security prior to ordering interim measures. The competence of an arbitral tribunal to issue interim protective measures does not affect or limit a party's right to request a state court to order interim measures. In any case, arbitral tribunals have no authority to enforce interim measures.

Interim measures must always be enforced by the state courts. Specifically, the competent district court shall enforce such measures upon the request of a party. Where an order for an interim measure provides for a means of protection unknown under Austrian law, the district court may upon request enforce such order nonetheless by means of the legal instrument under Austrian law which comes closest to the measure ordered by the arbitral tribunal.

Austrian courts generally enforce interim measures issued by arbitral tribunals, regardless of whether or not the seat of arbitration is within Austria. The list of grounds for refusal is limited and a district court may only refuse enforcement if:

- the seat of arbitration is in Austria and the measure suffers from a defect which constitutes grounds for setting aside an arbitral award;
- the seat of arbitration is not in Austria and the measure suffers from a defect which would constitute grounds for refusal to recognise and enforce a foreign arbitral award;
- the enforcement would be incompatible with an earlier Austrian or foreign court measure; or
- the means of protection is unknown under Austrian law and no appropriate means as provided by Austrian law were requested.

Upon request of a party, the district court shall set aside the enforcement if:

- the term of the measure as set by the arbitral tribunal has expired;
- the arbitral tribunal has limited the scope of or set aside the measure;
- a change of circumstances has made the order unnecessary (including that the claim to be secured has been found to be unjustified); or
- security was provided, making the enforcement unnecessary.

Austrian law contains an exhaustive list of the grounds for challenging arbitral awards (Section 611 CCP). Such grounds for challenge include:

- lack of jurisdiction;
- *ultra petita*;
- lack of due process;
- improper composition of the arbitral tribunal;
- violation of the Austrian procedural *ordre public*;
- non-arbitrability of the subject matter;
- grounds for retrial under civil procedural law; and
- violation of the Austrian substantive *ordre public*.

A challenge must be filed within 3 (three) months from the notification of the award.

Overall, Austrian courts have a very friendly attitude towards arbitration. Consequently, Austrian businesses are generally willing to conclude an arbitration agreement, especially in the context of international business transactions.

Taking effect as of 1 January 2018, VIAC has introduced revised arbitration rules (Vienna Rules) and mediation rules (Vienna Mediation Rules). The most significant amendment is VIAC's new competence to administer domestic disputes. In this context, VIAC has adjusted its administration fees (i.e. reduced its fees for smaller amounts in dispute and enhanced its fees for larger amounts in dispute) and grants the Secretary General a wider discretion to determine the fees for the institution and the arbitrators depending on the specific circumstances of a case. Finally, the simultaneous revision of the mediation rules demonstrates VIAC's commitment to offer both arbitration and mediation services as well as a combination thereof.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Regarding the enforcement of foreign arbitral awards, Austria is party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Austria acceded to the Convention in 1961, with the reservation that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting State. However, in 1988, Austria withdrew this reservation. Furthermore, Austria is also party to the 1961 European Convention on International Commercial Arbitration. Thus, if both Conventions are applicable to an arbitral award to be recognised and enforced in Austria, Article IX of the European Convention stipulates as follows: if the arbitral award was set aside in the country where it was made, only certain grounds of setting aside justify the refusal of recognition and enforcement. In particular, the violation of the ordre public is not such a ground and is thus not a legal obstacle for recognition and enforcement. Finally, Austria is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The usual duration of arbitration proceedings is between 8 months and 2 years.	
APPROXIMATE COSTS		▪ The costs of arbitration to a large extent depend on the arbitration agreement and the amount in dispute, the amount of documents, number of witnesses and whether expert opinions are required. The costs of arbitration also include the fees of arbitrators and administrative charges. ▪ The arbitrators usually have large discretion regarding the award of costs. However, in practice the award on costs often depends on the outcome of the case. The award of legal fees is usually not determined by reference to a statutory tariff.
PROCEDURAL COSTS	The procedural costs depend on whether a sole arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case and the administrative charges. The following two estimates are based on the procedural costs of the Rules of Arbitration and Conciliation of the Vienna International Arbitral Centre (VIAC).	
SIMPLE CASE	**Assumption: sole arbitrator appointed and an amount in dispute of EUR 1,000,000.** Total costs: registration fee of EUR 1,500, administrative fees of EUR 13,000 and fees for a sole arbitrator between EUR 26,500 and EUR 37,100.	
COMPLEX CASE	**Assumption: sole arbitrator and an amount in dispute of EUR 10,000,000.** Procedural costs: registration fee of EUR 1,500; administrative fees of EUR 24,900 and fees for a sole arbitrator between EUR 74,500 and EUR 104,300. In the case there is an arbitral tribunal with three arbitrators, it may be that the fees for the arbitrators triple.	
ATTORNEYS' FEES		
SIMPLE CASE	**Assumptions based on an amount in dispute of EUR 1,000,000:** review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 3 witnesses; review of 3 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: EUR 120,000.	

COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000:** review of 1000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 5 witnesses; review of 5 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: EUR 250,000.	
DOCUMENT PRODUCTION	Limited. Usually the International Bar Association Rules on the Taking of Evidence are applied which provide for a narrow document production.	
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	1 to 2 months until a decision on recognition and enforcement is rendered in first instance. 3 to 6 months if the decision is appealed.	▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof, and the original of the arbitration agreement or a duly certified copy thereof.
APPROXIMATE COSTS		
COURT FEES	For a declaration of enforceability no court fees have to be paid. For specific execution actions court fees are based on the Court Fees Act.	
ATTORNEYS' FEES (NET)	Application for recognition/ enforcement: *Simple case:* EUR 400 to 600. *Complex case:* EUR 2,000 to 5,000.	

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WOLF THEISS

BOSNIA & HERZEGOVINA

1. ARBITRATION

The rules regulating arbitration are contained in the entity laws on civil proceedings i.e. Articles 434 – 453 of the FBiH Code of Civil Procedure and in Articles 434 – 453 of the RS Code of Civil Procedure. Both acts are valid for both domestic and international arbitration proceedings; however, for arbitration proceedings to be classed as international, a foreign element must exist. However, in practice this method of dispute settlement is rarely used in BiH.

Arbitration may be initiated only on the basis of a written agreement signed by both parties. Any written proof, such as fax, email or postal correspondence is considered sufficient. Furthermore, an arbitration agreement is considered valid if the respondent does not contest the existence of such an agreement. An arbitration agreement may be part of a contract or contained in a separate document, i.e., in general terms and conditions which apply to the legal relationship between the parties. There are no specific content requirements for an arbitration agreement. However, the agreement should state the parties to the agreement and the subject-matter of the agreement, plus indicate clearly that a single dispute or all disputes that may arise from a certain contractual legal relationship will be subject to arbitration.

Generally, disputes concerning all commercial transactions may be submitted to arbitration. Claims involving family law and claims under administrative proceedings that cannot be brought before the courts but are decided by state agencies are not arbitrable. The parties are free to decide on the language of arbitration and on the applicable procedural rules that will govern the proceedings and may also decide on the number and method for selecting the arbitrators. There may only be an odd number of arbitrators. Provided that a foreign element exists, the parties are free to agree on any substantive law.

The applicable legislation does not provide for any specific rules on interim measures in relation to arbitration proceedings.

An arbitral award has the same legal validity and force as a court judgment and is therefore binding and enforceable. It can be challenged only in certain situations prescribed by law. These include:

- the invalidity or ineffectiveness of the arbitration agreement or if no arbitration agreement existed;
- the conduct of the proceedings or the rendering of the award were not in accordance with the parties' agreement;
- the award does not contain reasoning or was not signed;
- the award was made in a dispute not falling within the terms of the statement of claim or contains decisions beyond the statement of claim;
- the reasoning in the award is inadequate or contradicts the findings of the arbitral tribunal; or
- an infringement of BiH public order.

In addition, the Arbitration Court with the BiH Foreign Trade Chamber is established as of 2003 and administers both domestic commercial disputes, i.e., disputes which involve parties only residing in BiH, and commercial disputes between a party residing in BiH and a party with a foreign residence.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

A foreign arbitral award must also be recognized by the competent BiH courts before it can be enforced in BiH. The following preconditions must be met for recognition:

- the subject matter of the foreign arbitral award is not exempt from arbitration according to BiH law;
- the subject matter of the foreign arbitral award is not under the exclusive jurisdiction of the BiH courts or other authorities;
- the foreign arbitral award does not contradict principles set forth in the BiH Constitution, the FBiH Constitution or RS Constitution and/or public order;
- reciprocity of recognition exists between BiH and the country of origin of the foreign arbitral award;
- the relevant parties have concluded a written arbitration agreement and such agreement is valid and binding;
- the party against which the arbitral award has been rendered was duly informed of the appointment of the arbitral tribunal and of the arbitration proceedings and there were no obstacles for such party to participate in the arbitration proceedings;
- the composition of the arbitral tribunal and the arbitration proceedings were in accordance with the provisions of the arbitration agreement and the arbitration rules;
- the arbitral tribunal has not exceeded its authority determined by the arbitration agreement;
- the foreign arbitral award is final and enforceable; and
- the foreign arbitral award is not ambiguous or contradictory.

BiH is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state, will only be applied to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law and will only be applied to those arbitral awards which were adopted after the entry into effect of the Convention. In addition, BiH is a party to the 1961 European Convention on International Commercial Arbitration.

BiH is also a party to bilateral agreements with various countries that regulate the mutual relationships of BiH and the respective country in relation to the provision of legal aid, civil and criminal proceedings, etc.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	Arbitration proceedings are seldom used in BiH and the practice is very limited. Therefore, it is very difficult to give any estimates as to the duration, costs and other matters relevant for arbitration proceedings.	▪ Institutional arbitration is regulated by the Arbitration Rules of the Arbitration Court attached to the Foreign Trade Chamber of BiH (adopted in 2003). ▪ Until now, only a very limited number of arbitration proceedings have been initiated and realized before the Arbitration Court.
APPROXIMATE COSTS **PROCEDURAL COSTS**	The procedural costs depend on whether a sole arbitrator or an arbitral tribunal is appointed. The following estimates are based on the procedural costs of the Arbitration Rules of the Foreign Trade Chamber of BiH.	
SIMPLE CASE	**Assumption: sole arbitrator appointed and an amount in dispute of EUR 1,000,000**: Administrative costs: EUR 3,060; fee for a sole arbitrator: EUR 10,200. In total: EUR 13,260.	
COMPLEX CASE	**Assumption: sole arbitrator appointed and an amount in dispute of EUR 10,000,000**: Administrative costs: EUR 9,480; fee for a sole arbitrator: EUR 31,600. In total: EUR 41,080. In case of an arbitral tribunal, the arbitrators' costs will be multiplied by the number of arbitrators, minus 20%.	
ATTORNEYS' FEES (NET)	**According to the FBiH Attorney's Tariff**, attorneys' fees for all actions in arbitration proceedings are the same as the fees in standard civil proceedings. When representing a client in international arbitration proceedings, the attorney is entitled to double the amount of fees applicable in standard civil proceedings. **According to the RS Attorney's Tariff**, drafting submissions and representation at the hearing: BAM 500 (approx. EUR 250).	
DOCUMENT PRODUCTION	Yes. According to the Arbitration Rules of the Arbitration Court attached to the Foreign Trade Chamber of BiH, the plaintiff and the defendant are required to, in their claims and in response to claims, state and provide all documents supporting their statements.	

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	Up to one year, if appealed even longer.	According to the BiH Law on Conflict of Law Rules, the following must be submitted along with the motion for recognition/execution of a foreign arbitral award: ▪ original or certified copy of the foreign arbitral award for which recognition is sought, including certification from the competent authority that the award became legally valid and binding under the law of the country where the award was rendered; ▪ official translation of the foreign arbitral award; and ▪ proof that the court fee has been paid. The same documents must be submitted with a motion for recognition and enforcement of a foreign arbitral award under the New York Convention for Recognition and Enforcement of Foreign Arbitral Awards.
APPROXIMATE COSTS **COURT FEES**	**Canton Sarajevo**: BAM 100 (approx. EUR 50) for the motion for recognition; BAM 200 (approx. EUR 100) for an appeal; fees for the court's decision depend on the amount in dispute and are calculated in the same way as in civil proceedings. **RS**: BAM 200 (approx. EUR 100) for the motion for recognition, while the court fees for an appeal are BAM 300 (approx. EUR 150).	
ATTORNEYS' FEES (NET)	**Under the FBiH Attorneys' Fees** application for the recognition of foreign judgments and arbitral awards: 50% of the fees that would be charged by the attorney for actions in standard civil proceedings. Attorneys' fees for all actions in enforcement proceedings are the same as the fees in standard civil proceedings. **Under the RS Attorneys' Fees** application for the recognition of foreign judgments and arbitral awards and representation at the oral hearing (if applicable): BAM 375 (approx. EUR 180). Attorneys' fees for all actions in enforcement proceedings are the same as the fees in the standard civil proceedings.	

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WOLF THEISS

BULGARIA

1. ARBITRATION

Arbitration of commercial and civil disputes is regulated by the International Commercial Arbitration Act (promulgated in State Gazette Issue No. 60/5.08.1988, as amended from time to time, "**ICAA**"), and applies to all commercial disputes with the exception of disputes for property rights or possession over real estate, rights under an employment agreement or maintenance obligations, which all fall within the jurisdiction of the Bulgarian State Courts, or disputes where consumers are a party to the dispute (i.e., such disputes are not arbitrable). Despite its name, and with the exception of certain provisions, the Act is also applicable to domestic arbitration, i.e., to disputes where all involved parties have their domicile or seat in Bulgaria.

The oldest and most reputable arbitral institution in Bulgaria is the Arbitration Court at the Bulgarian Chamber of Commerce and Industry ("**BCCI**"), established in 1897. The Arbitration Court resolves commercial disputes, irrespective of whether the seat or domicile of one or both parties is in the Republic of Bulgaria or abroad. It has its own rules of arbitration which are available in Bulgarian, English, French, Russian and German and maintains three lists of arbitrators (one for domestic arbitrations, one for international arbitrations with only Bulgarian arbitrators and one for international arbitrations including foreign arbitrators). The last amendments to the rules for arbitration proceedings were enacted on 1 January 2017.

The parties to a dispute, or a potential dispute, can agree to settle their disputes through arbitration by concluding an arbitration agreement. The arbitration agreement should be in writing or evidenced through a written communication between the parties. The arbitration agreement may be included as a provision in a contract between the parties, in which case it shall be considered independent of the other terms of the contract, or as a separate agreement. An arbitration agreement is also considered to exist if the respondent takes part in the arbitration proceedings without challenging the jurisdiction of the arbitral tribunal, at the latest with the reply to the statement of claim.

Arbitral Tribunals composed under the Rules for Arbitration of the BCCI, can be composed of a sole arbitrator or of three arbitrators. The parties are free to agree upon the procedure for selecting the arbitrator(s), the procedural rules to be followed, the seat of arbitration and the language or languages of the arbitral proceedings.

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of one of the parties, order the other party to take appropriate measures for securing the rights of the petitioner. When ordering such measures, the arbitral tribunal may order the claimant to deposit a security (Section 21 ICAA). However, if a party refuses to cooperate, the interim measures granted by an arbitral tribunal are not enforceable and assistance from the state courts must be requested.

Arbitral tribunals may not order any interlocutory relief or provisional measures on a person or entity who is not a party to the arbitration agreement (e.g., to protect evidence). Such assistance may only be provided by the state courts. Only measures granted by the state courts are enforceable. Only Bulgarian courts have the competence to order such interim measures in the territory of Bulgaria.

An arbitral decision and/or award is binding and enforceable. An arbitral award rendered in an arbitration seated in Bulgaria can be challenged before the Supreme Court of Cassation (set-aside procedure) only under very few grounds, explicitly and imitatively listed in the ICAA. The relevant violations include:

- a party had no legal capacity to act at the time of signing the arbitration agreement;
- the arbitration agreement had not been concluded or it was deemed to be null and void pursuant to the applicable law chosen by the parties;
- a party has not been duly notified of the appointment of the arbitrator(s), or of the arbitration proceedings or was not able to participate in the proceedings for reasons beyond its control;
- the award dealt with a dispute beyond the scope of the arbitration agreement or outside the subject matter of the dispute;

- the composition of the arbitral tribunal or the arbitration proceedings did not conform with the parties' agreement; and
- the subject-matter of the dispute is non-arbitrable.

Once the arbitral award is rendered and has entered into force, a writ for the execution of arbitral awards may be issued by Sofia City Court or the competent district court.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Regarding the enforcement of foreign arbitral awards, Bulgaria is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state, and with regards to those made in the territory of non-contracting states the Convention will only be applied to the extent to which those states grant reciprocal treatment. Bulgaria is also a party to the 1961 European Convention on International Commercial Arbitration.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The usual duration of arbitration proceedings is between 6 and 18 months.	
APPROXIMATE COSTS **PROCEDURAL COSTS** **ATTORNEYS' FEES (NET)**	 The procedural costs depend on the arbitration court and its fee schedule, the parties' agreement, and the complexity and interest of the case. The arbitration institutions distinguish between domestic and international arbitration cases. Determined in the same way as in standard civil proceedings.	Costs include the arbitration court fee, costs of experts and attorneys' fees.
DOCUMENT PRODUCTION	Limited.	
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	1 to 2 months until a decision on recognition and enforcement is rendered in first instance; 3 to 6 months if the decision is appealed.	The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	 Application for recognition/ enforcement: BGN 50 (approx. EUR 25). Attorneys' Fees are calculated as in standard civil procedures.	For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.

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WOLF THEISS

CROATIA

1. ARBITRATION

Arbitration in Croatia is governed by the Croatian Arbitration Act of 2001. The purpose of the act was to create a modern law based on the UNCITRAL Model Law and to incorporate features of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Croatian law distinguishes between domestic arbitration and international arbitration, depending upon the seat of arbitration. For a dispute to be classified as international, at least one of the parties must be an individual with his or her domicile or habitual residence outside of Croatia, or be a legal entity established under foreign law. The parties may choose international arbitration, i.e., arbitration proceedings having its seat outside Croatia, only in a dispute which is classified as an international dispute.

There is only one major arbitration institution in Croatia, the Permanent Arbitration Court of the Croatian Chamber of Commerce (PAC-CCC), which was established in 1853. The Permanent Arbitration Court of the Croatian Chamber of Commerce has established Rules of International Arbitration (Zagreb Rules), which adhere largely to the provisions of the UNCITRAL Arbitration Rules.

The parties may generally submit to arbitration all disputes involving rights which the party may freely dispose of. This excludes certain family law disputes, criminal law matters, administrative law matters, and certain competition law issues. In addition, in arbitration proceedings having its seat outside Croatia, apart from the disposability of rights requirement above, the parties may not submit disputes that fall within the exclusive competence of Croatian courts, such as disputes involving real estate located within the territorial limits of Croatia.

Under Croatian law, an arbitration agreement may be contained in a separate document or in the form of an arbitration clause included in the underlying contract between the parties, but in both cases it must be in writing. The written form requirement may be satisfied by exchanging letters, faxes, telegrams or other means of communication providing for a written record of the agreement. Most importantly, there is no requirement that the writing contains the parties' signatures. In addition, the law provides that the written form requirement of the arbitration agreement is satisfied if an offer to enter into an arbitration agreement is made in writing or a written confirmation of an orally made arbitration agreement is sent to the other party and is not objected to. This would apply only if the offer or written confirmation would otherwise be deemed accepted under the usual trade customs. Furthermore, the written form requirement would be satisfied if there is a reference in a bill of lading to a shipping contract that contains an arbitration clause. Finally, if the respondent in arbitration proceedings does not challenge the jurisdiction of the arbitral tribunal at least in its reply to the statement of claim, the arbitration agreement will be deemed validly executed.

The parties may freely designate the law applicable to the subject-matter of their dispute(s) and other procedural rules such as the language of arbitration, the number of arbitrators and the method of selecting these. In international arbitration proceedings the parties are also free to designate the seat of arbitration. However, in domestic arbitration, i.e. in which only Croatian parties are involved, the seat of arbitration must be in Croatia.

