WOLF THEISS

THE WOLF THEISS GUIDE TO:

Dispute Resolution in Central, Eastern & Southeastern Europe

2018 Edition

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This 2018 Wolf Theiss Guide to Dispute Resolution 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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WOLF THEISS Rechtsanwälte GmbH & Co KG, Attorneys-at-Law
Schubertring 6, 1010 Vienna, Austria
www.wolftheiss.com

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FOREWORD

As a leading law firm in CEE/SEE and home to one of the biggest dispute resolution teams in the region, we see it as our obligation to keep our clients up-to-date with legal developments that may affect their businesses. Global financial uncertainty has brought with it a growing need for dispute resolution services across the region, in particular, in heavily regulated sectors such as energy, financial services or healthcare. Unexpected questions may arise, such as "Should we initiate legal proceedings? Where and when? What legal tools and procedures are available to us? How do we stay one step ahead of competitors and adversaries? How do we avoid costly investigations so we can protect our reputation?"

In response to this, we are very pleased to present the fourth edition of the Wolf Theiss Guide to Dispute Resolution in Central, Eastern and Southeastern Europe. With the majority of our work involving cross-border representation, the Wolf Theiss Guide to Dispute Resolution is a source of information for those who seek to get a general overview of dispute settlement and the relevant legal developments in each of the countries where Wolf Theiss provides services: Albania, Austria, Bosnia & Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Kosovo, Poland, Romania, Serbia, Slovak Republic, Slovenia, and Ukraine.

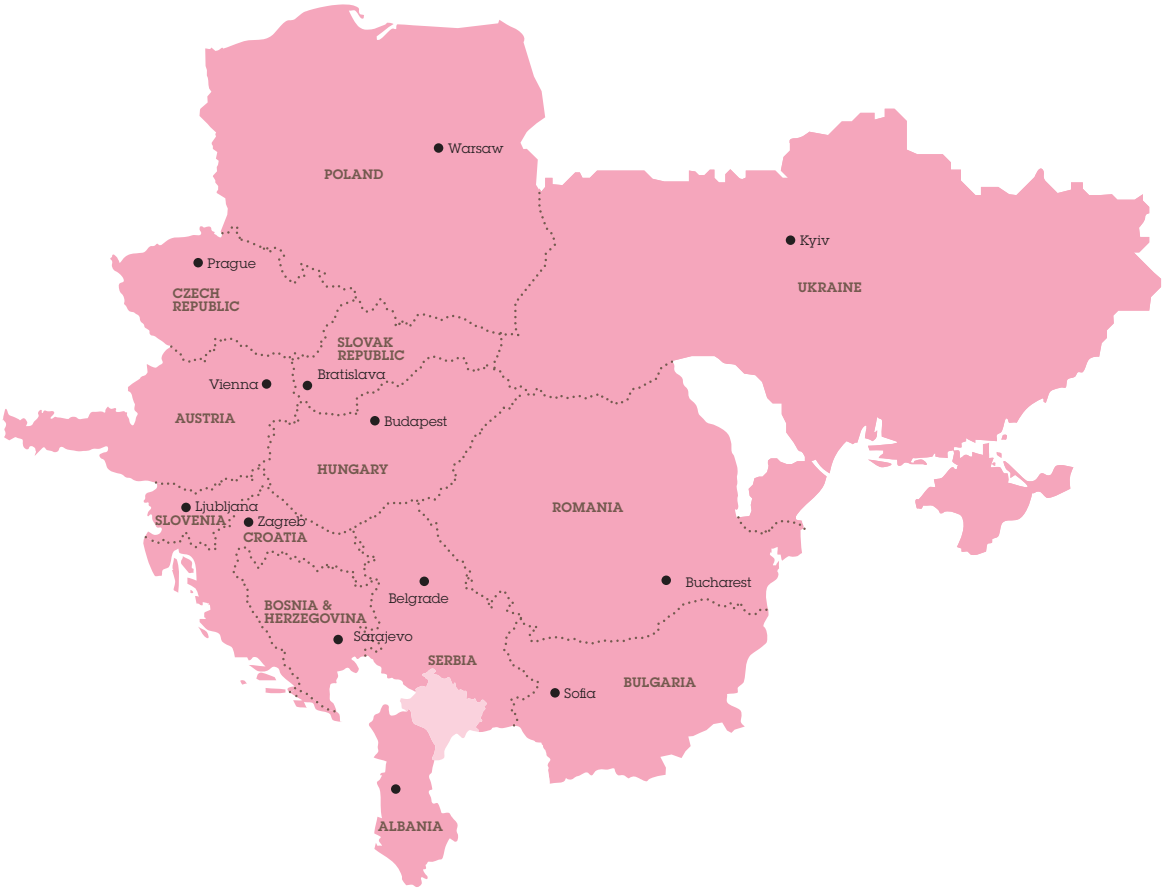
The new guide follows the same structure as the previous editions. Each country chapter describes the legal system, the litigation process, business crime, insolvency, arbitration, and enforcement of arbitral awards and foreign judgments, and ends with a chart giving a summary of the relevant procedures and costs in the respective jurisdiction, plus handy practice tips.

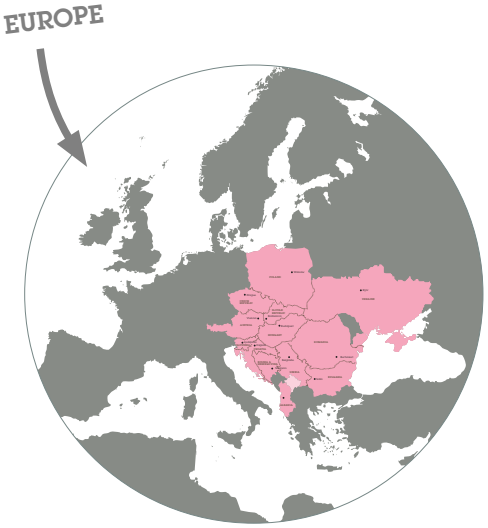
We trust that that you find the guide useful. If you have any questions, please do not hesitate to contact us.

Clemens Trauttenberg ▪ June 2018

Partner, Head of the Disputes Practice Group, Wolf Theiss

I would like to thank all colleagues at Wolf Theiss who assisted in the preparation of this publication. Their efforts to ensure the continuing update of the Guide are very much appreciated. I would also like to acknowledge former Wolf Theiss Partner Bettina Knoetzl for her contributions to previous editions of the guide.





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ALBANIA

1. LEGAL SYSTEM

The Albanian legal system is based on codified principles of civil, criminal and administrative law. Judicial precedents are taken into consideration by courts, but without having a binding effect, except for unifying decisions issued by the Joint Colleges of the Supreme Court.

2. LITIGATION

The Albanian court system is composed of District Courts, Courts of Appeal, Administrative Courts and Appellate Administrative Courts, Courts of Serious Crimes and Appellate Court of Serious Crimes, Military Courts and Appellate Military Courts, and the Supreme Court. There is also a Constitutional Court whose influence is increasing, especially due to an expansion of the "constitutional due process" review of other courts' decisions.

In each District Court (court of first instance), there are special court departments in charge to decide on:

- commercial disputes;
- disputes related to minors and family; and
- civil disputes.

Cases in District Courts are heard by a single judge or a panel of three judges. Matters exclusively heard by a panel of three judges include:

- claims valued at more than ALL 20 million (approximately EUR 156,000);
- claims on declaring a person as missing or deceased; and
- claims on removing or limiting the capacity to act of a person.

In the Courts of Appeal, cases are heard by a panel of three judges, while the High Court decides in panels of five judges. In the Supreme Court, Joint Panels also hear cases with the participation of all judges. The Joint Colleges of the Supreme Court are responsible for the unification and amendment of court practice. Penal, administrative and civil colleges established at the Supreme Court pre-hear the claims and decide whether the claim shall be rejected or refer the case for judgement to the panel of three judges.

Decisions of the Supreme Court are proclaimed, along with the reasoning behind the decision, no later than 30 (thirty) days from the date of the termination of the judicial examination. Decisions of the Joint Panels, along with their reasoning, are published in the Periodical Bulletin of the Supreme Court. Decisions that serve the unification or amendment of court practice are published immediately in the next issue of the Official Gazette.

In certain cases, courts may also grant interim measures.

The Albanian court system is rather efficient, despite the fact that no precise time frame is provided for the rendering of judgments. The time frame is generally allowed to be reasonably defined by the judges.

Decisions by the first instance courts (i.e., District Courts) may be appealed before the Courts of Appeal. As a general principle, all decisions issued by a court of first instance may be challenged in the Courts of Appeal, except for those cases when appeal is excluded by law. An appeal request may only be denied when: (i) the appeal is presented after the deadline provided by law; (ii) the appeal is made against a decision where an appeal is not permitted; or (iii) the appeal is made by an individual that is not legally entitled to file an appeal.

Upon request of the parties, the Appeals Court may examine facts and other legal aspects examined by the court of first instance, and may allow the presentation of new evidence in support of the appeal.

After considering the case, the Appeals Court can decide to: (i) uphold and leave in effect the decision of the first instance court; (ii) change the decision; (iii) revoke the decision and terminate the case; or (iv) revoke the decision and send the case back to the first instance court for retrial.

Decisions issued by the Court of Appeals are final and may be challenged before the Supreme Court only when: (i) the law has been violated or applied incorrectly; (ii) there are grave violations of procedural norms (i.e. Article 467 of the Civil Procedure Code); (iii) decisive proof or evidence requested by the parties during trial has not been provided; (iv) the reasoning of the decision is clearly illogical; or (v) the provisions on jurisdiction and authority have been violated.

Litigation costs are mainly composed of court and attorneys' fees, expenses for expert opinions and witnesses (including remuneration for any business days missed), and translation costs. The fees, expenses and remunerations for witnesses and translators are defined by the Council of Ministers.

The court and attorneys' fees awarded to the plaintiff shall be charged to the defendant if the claim has been accepted by the court. However, if a party is exempted by the court with respect to the awarding of court fees, the fees shall be charged to the other party only if the claim has been accepted by the court. The defendant shall generally have the right to demand court fees be awarded in proportion to the refused part of the claim. The defendant shall have the right to demand court fees be awarded, even if the case is over.