Unless otherwise agreed by the parties, an arbitral tribunal may, upon a request by a party, order such interim or protective measures (against the other party(ies) to the arbitration agreement) as the arbitral tribunal may consider necessary in respect of the subject matter of the proceedings. The party that has requested such measures may also apply to the competent national court for the enforcement of such measures. It is not incompatible with an arbitration agreement for a party to apply to the state courts before or during arbitration proceedings for an interim measure of protection or for a court to grant such a request.

Croatian arbitral awards have the same legal effect as final judgments, unless the parties have expressly agreed that the award may be contested before an arbitral tribunal of a higher instance.

There are only limited grounds for challenging an award:

- no arbitration agreement has been concluded, or the agreement is invalid;

- the parties to the arbitration agreement were under some incapacity, or were not adequately represented;
- a party was not given proper notice of the commencement of the arbitration proceedings, or was unable to present its case due to reasons beyond its control;
- the award concerns a dispute not contemplated by, or not falling within the terms of the arbitration agreement, or contains issues beyond the scope of the arbitration agreement;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the law, or the agreement of the parties;
- the award does not adequately or appropriately state the reasoning (unless this has been waived by the parties), or the award is not signed;
- the subject-matter of the dispute is not arbitrable under the laws of the Republic of Croatia; or,
- the award violates the public order of the Republic of Croatia.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Croatia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (by succession of ex-Yugoslavia, as of 8 October 1991), with the reservations that the Convention will only apply to the recognition and enforcement of awards made in the territory of another contracting state, to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law, and to those arbitral awards which were rendered after the effective date of the Convention. In addition, Croatia is a party to the 1961 European Convention on International Commercial Arbitration (by succession of ex-Yugoslavia, as of 8 October 1991), and the Washington Convention of 1966 on the Settlement of Investment Disputes between States and Nationals of other States (in force as of 22 October 1998).

Currently, there are 16 bilateral agreements regulating and simplifying the recognition and enforcement of foreign judgments, with Algeria, Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, France, Greece, Hungary, Iraq, Macedonia, Mongolia, Poland, Romania, Russia, Slovenia and Turkey, and one bilateral agreement regulating and simplifying the recognition and enforcement of foreign arbitral awards with Austria.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The usual duration of arbitration proceedings is between 1 to 3 years.	
APPROXIMATE COSTS **PROCEDURAL COSTS**	The following two estimates are based on the procedural costs of the Rules of Arbitration of the Permanent Court of Arbitration of the Croatian Chamber of Commerce (Zagreb Rules). **Assumption: sole arbitrator appointed and an amount in dispute of EUR 1,000,000**: Registration fee of EUR 200, administrative fees of EUR 2,140 and fees for a sole arbitrator of EUR 10,700.	▪ The procedural costs depend on whether a sole arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case and the administrative charges. ▪ The costs of arbitration to a large extent depend on the arbitration agreement and the amount in dispute, the amount of documents, number of witnesses and whether expert opinions are required. The costs of arbitration also include the arbitrators' fees and the administrative charges.

	Assumption: sole arbitrator and an amount in dispute of EUR 10,000,000: Registration fee of EUR 200; administrative fees of EUR 6,340 and fees for a sole arbitrator of EUR 31,700. In case there is an arbitral tribunal with three arbitrators, it may be that the fees for the arbitrators triple.	▪ The arbitrators usually have large discretion regarding the award of costs. However, in practice the award on costs often depends on the outcome of the case. The award of legal fees is usually not determined by reference to a statutory tariff.
ATTORNEYS' FEES (NET) *SIMPLE CASE*	**Assumptions based on an amount in dispute of EUR 1,000,000**: Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: EUR 35,000 to EUR 70,000.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: Review of 1000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: EUR 130,000 to EUR 200,000.	
DOCUMENT PRODUCTION	Limited. Usually the International Bar Association Rules on the Taking of Evidence are applied which provide for a narrow document production.	

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	1 to 6 months until a decision on recognition and enforcement is rendered in the first instance; 4 months to 1 year if the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	▪ For the enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
APPROXIMATE COSTS		
COURT FEES	A court fee of HRK 250 (approx. EUR 35) is payable for the recognition of a foreign court judgment. For enforcement actions, court fees are determined by the Court Fees Act and depend on the amount of a claim.	
ATTORNEYS' FEES (NET)	Application for recognition/enforcement: *Simple case*: EUR 400 to EUR 600. *Complex case*: EUR 2,000 to EUR 5,000.	

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WOLF THEISS

CZECH REPUBLIC

1. ARBITRATION

Arbitration in the Czech Republic is governed by Act No. 216/1994 Coll., on Arbitration Proceedings and the Implementation of Arbitral Awards (Arbitration Act) and applies to both domestic and international arbitration proceedings.

Under the Arbitration Act, a permanent court of arbitration may only be established by an Act of Parliament (Article 13 Arbitration Act). A permanent arbitration court is empowered to enact its own statute and rules of arbitration, which shall be published in the Commercial Bulletin.

Currently, three permanent arbitral institutions have been founded in the Czech Republic, the main one of which is the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic (the "Arbitration Court"), founded in 1949. The other two are the Exchange Court of Arbitration and the Arbitration Court of the Czech Moravian Commodity Exchange Kladno.

The Arbitration Court is the major permanent arbitral institution in the Czech Republic and administers both domestic and international disputes. It adopted its Rules of the Arbitration Court effective as of 1 July 2012 and also offers several rules for specific cases such as Additional Procedures for On-line Arbitration Rules for Domestic Healthcare Payments Disputes, Additional Procedures for Consumer Disputes or Rules for .cz domain name dispute resolution. The Arbitration Court is the only arbitration court in the world for .eu domain name dispute resolution. All currently effective Rules and Additional Procedures, with the exemption of those applicable to consumer and healthcare payments disputes, are available in English on the Arbitration Court's website (http://en.soud.cz/rules). The rules differ on various issues including procedure, fees charged and the language and place in which proceedings are heard.

Pursuant to the Arbitration Act, the parties may conclude an arbitration agreement that governs any or all disputes between them arising from their contractual relationship. In the agreement, the parties may agree whether the arbitration shall be decided by one or more arbitrators, or by an established arbitral institution. The parties may also specify in their agreement what procedural rules, or substantive law will apply to the resolution of the dispute.

The parties may agree to arbitrate disputes that have already arisen (compromise or submission agreement), or disputes that may arise in the future. However, in order for an arbitration agreement to be valid, it must be concluded in writing between the parties. The written component is deemed to be met if the agreement is contained in a telegram, a telex or another electronic means of communication. The agreement does not have to be signed, but the will of both parties to enter into the agreement must be clear.

Since the Act No. 257/2016 Coll., on Consumer Credit ("Consumer Credit Act"), came into effect on 1 December 2016, a total ban has been introduced on arbitration as a dispute resolution mechanism between credit providers and consumers. From this time onwards, all consumer credit disputes may be resolved by civil courts only.

In arbitration proceedings, decisions regarding property disputes can only be issued in: (i) disputes linked to the enforcement of the decision; (ii) disputes arising within the course of insolvency proceedings; and (iii) competence disputes. Disputes relating to personal status, marital status, family law matters and administrative matters are not arbitrable.

The parties are free to agree on the substantive law, the procedural rules, the seat and language of arbitration. In addition, the parties are free to agree on the number of arbitrators and their method of appointment. However, there must always be an odd number of arbitrators.

Arbitral tribunals do not have the authority to order interim measures of protection, or to grant injunctions in support of the enforcement of arbitral awards. Article 22 of the Arbitration Act therefore provides the courts with jurisdiction, upon application by any party, to order a preliminary measure or injunction if, during or prior to the commencement of arbitration proceedings, circumstances arise which are likely to jeopardize the enforcement of the arbitral award.

Generally, arbitral awards are enforceable by the courts and private (self-employed) judicial executors in the same manner as court judgments.

Arbitral awards may very rarely be challenged before the courts. The valid grounds for setting aside an arbitral award include the following:

- the award has been issued in a case in which no valid arbitration agreement has been concluded (lack of jurisdiction);
- the arbitration agreement is not valid for other reasons, has been terminated or does not concern the subject matter in dispute (lack of competence);
- an arbitrator participated in the arbitration proceedings whose appointment was neither based on the arbitration agreement nor on any agreement between the parties, or the individual appointed as the arbitrator did not possess the legal capacity to act as arbitrator;
- the award was not adopted by a majority of the arbitrators;
- a party was not given the opportunity to plead its case before the arbitral tribunal;
- the award obligated a party to an action that was not requested by the other party, or to an action which is not permitted under domestic law; or
- it is determined that reasons exist, which provide a sufficient justification for reopening the case.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Pursuant to the Czech Act on Arbitration, arbitral awards issued abroad shall be recognized and enforced by Czech Courts in the Czech Republic if reciprocity is guaranteed. Recognition of a foreign arbitral award does not require a special decision. The courts may only decline to recognize and enforce the foreign arbitral award under limited conditions based on the petition of the party obliged by the award.

The Czech Republic is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state and with regard to awards made in the territory of non-contracting states, the Convention will only be applied to the extent to which those states grant reciprocal treatment.

The Czech Republic is also a party to the 1961 European Convention on International Commercial Arbitration.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The usual duration of arbitration proceedings is between 6 months and 2 years.	The duration of arbitration proceedings can also be influenced by an agreement to have the arbitral award reviewed by a new arbitral tribunal.

APPROXIMATE COSTS		▪ The procedural costs depend on whether a sole arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case, and the administrative charges. ▪ Arbitration costs are awarded against the losing party who must reimburse the winning party. ▪ Arbitration costs include fees, attorneys' fees and expenses for expert opinions and witnesses. ▪ The action shall not be tried until the fees are paid. ▪ In general, a special tariff for arbitration fees and administrative fees (lump-sum reimbursement of the costs of the arbitration court) applies to international disputes; in domestic disputes, the arbitration fees are 5% of the disputed amount, subject to a cap of CZK 1,000,000 (approx. EUR 40,000). The arbitration fee for domestic disputes in a foreign language is 50% higher. ▪ The fee for accelerated arbitration proceedings is 50% higher (accelerated proceedings take approx. 3 months in domestic disputes and 4 months in international disputes). ▪ If a sole arbitrator is appointed in an international dispute, the arbitration fee is reduced by 30% and the administrative fee is reduced by 20%.
PROCEDURAL COSTS	Arbitration fees are based on the Rules for Costs of Arbitration Proceedings and depend on the amount in dispute. The following two estimates are based on the Rules for Costs of Arbitration Proceedings at the Arbitration Court attached to the Economic Chamber of the Czech Republic and to the Agricultural Chamber of the Czech Republic:	
SIMPLE CASE	**Assumption: sole arbitrator appointed and an amount in a dispute of EUR 1,000,000**: *domestic disputes*: arbitration fee EUR 30,000; *international disputes*: arbitration fee (reduced by 30%) EUR 18,500 plus administrative fee (reduced by 20%) EUR 15,000.	
COMPLEX CASE	**Assumption: sole arbitrator appointed and an amount in a dispute of EUR 10,000,000:** *domestic disputes*: arbitration fee EUR 40,000; *international disputes*: arbitration fee (reduced by 30%) EUR 74,500 plus administrative fee (reduced by 20%) EUR 26,500.	
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Assumptions based on an amount in dispute of EUR 1,000,000**: preparation of the arbitration claim/ responses, review of 100 pages of documents, nomination of the arbitral tribunal, preparation of the hearings (meetings with client, witnesses, correspondence with client): in total EUR 28,000 to EUR 60,000.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: preparation of the arbitration claim/ responses, review of 500 pages of documents, nomination of the arbitral tribunal, preparation and review of expert opinions, preparation of hearings and participation in meetings, meetings with the client, witnesses, and correspondence with client: in total EUR 50,000 to EUR 200,000.	
DOCUMENT PRODUCTION	The arbitral tribunal evaluates all produced documents. The documents shall be submitted in the language in which the arbitration proceedings are conducted.	

ENFORCEMENT OFFOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	6 to 12 months until a decision on recognition and enforcement is rendered in first instance. 5 to 10 months if the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
APPROXIMATE COSTS		
COURT FEES	The court fees are based on the Court Fees Act. In case of monetary performance, the fee is calculated based on the amount in dispute. If the amount in dispute is: ▪ up to CZK 20,000, the court fee is CZK 1,000; ▪ from CZK 20,000 to CZK 40,000,000, the court fee is 5% of the total value of the claims up to a maximum amount of CZK 2,000,000; ▪ above CZK 40,000,000, the court fee is CZK 2,000,000 and 1% of the value exceeding CZK 40,000,000. A value higher than CZK 250,000,000 is not taken into account. Court fees in cases of non-monetary performance: ▪ clearance of real estate: CZK 5,000; ▪ other forms of enforcement: CZK 2,000	
ATTORNEYS' FEES (NET)	Application for recognition/enforcement of a foreign arbitral award: *Simple case*: EUR 500 to EUR 1,000. *Complex case*: EUR 1,000 to EUR 3,000.	

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HUNGARY

1. ARBITRATION

Arbitration has had a growing significance over the past two decades. An increasing number of contracting parties, in particular those active in the construction and energy industry, have submitted their disputes to arbitration in recognition of the advantages of these procedures. Timely process, efficiency, confidentiality and the freedom to appoint arbitrators with particular professional knowledge and expertise are the most commonly listed advantages of arbitration. The relatively high costs of arbitration are often referred to as a key disadvantage. The final and binding nature of arbitral awards (i.e., that no appeal is available) is seen as a disadvantage predominantly in the public sector.

Arbitration in Hungary is governed by Act No. LX. of 2017 on arbitration (Arbitration Act) which entered into force on 1 January 2018. The re-tailored Arbitration Act closely follows the UNCITRAL Model Law as amended in 2006. The Arbitration Act applies to both domestic and international commercial arbitration proceedings.

The Arbitration Act introduces the institutional framework for Hungarian commercial arbitration on the basis of which the following permanent arbitration courts have been established:

- Commercial Arbitration Court with general jurisdiction in Hungary as the main institution dealing with arbitration;
- Sports Arbitration Court under the provisions of the Act on sports which is competent for the matters defined in such Act; and
- Arbitration Court for agricultural disputes which is attached to the Hungarian Chamber of Agriculture.

The above arbitration courts deal with domestic and international commercial disputes and have adopted their own rules of procedure which are fully compatible with the UNCITRAL Model Law and UNCITRAL Arbitration Rules.

Under the regime of the Arbitration Act, it is also possible to conduct ad hoc and international arbitration proceedings in Hungary.

Arbitration agreements must be in writing, and must contain the parties' submission of their disputes, arising from their contract, to arbitration; either to a permanent institution or to ad-hoc arbitration. The arbitration agreement may be entered into on a stand-alone basis or as part of another agreement (i.e. arbitration clause). An arbitration agreement will only be valid if duly signed by all parties.

Arbitration agreements will also be valid if such agreements are included in a document separate from the parties' contract, and the parties' contract includes such arbitration agreement by express reference to that separate document, provided that the parties' contract expressly sets out that the arbitration agreement in the separate document must be deemed part of the parties' contract.

Arbitration agreements are also deemed to have been concluded in writing if the party alleges the existence of the arbitration agreement in its declaration to refer the dispute to arbitration or in its statement of claim, and it is not disputed by the other party.

There are a number of disputes that cannot be submitted to arbitration: those arising from consumer contracts, marriage, personal or family status and capacity, labour relations, false or defamatory press statements, and enforcement procedures.

In previous years severe statutory restrictions were in effect in respect of disputes arising from contracts that related to "national assets". There was a comprehensive ban on arbitration in disputes, the subject matter of which were rights, claims or demands arising from civil law agreements governing "national assets" located on the territory of Hungary. "National assets" are assets under the ownership of the Hungarian State or the local

municipalities, such as company shareholdings, rights with quantifiable value, emission quotas, the airspace above the territory of Hungary, etc. These legislative bans and prohibitions completely ceased to exist recently, and the full scope and powers of arbitration have been restored in the Hungarian legal system.

Arbitrators may issue a wide range of interim measures (including those devoted to preserving a situation of fact or law, to preserving evidence, to seizing assets or freezing bank accounts). Interim measures of arbitral tribunals are adopted in the form of orders (i.e. not awards). Such order will only be granted following the constitution of the tribunal (the emergency arbitrator instrument has not been introduced into the rules of the major arbitration institutions in Hungary). When requesting interim measures the party may also request preliminary measures. Preliminary measures may be capable of preventing the other party from frustrating the purpose of the interim measure. The provisions of the Arbitration Act explicitly stipulate that the above orders should be enforced in accordance with the rules of judicial enforcement (i.e. the same way as regular court orders).

The Arbitration Act reflects the UNCITRAL Model Law when it sets out that it is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a regular court an interim measure of protection and for a regular court to grant such measure. Accordingly, Hungarian state courts will accept applications for protective measures related to disputes that are submitted to arbitration. Nevertheless, courts are willing to grant such measures only if the arbitration is in process (i.e., the request for arbitration has already been filed), and it is hard to track down cases where the measure was granted prior to the launch of the arbitration process. It can therefore be concluded that the term “before […] arbitral proceedings” in the text of the Arbitration Act does not in fact grant a seamless route to a protective measure unless a request for arbitration has already been filed. Such measures may be ordered after the constitution of the arbitral tribunal, and the court ordered provisional relief will remain in force following the constitution of the arbitral tribunal.

The Arbitration Act sets out that an award must be in writing, and must be signed by the members of the tribunal. If one of the parties so requests, the award must contain provisions on the amount and allocation of procedural costs and expenses. The award must describe the reasons and grounds for the decisions, and must provide a proper justification of the decision. The date of the award and the seat of arbitration must be clearly shown. A copy of the award must be delivered to each of the parties. Interim or partial awards, if these satisfy the validity criteria set out for awards in the Arbitration Act, are enforceable.

Arbitral awards cannot be appealed; only a request for setting aside can be filed with the state courts on grounds specifically listed in the Arbitration Act. These grounds are fundamentally identical with those listed in the UNCITRAL Model Law, and include:

- the party concluding the arbitration agreement had no legal capacity or capacity to act;
- the arbitration agreement is invalid;
- a party was not given proper notice of the appointment of an arbitrator, or of the arbitral proceedings or was otherwise unable to present its case;
- the award was made in a legal dispute to which the arbitration agreement did not apply or which was not covered by the provisions of the arbitration agreement;
- incorrect composition of the arbitral tribunal or the proceedings were not in accordance with the parties’ agreement;
- the subject matter of the dispute is not arbitrable under Hungarian law; or
- the award is in conflict with the rules of Hungarian public order.

Challenge proceedings before the state courts are usually completed at one single court hearing. It is exceptional that a second hearing is scheduled to further discuss complicated legal issues. Therefore challenge proceedings usually terminate within 3 to 6 (three to six) months.

If an arbitral award is challenged the court may stay enforcement upon the challenging party's request, therefore stay of enforcement is not granted *ex officio*. The court will assess all circumstances relevant from the perspective of deciding the stay or leave to enforce. There are no statutory aspects or factors to consider; it is at the absolute discretion of the court to make the decision.

The Arbitration Act provides for the possibility of a retrial of arbitration matters within 1 (one) year following the receipt of the award, based on facts or evidence which were not taken into account during the original arbitration procedure for any reason not attributable to the party relying on them, provided that it could have resulted in a more favourable decision for this party.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Hungary is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to disputes arising out of legal relationships, whether contractual or not, that are considered commercial under Hungarian law; and only to awards which were made in another contracting state. Hungary is also a party to the 1961 European Convention on International Commercial Arbitration.

Awards of arbitral tribunals will be directly enforceable through the judicial enforcement system. The concerned party will have to file an application to the competent court of the state and pay the statutory duties and fees, and the award will be enforced by the judicial enforcement officer in the same manner as state court judgements.

Enforcement may be opposed on the grounds that (i) the subject matter of the dispute was not capable of settlement by arbitration under the laws of Hungary; or (ii) the recognition or enforcement of the award would be contrary to the public policy of Hungary.

Court proceedings related to arbitration fall into the exclusive competent of county courts (*törvényszék*).