Final decisions of the court can be enforced by obtaining an instrument of immediate enforceability ("IEI"). The IEI gives its holder the right to have an enforcement order issued by the District court and to have the execution carried out immediately by the bailiffs' office.

The adjudication of administrative disputes is made through independent proceedings by the administrative courts and within a shorter period of time. The maximum term for administrative proceedings at the administrative courts of first instance is 60 (sixty) days.

Administrative courts are organised as: (i) Administrative Courts of First Instance which are established and function in the same regions as Courts of Appeal; (ii) the Administrative Appellate Court - currently there is only one Appellate Administrative Court which is located in Tirana, Albania; and (iii) the Administrative College of Supreme Court.

Military Courts are composed of Courts of First Instance and a Court of Appeal. Military Courts try military cases. The Military Court of Appeal is responsible for the second level review of complaints filed against decisions of the Military Courts of First Instance. The Military Courts try cases using panels of three judges.

There is also a Constitutional Court, which is not a part of the ordinary court system. It is regulated as an independent body subject only to constitutional provisions. The Constitutional Court ensures respect for all constitutional provisions and delivers final interpretations of these provisions.

According to the Code of Civil Procedure, all disputes (civil or other nature as prescribed by this code and other applicable laws) fall under the jurisdiction of the Albanian Courts. When a civil dispute is in the process of being heard by the Albanian courts, no other body is allowed to hear the matter. In this respect, any agreement that provides differently is deemed invalid.

Submission to the competence of a foreign court shall only be allowed when the trial is related to obligations between two foreign citizens or one foreign citizen and an Albanian citizen, or any foreign citizen that does not live/reside in Albania, as well as when such exemptions have been provided for in international agreements ratified by the Republic of Albania.

In Albania, the Court does not interrupt or suspend its judgment over a dispute, if the dispute, or some other matter related to the dispute, is the subject of examination of a foreign court.

3. BUSINESS CRIME

The Criminal Code of the Republic of Albania covers criminal acts such as fraud by individuals or legal entities, money laundering, both active and passive bribery in the public and private sectors and undue influence of public officials.

The Law on the Prevention and Combating of Organized Crime adopted in September 2004 provides the legal basis for combating economic crimes performed by organized criminal groups.

Law No. 9754, dated 14 June 2007 "On the criminal liability of legal entities" provides for the criminal liability of legal entities established in the Republic of Albania. The Law is applicable to all legal entities i.e. to companies that have been established and which operate pursuant to Albanian law but also to local administrative entities, public legal entities, political parties and trade unions.

Pursuant to this law, a legal entity can be held criminally liable for any offence committed in its name or for its benefit: (i) by its managing body or legal representatives; (ii) by a person who is under the authority of the person who runs, represents and administers the legal entity; or (iii) due to a lack of control or surveillance by the person that runs, represents and administers the legal entity.

The judicial process in a criminal case differs from a civil case. The prosecutor represents the state in most court proceedings, including all criminal prosecutions. The main principle governing the Albanian judiciary system is a fair trial with defendants presumed innocent until proven guilty.

A criminal proceeding is initiated upon the request of a prosecutor, police department or by individuals alleging violations of their rights or that have incurred damages. In the latter case, the allegation is submitted to the Prosecution Office or Serious Crimes Prosecution Office and the prosecutor then decides whether to file charges and, if so, what charges to file. The charges are filed with the District Court in the section for criminal cases or with the Court of Serious Crimes. The prosecutor may issue investigation orders or warrants which in any case should be examined by the court that has the authority to uphold or change such order/warrant.

The police are responsible for investigating allegations of business crime. If they find sufficient evidence of a crime, then an arrest is made. However, it is up to the court to finally decide on the final warrant. Otherwise, the police should submit a report on their findings to the prosecution office and then the prosecutor issues the warrant. This report constitutes a summary of all the events that have preceded the arrest and provides witness names and other relevant information. The report is handed over to the prosecutor.

Most criminal charges involving business crime are judged by the District Court of Serious Crimes located in Tirana. Other criminal charges are judged by the criminal first instance courts. The courts of first instance are organized and operate on a judicial district basis.

The defendant has the right to access all evidence that the prosecutor presents to the judges, may question opposing witnesses, and present its own witnesses and evidence.

Anyone accused of a crime is legally presumed to be innocent until proven guilty by a final court decision. This means that it is the prosecutor who has to convince the court that the defendant is guilty and must provide proof of guilt.

Cases on business crime in the First District Court of Serious Crimes in Tirana are heard by a panel of three judges. Its decisions may be appealed to the Court of Appeal of Serious Crimes located in Tirana. Appeals are decided by panels of three judges working together.

The Albanian legal system does not explicitly provide for the re-examination of criminal cases, including reopening domestic proceedings, in the event of the court finding a serious violation of an applicant's right to a fair trial. According to the provisions of Article 450 of the Albanian Criminal Code, a request for review of a final judgment may be entertained only when:

- the facts of the grounds of the sentence are contradictory to those of another final sentence;
- the sentence relies upon another civil court decision, which has since been revoked;
- after the sentence new evidence has appeared or has been found, which solely or together with the evidence already evaluated, proves that the accused is guilty; or
- it is proved that the sentence has been rendered as a result of the falsification of facts during the trial or due to another act which is by law a criminal offence.

The prosecutor should decide whether to bring the case to court, to dismiss the charges or to suspend the case within 3 (three) months from the date of the notification to the accused of the criminal charges against him/her.

The prosecutor may prolong the period of investigation by a further 3 (three) months. In complex cases, the prosecutor may extend the investigation period to 2 (two) years and upon the expressed written consent of the Attorney General the investigation may be extended to up to 3 (three) years.

However, in most cases the period between the submission of the claim and the indictment being submitted to the court takes approximately 12 (twelve) months.

The period between the indictment and a sentence in the first instance is approximately 12 (twelve) months.

Litigation costs are mainly composed of court and attorneys' fees, expenses for expert opinions and witnesses (including remuneration for any business days missed), and translation costs. However, free legal defence is provided for criminal cases. The fees, expenses and remunerations for witnesses and translators are defined by the Council of Ministers.

4. INSOLVENCY

Insolvency proceedings in Albania aim to provide an economic and financial solution to a debtor by means of a judicial procedure for the repayment of debts. Two kinds of insolvency proceedings exist:

- Bankruptcy Proceedings (*Procedura* e *falimentimit* me *likuidim*) which generally aim to satisfy the creditors' claims by liquidating the assets of the debtor and distributing the proceeds; and
- Judicial Reorganization Proceedings (*Plani* i *riogranizimit*), the ultimate aim of which is to preserve and continue the debtor's business on the basis of a reorganization plan.

Bankruptcy Proceedings are initiated by the competent court upon an application either by the debtor or by one or more of its creditors.

The business organization plan aims to create appropriate conditions for the organization and continuity of the debtor's business. This plan may provide for the sale of the whole or a part of the business activity, or other appropriate solutions.

The competent court for all forms of bankruptcy proceedings is the District Court where the debtor is resident or where the entity has its legal seat. Bankruptcy proceedings must be timely instituted as soon as the debtor is incapable of meeting its financial obligations. In the case of legal entities, bankruptcy proceedings must be

opened even if the entity is over-indebted. In addition, the tax authorities may file a petition for the opening of bankruptcy proceedings if a corporate taxpayer's balance sheet shows losses for a period of 3 (three) consecutive years. The court must decide within 30 (thirty) days of filing.

The decision of the court to initiate Bankruptcy Proceedings is entered into the Registry of Immovable Property and is delivered to the debtor and to all of its known creditors and debtors.

Without a mutual agreement, insolvency proceedings concluded outside the territory of the Republic of Albania shall apply to a debtor's property located inside the territory of the Republic of Albania only if:

- the insolvency proceedings are not contrary to Albanian legislation; and
- the insolvency proceedings do not affect the principles of Albanian legislation, especially the provisions of the Albanian Constitution.

The duration of bankruptcy proceedings will depend on several different factors (e.g. the extent of the assets and liabilities of the debtor, the number of creditors, whether the receiver challenges any transactions of the debtor in court, etc.). Although there is no general rule, in our experience bankruptcy proceedings may last between 12 (twelve) months to 9 (nine) years in more complex cases.

5. 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 a 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

Albania is not a party to any multilateral conventions on jurisdiction and enforcement of foreign judgments. In the absence of bilateral or multilateral jurisdiction and enforcement of foreign judgments agreements, the provisions of the Code of Civil Procedure apply.

As a general principle, foreign judgments are recognizable and applicable in the Republic of Albania in accordance with the rules provided by the Code of Civil Procedure.

Where the Republic of Albania has entered into a special treaty with a foreign state, the treaty applies.

The foreign judgment is enforceable after its recognition by a decision of the Appeals Court.

A foreign judgment shall not be enforced in the Republic of Albania when:

- according to mandatory provisions, the dispute is subject to the judgment of the Albanian court and not of a foreign court;

- there are procedural violations of the defendant's right to a fair trial and right to be heard;
- the Albanian court has given a different judgment on the same dispute, between the same parties, for the same cause;
- the same dispute is under examination before an Albanian court;
- the foreign judgment became irrevocable in violation of the legislation on which it is based; or
- it is in violation of the fundamental principles of the Albanian legislation (public order).

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
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases**: *first instance*: 6 months up to 1 year from the date of the filing of the claim; *second instance*: 12 months from the date of filing the appeal claim; *third instance*: 16–24 months from the date of filing the request. **Complex cases**: *first instance*: 2 years from the date of filing of the claim; *second instance*: 12–16 months from the date of filing the appeal claim; *third instance*: 24 months from the date of filing the request.	Cases before the District Courts are heard by a single judge or a panel of three judges. Cases heard by a panel of three judges include: (i) claims valued at more than LEK 20 million (approximately EUR 156,000); and (ii) claims objecting to administrative acts valued at more than LEK 20 million (approx. EUR 156,000).
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)** *SIMPLE CASE*	The filing fee of a claim in the First Instance Court is EUR 25 up to EUR 120. In complex cases, court fees may be up to 1% of the contractual amount in dispute. Such court fees are to be paid upon filing of the claim. **Assumptions based on an amount in dispute of EUR 1,000,000**: *first instance*: preparation of two briefs, four hearings with a duration of 1h, 2h, 4h, and 6h, respectively, preparation of hearings/meetings with client, witnesses, correspondence with client: In total EUR 15,000 to EUR 25,000; *second instance*: one brief, no hearing: EUR 5,000 to EUR 10,000; *third instance*: one brief, no hearing: EUR 5,000 to EUR 7,000.	▪ Litigation costs consist of court and attorneys' fees and expenses for expert opinions, witnesses, and translators. The Council of Ministers determines the appropriate expenses for witnesses and translators. The court and attorneys' fees incurred by the prevailing party may be charged to the losing party in proportion to what the court accepted in the claim. ▪ Court fees in the first and second instances are to be paid by the party filing the appeal. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, each party assumes the reimbursement of the respective attorneys' fees.

COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: *first instance*: preparation of 4 comprehensive briefs, 6 hearings with a duration of 2h, 4h, and 4 x 8h; preparation of hearings/meetings with client, witnesses, correspondence with client: In total EUR 50,000 to EUR 150,000; *second instance*: one brief, no hearing: EUR 15,000 to EUR 25,000; third instance: one brief, no hearing: EUR 10,000 to EUR 20,000.	
JURY TRIALS	There are no civil jury trials in Albania.	
CLASS ACTIONS	Limited.	The Albanian Code of Civil Procedure does not provide for a special proceeding for collective redress.
DOCUMENT PRODUCTION	Limited.	Documents are subject to disclosure if the party itself referred to the document during the proceeding.
MANDATORY REPRESENTATION BY COUNSEL	No.	
PRO BONO SYSTEM	Yes. Each court has a list of attorneys who provide free legal aid in criminal cases for people who can't afford the cost of legal proceedings. In other cases i.e. civil, administrative or social cases, non-profit organisations may provide free legal aid to certain groups of people who are unable to afford legal representation and access to the court system.	
BUSINESS CRIME		
APPROXIMATE DURATION	The period between indictment and sentence in first instance is approximately 9 months. The period between first instance court and appellate court sentence is approximately 6 months. Defendants that are detained on remand are treated with priority.	Every person deprived of her/his liberty should be brought before a court within 48 hours after the arrest. The pre-trial detention period cannot be more than half of the maximum punishment provided for the alleged crime. In any case, the pre-trial detention may not be more than 3 years.
APPROXIMATE COSTS	The procedural expenses include the costs related to examinations, expertise, notifications, lawyers' fees and any other expenses that have been duly documented. The maximum fees that may be applied by lawyers for both civil and criminal cases are defined by a joint order of the Ministry of Justice and National Chamber of Advocates. In the final decision of the court, the judge defines the party that has the obligation to pay the procedural expenses. The bailiff office undertakes all the required steps to enforce the final decision of the court.	▪ The procedural expenses are prepaid by the state, except for those related to acts requested by the parties. ▪ When the defendant does not have sufficient means, the defence expenses shall be covered by the state.
JURY TRIALS	There are no jury trials in Albania.	
CLASS ACTIONS	Limited.	
DOCUMENT PRODUCTION	Documents are disclosed to each of the parties in a criminal proceeding.	

MANDATORY REPRESENTATION BY COUNSEL	The defendant has the right to present his/her own defence or to be assisted by defence counsel.	
PRO BONO SYSTEM	Yes. Each court has a list of attorneys who provide free legal aid for people who can't afford the cost of legal proceedings.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	Generally, a decision on a request for a preliminary injunction is rendered within 15 days after the filing of the claim. However, if the request is submitted during legal proceedings, the decision is rendered immediately after the filing of the request by the applicant. *Appellate proceedings*: In general, 1 month from the date of filing the applicant's request.	▪ With the request for a preliminary injunction, the applicant must provide available evidence, such as documentary evidence and affidavits that can be examined immediately by the court. Foreign-language documents should be presented with Albanian translations. ▪ Witnesses should be readily available so that they can appear on short notice before the court.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)** *SIMPLE AND COMPLEX CASES*	If the request for preliminary injunction is applied for together with the original complaint, no extra court fees have to be paid. Otherwise, the regular court fees apply. Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	▪ The court may order the applicant to pay a security deposit. In practice, it is advisable to offer a security deposit if the demonstration of the claim faces challenges. ▪ No litigation costs will be awarded to the applicant in preliminary injunction proceedings. ▪ Costs incurred by a successful applicant in a preliminary injunction matter can only be sought in the main proceedings.
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	2–3 years.	
APPROXIMATE COSTS **PROCEDURAL COSTS** **ATTORNEYS' FEES (NET)** *SIMPLE AND COMPLEX CASES*	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. Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	▪ 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. ▪ 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 JUDGMENTS AND ARBITRAL AWARDS		
APPROXIMATE DURATION	The law does not set forth any specific time limits. However, in practice, the duration of the process to enforce foreign judgments takes between 12–24 months.	▪ The party seeking to enforce the foreign judgment must present an application, a notarized power of attorney for the attorney retained for the enforcement procedure, and a duly certified copy of the foreign court decision. All documents must be translated into Albanian and certified by a notary.

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.	▪ The party seeking to enforce the foreign judgment must present an application, a notarized power of attorney for the attorney retained for the enforcement procedure, and a duly certified copy of the foreign court decision. All documents must be translated into Albanian and certified by a notary. ▪ 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.	
INSOLVENCY PROCEEDINGS		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	In practice, not many bankruptcy proceedings have been brought before the Albanian courts. Only recently, statistics show an increase in the number of such proceedings. The information provided here is based on our experience with the Albanian court system and the Insolvency Law.	▪ The court decides to open the insolvency proceeding after being satisfied that there is sufficient legal ground for opening such proceeding, and the debtor's assets are estimated to be sufficient to cover the costs of the insolvency proceedings. In making such an assessment, the court may rely on the report of an interim insolvency administrator appointed by the court for such purpose. ▪ The decision of the court is published on the District Court website, delivered to the insolvent debtor and to the known debtor's creditors, and is filed with the National Centre for Registration, the authority in charge of the administration of the Commercial Register. ▪ The decision of the court to initiate Bankruptcy Proceedings is entered into the Registry of Immovable Property. ▪ The court appoints a receiver (*administartori i falimentimit*) who assumes control over the debtor's assets. ▪ The decision on the limitation of the administrative body's powers and the appointment of the receiver is published. ▪ The list of the debtor's assets and the list of creditors list must be filed with the District Court. The Commercial Section of the Court supervises the receiver. ▪ The receiver must obtain the creditors' approval for the implementation of actions of particular importance for the bankruptcy proceedings.

		▪ The assets of the insolvent debtor are confiscated and liquidated (i.e., sold in public auction) by a bailiff. The liquidation proceeds are distributed to the company's creditors in accordance with the priority principles set out in the Bankruptcy Act.
APPROXIMATE DURATION	Albanian Insolvency Law requires the courts to handle bankruptcy cases without delay. They must consider the case within 30 days from the date of filing the petition for insolvency.	
APPROXIMATE DURATION	The duration of bankruptcy proceedings will depend on several factors (e.g. the extent of the assets and liabilities of the debtor, the number of creditors, whether the receiver challenges any transactions of the debtor in court, etc.). Although there is no general rule, in our experience bankruptcy proceedings may last between 12 months to nine years in more complex cases.	
APPROXIMATE COSTS		
COURT FEES	The amount of court fees is approximately EUR 25, however, the costs of the proceedings may also include compensation for and expenses incurred by the insolvency administrator and members of the creditors' committee.	
ATTORNEYS' FEES (NET)	Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	

This chapter was written by Agim Muco and Jonida Braja.

AGIM MUCO
Associate

Wolf Theiss, Albania

T. +355 4 2274 521
agim.muco@wolftheiss.com

JONIDA BRAJA
Associate

Wolf Theiss, Albania

T. +355 4 2274 521
jonida.braja@wolftheiss.com

WOLF THEISS

AUSTRIA

1. LEGAL SYSTEM

The Austrian legal system is based on codified principles of civil law. Judicial precedents are not binding, but are strongly taken into consideration by courts and the parties in dispute.

In Austria, all courts are federal courts. Austria's court system is composed of District Courts *(Bezirksgerichte)*, Regional Courts *(Landesgerichte)*, Courts of Appeal *(Oberlandesgericht)* and the Austrian Supreme Court *(Oberster Gerichtshof)*. In addition to the general court system, there are specialized courts that rule on specific subject matters, for example commercial law or labour and employment law disputes.

Currently, there are in total 116 District Courts, 20 Regional Courts, 4 Courts of Appeal and the Supreme Court in Austria.

Generally, minor cases, i.e., cases valued up to EUR 15,000, are heard before the District Courts in the first instance and the Regional Courts act as the appellate courts. Major cases, i.e., cases with amounts in dispute higher than EUR 15,000 are heard before the Regional Courts in the first instance and appeals are decided by the Courts of Appeal in second instance. In general, proceedings consist of maximum three stages; with a Court of Appeal or the Austrian Supreme Court acting as the third instance.

In the first instance, in addition to low value cases, District Courts also handle all cases with the following types of matters: (i) claims for alimony and child support as well as disputes over the establishment or contestation of paternity; (ii) marital disputes; and (iii) all civil cases concerning the disturbance of possession or property, easements, lease or tenancy relationships.

Additionally, in Vienna there is a special District Court for commercial matters (*Bezirksgericht für Handelssachen Wien)* as well as the Commercial Court of Vienna (*Handelsgericht Wien*) on a regional level. Both are dealing with all commercial matters i.e. shareholder disputes, business acquisitions or disputes between businesses. Furthermore, there is the Labour and Social Court of Vienna that has jurisdiction to rule on matters expressly provided for by law regarding employment relationships and social security issues.

If commercial, labour or social security disputes arise that are not within the competency of the Viennese courts, the general courts are competent and the rules of competency of District and Regional Courts, as set out above, apply.

The Austrian Supreme Court is at the top of the judicial hierarchy in Austria. It primarily serves as a court of cassation. It is the court with appellate jurisdiction in criminal and civil cases, commercial matters, cases of administrative review and labour and social security disputes. In almost all civil cases it is the court of third instance. However, grounds of appeal to the Austrian Supreme Court are limited to substantial legal issues concerning substantive and/or procedural law.