The party opposing enforcement may request that the court stays enforcement. The court will assess all circumstances relevant from the perspective of deciding the stay or leave to enforce. There are no statutory aspects or factors to consider; it is at the absolute discretion of the court to make the decision.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The average duration of arbitration proceedings is between 5 months and 1½ years.	
APPROXIMATE COSTS		
PROCEDURAL COSTS	The costs of the procedure are contained in the Rules of Procedure. In case of the annulment of an arbitral award before the state courts, the procedure is subject to stamp duty: 1% of the amount up to a cap of HUF 250,000. The arbitration fee depends on whether an arbitral tribunal or a sole arbitrator is appointed. The arbitration fee includes the registration fee, arbitrators' fee and administrative costs and the state duty. The arbitration fee does not include other cost incurred by the Arbitration Court, e.g., experts' and interpreters' fees.	
ATTORNEYS' FEES (NET)	Subject to the engagement.	

DOCUMENT PRODUCTION	Procedural rules of Hungarian arbitration institutions do not contain detailed rules on document production. The tribunal and the parties may agree on the scope and order of document production, either by setting up specific rules or by reference to the IBA Rules on the Taking of Evidence in International Arbitration.
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS	
APPROXIMATE DURATION	Duration depends on the complexity of the case but may range from 2 months to more than a year.
APPROXIMATE COSTS	
COURT FEES	*Stamp duty* in proceedings before the enforcement officers of local courts: 1% of the enforceable amount subject to a cap of HUF 350,000. *Stamp duty* in proceedings before the enforcement officers of county courts: 3% of the enforceable amount subject to a cap of HUF 750,000. *Fees of the enforcement officer* are set out in a statutory rule of law. It is subject to the enforceable value, and is determined by a reducing percentage of the value starting from 3% for values between HUF 100,000 and HUF 1 million, to 0.5% for values exceeding HUF 10 million. In addition, the enforcement officer is entitled to the reimbursement of costs based on itemized costs plus a lump sum cost (50% of the fees set out above).
ATTORNEYS' FEES (NET)	Subject to the engagement.

This chapter was written by Zoltán Faludi and Enikő Lukács.

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KOSOVO

1. ARBITRATION

According to the Law on Arbitration, enacted on 10 September 2008, arbitration is a recognized instrument for the resolution of both domestic and international disputes between physical persons and legal entities.

In Kosovo, all disputes related to civil and economic matters may be arbitrated, but only if there is an arbitration agreement between the parties indicating consent to arbitration. The arbitration agreement must be in writing; however, this requirement is deemed to have been satisfied if the arbitration agreement is recorded by means of letters, telefaxes, telegrams or other means of telecommunication or electronic communication etc.

In the event a matter is pending before a court which is the subject of arbitration, the court shall reject the matter if a party invokes the arbitration agreement in its defence. The parties may agree on a sole arbitrator or on a panel of arbitrators, provided that the panel is composed of an odd number of arbitrators. However, in the event the parties fail to specify the number of arbitrators, the number shall be three, with each party appointing one and the two party-appointed arbitrators selecting the third arbitrator.

The arbitral tribunal may issue preliminary orders that are enforceable by the court upon request of a party, if that party gives credible evidence that an immediate or irreparable injury, loss or damage will result to the party if no preliminary order is granted. However, the arbitral tribunal may require any party to provide appropriate security in connection with such preliminary orders.

In arbitrations involving international issues, the arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the rules of private international law. In all other cases, the arbitral tribunal shall apply Kosovo law.

According to Article 36 of the law on Arbitration, a party may challenge an arbitral award before the court; however, the award will only be set aside if the applicant proves that:

- a party to the arbitration agreement did not have the capacity to act;
- the arbitration agreement is not valid under the law determined as applicable by the parties or the arbitral tribunal or, in the absence of such determination, under the law applicable in Kosovo;
- the applicant was not given proper notice of the appointment of the arbitrator(s) or of the arbitral proceedings or was otherwise unable to present his/her case;
- the award deals with an issue not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or,
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the provisions of the law or a valid arbitration agreement, under the condition that such defect had an impact on the arbitral award.

The award can also be set aside if the court finds that:

- the subject matter of the arbitration is prohibited by law; or
- the enforcement of the award conflicts Kosovo public order (*odre public*).

Unless the parties have agreed otherwise, a request for setting aside an arbitral award shall be submitted to the court not later than 90 (ninety) days after the award was received by the respective party. Otherwise, an arbitral

decision is binding on the parties involved in the arbitration, and the arbitral decision shall have the same effect between the parties as a final and binding court decision.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Foreign awards, rendered outside of Kosovo, can be recognized and become enforceable in Kosovo by making a request for recognition and enforcement to the Basic Court in Prishtina. The request for the recognition and enforcement of a foreign award must be accompanied by:

- the authenticated original award or a certified copy thereof;
- the original arbitration agreement or a certified copy thereof; and,
- a certified translation of the arbitration agreement and the arbitral award into an official language of Kosovo if the award or agreement is not made in an official language of Kosovo.

Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, if that party proves that:

- a party to the arbitration agreement, under the law applicable to the agreement, did not have the capacity to act; or the arbitration agreement was not valid under the law determined as applicable by the parties or, in the absence of such determination, under the applicable law in the territory where the award was made;
- the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator(s) or of the arbitral proceedings or was otherwise unable to present its case;
- the award deals with an issue not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that if the decisions on matters submitted to arbitration can be separated from those not submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the law applicable to it; or,
- the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the territory in which, or under the law of which, the award was made.

Recognition and enforcement of an arbitral award shall also be refused if the Court finds that:

- the subject matter is not capable of settlement by arbitration under the applicable law in Kosovo; or,
- the recognition or enforcement of the award would be contrary to the public order of Kosovo.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The Law on Arbitration, Law No. 02/L-75 specifies no overall time frame. Due to the different periods specified by law (i.e., for the appointment and challenge of arbitrators or the notification of witnesses), several months can be expected.	
APPROXIMATE COSTS	The costs are transparent and predictable, and the parties make the payment for arbitrators through the PTA (Kosovo Permanent Tribunal of Arbitration). In principle, the costs of arbitration are borne by the unsuccessful party. The costs are apportioned if the parties solve the dispute by settlement.	Further details and documents can be downloaded under www.kosovo-arbitration.com
DOCUMENT PRODUCTION	Article 21 of the Law on Arbitration states that all statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to all other parties. Also, any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to all parties.	
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	According to anecdotal evidence, the approximate duration of proceedings for the recognition of foreign judgments is 3 to 4 months. In cases when such a decision is appealed, the proceedings may take between 6 and 9 months.	▪ Enforcement of awards under the New York Convention is possible. In such a case, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
APPROXIMATE COSTS	There is not sufficient information available to determine the costs for these proceedings.	

This chapter was written in cooperation with Pallaska & Associates L.L.C., Pristina, Kosovo
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MACEDONIA

1. ARBITRATION

Arbitration in the Republic of Macedonia is governed by the following laws: Law on litigation procedure (*Закон за парничната постапка*) stipulating the legal proceeding before selected courts, International Private Act (*Закон за меѓународно приватно право*) regulating the applicable law and the recognition of foreign arbitral awards, Law on international commercial arbitration of the Republic of Macedonia (*Закон за меѓународна трговска арбитража на Република Македонија*) ("Law on international arbitration") regulating international commercial arbitration when the place of arbitration is located in the territory of the Republic of Macedonia and Law on enforcement (*Закон за извршување*) regulating the enforcement of foreign arbitral awards.

In addition, the Rulebook of the Permanent Court of Arbitration within the Economic Chamber of the Republic of Macedonia ("Rulebook") regulates the organization of the Permanent Court of Arbitration with its seat in Skopje, capital of Macedonia, which has jurisdiction for disputes with or without an international element.

The Arbitration Rules of the Macedonian Stock Exchange Joint Stock Company Skopje ("Macedonian Stock Exchange") and Central Depositary of Securities Joint Stock Company Skopje ("Central Depositary of Securities") regulate the settlement of disputes between members of the Macedonian Stock Exchange or between members and their clients, and between the members of the Central Depositary of securities or between the members and their clients in a justified, efficient and honest manner. It is mandatory to resolve disputes between members of the Macedonian Stock Exchange and members of the Central Depositary of Securities by arbitration. Disputes between members of the Macedonian Stock Exchange and members of the Central Depositary of securities with their clients are to be resolved by arbitration at the request of the clients. The Macedonian Stock Exchange and the Central Depositary form an Arbitration Commission for resolving disputes. The arbitral awards of this Arbitration Commission are final and binding among the parties without any right to appeal. The party commencing the arbitration procedure covers the deposit for the procedure. Nevertheless, the final fees are covered by the party which was unsuccessful in the dispute.

According to Macedonian law, an arbitration agreement may be concluded for a certain dispute and for future claims that may arise out of or in connection with a defined legal relationship.

Parties may agree on arbitration for the resolution of disputes if the rights are in the free disposal of the parties and the disputes do not fall under the exclusive jurisdiction of the Macedonian courts pursuant to the law, such as disputes related to but not limited to:

- establishment, termination and statutory changes of legal entities;
- registration in public registries;
- registration and legality of intellectual property rights;
- recognition of enforcement;
- property matters;
- labour relations;
- marital and family matters;
- penal law matters;
- insolvency matters; and
- consumer matters.

Both disputes with and without an international element may be resolved in front of an arbitral tribunal, whereby the dispute is considered to have an international element if:

- at least one of the parties at the time when the arbitration agreement was concluded is a natural person with permanent residence or domicile outside the territory of the Republic of Macedonia, or a legal entity whose seat is not within the territory of the Republic of Macedonia; or

- the place where a substantial part of the obligations of the commercial regulations should be performed or the place to which the subject matter of the dispute is most closely connected is not on the territory of the Republic of Macedonia.

Parties are not entitled to designate the applicable law if the legal dispute has no international element.

Under Macedonian law, parties may agree on the seat of arbitration which may be outside of the territory of the Republic of Macedonia only if at least one of the parties was, at the time of conclusion of the arbitration agreement, a natural person with permanent residence or domicile outside the territory of the Republic of Macedonia, or a legal entity whose seat is outside the territory of the Republic of Macedonia.

The arbitration agreement must be in writing and may be concluded in the form of an arbitration clause in the main contract or as a separate agreement.

The composition of an arbitral tribunal and the procedure before arbitral tribunals is strictly regulated. As a general rule, if the dispute is to be resolved by a sole arbitrator, he/she has to be appointed by both parties. If they do not reach an agreement on the sole arbitrator, he/she will be appointed by the president of the arbitration court. Where the dispute is to be resolved by an arbitral tribunal, the claimant and the respondent each appoints one arbitrator. The chair of the tribunal is then to be appointed by the president of the arbitration court; either directly or after the parties' attempt to jointly appoint a chair has failed. In some cases, the chair of the arbitral tribunal may be elected by the president of the competent Macedonian court. The arbitrators are appointed from a list of registered arbitrators. Foreign persons are qualified to act as arbitrators.

The arbitral tribunal may conduct the procedure in a way that it considers most appropriate, provided that the parties are treated equally and, at every stage of the procedure, each party is given an opportunity to present its facts, legal findings, requirements and views. Unless the parties have agreed otherwise, the arbitral tribunal may appoint experts for resolving issues in a particular field of expertise.

Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of one of the parties, issue an interim measure and order any party to take a certain action which the arbitral tribunal considers necessary in compliance with the subject of the dispute. The arbitral tribunal may request any party to provide an appropriate security regarding that measure. If the party against whom the interim measure is directed does not carry out the interim measure on a voluntary basis, the party that requested the interim measure may apply for the enforcement before the competent court.

Arbitral tribunal may require the legal support of the competent court of the Republic of Macedonia for performing of evidences when the arbitral tribunal cannot perform them itself.

An arbitral award should be rendered in writing including a proper reasoning except where the parties have reached an amicable settlement. An arbitral award may be published only upon approval by both parties.

The arbitral tribunal is obliged to deliver the draft of the arbitral award to the arbitration court prior to its signing, for an eventual opinion on amending the arbitral award. The review and the approval of the draft arbitral award are to be performed by the President of the arbitration court or by another member of the Presidency as appointed by the Presidency of the arbitration court. The arbitral award may not be signed and delivered to the parties before completion of this process of review and approval.

An arbitral award is final and binding upon the parties who are obliged to comply with it without any delay. An arbitral award has the effect of a final and binding judgement against the parties, unless the agreement provides for a possibility of appeal to an arbitration court of a higher instance. Based on the Law on international arbitration, there is no (ordinary) legal recourse against the arbitral award before a higher arbitration court.

The arbitral tribunal may only issue an arbitral award *ex aequo et bono* if explicitly authorized by the parties to do so.

A claim for annulment of the arbitral award may be filed as follows, but not limited to:

- lack of arbitration agreement or invalid arbitration agreement;
- non-arbitrability of the subject matter;
- improper composition of the arbitral tribunal;
- lack of due process;
- *ultra petita*;
- violation of the Macedonian procedural *ordre public*;
- violation of the Macedonian substantive *ordre public*; and
- violation of the Macedonian Constitution.

A challenge must be filed within three months from the notification of the award or acknowledgement of the reasons for annulment. The challenge may not be filed after the expiry of 1 (one) year as of the date of legal validity of the arbitral award.

Macedonian companies do not use arbitration frequently in their domestic business relations. In relationships with a foreign element, Macedonian companies often use the services of the International Chamber of Commerce (ICC) or the Vienna International Arbitral Centre of the Federal Economic Chamber (VIAC).

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

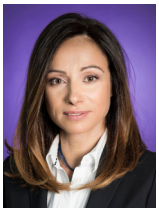
An arbitral award is considered foreign if it was rendered outside the territory of the Republic of Macedonia.

The recognition and enforcement of foreign arbitral awards shall be resolved according to the provisions of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which the Republic of Macedonia acceded subject to the following reservations: (i) the Republic of Macedonia will apply the Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law; and (ii) the Republic of Macedonia declared a reservation with regard to retroactive application of the Convention.

Macedonian courts recognize foreign arbitral awards when they fulfil the legal conditions and they receive the same legal status as judgements of the Macedonian courts

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	3-7 months	
APPROXIMATE COSTS		
PROCEDURAL COSTS	The procedural costs of the arbitration are subject to the advance on costs regulated under the Rules and include the following: registration fee, arbitration administrative fee, arbitrator's fee, representation fees, expenditures. These costs are to be covered by the party undertaking the legal action. Where the advance on fees exceeds EUR 25,000 the party is entitled to present an unconditional and irrevocable bank guarantee, from a Macedonian bank or a first class foreign bank, payable at first-demand of the President of the Permanent Court of Arbitration, The final costs shall be determined in the final arbitral award which will also stipulate which party should cover these.	The amount of the arbitration costs basically depends on the value of the dispute and further on the number of parties, the number of arbitrators, the, involvement of third parties, etc.
ATTORNEYS' FEES (NET)		
SIMPLE AND COMPLEX CASES	The attorney and the client may agree on hourly fees or a fixed fee, however not below the minimum prices determined in the Attorney's Tariff according to the value of the dispute.	
DOCUMENT PRODUCTION	Limited.	
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	1-2 years	The time period includes the procedure for recognition before the basic court and eventually the court of appeal in both simple and complex cases. In addition, the period also includes the possibility of extension of the enforcement depending on the disposed debtor's assets.
APPROXIMATE COSTS		Final costs shall be determined in the final court decision which will also stipulate which party shall cover these.
COURT FEES	Court fees shall be calculated according to the Court Fees Act and depend on the value of the dispute. These costs are to be covered by the party undertaking the legal action.	
ATTORNEYS' FEES (NET)	The attorney and the client may agree on hourly fees or a fixed fee, however not below the minimum prices determined in the Attorney's Tariff according to the value of the case.	

This chapter was written by Anna Rizova and Radolav Mikov Wolf Theiss Attorney Company in cooperation with Law Office Minoska, Skopje, Republic of Macedonia. Contributing author: Ana Minoska.



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MOLDOVA

1. ARBITRATION

Arbitration Arbitration in the Republic of Moldova continues to increase in popularity as an alternative venue to the conventional court system for solving disputes. The Government of the Republic of Moldova seems determined to promote the alternative dispute resolution (ADR) systems as well as to improve the enforcement procedure of foreign arbitral awards.

The existing legislative framework was reviewed and a series of recommendations were issued in order to align the existing framework to international standards. A practical handbook for arbitration users has been prepared and distributed. A number of impressive trainings on arbitration proceedings and enforcement of foreign arbitral awards, with the participation of foreign trainers, were provided to judges and arbitrators. Also, the set of guidelines on arbitration agreements, adopted several years ago by the Moldovan Supreme Court of Justice is currently revised in order to clarify certain ambiguous provisions and ensure uniformity in this area.

The Republic of Moldova has rather little experience with alternative methods of dispute solving as the first piece of legislation on arbitration dates back to 1994 which is considered to be the year of foundation of arbitration in Moldova. Also in 1994, the first Moldovan ADR institution, the International Commercial Arbitration Court (ICAC) was established under the umbrella of the Chamber of Commerce and Industry of Moldova and it still remains the country's main permanent arbitration body. Currently, there are 29 local and 32 international arbitrators on the arbitrators' list of the ICAC.

The number of arbitration institutions has increased tremendously since 1994. Based on a list published by the Supreme Court of Justice of Moldova, at present, there are 30 arbitration courts organized under various NGOs and associations, 4 of which were registered in the last two years. This list includes also several specialized arbitration institutions, such as: the International Arbitration Court of the Liquidators and Administrators Association of Moldova, the Court of Arbitration of the International Association of Auto Transporters of Moldova, the Arbitration Court Specialized in Industrial Property of the State Agency on Intellectual Property, as well as several arbitration courts in the agricultural sector. Each of these are also quite active in their domain. Also, last year the American Chamber of Commerce in Moldova has launched the Chisinau International Court of Commercial Arbitration and seems determined to promote this institution as a venue for solving disputes among its members as well as other business in Moldova.

The number of cases resolved via arbitration has also increased substantially during the past several years. Thus, according to the records of the Arbitration Court of the Chamber of Commerce and Industry of Moldova, which is still the most active arbitration court in Moldova, in 2010 it registered just 16 cases; while in 2017 it was already 127 cases.

Currently the ADR domain in Moldova is regulated by two main national laws:

- The law on arbitration nr.23/2008 - applicable to domestic arbitration; and
- The law on international commercial arbitration nr.24/2008 - applicable to arbitration with a foreign element (e.g. where one of the parties has its residence in a foreign state; or most of the property in dispute are in a foreign state).

Although Moldova has chosen the path of adopting two parallel arbitration laws, one for international and one for domestic arbitration procedures, both of them are in line with the UNCITRAL Model Law on International Commercial Arbitration.

Recognition and enforcement of foreign arbitral awards, the challenge of arbitral awards and the issuance of the enforcement deed of arbitral awards are regulated by the Civil Procedural Code of the Republic of Moldova.

There are also a number of international conventions applicable in Moldova. The most important are as follows:

- The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958;
- The European Convention on International Commercial Arbitration, Geneva, 21 April 1961; and
- The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), Washington,18 March 1965.

A wide range of disputes can be referred to arbitration in Moldova. The Law on international commercial arbitration specifies that the term "commercial" refers to relationships which arise from all kinds of commercial relationships, whether contractual or non-contractual. Commercial relations include the following, without limitation: contract of sales and delivery, exchange of goods and services; distribution agreements; commercial agencies and representatives; factoring, leasing, construction of industrial objects; consulting; business engineering; licensing; investments; financing; banking services; insurance; operating or concession agreements; joint ventures as well as other forms of industrial and commercial cooperation; air, maritime, railway and road transportation of goods and passengers.

There are, however, some exceptions which lie within the exclusive competence of courts of justice which cannot be resolved by arbitration: disputes related to family law, disputes that arise from housing lease agreements, including disputes related to validity, formation, termination and qualification of such agreements and any housing proprietary rights.

Parties are free to appoint arbitrators of any nationality or professional qualifications. Parties in arbitration proceedings having their seat in Moldova may also be represented by foreign counsel.

In order to be able to refer a dispute to arbitration, it is essential that the parties agree to settle the dispute (whether existing or potential) through arbitration. The agreement by which the parties agree to submit the dispute to arbitration is called an arbitration agreement, it must be established in the written form, failing which it will be considered null and void. The arbitration agreement can have either the form of an arbitration clause inserted in the main agreement (compromissory clause) or the form of a separate agreement (compromise). The arbitration agreement can be executed at any time including after the dispute has arisen.

Currently, the state duty for examination of a dispute in courts amounts to 3% of the value of the claim, but does not exceed MDL 50,000 (EUR 2,400) for legal entities. The arbitration fees are regressive and usually vary between 1% and 5% of the value of the claim.

Arbitral tribunals may issue interim measures which, if necessary, are enforced by courts of justice.

According to national rules, the arbitral award must be rendered at the latest within 6 (six) months as of the constitution of the arbitral tribunal unless agreed otherwise by the parties. This is the biggest advantage of arbitration in Moldova, as court proceedings can last for 2-3 (two to three) years. If the parties settle the dispute during the arbitral proceedings, the arbitrator shall terminate the arbitration and confirm the settlement in an award. In this case, according to the Rules of ICAC, 50% of the arbitration fee is reimbursed to the respective parties.

An arbitral award may be challenged in court by any party within 3 (three) months of the date of its receipt. The Code of Civil Procedure expressly provides an exhaustive list of grounds for the annulment of arbitral awards:

- the dispute may not be subject to arbitration proceedings accordingly to the law in force;
- the arbitration agreement is not valid according to the law;

- the arbitral award does not include the operative part and the grounds, place and date of issuance, or is not signed by the arbitrators;
- the operative part of the arbitral award contains provisions that cannot be executed;
- the constitution of the arbitral tribunal or the arbitral procedure does not comply with the arbitration agreement;
- the interested party was not notified, in the manner prescribed by law, about the nomination or appointment of the arbitrators or about the arbitration proceedings, including the place, date and time of the hearing, or due to other valid reasons could not be present before the arbitral tribunal to provide evidence;
- the arbitral award decided a dispute not contemplated by the arbitration agreement or not falling within its terms, or the decision contains provisions on matters beyond the scope of the arbitration agreement; or
- the arbitral award violates fundamental principles of Moldovan law or good morals.

Thus, the legal framework in the Republic of Moldova is in line with international provisions and best practice. Courts encourage business to use arbitration as an alternative means of dispute resolution and, as shown by statistics, business also welcome arbitration proceedings as these provide lots of advantages in comparison with court proceedings.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

According to Moldovan legislation; a foreign arbitral award can be recognized and enforced in Moldova if (i) it is issued in conformity with an arbitration agreement on the territory of a foreign state that is party to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards; (ii) if its recognition and enforcement is governed by an international treaty to which Moldova is a party; or (iii) if the recognition and enforcement is allowed on the basis of reciprocity as regards the effects of foreign arbitral awards. The competence to recognize and enforce foreign arbitral awards lies with the Moldovan courts.

Recognition and enforcement of a foreign arbitral award may be refused by the court only at the request of the party against whom it is raised if that party provides evidence to the court that:

- one of the parties to the arbitration agreement has no full capacity to exercise or the arbitration agreement is not valid under the law to which the parties have subordinated it or, failing that, according to the law of the country in which the judgment was delivered;
- the party against whom the decision is issued has not been properly informed of the designation of the arbitrator or the arbitral proceedings or, for other reasons, has been unable to provide his or her defence;
- the judgment has been given on a dispute not provided for in the arbitration agreement or which does not fall under the terms of the arbitration agreement, or the ruling contains provisions on matters that go beyond the limits of the arbitration agreement;
- the formation of the arbitral tribunal or the arbitral proceedings did not comply with the parties' agreement or, in the absence of such an agreement, was not in accordance with the law of the country in which the arbitration took place; or

- the arbitral award has not become binding on the parties or has been discontinued, or its execution has been suspended by the court or competent authority of the country in or under the law of which it was pronounced.

Recognition and approval of forced execution of the foreign arbitration award may also be refused if the court finds that:

- the subject of the dispute cannot be settled by arbitration under the laws of the Republic of Moldova; or
- the recognition or approval of the forced execution of the arbitral award is contrary to the public order of the Republic of Moldova.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	3 to 9 months. Decision to be issued within 6 months of the initiation of arbitration at the latest, unless parties agreed otherwise.	
APPROXIMATE COSTS	Unless the rules of the arbitration institution provide otherwise or the parties provide for something different in their agreement, the loser bears the costs.	
PROCEDURAL COSTS	The amount of arbitration fees depends on whether the dispute is international or local. The fees are determined by the courts rules. The fees of the Arbitration Court within Chamber of Commerce and Industry of Moldova are as follows: ***International arbitration:*** Registration Fee – USD 200 Arbitration Fee – in accordance with the table below: ***Value of the action*** **Arbitration fee** *Up to USD 50,000* 5% but not less than USD 500 *From USD 50,001 to USD 100,000* USD 2,500 + 3% from what is higher than USD 50,000 *From USD 100,001 to USD 500,000* USD 4,000 + 2% from what is higher than USD 100,000 *From USD 500,001 to USD 1,000,000* USD 12,000 + 1% from what is higher than USD 500,000 *From USD 1,000,001 to USD 2,000,000* USD 17,000 + 0,5% from what is higher than USD1,000,000 *Above USD 2,000,001* USD 22,000 + 0,3% from what is higher than USD 2,000,000	

	Domestic arbitration: Registration Fee – MDL1000 Arbitration Fee – in accordance with the table below
Value of the action **Arbitration fee**	*Up to MDL 50,000* 3% but not less than MDL1,000 *From MDL 50,001 to MDL 100,000* MDL 1,500 + 2,8% from what is higher than MDL 50,000 *From MDL 100,001 to MDL 200,000* MDL 3,000 + 2,6% from what is higher than MDL 100,000 *From MDL 200,001 to MDL 500,000* MDL 6,000 + 2,4% from what is higher than MDL 200,000 *From MDL 500,001 to MDL 1,000,000* MDL 15000 + 2,2% from what is higher than MDL 500,000 From MDL 1,000,001 to MDL 2,000,000 *MDL 30,000 + 2% from what is higher than MDL 1,000,000* Above MDL 2,000,001 MDL 60,000 + 1,5% from what is higher than MDL 2,000,000
ATTORNEYS' FEES	Hourly fees or a fixed fee and/or a success fee may be agreed upon between the attorney and the client.
DOCUMENT PRODUCTION	The law confers to the arbitral tribunal the right to determine the admissibility, relevance and importance of the evidence.
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS	
APPROXIMATE DURATION	Moldovan legislation does not specify any duration. Usually it takes 2-6 months. The application for recognition and enforcement of a foreign arbitral award in Moldova can be submitted within 3 years from the date the foreign arbitral award has become binding under the law of the place of arbitration. A foreign arbitral award can be recognized and enforced in Moldova if (i) it is issued in conformity with an arbitration agreement on the territory of a foreign state that is party to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards; (ii) recognition and enforcement is governed by an international treaty to which Moldova is a party; or (iii) if it may be recognised and enforced on the basis of reciprocity as regards the effects of the foreign arbitral award.
APPROXIMATE COSTS	
COURT FEES	The state fee for the application for recognition and enforcement of foreign arbitral award is MDL 100.
ATTORNEYS' FEES (NET)	Hourly fees or a fixed fee and/or a success fee may be agreed upon between the attorney and the client.

This chapter was written by Cristina Martin, Igor Odobescu and Andrei Caciurenco ACI Partners Law Office, Chisinau, Moldavia. www.aci.md

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MONTENEGRO

1. ARBITRATION

The Arbitration Law of Montenegro came into force on 26 August 2015. Prior to its coming into effect, arbitration proceedings and matters of recognition and enforcement of arbitral awards were governed by regulations on litigation and conflict of laws. The new law is expected to popularize arbitration as an alternative dispute resolution mechanism, especially for corporate entities, and develop the practice of the Arbitration Court attached to the Chamber of Commerce of Montenegro.

The Arbitration Law applies to both domestic and international arbitration proceedings, i.e. to which parties are natural or legal entities, with residency in or outside of Montenegro. Arbitration is not possible where other Montenegrin regulations provide that certain disputes are not arbitrable.

The arbitration agreement, whether as an integral part of the parties' contract or as a self-standing arbitration agreement, must be in writing, but is always deemed to be in writing if contained in documents signed by or exchanged between the parties by means of communication which provide written evidence of the parties' mutual agreement. There are several other scenarios which are considered to fulfil the written form requirement. For example, the parties can also incorporate an arbitration agreement into their contract by referring to a different document containing the arbitration agreement (e.g. general terms and conditions). Interestingly, if one of the parties, after an agreement is reached verbally, submits a written notice to the other party in which it refers to the previously concluded verbal agreement, and the other party does not timely object to the contents of the notice, then the written form requirement is met, as this is considered accepting an offer in Montenegrin commercial practice.

Notably, if a claimant initiates arbitration proceedings in cases where there is no previous written arbitration agreement and the respondent accepts the arbitration in written form, or participates in the proceedings without objecting before entering into the merits of the dispute, it is considered that the written form requirement is met and the parties have a valid arbitration agreement. On the other hand, if the parties agreed on arbitration, and a claimant initiates litigation proceedings, a party to such proceedings must object in order for the court to declare itself not competent and reject the claim. A party can, however, seek temporary protective measures before the court even if there is a valid and standing arbitration agreement. The court will not declare itself not competent and reject the claim if the arbitration agreement is not valid, enforceable or has ceased to be in effect.

When it comes to arbitration proceedings, the number of arbitrators is decided by the parties' agreement, but it must be an odd number. In case of failure of the parties to determine the number, an arbitral tribunal of three members will decide the dispute. The parties can agree on the procedure for appointing the arbitrators. However, if nothing was stipulated in the arbitration agreement or otherwise agreed between the parties, the arbitrators are appointed in accordance with a procedure provided in the Arbitration Law.

The Arbitration Law does not impose heavy requirements on the personality of an arbitrator – an arbitrator can be any individual with legal capacity, regardless of citizenship. Of course, a specific arbitrator must be and remain throughout the proceedings independent and impartial, and the Arbitration Law provides the possibility for challenge and exemption of an arbitrator in this respect.

During the proceedings, the equality of the parties is one of the key principles introduced by the Arbitration Law. Namely, the arbitral tribunal must ensure that each party has the opportunity to present its arguments and evidence, as well as to make statements on the actions and propositions of the opposing party. The rules of the proceedings are determined by the parties, but, if not, the arbitral tribunal has the authority to conduct the proceedings in a way it deems appropriate. The arbitral tribunal can decide to conduct the proceedings on the basis of written submissions only, but at request of a party will schedule an oral hearing (if oral hearings were not explicitly excluded by the parties' agreement). The Arbitration Law provides that the arbitral tribunal also has the competence to order interim measures at the request of a party.

The arbitral tribunal decides on the dispute in accordance with the governing law and rules chosen by the parties, excluding the conflict of law rules. If the governing law is not so determined, the arbitral tribunal applies adequate conflict of law rules. The tribunal will consider also commercial practice for a given transaction when deciding on

the matter, but will only decide *ex aequo et bono* if explicitly authorized by the parties.

Arbitration proceedings are generally finalized by a final arbitral award. In that respect, any arbitral award rendered by an arbitral tribunal on the territory of Montenegro has the legal effect of an enforceable title and can be enforced in accordance with enforcement regulations as a local award. Such local award can be subject to annulment proceedings before the Montenegrin court by way of a lawsuit for annulment. The Arbitration Law contains an exhaustive list of grounds for such challenge (Article 48 Arbitration Law) which include:

- invalidity of the arbitration agreement;
- lack of due process;
- *ultra petita*;
- incorrect composition of the arbitral tribunal;
- formal invalidity of the award;
- lack of arbitrability; and
- violation of Montenegrin public policy.

A challenge must be filed within 3 (three) months from the notification of the award.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Regarding the enforcement of foreign awards, i.e. arbitral awards rendered by arbitral tribunals seated outside of Montenegro, it should be noted that Montenegro is party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as well as to the 1961 European Convention on International Commercial Arbitration.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	According to the Rules of the Court of Arbitration at the Chamber of Commerce (CoA) of Montenegro, the arbitral tribunal sets a time frame for the resolution of each dispute. As a rule, disputes are generally resolved within one year from the date of receipt of the relevant case file, subject to certain exceptions.	
APPROXIMATE COSTS **PROCEDURAL COSTS**	Costs of proceedings before the CoA include the registration fee (i.e. EUR 200), the arbitral tribunal's fees, administrative fees, and any additional procedural costs incurred by the arbitral tribunal and the CoA. The amount of the arbitrators' fees and administrative fees shall be determined by the CoA Secretariat in accordance with the CoA Tariff, based on the respective value of the dispute.	▪ The costs of the arbitral proceedings are usually paid in advance by the parties. Unless agreed otherwise by the parties, they are obliged to bear the relevant costs of the advance payment equally, for which they share a joint and several liability. ▪ The costs of arbitration depend primarily on the amount in dispute. However, the amount of documents, number of witnesses, need for expert opinions, duration of the proceedings, etc., may also be of importance in this regard.

SIMPLE CASE	**Assumption: The amount in dispute is EUR 1,000,000:** **CoA** - registration fee of EUR 200, administrative fees of EUR 6,550, sole arbitrator fees of EUR 13,600, fees for panel of three arbitrators of EUR 34,000 (i.e. 2½ times the amount for the sole arbitrator).	▪ Unless otherwise agree between the parties, the arbitrators have a large discretion regarding the award of incurred reasonable costs. The award of legal fees is usually not determined by a reference to any statutory tariff, and is primarily based on the success rate of the parties in the proceedings.
COMPLEX CASE	**Assumption: The amount in dispute is EUR 10,000,000:** **CoA** - registration fee of EUR 200, administrative fees of EUR 11,300, sole arbitrator fees of EUR 15,550, fees for panel of three arbitrators of EUR 38,750 (i.e. 2½ times the amount for the sole arbitrator).	
ATTORNEYS' FEES		
SIMPLE CASE	**Assumptions based on an amount in dispute of EUR 1,000,000:** Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post-hearing brief. Total approximate cost: EUR 70,000.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000:** Review of 1000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: EUR 175,000.	
DOCUMENT PRODUCTION	The arbitral tribunal is authorized to order a party to produce a document or any other evidence that the arbitral tribunal deems relevant for the resolution of the proceedings.	▪ Should a party ignore the arbitral tribunal's order for production of a certain document, the arbitral tribunal is entitled to issue its decision on the basis of the evidence already presented. However, the arbitral tribunal shall freely evaluate the consequences

		of the omission of one party to produce the required document when issuing its final decision in the respective proceedings.
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	The enforcement of arbitral awards varies depends on a series of factors including the identification of the debtor's assets, financial means, the response of the debtor, and the perseverance of the enforcement authorities in the fulfilment of their duties.	▪ The party seeking recognition/ enforcement of arbitral awards must provide the court with the following documentation: the original arbitral award or a duly certified copy thereof, the agreement on arbitration or a document on acceptance of arbitration in the original or a duly certified copy thereof, and a certified translation of the abovementioned documents. ▪ For enforcement of arbitral awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original arbitration agreement or a duly certified copy thereof.
APPROXIMATE COSTS **COURT FEES**	According to the Law on Court Fees, a fee in the amount of EUR 50 is payable for the court decision on recognition of a foreign arbitral award. Other fees concerning the enforcement proceedings are payable depending on the value of the claim.	
ATTORNEYS' FEES (NET)	Application for recognition/ enforcement: *Simple Case*: EUR 400 to 1,000. *Complex Case:* EUR 1,000 to 4,000.	

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POLAND

1. ARBITRATION

Arbitration in Poland is governed by Part V of the Polish Civil Procedure Code (*Kodeks postępowania cywilnego*), as revised in 2005, which defines the limits of arbitration including the validity of arbitration agreements and the minimum standards that must be observed for a fair trial.

The oldest and largest Polish arbitration court in terms of number and value of cases is the Court of Arbitration at the Polish Chamber of Commerce in Warsaw ("SAKIG"). Other nationwide arbitral institutions in Poland include the Court of Conciliation (Arbitration) of the Polish Bank Association and the Court of Arbitration at Confederation Lewiatan (a nation-wide representation of employers to the state and trade unions founded in 1999).

Generally, any natural person, legal entity, or partnership fully capable of entering into a contract may conclude an arbitration agreement.

Under Polish law, pecuniary and non-pecuniary claims that are capable of being decided by courts of law may be subject to arbitration if the law allows the parties to enter into a settlement with regard to them, excluding claims for alimony. Disputes that would normally be decided by regulatory or supervisory authorities, claims relating to family law, personal status, bankruptcy, and disputes concerning entries in public registers may not be subject to arbitration.

An arbitration agreement may be concluded as a separate agreement or as a clause in a contract. An arbitration agreement must be executed in writing. Moreover, under Polish law, arbitration agreements must contain certain content. At a minimum, this must include: the names of the parties and a clear statement that the parties wish to submit a particular dispute to arbitration or any dispute arising out of a defined legal relationship. The arbitration agreement may contain provisions regarding the arbitral procedure or refer to the rules of a particular arbitral institution. Arbitration agreements to be entered into with consumers and employees have stricter requirements.

Any natural person of any citizenship, of full age and capacity may serve as an arbitrator. However, it should be noted that an active judge cannot be an arbitrator. The parties are free to agree on the number of members of an arbitral tribunal. If the parties fail to determine the number of arbitrators, the number of arbitrators shall be three.

The parties are free to agree on a procedure for the appointment of arbitrators. They can also make reference to a procedure setting forth the appointment of arbitrators and/or agree on a person/entity to serve as an appointing authority. Polish law stipulates a default procedure for the appointment of arbitrators where the parties have not agreed on such procedure.

Unless otherwise agreed by the parties, an arbitral tribunal may, at the request of a party, order such interim measures as the arbitral tribunal considers necessary with respect to the subject matter of the dispute. The arbitral tribunal may require the requesting party to provide appropriate security. Interim measures are enforced by state courts and court enforcement officers. The state court may refuse enforcement on certain legal grounds. Any party may also apply to the state courts for interim measures before and during arbitration, irrespective of the fact that the dispute is subject to an arbitration agreement or an arbitration case is pending. This second way of applying for interim measures is generally faster; due to the fact that a party is not obliged to obtain a separate enforcement clause from the common court.

Under Polish law an arbitral award can be challenged on the following grounds:

- no valid arbitration agreement;
- violation of due process;
- decision outside the scope of the arbitration agreement;

- improper composition of the arbitral tribunal;
- proceedings not in accordance with the parties' agreement or with provisions of law;
- the award was obtained by way of a crime or on the basis of a forged or falsified document;
- *res iudicata*;
- lack of objective or subjective arbitrability; and
- violation of Polish public order.

In addition, a consumer may challenge an arbitral award on the grounds that the award deprives him/her of rights granted to him/her by the provisions of binding law.

In principle, a challenge must be filed within 2 (two) months from the service of the award. The challenge should be lodged with the Court of Appeal. The award of the Court of Appeal cannot be challenged by further appeal, but a party has the right to lodge a cassation with the Polish Supreme Court. The parties may not waive their rights to challenge a future award. A challenge of an award neither suspends the legal force of the award nor its enforceability. It is, however, possible to stay the domestic enforcement on the basis of a challenge of the award.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

In regard to the enforcement of arbitral awards, Poland is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and to the 1961 European Convention on International Commercial Arbitration.

ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The usual duration of arbitration proceedings is between 8 months and 2 years.	▪ The costs of arbitration depend, to a great extent, on the amount in dispute, the amount of documents, the number of witnesses, and whether expert opinions are required. ▪ An arbitral tribunal has discretion regarding the awarding of costs. Usually the losing party must reimburse the winning party. ▪ The award of attorneys' fees is usually based on actual fees paid and not determined by reference to statutory tariffs.