2. LITIGATION

The Austrian court system is rather efficient in European and international comparison. Civil proceedings are commenced by the filing of a claim with the competent court. The claim must contain the facts of the case and offer supporting evidence. Under Austrian law, the claimant must also include the relief or remedy sought in the matter. Remedies which the claimant may request include the following:

- a decision on performance of an obligation; holding the defendant liable to pay a certain amount of money, deliver or surrender moveable property, pay damages or to cease and desist (i.e., acts of unfair competition);
- a declaratory decision; a judgment determining the existence or non-existence of a legal relationship or right, including the authenticity of a document; or
- a decision that leads to the creation, amendment or cancellation of a legal relationship.

After a claim is filed, the court considers whether it has jurisdiction over the claim. If it has jurisdiction over the dispute, it serves the claim to the defendant, along with an order for the defendant to submit a statement of defence within a specified period of time. The defendant's statement of defence must include an explanation of the facts and evidence which it relies on, including the judgment sought in response to the claim, i.e. dismissal of the claim in whole or in part. Moreover, the defendant may also raise set-off claims.

Once the defendant submitted its statement of defence, the court initiates the court proceedings which typically consist of several oral hearings. In Austria, jury trials do not exist in civil proceedings. The trial is held before and decided by either a judge or a panel of judges, depending on the type and stage of the proceedings.

Trials serve the highly important purpose of allowing the presentation and gathering of evidence. Evidence presented by the parties during the proceedings may include documents, witnesses, expert witnesses, and testimony of the parties involved in the dispute. The approved witnesses are questioned by the judge first and can then be further examined by the parties' attorneys. After the hearing and taking of evidence has been concluded, the judge will close the proceedings and issue his/her judgment, usually in writing.

According to the available statistics, first instance proceedings pending before a District Court take on average 6 (six) months; in Regional Courts, the average time is 13 (thirteen) months. Only 2.3% of dispute resolution proceedings take longer than 3 (three) years. In appellate proceedings, evidence is generally not re-examined and new evidence or new allegations are not admitted. Appellate proceedings may take between 6 (six) months and 1 (one) year. The Supreme Court usually renders its judgment within 1 (one) year.

A party may also request interim remedies. A court may order a preliminary injunction to secure *inter alia* money claims either before or during litigation proceedings. In order to have a request for a preliminary injunction granted, the court must have a sufficient reason to believe that (i) the defendant will prevent or endanger the enforcement of a potential judgment by destroying, concealing or transferring assets; or, (ii) the judgment would otherwise have to be enforced in a state in which enforcement is not guaranteed by international treaties or by the laws of the European Union. Potential preliminary injunctions may include an order for the freezing of bank accounts or attachment of the defendant's assets, including real estate. The court may even extend an injunction to order a third party not to pay accounts receivable to the defendant.

The final judgment issued by the court also includes an order specifying which party has to bear the costs of the proceedings. Litigation costs are mainly composed of court and attorneys' fees, expenses for expert opinions and travel expenses for witnesses. Generally, litigation costs are awarded against the losing party who must reimburse the winning party. However, if either party prevails with a portion of their claim, the costs are divided on a pro-rata basis.

The calculation of litigation costs is based on the Austrian Act on Attorneys' Tariffs *(Rechtsanwaltstarifgesetz)* and the Act on Court Fees (*Gerichtsgebührengesetz)*. It is important to note that the winning party is only entitled to attorneys' fees on the basis of the Austrian Act on Attorneys' Tariffs *(Rechtsanwaltstarifgesetz)*. Higher Fees paid to the attorney on the basis of a separate fee agreement (e.g. on the basis of hourly rates) are not subject to reimbursement in the course of civil proceedings.

In Austria, both contingency fees that entitle an attorney to a certain percentage of the amount obtained by the claimant as well as the *quota litis* (an agreement by which the creditor of a sum difficult to recover promises a portion to the person who undertakes to recover it) are prohibited.

3. BUSINESS CRIME

Over the past years, criminal authorities have become more interested and better equipped to start investigations in business crime matters. In fact, criminal proceedings are often conducted parallel to civil proceedings. Criminal proceedings can be a powerful tool for recovering or securing assets or any other funds that are derived from criminal offences.

Furthermore, since the Austrian Code of Civil Procedure (CCP; *Zivilprozessordnung*), is characterized by rather restrictive disclosure rules, criminal proceedings represent an effective tool to obtain evidence, which would otherwise not be accessible, from the opposing party. In addition, a criminal court may also decide on civil claims brought against the accused by issuing a binding and enforceable decision, thereby avoiding time-consuming and costly civil proceedings that bear a substantial cost risk for the parties. Under Austrian law, both individuals as well as legal entities can be subject to criminal prosecution.

The criminal investigation is usually conducted by the criminal investigation department of the police (*Kriminalpolizei*) under the supervision of the public prosecution (*Staatsanwalt*). For corruption matters and large volume white-collar crime cases, a special prosecution authority is competent; the Public Prosecution Authority for Cases of White-collar Crime and Corruption (*Wirtschafts- und Korruptionsstaatsanwaltschaft*). The overseeing judge (*Haft- und Rechtsschutzrichter*) at the local Regional Court *(Landesgericht*) decides upon objections to investigative measures as well as requests to impose or terminate investigative custody. Certain investigative measures require the overseeing judge's approval; in particular measures with coercive character (e.g. house searches).

A conviction can be avoided (also, a potential penalty can be reduced) by cooperating with the public prosecution, e.g. as chief witness *(Kronzeugenregelung)*. The benefit derived from such cooperation varies depending on the stage of the investigation. If the public prosecution finds that there is sufficient basis for a conviction, main criminal proceedings *(Hauptverhandlung)* are initiated by filing an indictment. In other words: The case is brought to public trial.

The first instance main criminal proceedings are conducted by District Courts (*Bezirksgericht)*, in minor cases (with penalties of up to 1 (one) year of imprisonment) and Regional Courts (*Landesgericht*). While District Court trials are held by single judges, the composition of the Regional Court varies depending on the charges: single judge; panel of one judge and two lay judges; panel of three judges and a jury of eight persons.

Austrian criminal procedural law provides for a rather complicated system of two instances. Either the Court of Appeal or the Austrian Supreme Court is on the top of the pyramid.

As of 1 January 2015, parties to criminal proceedings may also file a complaint with the Constitutional Court (*Verfassungsgerichtshof*) if the parties consider the statutes applied to the case unconstitutional. Such complaints may only be filed in connection with an appeal against a first instance decision.

Potential victims of a criminal offence are distinctly recognized as parties to criminal proceedings; this enables potential victims access to information that can also be used in the pursuit of their civil claims. Potential victims may, *inter alia*:

- have access to the files (which may be subject to restriction);
- participate in certain phases of the criminal investigation;
- participate in the main proceedings (trial) with the right to ask direct questions to the accused, to witnesses and to expert witnesses; and
- request that the criminal investigation be continued if the public prosecutor decides to terminate the investigation.

Any victim (legal entities as well as natural persons) may also join criminal proceedings as a "private party" *(Privatbeteiligter)* via a formal statement of accession *(Privatbeteiligtenanschluss)*. In addition to the aforementioned rights, a private party is also entitled to, *inter alia*:

- formally request the collection of evidence;
- act as a subsidiary prosecutor if the public prosecutor drops the charges;

- file a complaint if the criminal court terminates the criminal proceedings;
- present its civil claims against the accused and request that the criminal court decide upon its civil claims; and
- file an appeal if the criminal court fails to decide on (or finds in favour of) its civil claims.

While criminal proceedings are a powerful tool to gain information otherwise inaccessible through civil proceedings, criminal courts are reluctant to actually award civil claims (in total). Even in cases of convictions, victims are often relegated to the civil courts.

4. INSOLVENCY

The Austrian Insolvency Act *(Insolvenzordnung)* which came into force on 1 July 2010 distinguishes between three types of insolvency proceedings:

- bankruptcy proceedings (*Konkursverfahren*);
- restructuring proceedings where a bankruptcy receiver is appointed (*Sanierungsverfahren ohne Eigenverwaltung*); and
- restructuring proceedings where the debtor retains the right to self-administration (*Sanierungsverfahren mit Eigenverwaltung*).

While bankruptcy proceedings usually lead to a realisation or winding-up of the debtor's estate and the distribution of the proceeds of its assets among its creditors, the aim of restructuring proceedings is to enable the debtor to continue its business and to be discharged from its debts (*Restschuldbefreiung*).

Further, the Austria Business Reorganisation Act (*Unternehmensreorganisationsgesetz*) provides for a type of proceedings which are not technically insolvency proceedings, but which enable the debtor to reorganize its business.

Precondition for the opening of insolvency (bankruptcy or restructuring) proceedings is that the debtor is illiquid, or in cases where the debtor is a corporate entity, either illiquid or over-indebted in terms of insolvency laws. Illiquidity (*Zahlungsunfähigkeit*) means that the debtor is unable to pay its debts in due time and is not in a position to acquire the necessary funds to satisfy its due liabilities within a reasonable period of time. If a corporate entity's liabilities exceed its assets and the company has a negative prospect, the company is considered to be over-indebted in terms of the insolvency law (*insolvenzrechtliche Überschuldung*).

Both debtors and creditors have the right to file a petition for bankruptcy; however, a petition for the commencement of restructuring proceedings can only be filed by the debtor. In addition, once it is apparent that the criteria for commencing bankruptcy proceedings are fulfilled, the debtor is obliged to apply for the opening of bankruptcy or restructuring proceedings without culpable delay, and in any case, no later than 60 (sixty) days. The debtor may already file for the opening of restructuring proceedings in case of threatened illiquidity. Late filing for bankruptcy or omission to do so may result in civil and/or criminal liability.

The purpose of bankruptcy proceedings is to determine the value of the debtor›s estate (*Konkursmasse*), to realize the debtor's assets and to distribute the proceeds among its creditors. The rights of secured creditors remain in principle unaffected. The costs of the insolvency proceedings including the court-appointed bankruptcy receiver's fees rank as priority claims. In effect, the unsecured creditors bear the costs of the proceedings. After liquidation and distribution of the debtor's estate the bankruptcy proceedings are terminated by court order.