APPROXIMATE COSTS		
PROCEDURAL COSTS	The procedural costs depend on whether a sole arbitrator or an arbitral tribunal composed of three members is appointed. The following estimates are based on the procedural costs of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw (SAKIG).	
SIMPLE CASE	**Assumptions: sole arbitrator is appointed and the amount in dispute is EUR 1,000,000**: Total costs: registration fee in the amount of EUR 625 and arbitration fee in the amount of EUR 14,000.	
COMPLEX CASE	**Assumptions: sole arbitrator is appointed and the amount in dispute is EUR 10,000,000**: Total costs: registration fee in the amount of EUR 625 and arbitration fee in the amount of EUR 50,000. In the case of an arbitral tribunal composed of three arbitrators, the arbitration fee doubles.	
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Assumptions based on the amount in dispute of EUR 1,000,000**: Preparation of the statement of claim/response, review of 100 pages of documents, preparation and participation in hearings, meetings with client, correspondence; in total: EUR 30,000 to EUR 80,000.	
COMPLEX CASE	**Assumptions based on the amount in dispute of EUR 10,000,000**: Preparation of the statement of claim/response, review of 1000 pages of documents, preparation and participation in hearings, meetings with client, correspondence; in total: EUR 80,000 to EUR 200,000.	
DOCUMENT PRODUCTION	Limited. All the documents should be submitted in the language in which the proceedings are held. The parties can agree on the application of the IBA Rules on the Taking of Evidence which stipulate narrow document production.	
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	2 to 6 months until a decision on recognition or enforcement is rendered in the *first instance*. 4 to 10 months if the decision is contested. The duration of enforcement proceedings depends mainly on whether the debtor has executable assets and whether the enforcements are opposed by the debtor.	▪ For enforcement of arbitral awards under the New York Convention, the creditor must provide the court with the arbitral award and the arbitration agreement in original or in certified copies.
APPROXIMATE COSTS		
COURT FEES	Filing of an application for recognition or enforcement of a foreign/arbitral award is subject to a court fee in the amount of PLN 300.	
ATTORNEYS' FEES (NET)	Application for recognition/enforcement: *Simple case:* EUR 500 to EUR 1,000. *Complex case:* EUR 1,500 to EUR 3,000.	

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ROMANIA

1. ARBITRATION

Arbitration in Romania is governed by the Fourth Book – Domestic Arbitration (Articles 541–621) and by the Seventh Book – International Civil Trials – International Arbitration (Articles 1111-1133) of the New Civil Procedural Code ("NCPC"). An arbitral dispute taking place in Romania is qualified as international if it is based upon a legal relationship having a foreign element.

The most used institution in Romania is the International Court of Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania ("CCIR"). CCIR has its own Rules of Arbitration.

Nevertheless, under the provisions of the NCPC the parties to an arbitration clause or separate arbitration agreement are free to choose any arbitral institution or arbitration rules they want to be applicable to their dispute. Under Romanian law, the parties may agree that disputes arising from their contractual relationships shall be settled by arbitration, indicating, under the sanction of nullity, the method of appointment of arbitrators. In case of institutionalized arbitration, reference to the arbitration body or its rules of arbitration shall suffice.

The arbitral agreement shall be concluded either in the form of an arbitration clause, stipulated in the main contract (such clause is always previous to any arisen dispute), or in the form of a separate agreement ("compromise"), which is concluded at the moment the dispute occurs. Both the arbitration clause and the compromise must be in writing and signed by the parties.

Generally all disputes involving a patrimonial interest can be submitted to arbitration. Disputes concerning personal status, collective labour conflicts, certain shareholder disputes, the annulment of intellectual property rights and bankruptcy proceedings cannot be subject to arbitration.

In the arbitration agreement or by subsequent agreement, the parties are free to establish the procedure to be observed by the arbitral tribunal, the number of arbitrators, and the method used to appoint the arbitrators, including whether the dispute shall be settled by a sole arbitrator or several arbitrators (this is generally applicable to *ad hoc* arbitration as in case of institutionalized arbitration, the rules of the institution shall apply). As a general rule, according to the NCPC, if the parties have not specified the number of arbitrators, the dispute shall be settled by three arbitrators, one appointed by each party and the third arbitrator, the chairman, shall be appointed by the other two arbitrators. The parties are also free to decide on the seat and language of arbitration.

If the parties fail to reach an agreement, the arbitral tribunal has the authority to decide upon the procedural rules that will apply to the arbitration; however, if the parties are unable to reach an agreement and the tribunal is unable to decide, the general provisions stipulated in the NCPC shall apply.

Before or during the arbitral proceedings, any party may request the courts of law to grant precautionary and provisional measures with regard to the dispute or to ascertain certain factual circumstances (Article 585 of the NCPC).

A copy of the request for arbitration and the arbitration clause shall be attached to the application for precautionary or provisional measures. In case the court grants such measures, the party who applied for such measures shall communicate a copy of the decision to the arbitral tribunal.

During the arbitral proceedings, precautionary and provisional measures or measures required for the ascertaining of factual circumstances related to the dispute can also be approved by the arbitral tribunal. In case of resistance, the execution of these measures shall be ordered by the court.

Generally, arbitral awards rendered by tribunals with seat in Romania are enforceable by the courts through judicial bailiffs, in the same manner as other legally binding court judgments. The arbitral award shall be final and binding, and shall have the same effect as any final decision rendered by a court of law.

Arbitral awards are considered "national" awards when the seat of arbitration was in Romania. If the seat of arbitration was not located in Romania, the arbitral award shall be considered a foreign award and shall be

enforced only after it is recognized by the Romanian courts under a specific procedure.

Arbitral awards may be challenged in ordinary courts. An arbitral award may only be set aside following a petition for annulment based upon one of the following reasons:

- the dispute could not be settled by arbitration;
- the arbitral tribunal settled the disputes in the absence of an arbitration agreement or pursuant to an agreement that is void or inoperative;
- the arbitral tribunal had not been constituted in accordance with the arbitration agreement;
- a party was absent on the date of the hearing and the summoning procedure has not been legally fulfilled;
- the arbitral award has been rendered after the time for rendering the award has lapsed;
- the arbitral tribunal has decided matters which have not been submitted to arbitration, or has failed to decide upon a specific claim;
- the arbitral award failed to include the grounds of the award, the date and place where the award was issued, or the award was not signed by the arbitrators;
- the arbitral award violates public order, morals or provisions of the law; or
- if, after the issuance of the arbitral award, the Constitutional Court ruled on a law applied in the dispute to which the arbitral award refers, declaring that the law, the ordinance or a provision of the law or ordinance is unconstitutional.

Generally the term for filing a set aside petition is thirty (30) days from the communication of the arbitral award.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Arbitral awards which are not deemed to be qualified as a national award in Romania, but have been rendered in a domestic or international arbitration in a foreign state, are considered foreign arbitral awards.

Foreign arbitral awards can be acknowledged and enforced in Romania by applying the provisions stipulated in the NCPC.

Foreign arbitral awards which are not willingly performed by those who are obligated to do so may be acknowledged and enforced in Romania if the subject matter of the arbitration may be settled through arbitration and if the award does not contain provisions contrary to Romanian public order.

Romania is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("NY Convention"), with the reservations that the Convention will only be applied to awards resulting from disputes having a commercial nature according to Romanian legislation; and to the recognition and enforcement of awards made on the territory of another contracting state. With regard to awards made in the territory of non-contracting states, the Convention will only be applied to the extent to which those states grant reciprocal treatment.

Romania is also a party to the 1961 European Convention on International Commercial Arbitration and the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, both containing provisions with regard to the recognition and the enforcement of arbitral awards in specific fields.

The enforcement of judicial awards is mainly regulated by the provisions of the NCPC. This legal framework is only supplemented by the international conventions on arbitration. The NCPC chapter on the enforcement of foreign arbitral awards has incorporated the provisions of the NY Convention.

The application for the acknowledgement and enforcement of an arbitral award must be lodged with the tribunal in which the domicile or the registered office of the opposing party is located. In case the competent court cannot be identified, the Bucharest Tribunal always has jurisdiction. The application for enforcement must be accompanied by the arbitral award and by the arbitration agreement, translated into Romanian.

The recognition or the enforcement of the foreign arbitral award shall be denied by the tribunal, if the opposing party proves the existence of the following circumstances:

- the parties did not have the capacity to conclude the arbitration agreement, under their respective applicable laws;
- the arbitration agreement was not valid under the law chosen by the parties or, if not applicable, the law of the state where the award was issued;
- the opposing party was not properly informed with regard to the election of the arbitrator(s), the arbitral proceeding or was unable to defend itself in the arbitration;
- the composition of the arbitral tribunal or the arbitral procedure was not carried out according to the agreement of the parties or, in the lack of such agreement, in accordance to the *lex loci*;
- the award concerns a dispute excluded from the arbitration agreement or contains provisions that exceed the scope of the arbitration agreement. However, matters from the award that may be subject to arbitration can be separated from the others and enforced; or
- the award has not become binding on the parties yet, was annulled or suspended by a competent authority from the state of its issuance or in accordance with the law of the state of its issuance.

The decision on the application for recognition and enforcement of a foreign arbitral award may be challenged only through an appeal. The foreign arbitral award is recognised in Romania with regard to all factual circumstances in its content.

The NCPC prohibits the examination on the merits of an arbitral award by the court of recognition.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The usual duration of arbitration proceedings is between 6 months and 1 year.	
APPROXIMATE COSTS **PROCEDURAL COSTS**	The procedural costs depend on whether a sole arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case and the administrative charges. The following two estimates are based on the procedural costs of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry.	▪ The costs of arbitration depend to a great extent on the amount in dispute, the amount of documents, the number of witnesses and whether expert opinions are required. ▪ The arbitrators usually have large discretion regarding the award of costs. However, in practice the award on costs often depends on the outcome of the case. The award of legal fees is usually not determined by reference to a statutory tariff.
SIMPLE CASE	**Assumption: Sole arbitrator appointed and an amount in dispute of EUR 1,000,000**; Total costs: registration fee: EUR 150, administrative fees of EUR 13,300 and fees for a sole arbitrator of EUR 12,900.	
COMPLEX CASE	**Assumption: Sole arbitrator and an amount in dispute of EUR 10,000,000**: Registration fee: EUR 150; administrative fees of EUR 42,300 and fees for a sole arbitrator of EUR 41,900. These fees are applicable only for disputes between foreign companies, or between foreign companies and Romanian companies and not to arbitration between Romanian companies claiming amounts in EUR. For this last situation, the amounts in EUR must be converted to RON and the fees will be calculated based upon the amount in RON. However, the fees in RON and EUR are rather similar.	
ATTORNEYS' FEES (NET) *SIMPLE CASES*	**Assumption based on an amount in dispute of EUR 1,000,000**: Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation; preparation and review of one post hearing brief. Total approximate cost: from EUR 40,000 to EUR 60,000.	

COMPLEX CASES	**Assumption based on an amount in dispute of EUR 10,000,000**: Review of 1,000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: from EUR 60,000 to EUR 100,000.	
DOCUMENT PRODUCTION	Limited.	
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	1 to 3 months until a decision on recognition (if applicable) and enforcement is rendered in first instance; 3 to 5 months if the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures or even enforceability of the foreign judgment issued in an EU Member State are opposed by the debtor.	▪ A translation of the judgment/ award is always required
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	For a declaration of enforceability, court fees are insignificant (EUR 10 – EUR 20). For the enforcement of the award by a bailiff, there are specific costs. Application for recognition/ enforcement: *Simple case:* EUR 1,000 to EUR 1,500 *Complex case:* EUR 2,000 to EUR 5,000	▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.

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SERBIA

1. ARBITRATION

Arbitration proceedings are governed by the Serbian Arbitration Act, which entered into force on 10 June 2006. The Arbitration Act applies to both domestic and international arbitration proceedings where the seat of arbitration is in Serbia. International arbitration is generally defined as arbitration whose subject matter concerns disputes arising out of international commercial business relations. In general, Serbian companies are willing to sign arbitration clauses, especially concerning international commercial and business transactions.

The last few years have seen a number of developments with respect to Serbian arbitration institutions. The Belgrade Arbitration Centre was established in 2013 as a permanent arbitral institution that administers domestic and foreign disputes in accordance with its BAC Rules. The BAC also assists in technical and administrative aspects of *ad hoc* arbitral proceedings under rules other than its own and furthermore organizes and conducts mediation sessions.

Also, as of June 2016, the Permanent Arbitration at the Serbian Chamber of Commerce was established as an arbitration institution. This is only formally a new institution as it was formed by merging two long-standing independent arbitration institutions that existed at the Chamber of Commerce, namely, the Foreign Trade Court of Arbitration and the Permanent Court of Arbitration. Other chambers and organizations may also establish institutional arbitration courts, if their professional rules allow. For example, according to the Serbian Securities Act and the legal provisions governing the Belgrade Stock Exchange, disputes related to stock exchange transactions between members and participants of the Stock Exchange, or between these entities and the Stock Exchange, may be resolved by the Stock Exchange Arbitration Court.

Under Serbian law, the arbitration agreement must be in writing, and is deemed to be in writing if contained in documents signed by the parties or in other forms of communication exchanged between the parties that provide written proof of the existence of the parties‘ mutual agreement to settle the dispute through arbitration.

Arbitration may only be agreed upon for the resolution of proprietary disputes arising out of rights of the parties over which they may freely dispose. Claims where the subject matter is in the exclusive jurisdiction of the state courts (such as disputes concerning real estate in Serbia, marital and family disputes, personal status rights etc.) are not arbitrable.

The Arbitration Act does not stipulate a maximum duration of the arbitration proceedings. However, the Act does require the arbitrators to diligently and efficiently carry out their duties as arbitrators. The parties are free to agree on the substantive law, the procedural rules, the seat and language of arbitration.

Depending on the agreement between the contracting parties, arbitration proceedings may be presided over by an arbitral tribunal or by a sole arbitrator. There may only be an odd number of arbitrators. In addition, the parties may agree on the procedure for appointing the arbitrators. However, if no agreement has been stipulated in the arbitration agreement or reached between the parties in this respect, a local court shall decide how the arbitrators should be appointed.

The decisions of arbitral tribunals are based on material laws, legal rules, agreements and customs; however, the tribunal may also decide on the basis of what is just and fair (*ex aequo et bono*) if the parties have so agreed. If the parties have not agreed on the applicable substantive law and legal rules governing the arbitral proceedings, the arbitral tribunal or arbitration court may decide on the basis of conflict of laws rules.

The Arbitration Act provides that arbitral tribunals have the authority, unless the parties to the arbitration agree otherwise, to order upon request of a party such interim measures as the tribunal deems necessary.

The Arbitration Act stipulates that the parties may request interim measures from a court either before or during arbitral proceedings (Article 15 Arbitration Act). The Arbitration Act also stipulates that this possibility exists even when the arbitration agreement relates to arbitration that has its seat outside of Serbia.

Under the Arbitration Act domestic arbitral awards (i.e. awards rendered in Serbia) may be challenged by way of a claim for annulment. The Arbitration Act contains an exhaustive list of grounds for such challenge (Article 58 Arbitration Act). Those grounds include:

- invalidity of the arbitration agreement;
- lack of due process;
- *ultra petita*;
- incorrect composition of the arbitral tribunal;
- lack of arbitrability;
- violation of Serbian public order; and
- false testimony or a criminal act of an arbitrator or a party to the proceedings (if established by a final court judgment).

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Foreign arbitral awards may be enforced only if the foreign award has been previously "admitted" to the Serbian legal system in recognition proceedings. When recognized by a Serbian Court, a foreign award receives the same status as a domestic award.

Serbian courts will refuse to recognize foreign arbitral awards, upon a proposal of a party against which the enforcement is sought, based on grounds which are essentially the same as the described grounds for challenge of domestic arbitral awards. However, whereas the false testimony or criminal act of an arbitrator or a party to the proceeding is not among the grounds for refusal of the recognition of a foreign award by Serbian courts, the recognition of the award may be refused based on one additional ground. Namely, if the foreign award has not yet become binding for the parties, or if it has been annulled or its enforcement has been stopped by a court of the state where or based on whose law the award was rendered, the Serbian court will be entitled to refuse its recognition (and enforcement).

Serbia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state, will only be applied to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law and will only be applied to those arbitral awards which were adopted after the entry into effect of the Convention. Serbia is also a party to the 1961 European Convention on International Commercial Arbitration.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	According to the Permanent Arbitration, arbitration proceedings shall be completed within six months from the date of constitution of the arbitral tribunal or the appointment of the sole arbitrator. Rules on expedited procedure apply if the amount in dispute is less than EUR 50,000.	In exceptional cases, the arbitral tribunal or the sole arbitrator may – with the consent of the President of the Permanent Arbitration – decide to extend the arbitral proceedings, if this is necessary for the purpose of obtaining evidence, or if the parties make such a request, or for other justified reasons.
APPROXIMATE COSTS		
PROCEDURAL COSTS	According to the Permanent Arbitration, at the time of submission of a request for arbitration, a claim, a counterclaim, or a set-off claim, the party shall deposit the amount of EUR 200 as a registration fee.	
SIMPLE CASE	**Assumption: The amount in dispute is EUR 1,000,000**: Total costs: registration fee of EUR 200 and administrative fee of EUR 27,000.	
COMPLEX CASE	**Assumption: The amount in dispute is EUR 10,000,000**: Total costs: registration fee of EUR 200 and administrative fee of EUR 63,600.	
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Assumptions based on an amount in dispute of EUR 1,000,000**: Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post-hearing brief. Total approximate cost: EUR 100,000.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: Review of 1,000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: EUR 250,000.	
DOCUMENT PRODUCTION	The Law on Arbitration as well as the Rules of the Permanent Arbitration do not provide for special rules regarding the presentation of documents.	
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	Varies.	
APPROXIMATE COSTS		▪ Pursuant to the Arbitration Act and the New York Convention, the party seeking recognition/ enforcement of an arbitral award must provide the court with the following documentation: the original arbitral award or a duly certified copy thereof, an agreement on arbitration or a document on acceptance of arbitration in the original or a duly certified copy thereof, and certified translations of the abovementioned documents.
COURT FEES	According to the Law on Court Fees, for the purpose of issuing a decision on recognition, the following amounts have to be paid: *Civil proceedings*: EUR 18. *Commercial proceedings*: EUR 185. Other court fees for enforcement proceedings, as well as the fees of the public enforcement officer, depend on the amounts awarded by the respective foreign judgement or arbitral award.	

ATTORNEYS' FEES (NET)	Application for recognition/ enforcement: *Simple case*: EUR 250 to EUR 450. *Complex case*: EUR 1,000 to EUR 4,000.	

This chapter was written by Miroslav Stojanović, Vidak Kovačević and Anđelka Todorović.

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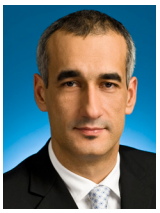

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SLOVAK REPUBLIC

1. ARBITRATION

Pursuant to the Slovak Act on Arbitration Proceedings (Act No. 244/2002 Coll., as amended), parties may enter into an agreement that any or all disputes arising from their contractual relationship shall be decided by one or more arbitrators or by a standing court of arbitration. The standing courts of arbitration may be established either by the national sport federation or a chamber established pursuant to the legal regulations, or on the basis of a special legal regulation (e.g. Act No. 492/2009 Coll. as amended on Payment Services). The act reflects the UNCITRAL Model Law to a certain extent and applies to both domestic and international arbitration proceedings, if the seat of arbitration is in the Slovak Republic.

The main arbitral institution in the Slovak Republic is the Arbitration Court of the Slovak Chamber of Commerce and Industry established in 2002. The Arbitration Court deals with commercial disputes of both national and international nature. It has its own rules of arbitration.

An arbitration agreement can be included as a clause contained in the initial contract between the parties, or as a separate agreement (e.g. as a "compromise" for disputes that arose after the original contract was concluded). An arbitration agreement must be in writing. It may be replaced by a statement of the parties in the minutes of an arbitral tribunal in which they subject themselves to the jurisdiction of the arbitral tribunal. This statement shall be made at the latest at the commencement of arbitration proceedings. In order for the arbitration agreement to be valid, the dispute between the parties must concern a subject matter that is not otherwise excluded by law from resolution by a judicial settlement.

A dispute cannot be decided by arbitration where the dispute: (i) concerns the origin, change or expiration of rights related to real estate; (ii) concerns personal status disputes; (iii) is linked to the enforcement of a decision; or (iv) arose in the course of bankruptcy or restructuring proceedings.

The parties are free to agree on the substantive law, the procedural rules, the seat and language of arbitration. However, disputes arising from domestic commercial or civil relationships are decided only on the basis of Slovak law. In addition, the parties are free to agree on the number of arbitrators and their method of appointment. However, there must always be an odd number of arbitrators.