However, termination of the bankruptcy proceedings does not have the effect of discharging the unsatisfied claims of creditors which have not been satisfied in full. Creditors with remaining claims which have been verified by the

receiver, or by a court order, may enforce their rights against the debtor with respect to the unsettled portion of their claim for a period of 30 (thirty) years, provided the debtor within such period, comes into possession of any assets. In the case of a corporate debtor, bankruptcy usually leads to the ultimate dissolution of the company, thus preventing later recourse to the debtor for payment of outstanding amounts.

Restructuring proceedings enable the illiquid or over-indebted debtor to continue its business and to be discharged from its debts (*Restschuldbefreiung*) by paying a certain part of the debts. The debtor has to offer a restructuring plan (*Sanierungsplan*) which must be approved by the majority of its (unsecured) creditors and the insolvency court. Rights of secured creditors remain in principle unaffected. The Insolvency Act provides for the following two types of restructuring proceedings:

- In restructuring proceedings where a bankruptcy receiver is appointed (*Sanierungsverfahren ohne Eigenverwaltung*) the debtor loses its right to dispose over its assets and the court-appointed bankruptcy receiver manages the insolvency estate. The debtor must offer a minimum payment of 20% of the debts within a period of 2 (two) years to its unsecured creditors.

- In restructuring proceedings where the debtor retains the right to self-administration (*Sanierungsverfahren mit Eigenverwaltung)* the insolvency court appoints a restructuring administrator that supervises the debtor and has to approve certain transactions. The debtor can be discharged from its debts by paying a minimum quota of 30% to its unsecured creditors within a period of 2 (two) years. Further since 1995, a special insolvency regime has applied to natural persons (entrepreneurs and private individuals). This special insolvency regime became necessary as natural persons facing financial difficulties were often unable to meet the requirements for a restructuring plan and were thus denied the benefit of discharging any claims that exceeded the settlement quota (*Restschuldbefreiung*). At the same time, bankruptcy proceedings did not offer a satisfactory solution to solving their debt problems, since creditors would be able to enforce their rights with respect to unsettled claims against the debtor for a period of 30 (thirty) years. The Insolvency Law Amendment Act 2017 enacted amendments to this special insolvency regime aiming to further facilitate the debt discharge of natural persons.

Insolvency proceedings are conducted by the insolvency court, which is a special unit within each court of first instance (*Gerichtshof 1. Instanz*); except for insolvency proceedings of private individuals which are conducted before the district court (*Bezirksgericht*). A regional exception exists for Vienna where the competent insolvency court is the Commercial Court of Vienna (*Handelsgericht Wien*).

In all types of insolvency proceedings unsecured creditors have to file their insolvency claims within a deadline set by the insolvency court. If a creditor fails to meet this deadline, a further creditor's hearing may be scheduled at the expense of the creditor who failed to meet the deadline.

5. 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 and
- 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

The enforcement of foreign judgments (i.e., non-EU judgments) in Austria is contingent on the issuance of a declaration of enforceability by the competent Austrian court. The enforcement proceedings are governed by the Austrian Enforcement Act (*Exekutionsordnung*).

By virtue of its membership in the EU, the procedure for the enforcement of EU judgments in Austria is subject to a standardized and simplified procedure, which is presently governed by the European Parliament and Council Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters applicable to proceedings instituted, authentic instruments formally drawn up or registered, and court settlements approved or concluded on or after 10 January 2015. For matters before that date, the former Council Regulation No. 44/2001 still applies.

One of the main aims of European Regulation No. 1215/2012 was to limit the scope of forum shopping. The former legal situation allowed parties to stall anticipated proceedings by pre-emptively initiating proceedings in other jurisdictions known for overly lengthy proceedings. For the time the pre-emptively addressed court takes to decide upon its (non)competence over the matter, all other EU Courts are prevented from hearing the case. The amendment battles this strategy (known as the "Italian Torpedo") by strengthening the procedural effect of choice of forum agreements. Consequently, the amendments of the new Regulation have to be taken into account in the wording of contracts.

As a general rule, a judgment rendered in a Member State of the EU is recognized in any other Member State without any special procedure. Notwithstanding this, there are a number of limited grounds on which recognition of a foreign judgment can be denied. These exceptions include cases in which the recognition of a given judgment is manifestly contrary to the *ordre public* of the Member State in which recognition is sought, or when the judgment was rendered in violation of due process.

Other grounds for the denial of recognition are, *inter alia*, if the decision is "irreconcilable with a judgment given between the same parties in the Member State in which recognition is sought", or if the judgment is "irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties", provided that the earlier judgment can be enforced in the Member State in which recognition is sought.

According to the Austrian Supreme Court, the requirement that the foreign judgment be enforceable in the state of origin does not imply a requirement that the title be executed in the country in which it was rendered, but rather that such judgment is only formally enforceable.

Specifically, in order to determine the authenticity of a judgment to be enforced in a given Member State, the party seeking recognition must provide a copy of the judgment, accompanied by a Certificate of Authenticity issued by the court that rendered the decision in the country of origin using the form set out in Annex I of European Regulation No. 1215/2012. The translation of judgments and accompanying documents is not mandatory. However, the court may still order the party to produce a (certified) translation of the judgment and the accompanying documents in the official language of that Member State. Thus, in order to avoid such a delay, attaching a certified translation is highly recommended.

With respect to judgments of foreign/non-EU Member States, the requirement to have the judgment declared enforceable prior to the actual enforcement may turn out to be a rather cumbersome procedure depending on the origin of the judgment. If reciprocity cannot be established, meaning that the foreign state does not enforce Austrian judgments, success is unlikely.

Any decision by a foreign/non-EU court must be declared enforceable by an Austrian court in order for the decision to be enforceable in Austria. The general requirements for the issuance of a declaration of enforceability are:

- the foreign judgment is enforceable in the state in which it was rendered; and,
- reciprocity with the state of origin is established by bilateral treaties or other instruments.

The party must request the declaration of enforceability from the competent District Court, i.e., in general, the District Court of the opposing party's domicile. In addition, the party is required to enclose certified copies of all relevant documents.

However, even if the requirements for enforceability are met, the declaration of enforceability may still be refused if:

- pursuant to Austrian rules on jurisdiction, the foreign court would, under no circumstances, have jurisdiction over the legal matter;
- the opposing party was not properly served with the document that initiated the foreign proceedings;
- the judgment is not formally enforceable;
- the opposing party could not properly participate in the foreign proceedings due to irregularities in the proceedings; or
- the judgment and/or its enforcement violate(s) basic principles of Austrian law (*ordre public*).

The court issues its decision without hearing the opponent. However, the opponent (as well as the requesting party, if enforceability was refused) may file an appeal against the decision within 1 (one) month.

Once the declaration of enforceability is effective, the foreign judgment may be considered equal to domestic enforceable titles. Thus, the request for enforcement of the decision can be submitted to the court and, if approved, the enforcement of the judgment finally takes place. However, it is also possible to include the request for enforcement already in the request for declaration of enforceability. In this case, the court has to decide on both requests at the same time.

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
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases**: *first instance*: 1 year; *second instance*: 6 to 12 months; *third instance*: within 1 year. **Complex cases**: *first instance*: 1 to 3 years; *second instance*: 8 to 18 months; *third instance*: 10 to 18 months.	
APPROXIMATE COSTS		▪ Litigation costs include court fees, attorneys' fees and expenses for expert opinions and witnesses. ▪ Court fees have to be paid upon filing the claim. ▪ Court fees in the first and second instance are to be paid by the party filing the claim/appeal. ▪ If a claim is filed by a foreign party and enforcement of a decision on reimbursement of litigation costs is not safeguarded, the foreign party can be ordered to pay a security deposit. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, reimbursement of attorney fees will only be made on the basis of the fees provided for in the Act on Attorneys' Tariffs. ▪ The actual attorney fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are not part of the reimbursement. ▪ Agreements on *Quota litis* and contingency fees are generally prohibited for Austrian lawyers in all types of proceedings.
COURT FEES	Court fees are based on the Court Fees Act and depend on the amount in dispute. Examples: Amount in dispute EUR 500,000: Court fees: EUR 9,488 in first instance; Amount in dispute EUR 1,000,000: Court fees: EUR 15,488 in first instance; Amount in dispute EUR 5,000,000: Court fees: EUR 63,488 in first instance.	
ATTORNEYS' FEES (NET) *SIMPLE CASE*	**Assumptions based on an amount in dispute of EUR 1,000,000** (based on the Austrian Act on Attorneys' Tariffs plus hourly rates): *First instance*: in total EUR 35,000 to 50,000, incl. preparation of two briefs, four hearings with a duration of 1h, 2h, 4h, and 6h, preparation of hearings/meetings with client, witnesses, correspondence with client; *Second instance*: in total EUR 8,000 to 20,000; incl. one brief, no hearing; *Third instance*: in total EUR 7,000 to 18,000; incl. one brief, no hearing.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000** (based on the Austrian Act on Attorneys' Tariffs plus hourly rates): *First instance*: in total EUR 75,000 to 250,000, incl. preparation of 4 comprehensive briefs, six hearings with duration of 2h, 4h, and 4 x 8h, preparation of hearings/meetings with client, witnesses, correspondence with client; *Second instance*: in total EUR 30,000 to 60,000, incl. one brief, no hearing; *Third instance*: in total EUR 25,000 to 50,000, incl. one brief, no hearing.	
JURY TRIALS	There are no civil jury trials in Austria.	