According to Section 22 of the Arbitration Act, the arbitral tribunal has authority to issue any interim measures it deems necessary to protect the subject matter of the dispute and preserve the integrity of the proceedings. The arbitral tribunal may require that the party seeking interim measures provides security in exchange for any interim measures that are granted. Parties also have the right to seek interim measures from the courts either before the constitution of the arbitral tribunal or after the termination of the arbitration proceedings. The arbitral tribunal may also apply to the courts for assistance in enforcing an interim measure.

Generally, Slovak courts only uphold challenges to arbitral awards if there are compelling reasons for them to do so. Section 40 of the Arbitration Act provides the following grounds for challenging an award:

- the subject matter of the dispute was non-arbitrable;
- the award dealt with a dispute not contemplated by or not falling within the terms of the arbitration agreement and the party challenging the award objected to this fact before the arbitral tribunal;
- the award addressed issues that had already been determined by a previous court or arbitral tribunal;
- a party to the arbitration challenges the validity of the arbitration agreement;
- a party to the arbitration was unable to present its case (e.g., was not duly represented);
- the award was rendered by an arbitrator who had been removed for bias;
- the principle of the equality of the parties was violated;

- there are compelling reasons for re-opening the case (e.g. new evidence has emerged which casts serious doubt upon the correctness of the arbitral tribunal's decision);
- the award was tainted by fraud or other criminal conduct; or
- the consumer protection laws were violated.

Please note that as of 1 January 2015 arbitration proceedings with respect to consumer protection are subject to further significant restrictions. Alternative dispute settlement in this regard is governed by Act No. 391/2015 Coll. on Alternative Settlement of Consumer Disputes, as amended.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Pursuant to the Slovak Act on Arbitration Proceedings, arbitral awards issued abroad shall be recognized and enforced by the courts in the Slovak Republic. Recognition of a foreign arbitral award shall not be declared in a special decision. The foreign arbitral award shall be recognized by the respective court in execution proceedings. In some instances, the courts may decline to recognize and enforce a foreign arbitral award based on the petition of the party obliged by the award.

The Slovak Republic is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state. With regard to awards made in the territory of non-contracting states, the Convention will only be applied to the extent to which those states grant reciprocal treatment.

The Slovak Republic is also a party to the 1961 European Convention on International Commercial Arbitration and to the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The usual duration of arbitration proceedings is between 1 month and 2 years.	
APPROXIMATE COSTS **PROCEDURAL COSTS**	Costs depend on several factors: Whether a sole arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case, the administrative charges and other expenses (translation, travel and accommodation of foreign arbitrators, etc.), if the dispute is national or international, whether a speedy decision is expected, etc. The following estimates are based on the procedural costs of the Arbitration Court of the Slovak Chamber of Commerce and Industry.	▪ In cases with a speedy decision within 1 month, the arbitration fee is increased by 75% and if within 4 months, by 50%. ▪ In simple proceedings (without any hearings, only based on evidence), the arbitration fee is decreased by 30%. Total decrease may be up to 50%. Similarly, the administrative fee may be decreased up to 30% in total. ▪ If the dispute is decided by a sole arbitrator, the arbitration fee is decreased by 30% and the administrative fee by 20%.

SIMPLE CASE	A**ssumption: sole arbitrator appointed and an amount in dispute of EUR 1,000,000**: Total costs: Arbitration fee of EUR 14,000; administrative fee of EUR 9,500.	
COMPLEX CASE	**Assumption: Sole arbitrator and an amount in dispute of EUR 10,000,000**: Total costs: arbitration fee of EUR 62,400; administrative fee of EUR 16,700.	
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Assumptions based on an amount in dispute of EUR 1,000,000**: Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. In total: EUR 25,000 to EUR 35,000.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: Review of 1,000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation; preparation and review of one post hearing brief. In total: EUR 230,000 to EUR 400,000.	
DOCUMENT PRODUCTION	Limited.	▪ The arbitral tribunal only considers the evidence proposed by the parties. ▪ In general, a party could ask the arbitral tribunal for its support in document production. ▪ The arbitral tribunal may ask the general court for support in document production.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	1 to 2 months until a decision on authorization to the executor is rendered in first instance and 3 to 6 months if the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	 The court fee for the decision on authorization executor is EUR 16.50. Reward and expenses of the executor are governed by the Regulation on Rewards and Expenses of Court Executors. Application for recognition/ enforcement: *Simple case*: EUR 1,300 to EUR 3,000 *Complex case*: EUR 2,000 to EUR 6,000	▪ For the enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.

This chapter was written by Katarína Bieliková and Vladimíra Roštárová.

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WOLF THEISS

SLOVENIA

1. ARBITRATION

In 2008 Slovenia enacted the new Slovenian Arbitration Act (*Zakon o arbitraži*) which reflects the UNCITRAL Model Law, including the recommendations adopted by UNCITRAL in 2006 concerning the written form requirements of arbitration agreements and interim measures of protection.

The Arbitration Act (Act) regulates various types of arbitral proceedings when the seat of arbitration is within the territory of the Republic of Slovenia. Specifically, this means that the provisions of the Act are applicable to commercial as well as to non-commercial disputes which can be resolved through arbitration. The Arbitration Act applies both to domestic disputes and disputes involving international elements. The provisions of the Act shall apply to all types of arbitral proceedings, regardless of whether the arbitration is conducted under the auspices of an arbitration institution or by an *ad hoc* tribunal.

In Slovenia, there is one notable permanent arbitral institution attached to the Slovenian Chamber of Commerce of Slovenia (*Gospodarska zbornica Slovenije*) – the Ljubljana Arbitration Centre, as well as specialized arbitration courts attached to certain institutions, notably the largest Slovenian insurer (*Zavarovalnica Triglav d.d.*), and the Ljubljana Stock Exchange.

The Ljubljana Arbitration Centre is an autonomous and independent institution acting as the central arbitral institution in the Republic of Slovenia and administers disputes for both the domestic and international business communities through arbitration or other forms of ADR. New modern arbitration rules have entered into force on 1 January 2014, which brought the centre into line with other big regional and global institutions.

The Act requires that the arbitration agreement entered into by the parties be in writing. It can be a separate agreement or form part of another agreement. An arbitration agreement is deemed to be in writing if it is concluded between the parties by way of an exchange of letters, facsimiles or telexes or by such other means of telecommunication which produces a permanent record of the agreement. It is also considered to be in writing if it is sent from one party to the other or by a third person to both parties and if no objection was raised in good time. An arbitration agreement is also valid if a bill of lading contains an express reference to an arbitration clause in a charter party. It will also be deemed to be in writing if one of the parties states in its statement of claim that an arbitration agreement was entered into between them, and the other party does not deny this in its statement of defence at the latest.

Further, the Act allows the parties to agree that all previous or future disputes arising out of the parties' contractual or non-contractual relationship shall be settled through arbitration. Generally all pecuniary claims are arbitrable, as well as any other disputes in respect of which parties are allowed to settle. Disputes regarding personal status, e.g., marital disputes and adoption or parental issues, are not arbitrable. In addition, claims that would normally be decided by regulatory or supervisory authorities such as patent, trademark or antitrust disputes are not arbitrable.

The parties are free to agree on the substantive law, the procedural rules, the seat, language, number of arbitrators and their method of appointment, and other aspects of arbitration.

Unless otherwise agreed by the parties, an arbitral tribunal may, upon request of the other party, order such interim or protective measures against a party as the arbitral tribunal may consider necessary in respect of the subject matter of the proceedings. The party that has requested such measures may also apply to the competent national court for the enforcement of such measures. It is not incompatible with an arbitration agreement for a party to apply to the state courts before or during arbitration proceedings for an interim measure of protection or for a court to grant such claim.

Arbitral awards are considered final and binding upon the parties involved in the arbitration, and an arbitral decision possesses the same effect and validity as a judicially imposed judgment. In general, a domestic arbitral

award may be challenged (setting-aside proceedings) before the District Court in Ljubljana, on the following grounds:

- the party concluding the arbitration agreement had no legal capacity or capacity to act;
- the arbitration agreement is not valid under the law to which the parties have subjected it, or failing such indication, under Slovenian law;
- a party was not given proper notice of the appointment of the arbitrator(s), or of the arbitral proceedings or was otherwise unable to present its case;
- the award was made in a dispute not falling within the terms of the statement of claim or contains decisions beyond the scope of the statement of claim;
- incorrect composition of the arbitral tribunal or the proceedings were not in accordance with the parties' agreement;
- the subject matter of the dispute is not arbitrable under Slovenian law; or
- the award is in conflict with the rules of Slovenian public order.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

The recognition and enforcement of foreign arbitral awards are carried out in accordance with the Slovenian Private International Law and Procedure Act. Furthermore, most international arbitral awards are decided in accordance with the applicable provisions of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Arbitral awards that are enforced under the provisions of the Private International Law and the Procedure Act must fulfil certain criteria. Generally, this requires that the party seeking enforcement submit to the competent court:

- the original arbitral award or certified copy thereof;
- the original arbitration agreement or certified copy thereof; and
- a certified translation of the arbitral award into Slovenian, or another official language recognized by the Slovenian Courts.

The request for the recognition and enforcement of the foreign arbitral award should be filed at the District Court. In the event that the court establishes that no obstacles exist for the recognition and enforcement of the foreign arbitral award, the court may issue an order for enforcement of the foreign award. Any appeals to an order recognizing a foreign arbitral award must be filed within a period of 15 (fifteen) days after the order recognizing the award is issued.

Slovenia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration, with the reservation that the Convention will only be applied to those arbitral awards which were adopted after the entry into effect of the Convention. Slovenia is also a party to the 1961 European Convention on International Commercial Arbitration, as well as to the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The usual duration of arbitration proceedings is up to 2 or even 3 years. According to information received from the Ljubljana Arbitration Centre, the proceedings became shorter in the last few years and it is not uncommon for proceedings to be completed within 9–12 months.	The Permanent Court of Arbitration attached to the Chamber of Commerce and Industry of Slovenia is the only general and permanent arbitral institution in Slovenia with a noticeable caseload of commercial matters.
APPROXIMATE COSTS **PROCEDURAL COSTS**	The procedural costs depend on whether a sole arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case, and the administrative charges. The following estimates are based on the procedural costs of the Rules of Arbitration of the Permanent Court of Arbitration attached to the Chamber of Commerce and Industry of Slovenia:	▪ The costs of arbitration depend on the arbitration agreement and the amount in dispute, the amount of documents, number of witnesses and whether expert opinions are required. ▪ The costs of arbitration also include the fees of arbitrators and administrative charges. ▪ In the case there is an arbitral tribunal with three arbitrators, the fees double. ▪ The arbitrators usually have large discretion regarding the award of costs. However, in practice the award on costs often depends on the outcome of the case. ▪ The award of legal fees is usually not determined by reference to a statutory tariff.
SIMPLE CASE	**Assumption: international dispute, sole arbitrator appointed and an amount in dispute of EUR 1,000,000**: Procedural costs: registration fee of EUR 1,000; administrative fees of EUR 9,500 and fees for a sole arbitrator between EUR 20,400 and EUR 30,600.	
COMPLEX CASE	**Assumption: international dispute, sole arbitrator appointed and an amount in dispute of EUR 10,000,000**: Procedural costs: registration fee of EUR 1,000; administrative fees of EUR 18,000 and fees for a sole arbitrator of between EUR 63,600 and EUR 95,400.	
APPROXIMATE RECOGNIZED ATTORNEYS' FEES (NET)[1]		
SIMPLE CASE	**Assumptions based on an amount in dispute of EUR 1,000,000**: preparation of 2 filings, attendance at 1 hearing, correspondence with client: around EUR 4,200.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: preparation of 4 filings, attendance at 3 hearings, correspondence with client, in total: EUR 8,000.	

1 As provided by default by the Attorney's Tarrif. Attorneys and their clients are allowed to agree on certain other fee-structures, e.g. hourly rates.

DOCUMENT PRODUCTION	Very limited. Document production is only allowed according to the applicable arbitration rules.	
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	Depends mainly on the type and basis of the proceeding. Under EC Regulation 44/2001, proceedings are shorter than under usual proceedings under the Private International Law and Procedure Act or under the Arbitration Act (New York Convention). It takes approximately 1 to 3 months until a decision on recognition and enforcement is rendered in first instance. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
APPROXIMATE COSTS		
COURT FEES	The fee for recognition decisions is EUR 16 – EUR 35, regardless of the disputed amount. The fee for enforcement proceedings is EUR 44 and above, depending on the manner of filing and number of additional means of enforcement.	
ATTORNEYS' FEES (NET)	*Simple case*: (assumption based on an award of EUR 1,000,000): Approx. EUR 780. *Complex case*: (assumption based on an award of EUR 5,000,000): Approx. EUR 780.	

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TURKEY

1. ARBITRATION

A new arbitration institution, the Istanbul Arbitration Centre (ISTAC), has been recently established in Istanbul with the aim of developing Turkey as a hub for international arbitration attracting business from Eastern Europe, Central Asia, the Middle East and North Africa. ISTAC has its own Arbitration and Mediation Rules as well as Fast Track Arbitration Rules and Emergency Arbitration Rules. In addition to ISTAC, the Union of Chambers and Commodity Exchanges of Turkey (TOBB) and the Istanbul Chamber of Commerce (ITO) also provide institutionalized arbitration services under their own arbitration rules and with respect to both domestic and international disputes. Very recently, the Turkish Capital Markets Board has announced the establishment of an arbitration panel by the Capital Markets Association to solve customer disputes arising out of over-the-counter transactions.

Commercial arbitration is widely used to resolve international disputes which require a highly technical expertise or which are of a complicated nature such as in the energy, construction, or maritime sectors.

The International Arbitration Code No: 4686 (International Arbitration Code)[1] entered into force in 2001, and applies mandatorily to arbitration proceedings with a seat in Turkey and involving a foreign element (e.g. the place of residence or the place of performance is abroad). It is based upon the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL Model Law) as well as the international arbitration section of the Swiss Federal Private International Law of 1987. The International Arbitration Code may also apply in cases where arbitrators decide to apply the International Arbitration Code in international proceedings with a seat outside of Turkey.

Generally, an arbitration agreement may be concluded between parties for both existing and future civil claims that may arise out of or in connection with a defined legal relationship. Exceptions include the following:

- Ownership or property rights on immovables located in Turkey;
- Matters which cannot be settled as per the intentions of the parties such as criminal law matters, insolvency law matters, labour law matters, competition law matters.

The arbitration agreement may be in the form of an arbitration clause in an agreement or in the form of a separate agreement. If the main agreement makes reference to a different document signed for the same legal relationship and including an arbitration agreement, the reference will be acknowledged as a valid arbitration agreement by incorporation. It is important to note that according to the jurisprudence of the Turkish Court of Appeal, arbitration clauses which grant only one party the right to file for arbitration proceedings are void since they are contrary to the principle of equality and public order. Similarly, arbitration clauses which state that disputes which cannot be resolved through litigation may be submitted to courts are void because the intention of the parties to resolve their disputes through arbitration is not definite.

The arbitration agreement must be made in writing. It must either be signed by the parties or included in an exchange of letters, telegrams or any other means of telecommunication that provides a record of the agreement. Alternatively, the 'written agreement' requirement is also satisfied when a party refers to an arbitration agreement in court (i.e., challenges the court's jurisdiction due to an arbitration agreement) and the counterparty does not object.

The parties may determine the specifics of the arbitral procedure; this is usually done by referring to the rules of a specific arbitral institution, such as the International Chamber of Commerce (ICC), the Vienna International Arbitral Centre of the Federal Economic Chamber (VIAC), ITO, or ISTAC. ICC is the arbitral institution most commonly preferred by Turkish parties.

Unless the parties agree on the rules governing the proceedings, refer to a set of international or institutional provisions or to a specific code, the default provisions of the International Arbitration Code regulating the most

1 Published in the Turkish Official Gazette dated 5 July 2001 and numbered 24453.

important procedural aspects will apply. For instance, in case of failure by the parties to determine the number of the arbitrators, the number will be three. Another example is that if the claimant fails to submit the statement of claim in time or does not correct any deficiencies within the period determined by the arbitrator(s), the arbitration proceedings will be terminated. If, however, the defendant fails to submit the statement of defence, this is not considered an admission of the claimant's allegations and the arbitrator(s) will continue with the proceedings. In any case, it is imperative to comply with the mandatory provisions of the International Arbitration Code. Special attention must be paid to Article 10/B which states that the tribunal must decide within one year, in the case of a sole arbitrator from the appointment of the sole arbitrator, in the case of a panel of arbitrators from the first meeting of the arbitrators. This one year period is subject to extension upon agreement by the parties; in case such agreement fails, upon grant of approval by the court.

Furthermore, under the International Arbitration Code, the arbitral tribunal has the discretion to determine whether the proceedings will be based solely upon written submissions or to hold oral hearings. Unless the parties agreed otherwise, the tribunal will hold oral hearings upon request of a party at an appropriate stage of the proceedings.

Upon request by a party courts may grant a preliminary injunction order prior to or during the arbitration proceedings. Such a request does not jeopardize the authority of the arbitral tribunal. If the injunction order is granted prior to the start of the arbitration proceedings, the party in whose favour the order is provided has 30 days to file the claim and start the arbitration proceedings.

Pursuant to the International Arbitration Code, arbitrators also have authority to grant preliminary injunction orders. However, such authority may be removed by agreement of the parties. The authority of arbitrators to grant preliminary injunction orders is very limited. Orders that can solely be enforced by state authorities (e.g. seizure of a property) cannot be granted. Arbitrators are prohibited from issuing orders binding upon official authorities or third parties, who do not have the possibility to object to the decision of the tribunal. The arbitrators have the authority to ask from the party requesting a preliminary injunction order the deposit of a security to guarantee possible damages to the counterparty.

If the party against whom a preliminary injunction is ordered does not comply with the order of the tribunal, the other party may request execution from the court. If the court is of the opinion that the conditions for granting a preliminary order are not fulfilled, the request may be rejected. The preliminary injunction order ceases to be effective upon the final arbitral award becoming enforceable or the rejection of the claimant's requests by the arbitrator(s).

The International Arbitration Code does not provide for the confidentiality of the proceedings. If the parties wish to keep the proceedings confidential, they are free to include a confidentiality clause in their arbitration agreement.

According to the International Arbitration Code the arbitrator(s) must decide as per the law chosen by the parties as applicable to their relationship, including the commercial practices and business customs pertaining to such law. Unless otherwise agreed by the parties, provisions regarding conflict of law as well as the procedural law provisions of the law chosen by the parties are not applicable. In the absence of choice of law provisions, arbitrator(s) shall apply the law which is most relevant to the conflict.

An arbitral award rendered pursuant to the International Arbitration Code can be challenged before national courts within thirty days after the notification of the award or a decision on correction, interpretation or completion to the party requesting its cancellation. The cancellation lawsuit is subject to expedited proceedings. The cancellation grounds include the following:

- Lack of legal capacity of one of the parties;
- Invalidity of the arbitration agreement;
- Procedural errors in the appointment of the arbitrators;
- Failure to grant the award within the mandatory period;

- Wrong decision on the competence of the arbitral tribunal;
- The arbitral award was granted on a matter outside of the competence of the arbitral tribunal, excess of competence or leaving some claims undecided;
- Procedural errors in the conduct of the proceedings;
- Unequal treatment of the parties;
- The subject matter of the proceedings cannot be resolved by arbitration under Turkish law; or
- The award is against public order.

The parties may partially or totally waive their right to file a cancellation lawsuit.

According to the International Arbitration Code, international arbitral awards rendered in Turkey may be enforced directly, i.e. without being subject to further proceedings, in Turkey.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable as of 2 July 1992. However, Turkey's participation in the New York Convention is subject to the following reservations:

- Turkey only applies the New York Convention with respect to the recognition and enforcement of an award rendered in a signatory state in accordance with the reciprocity principle;
- The New York Convention applies only to disputes arising from contractual or non-contractual legal relationships which are deemed commercial under Turkish law.