CLASS ACTIONS	Limited.	
DOCUMENT PRODUCTION	Limited.	▪ There is no formal discovery system in Austria. ▪ Documents are subject to disclosure if a party itself referred to the document in the course of the proceedings. The party is obliged to hand over the document by substantive law, or the document is qualified as a "joint deed" between the parties. ▪ A court order to produce such documents is not enforceable. Failure to comply with a court order can only be considered by the court in its evaluation of the case.
MANDATORY REPRESENTATION BY COUNSEL	Generally, yes.	▪ In cases before District Courts where the amount in dispute is lower than EUR 5,000, or in matters where District Courts have exclusive jurisdiction (e.g. family matters, tenancy), representation by an attorney at law is not mandatory. ▪ In matters where District Courts have exclusive jurisdiction representation is not mandatory, however, if representation is wanted it must be by an attorney at law. In other cases, the person can be represented by a non-lawyer.
PRO BONO SYSTEM	Yes.	There is legal aid for natural persons as well as legal entities who cannot afford the costs of legal proceedings.
BUSINESS CRIME		
APPROXIMATE DURATION	There are no statistics available regarding the duration of criminal proceedings concerning charges of business crime and/or corruption. In general, criminal investigations may take 1 to 3 years; first instance proceedings (calculated from the indictment to the first instance court's decision in writing) may take 6 to 12 months; appellate proceedings may take another 6 to 18 months. If the matter is remitted to the first instance, the entire case will have to be reheard by another judge/panel. It has to be stressed that complex cases regarding charges of business crime and corruption may easily take 5 to 10 years.	
APPROXIMATE COSTS	It is close to impossible to provide a general and serious estimation of the costs of criminal proceedings. The complexity of the case is a major factor but also ▪ whether the investigation is closed or the case is actually tried; ▪ the location of the office of the public prosecution authority conducting the investigation/of the court conducting the main proceedings; ▪ the number of suspects and other parties; ▪ the necessity of private expert opinions/expert testimony (e.g., forensic accountants); ▪ the necessity of translations and/or international judicial assistance; ▪ whether the case is in the public eye, etc.	

	The following approximate costs are based on the assumption that no expert opinions or expert testimonies are required: For the party initiating and joining such proceedings as an injured party, the costs for the criminal investigation as well as the first instance proceedings may easily range from EUR 10,000 to EUR 50,000 and from EUR 5,000 to 20,000 for potential appellate proceedings. There are no court fees. For the party subject to criminal proceedings, the costs for the criminal investigation may easily range from EUR 75,000 to EUR 250,000; for the first instance proceedings from EUR 50,000 to EUR150,000, and for appellate proceedings from EUR 30.000 to EUR 75,000. Suspects who are (fully) acquitted are eligible for a "contribution" to his/her legal fees; the maximum contribution is limited to EUR 5,000 (irrespective of the actual costs) plus cash outlays (e.g. costs for copies of the file).	
JURY TRIALS	Most cases of corruption and/or business crime are heard by a single judge or a panel consisting of one professional judge and two lay judges. In general, only capital offenses and certain political offenses will be heard by a jury.	
CLASS ACTIONS	Not applicable in criminal proceedings.	
DOCUMENT PRODUCTION	Yes. Certain evidence may not be gathered by (order of) the prosecution without prior court approval (e.g. banking information).	Limited privilege: Austria provides only limited legal privilege regarding attorney work products and client-attorney correspondence. Such documents will only enjoy privilege if they are physically located within the realm of the attorney. Consequently, if such document is found e.g. in the offices of the client, it will not be protected by professional legal privilege.
MANDATORY REPRESENTATION BY COUNSEL	Presentation by counsel is mandatory in (i) the criminal investigation for as long as the suspect is held in investigative custody; (ii) in the main proceedings if the potential penalty exceeds three years of imprisonment; and (iii) in (most) appellate proceedings.	
PRO BONO SYSTEM	Yes. There is legal aid for natural persons as well as legal entities who cannot afford the costs of legal proceedings.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	Generally, a decision on a request for a preliminary injunction is rendered between 1 day and 3 weeks. *Appellate proceedings*: 1 to 3 months in second instance and 2 to 4 months in third instance.	▪ With the request for a preliminary injunction, the applicant must provide available evidence, such as documentary evidence and affidavits that can be immediately examined by the court. ▪ Foreign-language documents should be presented with German translations.
APPROXIMATE COSTS **COURT FEES**	If the request for a preliminary injunction is applied for with the original complaint, no extra court fees have to be paid. If the request for a preliminary injunction is filed outside the main proceedings, the court fees are reduced to half in first instance. Only in some exceptional cases, the full court fees of second and third instance apply for appeals.	▪ Witnesses should be readily available, so that they can appear on short notice before the court. ▪ The court may order the applicant to pay a security deposit. In practice, it is advisable to offer a security deposit if the demonstration of the claim faces challenges. ▪ No litigation costs will be awarded to the applicant in preliminary injunction proceedings. ▪ Costs incurred by a successful applicant in preliminary injunction matters can only be sought in the main proceedings.

ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Assumptions: only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent:** EUR 4,000 to 8,000 in *first instance*; *second instance*: one brief, no hearing: EUR 6,000 to 10,000; *third instance*: one brief, no hearing: EUR 6,000 to 10,000.	
COMPLEX CASE	**Assumptions: apart from filing the request for a preliminary injunction, two comprehensive counter statements are filed in reply to two statements of opponent; witnesses are heard**: total costs (including meetings with client/witnesses) of *first instance*: EUR 30,000 to 50,000; *second instance*: one brief, no hearing: EUR 20,000 to 45,000; *third instance*: one brief, no hearing: EUR 20,000 to 45,000.	
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.
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).	
PROCEDURAL COSTS		
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.	▪ 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.
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 tripe.	

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 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 JUDGMENTS AND ARBITRAL AWARDS		
APPROXIMATE DURATION	It takes around 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.	▪ Under the European Regulation No. 1215/2012, the party that seeks recognition/enforcement must submit a copy of the judgment which should be accompanied by a Certificate of Authenticity issued by the court that rendered the judgment. ▪ It is highly recommended to attach a translation of the judgment in order to avoid any delays.

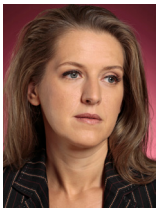
APPROXIMATE COSTS		
COURT FEES	The court fees for declaration of enforceability (and execution) are the same as those for execution of domestic judgments. They depend on the amount in dispute and whether the creditor seeks execution in movable and/or immovable assets. As a rule of thumb, for disputes above EUR 70,000, the court fees vary between 0.25% and 0.60% of the amount in dispute.	▪ Judgments that fall outside the scope of the application of the European Regulation must be submitted in original form or in copy issued by the court that rendered the judgment. ▪ Furthermore, a certified translation of the judgment must be submitted. ▪ 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.
ATTORNEYS' FEES (NET)	Application for recognition/ enforcement: *Simple case*: up to EUR 2,000 *Complex case*: up to EUR 10,000	
INSOLVENCY PROCEEDINGS		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	The commencement of insolvency proceedings is published by edict on the website of the Austrian Ministry of Justice under http://www.edikte.justiz.gv.at. In the edict, the period for filing of insolvency claims is set.	
APPROXIMATE DURATION	1 year to several years; in very complex cases, a duration of more than 10 years is possible.	
APPROXIMATE COSTS		
COURT FEES	Court fees of EUR 23 for each filing.	
ATTORNEYS' FEES (NET)	Filing of insolvency claim: *Simple case*: EUR 500 to 1,000. *Complex case*: EUR 3,000 to 10,000.	

This chapter was written by Valerie Hohenberg, Eva Spiegel, Angelika Hellweger and Venus Valentina Wong

VALERIE HOHENBERG
Partner

Wolf Theiss, Austria

T. +43 1 51510 5021
valerie.hohenberg@wolftheiss.com



EVA SPIEGEL
Partner

Wolf Theiss, Austria

T. +43 1 51510 5020
eva.spiegel@wolftheiss.com

ANGELIKA HELLWEGER
Counsel

Wolf Theiss, Austria

T. +43 1 51510 5202
angelika.hellweger@wolftheiss.com

VENUS VALENTINA WONG
Counsel

Wolf Theiss, Austria

T. +43 1 51510 5755
valentina.wong@wolftheiss.com

WOLF THEISS

BOSNIA & HERZEGOVINA

1. LEGAL SYSTEM

The state of Bosnia and Herzegovina (BiH) consists of two entities – the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS), and a special autonomous district under the direct sovereignty of the state – the Brčko District (BD). The entities have their own set of relatively distinct laws, but some matters are regulated by national laws which apply to both entities.

Court organization, jurisdiction, financing of courts and other related issues in BiH are regulated at the entity level, in FBiH by the Law on Courts in FBiH (*Zakon o sudovima u Federaciji Bosne i Hercegovine*) and in RS by the Law on Courts of RS (*Zakon o sudovima Republike Srpske*).

In 1998, BiH began with a reform of its judicial system which is still ongoing. Although significant progress has been made since then, the reform process and implementation of the new laws has been generally slow and inconsistent, mainly due to the high number of unresolved cases and inadequate training and education of judges in the new procedural legislation. Consequently, court practices and procedures tend to vary significantly from court to court and judge to judge.

The FBiH court structure consists of Municipal Courts (*Općinski sudovi*), Cantonal Courts (*Kantonalni sudovi*) and the FBiH Supreme Court (*Vrhovni sud FBiH*). All civil and commercial disputes, as well as bankruptcy proceedings, enforcement proceedings and the registration of companies, including all related issues, are within the competence of the Municipal Courts. However, it should be noted that commercial disputes can only be brought before Municipal Courts which have a commercial division. Under the Law on Courts in FBiH, a commercial dispute is considered to be any dispute between business companies and/or entrepreneurs related to the trade of goods, services, securities, real estate etc., disputes related to ships and sailing (except passenger transport), aircrafts and air traffic (except passenger transport), industrial property and copyrights, trusts and commercial offences.

Appeals against judgments of the Municipal Courts may be filed with the competent Cantonal Court. Aside from appeals, Cantonal Courts are first instance courts in criminal matters related to major crimes. In addition, the Cantonal Courts have exclusive competence to resolve jurisdictional conflicts between the Municipal Courts and are the courts of first instance for the recognition of foreign judgments. The FBiH Supreme Court is the highest appeals court and has exclusive competence to hear appeals from judgments of the Cantonal Courts. The FBiH Supreme Court also resolves jurisdictional conflicts between lower courts from different Cantons in FBiH.

The commercial courts in RS are competent to resolve disputes and matters in civil and extra-ordinary proceedings, which relate to issues arising out of contracts concluded between legal entities regarding legal transactions involving goods, services, securities, ownership and other rights as well as for disputes and matters related to bankruptcy, ships, planes, copyrights, foreign investments, establishment of legal entities, etc. The commercial courts are established at two levels: six first instance District Commercial Courts and one second instance Higher Commercial Court, with its seat in Banja Luka, which decides on appeals against decisions of the District Commercial Courts as well as on competency issues and the establishment of legal standards for the uniform application of laws.

The RS court structure consists of: (i) 28 Basic Courts (*Osnovni sudovi*) which have authority in criminal, civil and enforcement proceedings under conditions set out in the Law on Courts in RS; (ii) six District Courts (*Okružni sudovi*); (iii) six District Commercial Courts (*Okružni privredni sudovi*); (iv) the Higher Commercial Court (*Viši privredni sud*); and (v) the Supreme Court of RS (*Vrhovni sud RS*). Appeals against awards of the Basic Courts may be filed with the competent District Courts. Aside from appeals, District Courts are also first instance courts for major crimes, administrative disputes and the recognition of foreign court judgments/arbitral awards. The highest appeals court in RS is the Supreme Court, with essentially the same competences as the FBiH Supreme Court.

Both entities have Constitutional Courts, the competency of which is to uphold the respective entity constitutions.

The BiH judicial system consists of the following state-level judicial institutions: the Court of BiH (*Sud BiH*) and the Constitutional Court of BiH (*Ustavni sud BiH*). The Court of BiH has three divisions: Criminal Division, Administrative Division and Appellate Division, and is, *inter alia*, competent for the prosecution of war crimes, organized crime, commercial crime, corruption and violations of election laws. The Constitutional Court of BiH is competent to support and protect the Constitution of BiH, which includes cases when a violation of human rights is alleged due to a judgment or decision of any judicial institution in BiH. The Constitutional Court is not a part of the legislative, executive or regular judicial authorities but is positioned under the BiH Constitution as a special and independent authority which operates, based on the Constitution, as the correction factor for all three segments of the authority.

2. LITIGATION

The FBiH Civil Procedure Act (*Zakon o parničnom postupku FBiH*) and RS Civil Procedure Act (*Zakon o parničnom postupku RS*), were enacted in 2003 to accelerate and simplify civil litigation proceedings and enhance the efficiency of the BiH courts. The Acts, to a large extent, correspond to each other, but in practice the courts may slightly differ in the manner in which the various provisions are applied. The litigation process begins by delivering the lawsuit to the defendant. The defending party has the right to respond to allegations set forth in the lawsuit. All communications between the parties are generally made through the court in a written form, apart from direct oral communications during court hearings.

Generally, the litigation process entails two hearings: a preparatory hearing (*pripremno ročište*), and a main hearing (*glavna rasprava*), after which the court renders its judgment. An unsatisfied party may file an appeal against the award of the court of first instance to the competent Cantonal Court in FBiH or District Court/Higher Commercial Court in RS, but only for one of the reasons provided for in the relevant code of civil procedure. Decisions issued by the second instance court may be challenged before the relevant Supreme Court for a limited number of reasons set forth in the respective civil procedure codes and only if the amount in dispute exceeds BAM 30,000 (approximately EUR 15,000) or BAM 50,000 (approximately EUR 25,000) for commercial disputes in FBiH and RS.

Although the FBiH Civil Procedure Act and RS Civil Procedure Act provide for relatively expedited court proceedings, in practice litigation may last several years, due to the backlog of cases before the courts throughout BiH.

Litigation costs typically include court fees, attorneys' fees, remuneration for experts and witnesses, translation expenses, etc., which may in the aggregate be substantial, depending on the amount in dispute. The losing party is obligated to reimburse all costs of the proceedings to the successful party at the conclusion of the proceedings.

3. BUSINESS CRIME

Criminal acts are generally regulated by criminal codes (*krivični zakon*) adopted at both entity and state levels, as well as at the level of BD, while rules of criminal procedure are provided in the criminal procedure codes (*zakon o krivičnom postupku*) also adopted at entity, state and BD level. Due to the process of harmonization of criminal procedure codes within BiH which started in 2003, all these legal acts in principle provide for substantively the same rules of criminal procedure.

The criminal codes of BiH, FBiH, RS and BD provide for a set of criminal acts which can be classified as business crimes, i.e., criminal acts against commerce, business and security of money transfers. In addition, the relevant codes also define criminal acts of bribery (corruption), as well as tax-related criminal acts. This group of crimes includes acts, *inter alia*, causing bankruptcy, damaging creditors, creating a monopoly position on the market, revealing business secrets, counterfeiting money or securities, money laundering, illicit trade and production, etc.

In addition to the liability of natural persons, the relevant criminal codes also regulate the criminal liability of legal entities, which can be penalized with monetary fines, seizure of property or liquidation of the legal entity. In general, a legal entity is liable for criminal acts committed on the territory of BiH. In general, a legal entity can be liable for criminal acts that its legal representative committed in the name and for the account of such legal entity, in situations defined by the respective criminal code.

As previously outlined, the criminal procedure in BiH is governed by the criminal codes of BiH, FBiH, RS and BD. In general, the criminal procedure consists of three stages: investigation, denunciation and the main hearing. The procedure is initiated by the prosecutor who is authorized to issue an order for an investigation, if it finds that there are reasons to doubt (*osnovi sumnje*) that a criminal act has been committed. Providing that the investigation results in sufficient material (e.g. supporting evidence) confirming that there is reasonable doubt (*osnovana sumnja*) that a criminal act has been committed and who the offender is, the prosecutor will commence the denunciation phase of the procedure by raising an indictment.

The indictment is submitted to the competent court in writing. Upon receipt of the indictment, the court passes a decision confirming or rejecting all or certain allegations of the submitted indictment. If the court confirms the indictment entirely or partially, it schedules a main hearing where the prosecutor and the defendant may present their cases, by submitting documents, examining fact and expert witnesses, etc., and through closing arguments. The first instance procedure is terminated after the court renders the judgment.

The judgment is based on the facts and evidence presented by the parties during the main hearing. An unsatisfied party may file an appeal to the competent Cantonal Court in FBiH or District Court in RS, for the reasons provided in the relevant codes of criminal procedure. Judgments of the appellate courts may further be challenged before the relevant Supreme Courts of FBiH and RS for a limited number of reasons. In BD, an unsatisfied party may file an appeal to the BD Appellate Court, while an appeal against decisions of the BiH Court can be filed with the Appellate Council of the BiH Court.

Generally, the prosecutor plays the key role in criminal proceedings as the criminal procedure can be initiated and conducted only on the basis of a prosecutor's request. In the course of the procedure, the prosecutor undertakes actions for which it is authorized by law. An illustrative example is the prosecutor's role in the investigation procedure. In particular, a prosecutor is authorized to undertake all investigation activities, including questioning the suspect and hearing the injured party, performing inspections and reconstructions of events, undertaking special measures which ensure the safety of the witnesses and information, and ordering the necessary expertise, in accordance with the rules stipulated in the relevant criminal procedure codes.

In any case, the prosecutor can undertake actions either alone or through persons who are legally obliged to act on the basis of the prosecutor's orders. In that respect, the prosecutor supervises the work of the authorized officers (e.g. police officers), i.e. persons who have adequate authorization within, *inter alia*, the police bodies of BiH, including the State Agency for Investigation and Protection, State Border Agency, and the police bodies of the competent ministries of internal affairs. Moreover, the prosecutor is authorized to request information from the state authorities, business companies, legal entities and natural persons, all of whom are obliged to notify the prosecutor of any actions undertaken and to act on the basis of its orders.

Generally, under the relevant laws, an injured person – i.e., a person whose personal or proprietary rights have been violated or jeopardized by the committed criminal act – is typically considered as a victim and as such, has certain rights and obligations in the course of the criminal procedure.

In principle, the damaged person is entitled to be notified if the investigation will not be conducted or if the investigation has been suspended in order to be able to file an objection to the relevant decisions; to be examined as a witness (which is usually the case); to be present during the hearing of fact and expert witnesses; to file an appeal against the court's judgment with regard to the costs of the criminal procedure and its property-related claim, etc. In any case, one of the important rights of the injured party is the right to file a property-related claim for example for compensation for damages, return of goods or the annulment of certain legal transactions.

If the court passes a decision finding the accused guilty, it can adjudicate the property-related claim entirely or partially. In case the court passes a decision finding the accused not guilty, it will further refer the injured party to claim its property-related claims in the course of civil litigation proceedings. In any case, the court may propose that the involved parties settle the claim in a mediation procedure. In practice, courts in BiH rarely decide on property-related claims filed in criminal proceedings stating that deciding on this issue would unnecessarily prolong the criminal procedure. Therefore, the injured party is usually referred to civil proceedings to claim damages.

In principle, evidence used in criminal proceedings may be used in the civil procedure as well. Under the relevant codes on civil procedure, the court is, with regard to the existence of a criminal act and the criminal liability of the offender, bound by the final decision of the court finding the accused person guilty.

Although the BiH, FBiH, RS and BD criminal procedure codes provide for relatively expedited court proceedings, depending on the backlog of pending cases before the relevant courts and the circumstances of the given case, in practice criminal proceedings last for at least 1 (one) year, with the exception of certain aspects of the criminal procedure, such as the issuance of the warrant for pronouncement of sentence (*kazneni nalog*), or the procedure for admission of guilt and plea bargaining which is quite often used in practice.

The costs of the criminal procedure typically include attorneys' fees, detention costs, remuneration for experts and witnesses, translation expenses, etc. The court determines and sets the amount of court fees in the court judgment for each individual case.

If the accused is found guilty, it will bear all costs of the procedure. On the other hand, if the accused is found not guilty, the costs of the procedure are borne by the state/entity/district budget.

4. INSOLVENCY

In BiH, bankruptcy proceedings are regulated by the FBiH Bankruptcy Act (*Zakon o stečajnom postupku FBiH*), and the RS Bankruptcy Act (*Zakon o stečaju RS*). The Acts are generally consistent and provide for a rather creditor-friendly insolvency system. Also, the new RS Bankruptcy Act regulates the new institutes for debt restructuring and sale of the debtor as a legal entity.