Articles 60-63 of the Law No: 5718 on International Private Law and Procedural Law[2] apply to the enforcement of arbitral awards rendered in jurisdictions which have not acceded to the New York Convention. Turkey is also party to the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	Depending on the complexity of the case the usual duration of arbitration proceedings is between 8 months and 2 years.	
APPROXIMATE COSTS **PROCEDURAL COSTS**	The procedural costs depend on whether a sole arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case and the administrative charges.	▪ The costs of arbitration to a large extent depend on the arbitration agreement and the amount in dispute, the amount of documents, number of witnesses and whether expert opinions are required. The costs of arbitration also include the fees of arbitrators and administrative charges.

2 Published in the Turkish Official Gazette dated 12 December 2007 and numbered 26728.

	The following two estimates are based on the procedural costs of the Rules of Arbitration of Istanbul Arbitration Centre (ISTAC).	▪ The arbitrators usually have large discretion regarding the award of costs. However, in practice the award on costs often depends on the outcome of the case.
SIMPLE CASE	**Assumption: an amount in dispute of TL 4,970,000** (approx. EUR 1,000,000 based upon an exchange rate of 1 EUR = TL 4.97). Total costs: registration fee of TL 300 (approx. EUR 60), administrative fees of TL 31,350 (approx. EUR 6,308) and fees for a sole arbitrator of TL 162,100 (approx. EUR 32,616) for a panel of three arbitrators TL 261,500 (approx. EUR 52,615).	
COMPLEX CASE	**Assumption: an amount in dispute of TL 49,700,000** (approx. EUR 10,000,000). Total costs: registration fee of TL 300 (approx. EUR 60), administrative fees of TL 86,200 (approx. EUR 17,344) and fees for a sole arbitrator of TL 411,500 (approx. EUR 82,796), for a panel of three arbitrators TL 760,000 (approx. EUR 152,916).	
ATTORNEYS' FEES		
SIMPLE CASE	**Assumptions based on an amount in dispute of EUR 1,000,000:** review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate fees: EUR 50,000.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000:** review of 1000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate fees: EUR 150,000.	

DOCUMENT PRODUCTION	The law does not provide for document production procedure. However if procedural order of the arbitrator(s) or parties' agreement provide for document production this would apply.	
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	9 months to 1,5 years until a decision on recognition and enforcement is rendered in first instance. 1 to 2 months before the Regional Court of Appeal and 1 year before the Turkish Court of Appeal if the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets.	▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof. ▪ Stamp tax in the amount of 0.98% of the awarded amount arises on arbitral awards subject to the maximum cap of TL 2,135,949.30 (approx. EUR 429,768).
APPROXIMATE COSTS		
COURT FEES	Although the court registration allows filing for the enforcement of an arbitral award with the deposit of a fixed amount which is negligible, there are decisions of the Court of Appeal ruling that the enforcement of arbitral awards is subject to a fee to be charged on a percentage basis. Accordingly court fees are calculated on the basis of 68.31/1000th of the awarded amount. 1/4 of the fees so calculated is payable upon the application to the court for enforcement of the arbitral award.	
ATTORNEYS' FEES (NET)	Application for recognition/ enforcement: *Simple Case:* EUR 1,000 to EUR 3,000. *Complex Case:* EUR 3,000 to EUR 10,000.	

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UKRAINE

1. ARBITRATION

Ukrainian law provides for separate legal regimes with respect to domestic and foreign or international arbitration proceedings. The primary law regulating domestic arbitration covering disputes between Ukrainian parties is the Law of Ukraine "On Courts of Arbitration" No. 1701-IV dated 11 May 2004. The Law of Ukraine "On International Commercial Arbitration" No. 4002-XII dated 24 February 1994 (the "ICA Law") regulates international arbitration proceedings conducted in Ukraine. The ICA Law is based on the UNCITRAL Model Law on International Commercial Arbitration.

According to the ICA Law, the following disputes can be submitted to an international arbitration in Ukraine: disputes arising out of cross-border contracts in the course of foreign trade and other forms of international economic relations, provided that the place of business of at least one of the parties to the dispute is situated outside of Ukraine; disputes involving enterprises with foreign investments or international associations or organizations established in Ukraine. The ICA Law may be interpreted as stating that disputes between two Ukrainian legal entities, provided that at least one of such entities has a foreign shareholder, may be subject to international arbitration.

The ICA Law provides that an international arbitration proceeding in Ukraine may be conducted either by a tribunal set up specifically for a given case (ad hoc arbitration), or by an arbitral institution. The ICA Law provided for the establishment of the following two permanent Ukrainian arbitral institutions: the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry ("ICAC") and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry ("MAC").

Pursuant to the Ukrainian law, the parties to an arbitration agreement can submit to arbitration any civil or commercial international dispute, except for the following disputes which fall within the exclusive competence of Ukrainian courts: disputes on the validity of state acts and acts of legal entities; disputes arising out of the conclusion, amendment, termination and performance of public procurement contracts; disputes regarding privatization of state property; disputes regarding registration of rights to real estate (including land plots) located in Ukraine; intellectual property rights and securities; corporate disputes between shareholders of a legal entity and disputes between a legal entity and its shareholder (except for cases when such disputes arise out of an agreement and all shareholders have concluded an arbitration agreement with the legal entity); disputes concerning the protection of economic competition (except for civil law aspects of disputes arising out of agreements); insolvency disputes; disputes between a legal entity and its manager(s) on compensation for damages caused to the legal entity; as well as other disputes the jurisdiction over which is expressly granted to Ukrainian courts. However, there is no exhaustive list of disputes that fall within the exclusive competence of Ukrainian courts.

Importantly, the fact that corporate disputes between shareholders of a legal entity and disputes between a legal entity and its shareholder could not be submitted to arbitration in the past (i.e. prior to December 2017) has affected the corporate structures for investing in Ukraine, especially those involving a shareholders agreement. As a result, many joint venture projects are structured using non-Ukrainian holding entities at the level at which shareholders agreements are signed. This allows the parties to provide for arbitration in the shareholders agreements or other documents among shareholders and the companies.

However, in view of the recent legislative changes that took effect in December 2017 and which now allow arbitration with respect to corporate disputes when there is an arbitration agreement in place between a legal entity and all of its shareholders, it is expected that more parties will be encouraged to opt for settling/deciding their corporate disputes in Ukraine rather than on an off-shore level using foreign corporate structures.

Arbitration agreements must be made in writing and may be either in the form of an arbitration clause in the contract between the parties or in the form of a separate arbitration agreement. An arbitration agreement is also deemed to be made in writing if it is contained in documents signed by the parties or in an exchange of letters, telex, telegrams or other means of electronic communication which provide for a record of an agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and is not denied by the other. A reference in a contract to a document containing an arbitration clause constitutes an

arbitration agreement provided that the contract is executed in writing and the reference may be interpreted as making the arbitration clause an integral part of the contract.

An arbitration agreement must expressly indicate the full name of the arbitral institution and the disputes that the parties have agreed to submit to arbitration. However, any deficiencies of the arbitration agreement›s wording, any doubts as to its validity and enforceability should be interpreted in favour of the validity and enforceability of the arbitration agreement. The parties are free to agree on the substantive law, the procedural rules, the seat and language of arbitration, the number of arbitrators and the method for their appointment. If the parties do not agree on the applicable procedural rules in the arbitration agreement the tribunal applies the rules that it finds most suitable in the circumstances.

An arbitral tribunal shall resolve a dispute in accordance with the applicable law agreed by the parties to the arbitration agreement. If the parties fail to choose the applicable law, the arbitral tribunal will determine the applicable law in accordance with the conflicts of law rules as provided for by the Law of Ukraine "On Private International Law" No. 2709-IV dated 23 June 2005.

According to the procedural rules of the ICAC, the duration of arbitration proceedings should not exceed 6 (six) months; however, this term may be extended in certain cases when an extension is required and can be justified.

The ICAC and MAC arbitration rules allow a party to obtain injunctive relief at its request. An arbitral tribunal may demand that a party should provide security deemed to be appropriate in connection with such measures. Such injunctive relief may be granted at any stage of an arbitral proceeding, as well as before the proceedings commence. An arbitral order for injunctive relief is binding on the parties and remains in force until a final arbitral award is made. However, the enforcement of such an arbitral order for injunctive relief in the Ukrainian courts may be practically difficult.

According to the ICA Law, a party may apply with an application for assistance in the collection of evidence directly to the state court.

An arbitral award made under the ICA Law is final and binding for the parties. If a losing party refuses to perform it voluntarily, an award can be enforced according to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The ICA Law does not provide for the possibility to appeal awards on their merits. An award may be challenged only by initiating proceedings to set aside the award before a state court and only on the following grounds:

- invalidity of the arbitration agreement due to the incapacity of one of the parties to conclude an arbitration agreement or due to other grounds envisaged in the applicable law;
- absence of proper notification of arbitration proceedings;
- lack of arbitrability according to the arbitration agreement;
- incorrect composition of the arbitral tribunal or incorrect arbitration procedure;
- the award has not yet become binding on the parties or has been set aside or suspended by a court;
- the recognition or enforcement of the award would be contrary to the public policy of Ukraine; or
- the subject-matter of the dispute may not be subject to arbitration under Ukrainian law.

2. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Foreign arbitral awards are recognized and enforced in Ukraine based on an international treaty between Ukraine and the relevant foreign state or based on the reciprocity principle. In case of the absence of a treaty providing for recognition and enforcement, foreign awards may be recognized and enforced based on the reciprocity principle, which is presumed (unless proven otherwise).

With respect to the recognition and enforcement of awards of international arbitration proceedings, Ukraine is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the 1961 European Convention on International Commercial Arbitration, the provisions of which were implemented into Ukrainian procedural laws. When it comes to awards rendered in non-contracting states (i.e. states which are not parties to the above-mentioned conventions), Ukraine will apply the New York Convention only under the reciprocity principle.

According to the Civil Procedure Code of Ukraine, generally, applications for enforcement should be submitted within 3 (three) years of the adoption of the arbitral award.

In order to obtain recognition of and enforce an arbitral award, a claimant has to apply to the court of appeals having jurisdiction over the city of Kyiv. An application for enforcement must contain details of the parties to the arbitral proceedings, the composition of the arbitral tribunal that rendered the award, the date the award was rendered and the date it was received by the person seeking enforcement, etc.

With respect to the enforcement of a foreign arbitral award, an application for recognition and enforcement should be supported by the following documents: (i) an original or a certified copy of the arbitral award; (ii) an original or a certified copy of the arbitration agreement; (iii) evidence of payment of the filing fee; (iv) a document confirming the powers/authority of the applicant (if the application for enforcement is submitted by its representative), and (v) a certified translation into Ukrainian of all documents listed above. Failure to observe the formal requirements as to the documents that must be submitted to the court will result in returning the application for enforcement of the arbitral award to the applicant without the application's consideration.

According to Article 478 of the Civil Procedure Code, a state court must reject the application for recognition and enforcement of an arbitral award if:

- the party against whom enforcement is sought provides evidence that:
  - no due notification to that party about the arbitral proceedings took place;
  - the arbitration agreement is invalid;
  - the arbitral award goes beyond the scope of the arbitration agreement;
  - the composition of the arbitral tribunal or arbitral proceedings were not in line with the arbitration agreement or applicable law; or
  - the arbitral award did not become binding or was set aside; or
- if the court finds that:
  - the dispute may not be referred to arbitration according to the law; or
  - recognition and enforcement of the award would contradict Ukrainian public policy.

Specific grounds for refusing the recognition and enforcement of foreign arbitral awards are also set out in the ICA Law and they are the same as those for setting aside a domestic award.

Once the Ukrainian court issues an enforcement letter, it can be submitted to the state or private enforcement service (depending on the subject matter of the case) for compulsory enforcement. The debtor may file a complaint with the relevant court against officers of the enforcement service responsible for enforcement of the arbitral award.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The expected duration of arbitration proceedings at the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC) is 6 months.	Duration may be longer or shorter depending on the case.
APPROXIMATE COSTS **PROCEDURAL COSTS**	Procedural costs at the ICAC include primarily the registration fee and the arbitration fee: The registration fee is USD 600. The amount of the arbitration fee varies depending on the amount in dispute, number of arbitrators involved, complexity of the case and administrative charges. Examples, if the amount in dispute is: ▪ USD 200,001 to USD 500,000 – the arbitration fee is USD 9,200 + 2% of the amount above USD 200,000; ▪ USD 500,001 to USD 1,000,000 – the arbitration fee is USD 15,200 + 1% of the amount above USD 500,000; ▪ USD 5,000,001 to USD 10,000,000 – the arbitration fee is USD 38,700 + 0.3% of the amount above USD 5,000,000; ▪ above USD 50,000,000 – the arbitration fee is USD 118,700 + 0.1% of the amount above USD 50,000,000. If the case is considered by a sole arbitrator, the arbitration fees are subject to a 20% decrease.	▪ The arbitration fee payable for non-monetary claims amounts to USD 1,800. ▪ Arbitration proceedings may also involve additional expenses.
ATTORNEYS' FEES (NET) *SIMPLE CASES*	**Assumptions based on the amount in dispute of EUR 1,000,000**: Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; no experts; preparation for an oral hearing and participation; preparation and review of one posthearing brief. Approx. total cost: EUR 40,000 to EUR 50,000.	

COMPLEX CASES	**Assumptions based on the amount in dispute of EUR 1,000,000**: Review of 500–1,000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; up to four exchanges of submissions; review of correspondence with arbitral tribunal; experts are involved; preparation for multiple oral hearings and participation in them; preparation and review of post-hearing briefs. Approx. total cost: EUR 80,000 to EUR 100,000 or more depending on the specifics of the case.	
DOCUMENT PRODUCTION	Limited.	There is no formal discovery in Ukraine.
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS		
APPROXIMATE DURATION	Ukrainian law provides for the following stages of enforcement procedure: ▪ submission of application on recognition and enforcement of a foreign or arbitral award to the local court; and, ▪ enforcement proceedings. The duration of court proceedings is not clearly specified by Ukrainian law. In general, such proceedings should not last more than two months. But usually it may take longer to complete the proceedings as the judge has discretion to extend the time frame of the proceedings. The duration of enforcement proceedings depends mainly on whether the debtor has enforceable assets and whether the enforcement measures are opposed by the debtor.	▪ In order to recognize and enforce a foreign arbitral award, the applicant should submit a list of documents provided for under the relevant provisions of an international treaty to which Ukraine is a party or under Articles 468 and 476 of the Civil Procedure Code of Ukraine. ▪ All documents must be translated into Ukrainian.
APPROXIMATE COSTS		
COURT FEES	The court fee for filing the application on recognition and enforcement amounts to 0.5 living wage, i.e., approx. EUR 25.	
ATTORNEYS' FEES (NET)	The submission of an application for recognition/enforcement and representation in court: EUR 6,000 to EUR 12,000.	

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ABOUT ENERGY

1. ENERGY ARBITRATION

The energy sector is a complex industry comprising of oil & gas, LNG, electricity, renewable energy, mining and environmental sectors. Due to their complexity, energy investments involve large capital investments and high technology. Contracts are typically on a long-term basis and they are signed not only between private parties but also between investors and states. Disputes usually relate to the political aspects, technical details, and time aspects such as adverse effects arising during performance of the contracts. The legal issues often arise from hardship clauses, non-existing or not sufficiently flexible price revision, regulatory changes and termination clauses.

Due to the involvement of foreign investments, international arbitration under investor-state dispute settlement (ISDS) procedures is not infrequent in the energy sector. Under ISDS procedures, investors have the opportunity to bring arbitration claims against states directly, rather than having to seek redress in domestic courts. The investor-state claims in the energy sector are often based upon a breach of the Energy Charter Treaty (ECT), which provides the legal framework for the promotion and protection of energy investment, trade, transit and dispute resolution. Some claims are based upon a breach of bilateral investment protection treaties signed by state parties but set forth ISDS procedures. This may be the case when the level of protection provided in the applicable bilateral investment treaty is higher than that under the ECT.

A striking feature of the energy arbitration landscape is the number of renewable energy claims by European investors against other European states. Since 2013, several investment treaty claims have been filed in the field of renewable energy against European states based upon alleged breach of the ECT. These claims arise from certain changes to the renewable energy support schemes in these countries, which have effectively reduced the anticipated level of feed-in-tariffs or green certificate subsidies. Investors allege that these changes have detrimentally impacted their reasonable expectations for a return on their investments. There are currently more than 40 such claims against Bulgaria, the Czech Republic, Italy and Spain. The states' defence is based on their right to regulate the energy sector as they deem necessary (particularly following the economic crisis) and given that the regulatory changes did not discriminate against foreign investors. Therefore, the states argue that investors cannot expect that the state guarantees a fixed return on their investments.

An important discussion in the pending cases relates to the compatibility of ISDS procedures under investment protection treaties with the European legal order. As a result of such discussions, the European Commission has participated as *amicus curiae* in the cases filed against EU Member States by investors from other European countries as per ISDS procedures. The purpose of the participation of the European Commission is to convince the investment treaty tribunals to decline jurisdiction. While arbitral tribunals have systematically rejected the position of the European Commission, the discussion has taken a new turn based on a very recent judgement of the European Court of Justice (ECJ).[1] According to the ECJ, the investor state clause in an investment protection treaty between two European states is against European legal order since it establishes a mechanism that cannot ensure that a dispute over the application or interpretation of EU law shall be decided by a court within the judicial system of the EU. It is unclear whether the judgement of the ECJ will support the European Commission's position regarding the ISDS procedures of the ECT, to which the EU itself is a signatory, and how the claims of European energy investors against other European states shall be affected.

Since these discussions have started in Europe, Latin American states such as Bolivia, Ecuador and Venezuela have expressed their opposition to ISDS by withdrawing from the International Centre for Settlement of Investment Disputes (ICSID). ICSID is the key institution in the ISDS framework since awards rendered under the ICSID Convention are directly enforceable against state parties, without going through enforcement procedures. These changes might affect disputes in the field of energy arbitration as, according to the statistics of ICSID, approximately 41% of all ICSID cases are energy related. It is also important to note that China, one of the largest energy importers, is not a member of the ECT but only an observer.

In order to attract a sufficient amount of investments to meet the growing need of global energy demand; it is key

1 Slovak Republic v. Achmea BV (Case C-284/16).

to provide legal confidence to investors. The promise of international arbitration under ISDS procedures, as the most effective way of solving disputes in the energy area, is the most important protection provided to investors. This aspect should not be overlooked by states when forming their governmental policies as the energy sector continues to evolve.

Finally, there remains the challenging question of how investors should select the counsel advising them on their grievances. Given the complexity of energy investments, the expertise and experience of the lawyers dealing with energy disputes are essential. They must not only have the necessary legal knowledge, but also know the technical industry as well as the political landscape to develop strategies that provide for sustainable long-term results. The following aspects require particular attention:

- Investment protection measures provided for under different legal instruments (ECT, applicable bilateral investment treaty or investment contract) and which might be applicable to the dispute must be carefully assessed to decide which instrument provides the most effective protection;
- in cases of contractual claims lawyers must carefully assess whether contractual claims are elevated to the level of investment treaty claims under the umbrella clauses which may be set forth in the applicable investment protection treaties;
- notification of the claims and negotiations in good faith with a view to settle the dispute prior to arbitration proceedings is a key procedural phase which must be carefully handled;
- extensive technical approaches are necessary to identify the winning argument;
- the language of the experts must be translated precisely and accurately into legal pleadings to convince the tribunal;
- pro-active development of strategies in technical versatile discussions – if the lawyers know the industry sufficiently well – brings a major benefit in the flexibility and dynamics of the procedures; and
- in-depth legal arguments and sustainability in pleadings which goes together with industry expertise is necessary.

Furthermore, layers of complexity with respect to international law, such as sanction regimes (e.g. EU sanctions against Russia), do have major effects also on the energy sector or industries providing services to energy companies and need to be treated diligently by multi-branch teams combing efforts and knowledge to effectively cover all legal areas.

This high demand in expertise represents a challenge for future claims as it leads to a limited pool of lawyers. The risk is not only over-burdened counsel and arbitrators who must come up with efficient case management procedures, it also raises potential issues of conflict of interests as arbitrators may be faced with similar issues and the same state parties and legal positions on their claims.

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ABOUT CONSTRUCTION

1. CONSTRUCTION ARBITRATION

In a globalized world and in particular in the common European market, large scale construction projects usually have an international dimension as various companies of different countries are involved. It is thus standard practice in such construction contracts to include arbitration clauses as it can provide a flexible and efficient method of dispute resolution that also guarantees legal certainty.

In construction and engineering disputes of a multi-national character, the following aspects are very typical and require particular attention:

- **Multi-party dispute:** A construction or engineering project often involves different parties at different levels of the project. The employer regularly hires a general contractor who then assigns different parts of the project to various sub-contractors. Apart from these players, there might be suppliers, designers, financial institutions etc. who are substantially involved in the project and could claim rights to particular issues. The fact that various parties to the same project have various claims against each other and possibly involving different jurisdictions and different dispute resolution mechanisms renders the matter to become a "complex arbitration".

  – **Multi-tier dispute resolution mechanism:** Construction contracts often include dispute resolution clauses which do not only provide for one single forum, but multiple procedural steps resulting in arbitration or court litigation (thus also referred to as "escalation clauses"). The purpose behind such multi-tier clauses is to resolve smaller issues ("claims") at an early stage of a (possible) dispute, often only by technical experts such as engineers or […] and without the need of intensive legal assessment. Such early phases where claims are decided are often known as adjudication (e.g. through various kinds of "dispute adjudication boards" or "dispute review boards"). In some matters, the parties also enter procedures of conciliation or mediation either because the dispute resolution clause so provides or because the parties voluntarily so agree with the intention to resolve their dispute before it "escalates" in legal terms before an arbitral tribunal or a state court.

  – **Intervention, joinder, consolidation and parallel proceedings:** One of the main challenges in multi-party arbitration relates to the question whether a dispute which relates to various involved parties can be resolved in a single or consolidated arbitration or at least in parallel proceedings that run in co-ordination. A single or consolidated arbitration (i.e. where at least two arbitrations are consolidated in one arbitration) requires that the different arbitration clauses contained in the various contracts are compatible (in particular agreement on the same arbitral institution, on the same number of arbitrators and on the same place of arbitration). If parallel arbitration proceedings take place before different tribunals and/or under different arbitration rules, counsel have a particular duty to oversee and coordinate these proceedings. It is an even greater challenge if parallel proceedings take place both before arbitral tribunals and state courts. At times, if such proceedings (whether arbitration and/or litigation) take place in different jurisdictions, then a team of counsel of different jurisdictions must cooperate with each other. One legal challenge for both parties and their counsel is that there are currently no international treaties governing general questions of parallel proceedings and res iudicata between arbitrations or between arbitral tribunals and state courts.

  – **Appointment of arbitrators:** The process of appointing arbitrators is rather sensitive in multi-party proceedings and should deserve particular attention by the parties and their counsel. Moreover, the time-frame for the appointment can be rather short taking into account that counsel must communicate with various stakeholders if multiple parties are involved. In particular, conflicts may arise if several parties on one side (i.e. claimant, respondent or a joining third party) are under a duty to jointly appoint one arbitrator, but have different expectations or interests. Institutional arbitration rules and national arbitration laws provide for different solutions in such a case. Once an arbitrator is appointed, it is – in principle – not possible to remove him/her unless he/she breaches the principles of independence and impartiality or his/her duties in a very serious way.

- **Industry expertise:** Some legal disputes involve "only", albeit highly complex legal questions where the main legal question relates to the interpretation of a particular contractual clause or a statutory provision. However, resolving construction and engineering disputes will always require a thorough understanding of the industry itself as disputes rarely evolve only around legal questions.

  – **Expertise of counsel:** As a consequence of the highly technical aspects of construction and engineering disputes, legal counsel must usually be acquainted with the industry knowledge either by relying on their own expertise or by retaining outside experts in order to understand the client's business, needs and expectations.

  – **Experts in the proceedings:** In addition, most construction and engineering arbitrations will have to involve experts who help the arbitral tribunal to decide the matter. This can be done either by party-hired experts (often preferred by the parties because they can present their view of the matter) or by one or more tribunal-appointed experts (often preferred by the arbitral tribunal because it can essentially rely on the conclusions of the expert in order to decide the dispute). In particular in the case of tribunal-appointed experts, it requires a particular sense and knowledge of procedural standards in order to safeguard the parties' rights in a fair and transparent expert procedure and to ensure that it is the tribunal and not the tribunal-appointed expert that takes a particular decision on the merits.

  – **Standard forms:** In construction and engineering projects, parties often rely on standard forms and conditions in their contracts. This usually provides efficiency in the execution of the contract, legal certainty and an international standard. The most well-known standard forms are the contract conditions of FIDIC (Federation Internationale des Ingenieurs Conseils) which provide contract conditions – inter alia – for a construction based on the employer's design (the FIDIC "Red Book"), for design and build-contract (the FIDIC "Yellow Book"), for a turnkey-contract (the FIDIC "Silver Book") or even for a design-build-operate-contract (the FIDIC "Gold Book"). Lawyers dealing with FIDIC conditions need to be aware that their origin lies with national British contract conditions. Hence, the contract terminology under FIDIC has its roots in the Common Law system, with only a few ideas adopted from the Civil Law system. In particular, these conditions put a heavy trust in the role of the (consulting) engineer and rely substantially on formal written notices and certificates.

  – **Claims management:** One should never underestimate the importance of a well-organized and project-accompanied claims management: Construction contracts usually state a specific time-period for either party to inform the other party about events and/or circumstances giving them a contractual claim entitlement (e.g. the contractor's obligation under sub-clause 20.1 of the FIDIC conditions to submit a formal claim notice within 28 days after the contractor has become or should have become aware of such event or circumstance). Such time-periods are usually designed as "cut-off-periods", meaning that the other party shall be discharged from all liability in connection with the claim should the claiming party fail to submit its claim notice within the stipulated time-period. Hence, the work of claims management – such as monitoring of the claim events on-site, drafting and submitting of the claim notice (and subsequently of the fully detailed claim) within the contractual time-period and producing the relevant documentation and records for the claim – is an important factor for the proving of or the defending against claims and therefore crucial for the success in arbitration proceedings.

- **Public authorities and entities:** Large and complex construction and engineering projects are often commissioned by a state or a state entity such as a particular ministry on the national level or a local administrative authority. In addition, such projects regularly receive financial aid from a third party other than the contracting state entity, whether private or public (such as the European Commission or other financial institutions within the European Union framework or under other auspices such as that of the world bank). The involvement of such public entities (either as actual party or as involved third party) require a thorough understanding of procedural mechanisms and guarantees on the one hand and of

the complex interplay of the applicable substantive rules designated by the parties and mandatory rules of public law on the other hand. Moreover, it is the public itself (citizens, politicians and media) that might have legitimate interests in the progress and the outcome of the arbitral proceedings. The issues of confidentiality and transparency deserve particular and sensitive attention in this respect.

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ABOUT INVESTMENT ARBITRATION

1. ABOUT INVESTMENT ARBITRATION

When investors from different cultures invest in an environment where political, legal, and economic factors are changing and considerable amounts of investments are at stake, investors seek security and protection of their investments. Investment protection treaties between the host state of the investment and the home state of the investor provide investors with protection against arbitrary, discretionary and egregious acts of the host state. Such investment protection treaties may be concluded in the form of bilateral investment protection treaties (BITs) or multilateral investment protection treaties (e.g. Energy Charter Treaty). Even though investment treaty protection has been discussed in various forms, there is one institution that made an indispensable contribution to development of the subject. That is the International Centre for Settlement of Investment Disputes (ICSID), established by the ICSID Convention in 1966.

In this article, we will examine some selected and debated jurisdictional issues of arbitration against states or state controlled entities under investment protection treaties.

The Issue of Nationality in Investment Arbitration

As a matter of principle, the host state's consent to arbitration contained in an investment protection treaty is available exclusively to investors who are nationals of the other contracting state to the BIT. Individuals that hold the nationality of the state that is the opposing party in the dispute cannot avail themselves of the protections under investment protection treaties. Even though this issue may appear to be rather straightforward, there are many situations in which the distinctions are not so obvious, including those of investors holding two or more nationalities, including the nationality of the state party to the dispute.

Most investment treaties define a national as an individual who was formally accorded citizenship by one of the contracting states to the treaty, less frequently, the residence of the investor is decisive.[1] Legal entities are considered as nationals of a particular state if they are incorporated under the laws of that state or have their seat of administration in the territory of such state. Some treaties even extend the nationality element to companies incorporated in third-party states, provided that the companies are controlled by individuals who possess the nationality of one contracting state.

The issue of the standing of a dual national under a given bilateral investment treaty was tested for the first time in *Garcia Armas v. Venezuela*[2], a pending UNCITRAL arbitration proceeding initiated against Venezuela by two Spanish nationals, who also held Venezuelan nationality. The tribunal upheld jurisdiction on the ground that the bilateral investment treaty applicable to the dispute did not exclude dual nationals from protection. The tribunal denied the application of the test of "dominant and effective nationality" applied in customary international law in the field of diplomatic protection which considers as foreign dual nationals who have a stronger tie with the nationality of their adopted country. The tribunal held that such principle is not applicable in the context of investment treaties.[3]

In the more recent example of proceedings initiated by dual nationals, *Dawood Rawat v. the Republic of Mauritious* filed on 9 November 2015 by a French Mauritian dual national under the France-Mauritius BIT, the tribunal took the opposite view. There, by interpretation of the particular parts of the France-Mauritius BIT, the tribunal concluded that the contracting states *"implicitly, but necessarily, excluded French-Mauritian dual nationals from the scope of application of the BIT"*.[4]

1 Article 201 of NAFTA; Article 1(7) of the Energy Charter Treaty.

2 UNCITRAL, PCA Case No. 2013-3.

3 Javier Garcia Olmedo, "Claims by Dual Nationals under Investment Treaties: A New Form of Treaty Abuse?".

4 UNCITRAL, PCA Case No. 2016-20, 179.

It remains to be seen which approach international tribunals will be taking in deciding claims by dual nationals. While abuse of rights conferred under investment protection treaties must be prevented, potential effects of denying investment treaty protection to immigrants, who acquired their wealth elsewhere and could potentially invest into their country of origin, must be taken into account.

Definition of Investment: Broad or Narrow Construction

The definition of investment has always been a controversial issue since there is no common definition of investment and every investment protection treaty may have different definitions depending on many factors. For instance, one of the discussion items is whether the definition of investment should be limited to foreign direct investment (FDI) which involves significant long-term investment with control over management or rather be broader to include other types of investments, such as portfolio investment with hardly any control over a company (e.g. investments made through a stock market). In practice, the definition of investment in the majority of investment protection treaties allows for the broad asset-based definition of investment, including all assets, tangible as well as intangible, in the host country owned by the investors of the other country which is party to the applicable investment protection.

The definition of investment set forth in the applicable investment protection treaty is particularly important for the viability of the investment treaty claims filed pursuant to the ICISD Convention. Article 25(1) of the ICSID Convention states that jurisdiction of the Centre extends only to legal disputes arising directly out of an investment between a contracting state and a national of another contracting sate. The ICSID Convention lacks, however, any definition of investment.

The directness set forth in Article 25(1) of the ICSID Convention was clarified in *Fedax v. Venezuela*.[5]The issue in this case was whether promissory notes could be considered investments. Venezuela argued that since there was no direct foreign investment and the notes did not involve a long-term flow of capital resources, there was no foreign investment. The tribunal rejected Venezuela's argument and held that the "directness" set forth in Article 25(1) of the ICSID Convention is not related to investment but to the fact that the dispute must arise directly out of an investment made. In other words it is immaterial whether the foreign investment is direct or indirect; bringing a portfolio investment within the ambit of investment as understood by the ICSID Convention.

Another benchmark case on the issue of the definition of investment, highlighting the basic features of investment, is *Salini Costruttori S.p.A. v. Morocco*.[6] One of the main jurisdictional issues in *Salini v. Morocco* was whether a contract for the construction of a highway was an "investment". The tribunal made it clear that the understanding of "investment" is to be derived from not just the bilateral investment treaty forming the basis of the dispute but also on the basis of the ICSID Convention. The tribunal, then, went on to set out the characteristics of an investment under Article 25(1) of the ICSID Convention, which later became known as the *Salini* test, and stated that investment infers contributions to the economic development of the host state, a certain duration of performance of the contract, and participation in the risks of the transaction. In another case, *Joy Mining v. Egypt*,[7] the issue of whether bank guarantees could be considered an investment was discussed. The tribunal held that bank guarantees were not investments because they were contingent liabilities and merely supported a contract of sale.

5 ICSID Case No. ARB/96/3.

6 ICSID Case No. ARB/00/4.

7 ICSID Case No. ARB/03/11.

Effect of Umbrella Clauses

Disputes, in particular in the context of concessions, privatizations and energy investments, often arise out of contractual agreements concluded between the investor and the state or a state entity and are subject to national laws. These agreements are commonly referred to as investment contracts.

Disputes arising out of investment contracts can raise complex issues also with regard to treaty-based investment arbitrations. When an investor alleges a violation of an investment contract in an investment treaty arbitration, the arbitral tribunal must not only decide whether there was a breach of the investment contract itself, but it must also determine whether such breach amounts to a violation of the applicable investment protection treaty. This is possible if the applicable investment treaty contains a so-called "umbrella clause". By way of example, the Energy Charter Treaty contains the following umbrella clause, which elevates contractual breaches to the level of treaty breach:

"Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of an Investor of any other Contracting Party"

There is an evolving jurisprudence of investment treaty tribunals on the interpretation of umbrella clauses. While review of such jurisdiction is out of the scope of this analysis, one should note that this is often an important jurisdictional issue discussed in length by the investment treaty tribunals based upon contract and treaty interpretation. The following cases illustrate an example of the approach of investment treaty tribunals:

- In *Société Générale de Surveillance S.A. (SGS) v. Islamic Republic of Pakistan (SGS v. Pakistan)*[8] the investment treaty tribunal adopted a narrow interpretation and rejected its jurisdiction over purely contractual claims on the grounds that the consequences of interpretation of the clause by the claimant would be "so burdensome" that "clear and convincing evidence that such was indeed the shared intent of the Contracting Parties to the Swiss-Pakistan Investment Protection Treaty in incorporating Article 11 in the BIT must be adduced by the claimant".

- In *SGS v. Republic of the Philippines*,[9] the tribunal disagreed with the approach adopted by the SGS v. Pakistan tribunal. Instead, it considered that the consent to arbitration in the bilateral investment treaty between the Philippines and Switzerland allowed the investor to raise contractual claims under an investment treaty, unless the contract in question had an exclusive forum clause. If there were such a clause, the investor's choice would be restricted to the dispute resolution mechanism in the contract. Subsequent cases have tended to adopt one or the other of those approaches.

- In a more recent case, *SGS v. Republic of Paraguay*,[10] the investment treaty tribunal adopted the approach of the tribunal in SGS v. Republic of the Philippines and rejected the respondent's arguments that the forum selection clause (which was not an exclusive jurisdiction clause) in the investment contract precluded the jurisdiction of investment treaty arbitration and that an abuse of sovereign authority was necessary to prove a violation of the umbrella clause.

It is important to keep in mind that there is no system of precedents in ICSID and the interpretations made by the tribunals are not binding on future tribunals. Nevertheless, the tribunals' interpretations are important as they constitute an important body of judicial decisions for other investment treaty tribunals to refer to.

8 ICSID Case No. ARB/01/13.

9 ICSID Case No. ARB/02/6.

10 ICSID Case No. ARB/07/29.

Acts of State Controlled Entities Attributable to States

Often, the acts or omissions, which investors allege to be in breach of the investment contract or the applicable investment protection treaty, are not committed directly by the state or its organs. Rather, these violations are committed by a state controlled entity. To establish a treaty claim in these circumstances, the investor needs to prove that a treaty violation as such has occurred and that it is actually the state that is responsible for the wrongful act.

Principles on the Responsibility of States for Internationally Wrongful Acts (ILC Articles) adopted by the UN General Assembly shed light on the current state of customary international law on attribution of conduct to a state. Under the ILC Articles, a state can be held responsible for a breach of an investment treaty commitment by an individual or a separate entity in, at least, three circumstances:

- if the individual or the entity is a state organ (Article 4);
- if the person or entity is not an organ of the state but is empowered by the law of that state to exercise elements of governmental authority and is acting in that capacity (Article 5); or
- if the entity or individual committed the act in question on the instructions, or under the direction or control of the state (Article 8).

In *Tulip Real Estate and Development Netherlands B.V. v. Republic of Turkey*,[11] the investment treaty tribunal stated that the criterion to decide whether a "specific activity" by a state owned entity can be attributable to the state itself is that the acts and actions by such entity are a result of the exercise of sovereign power in order to achieve any particular state purpose, rather than the expression of ordinary control exercised by a majority shareholder acting in the company's best commercial interest. This means that an act would be attributable to the state in case it can be proven that a company's decision has not only been made in its best commercial interest, but rather as a vehicle directed towards achieving a particular result in a state's sovereign interest. In *EDF (Services) Limited v. Romania*,[12] the investment treaty tribunal ruled that the fact that directions are given by the mandates to the members of the board of directors, a body that should decide in full autonomy in the company's interest, is indicative of the compelling nature of the Ministry's mandate system.

Discussions on the Compatibility of Investor State Dispute Settlement Procedures with the EU Legal Order

The relationship between EU law and investment protection agreements signed between EU Member States has been heavily debated on an academic as well as on a political level. The European Commission repeatedly raised its concerns and has participated as amicus curiae in cases filed against EU Member States by investors from other Member States, arguing that the investment treaty tribunals have no jurisdiction over these, so-called, intra-EU investment arbitrations. Its stance has been, *inter alia*, that Article 344 of the Treaty on the Functioning of the European Union (TFEU)[13] prohibits the application of EU law by arbitral tribunals in cases concerning Member States.

The European Commission's arguments were rejected by every investment tribunal that considered it. As an example, in *Charanne and Construction Investments v. Spain*[14], the first of a series of cases arising from changes made in the favourable tariffs provided to the renewable energy sector in Spain, the tribunal remarked *"[a]*

11 ICSID Case No. ARB/05/13.

12 ICSID Case No. ARB/05/13.

13 Article 344 TFEU stipulates that Member States undertake not to submit a dispute concerning the interpretation or application of the Treaty on European Union (TEU) and TFEU to any method of settlement other than those provided for therein.

14 Arbitration No. 062/2012.

Member State can agree to submit a dispute that may involve issues of EU law to an arbitration. Finally, it is today universally accepted that an arbitral tribunal not only has the power but also the duty to apply EU law."[15] The tribunal concluded that Article 344 of the TFEU did not apply to investor state dispute settlement procedures. The position of the tribunal in *Charanne vs Spain* has been recently repeated in RREEF Infrastructure (G.P.) Limited and *RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Spain*.[16]

The sudden change in tides happened on 6 March 2018, when the Court of Justice of the European Union (CJEU) issued a long awaited decision concerning the fate of arbitration provisions contained in the intra-EU BITs. In its most solemn sitting – the Grand Chamber - the CJEU ruled in the case of *Slovak Republic v. Achmea BV* that such provisions are not compatible with the EU law.[17] While the *Achmea* Judgment does not seem to invalidate intra-EU BITs themselves, it is still uncertain what effects it has on pending and any future intra-EU investment arbitrations and how investment tribunals will deal with its effects. It is certain, however, that the *Achmea* Judgment will cause serious hurdles to all investors trying to enforce through local courts arbitral awards rendered in intra-EU investment arbitrations.

Conclusion

As a conclusion, investment treaty disputes can give rise to a number of questions regarding public international, domestic, and EU law, including – but not limited to – the questions briefly examined above. Even before the investment is made it is very important to consider the issues of investment planning and the most favourable legal regimes for routing the investments. On the other hand, once the disputes have arisen, it is crucial to analyse at the outset of the dispute various legal aspects in light of the underlying facts in order to decide the most suitable forum for the settlement of such a dispute. The choice of the correct forum is essential to reach the best outcome in the case in the most efficient way.

15 *Charanne and Construction Investments vs Spain*, Unofficial translation of the award by Mena Chambers, para. 443.

16 ICISID Case No. ARB/13/30, Decision on Jurisdiction dated 6 June 2016.

17 The Court of Justice of the European Union Case No. C-284/16.

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