Under the BiH bankruptcy system, a company is deemed insolvent and is obligated to enter into a bankruptcy procedure if the company is unable to meet all of its outstanding debts, within the period defined in the bankruptcy acts. Consequently, this may mean that a company that is capable of paying some of its debts, but not all, may be considered to be insolvent. In FBiH, a company must enter into bankruptcy proceedings if it has been incapable of paying its debts (i.e. legally insolvent) for a period of 30 (thirty) days. In RS, the insolvency period is 60 (sixty) days. In addition, both the FBiH and RS bankruptcy acts require compulsory filing for bankruptcy in certain defined cases.

The bankruptcy procedure is under the jurisdiction of the Municipal Courts in FBiH, and the District Commercial Courts in RS. Bankruptcy proceedings are controlled by a single bankruptcy judge (*stečajni sudija*). The bankruptcy procedure is initiated with the filing of a petition by the company or any of its creditors. In FBiH, a company engaged in the production of weapons and military equipment can be "pushed" into bankruptcy only upon the approval of the FBiH Ministry of Energy, Mining and Industry. The approval shall be deemed granted if the competent ministry is silent for more than 30 (thirty) days. If the ministry denies its approval, the FBiH will jointly and severally be liable with the company for the company's debts. In RS, to initiate a bankruptcy procedure against a company in which the state owns the majority of the share capital, the approval of the RS Government is required if (i) the company is in the process of restructuring by the RS Direction for Privatization; or (ii) until a privatization sale process, that has already been initiated, is completed and all deadlines for fulfilment of the buyer's contractual obligations have expired. The approval shall be deemed granted if the RS Government is silent for more than 30 (thirty) days.

The new RS Law on Bankruptcy entered into force on 10 March 2016. The most significant novelties introduced by the law are

- the possibility of restructuring the debtor – as a legal entity – without having to initiate bankruptcy proceedings; and
- the possibility of selling the bankruptcy debtor as a whole in the course of the bankruptcy proceedings.

The restructuring enables an insolvent debtor to consolidate and continue with its business operations in accordance with an operational and financial restructuring plan approved by the creditors who participate in the restructuring proceedings. Furthermore, the sale of the insolvency debtor as a whole in the course of the bankruptcy proceedings also provides for the possibility that the bankruptcy debtor survives bankruptcy proceedings. Namely, in case of such sale, the bankruptcy proceedings shall be terminated in respect of the bankruptcy debtor and the bankruptcy debtor keeps its assets. The proceeds of the sale become part of the bankruptcy estate and are shared among the bankruptcy creditors.

In addition to the above, the new RS Law on Bankruptcy provides a higher level of protection of the rights of employees comparing to the previous law, since employee claims - up to the amount of 12 gross minimum salaries - are classified as the high priority claims.

After the petition for bankruptcy has been filed with the court, the bankruptcy judge will initiate the preliminary bankruptcy procedure and appoint a preliminary bankruptcy administrator (*privremeni stečajni upravnik*) who will audit the company's business records and determine if the basis for bankruptcy exists. In the event the preliminary bankruptcy administrator determines the company is insolvent and should enter into bankruptcy proceedings, the bankruptcy judge will commence the bankruptcy procedure, appoint a bankruptcy administrator, and set out dates for the notification of claims and court hearings. All creditors must announce their claims within the period of time that is stipulated.

After the bankruptcy judge initiates the proceedings, all rights and responsibilities of the company's management are transferred to the bankruptcy administrator by law. All court and arbitration proceedings related to the company's property and assets are suspended thereafter, and can be continued only in certain cases as set out in the bankruptcy laws. The court registers must be notified of the opening of the bankruptcy procedure and the words "in bankruptcy" (*u stečaju*) will be added to the company's name. In RS, a decision to commence bankruptcy proceedings will also be delivered to the relevant stock exchange if the company is listed.

After appointment, the bankruptcy administrator is obliged to draft lists of the company's assets and its creditors. Pursuant to the claims of the creditors, the administrator then classifies the claims into payment orders or ranks (*isplatni redovi*). A competent assessor must assess the company's assets. In practice, the assessed value is always lower than the real market value which is why it is rarely possible to repay and satisfy the full amount of a company's debts through bankruptcy proceedings.

Under the BiH bankruptcy system, creditors are entitled to decide on the settlement of their claims, i.e., if they will undergo asset sale and liquidation or if they will opt for the reorganization of the company. The reorganization of a company is an important novelty in the BiH bankruptcy system and has provided for better long-term settlement of claims. At the same time, the insolvent company gets an opportunity to continue its business activities and overcome its difficulties.

Upon the request of creditors, a reorganization plan may be drafted and submitted to the bankruptcy court by the insolvent company before the commencement of the bankruptcy procedure or the appointment of a bankruptcy administrator. If the creditors and the insolvent company adopt the plan, the bankruptcy proceedings will be suspended and the company will continue its business under the supervision of the bankruptcy administrator, creditors and bankruptcy judge.

Petitioners for a bankruptcy are usually required to deposit, in advance, a certain amount of money to cover the costs of the bankruptcy procedure (the amount of deposit varies). The deposit will be remunerated later out

of the bankruptcy estate including all other expenses of the procedure. The bankruptcy procedure for banks is somewhat different from the general bankruptcy procedure and is regulated by the FBiH and RS Laws on Banks. The procedure is administered and supervised by the FBiH and RS banking regulators.

5. 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 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

A foreign court judgment can be enforced in BiH only after it has been recognized by the competent BiH courts. BiH courts will recognize a foreign judgment if the following conditions are satisfied:

- the foreign judgment is legally valid and enforceable in the foreign state where the judgment was rendered;
- the party against which the judgment was rendered had the right to participate in the proceedings;
- the competent court in BiH has not already decided on the subject matter of the foreign judgment and/or it has not already recognized a foreign judgment for the same subject matter;
- there is reciprocity of recognition between BiH and the foreign state that rendered the judgment; and
- the subject matter of the foreign judgment is not under the exclusive competence of the BiH courts.

The existence of reciprocity is presumed, until proven otherwise, but in the event of doubt, the court will request clarification from the Ministry of Justice (it is common under the current court practice that factual reciprocity is required, rather than legal). Also, the foreign award must not contradict the BiH Constitution, the FBiH Constitution or RS Constitution and/or public order.

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
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases in both FBiH and RS**: *first instance*: 1 to 2 years; *second instance*: 6 months to 2 years; *third instance*: 1 to 2 years. **Complex cases in both FBiH and RS**: *first instance*: 2 to 5 years; *second instance*: 1 to 3 years; *third instance*: 1 to 3 years.	▪ Duration and costs of standard civil proceedings initiated before the first instance courts in FBiH/ RS differ to a great extent from municipality to municipality and usually depend on practice and backlog of cases at the respective court. ▪ Litigation costs include court fees, attorney fees and expenses (e.g. expert opinions, travel expenses for witnesses). ▪ Court taxes in the first and second instances are to be paid by the party filing the statement of claim or the appeal. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. However, the losing party will only reimburse the minimum amount in accordance with the relevant regulation, regardless of the amount agreed between the winning party and its attorney which may be significantly higher. The actual attorney fees of a party (depending on the fee agreement between attorney and client) may thus be substantially higher, but are of no relevance to the opposing party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. ▪ Agreements on *Quota litis* are generally prohibited for BiH lawyers in all types of proceedings. ▪ It should be noted that in FBiH, there is a limit imposed by the parliament as to the amount that can be charged by an attorney for a single action (preparation of lawsuit, representation at a hearing, etc.). This amount corresponds to the average salary in FBiH, which is currently around BAM 800 (approx. EUR 400).
APPROXIMATE COSTS **COURT FEES**	**Court fees are based on the canton laws on court fees** and depend on the amount in dispute. Please note that court fees in FBiH can vary from canton to canton. **Examples for Canton Sarajevo:** ▪ If the amount in dispute is up to BAM 1,000 (approx. EUR 500): 5% of the amount in dispute for lawsuit and judgment, double that amount for an appeal; ▪ If the amount in dispute is up to BAM 5,000 (approx. EUR 2,500): 4% of the amount in dispute for lawsuit and judgment, double that amount for an appeal; ▪ For amounts in dispute above BAM 5,000 (approx. EUR 2,500): 3% but not exceeding the amount of BAM 10,000 (approx. EUR 5,000) for lawsuit and judgment, double that amount for an appeal. **Examples for RS:** ▪ For an amount in dispute between BAM 10,000 to BAM 50,000 (approx. EUR 5,000 to EUR 25,000): BAM 500 (approx. EUR 250) for lawsuit and judgment, double that amount for an appeal; ▪ For an amount in dispute between BAM 50,000 to BAM 100,000 (approx. EUR 25,000 to EUR 50,000): BAM 1,000 (approx. EUR 500) for lawsuit and judgment, double the amount for an appeal;	

	▪ For amounts in dispute exceeding BAM 100,000 (approx. EUR 50,000): 1% but not exceeding BAM 10,000 (approx. EUR 5,000) for lawsuit and judgment, double that amount for an appeal.	▪ The actual attorneys' fees may be higher (depending on the agreement with the client), but this has no influence on the obligation of the losing party to reimburse the costs to the winning party.
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**FBiH: Assumptions based on an amount in dispute of BAM 1,000,000 (approx. EUR 500,000):** *first instance*: preparation of lawsuit BAM 12,600 (approx. EUR 6,300); preparation and presence at preliminary hearing (meetings with client, witnesses, correspondence with client, etc.) BAM 12,600 (approx. EUR 6,300); preparation and presence at main hearing BAM 12,600 (approx. EUR 6,300); in total BAM 37,800 (approx. EUR 18,900); *second instance*: drafting appeal, no hearing: BAM 15,750 (approx. EUR 7,875); *third instance*: one brief, no hearing: BAM 18,900 (approx. EUR 9,450). **RS: Assumptions based on an amount in dispute of BAM 1,000,000 (approx. EUR 500,000)**: *first instance*: preparation of lawsuit BAM 2,000 (approx. EUR 1,000); preparation and presence at preliminary hearing (meetings with client, witnesses, correspondence with client, etc.) BAM 2,000 (approx. EUR 1,000); preparation and presence at main hearing BAM 2,000 (approx. EUR 1,000); In total BAM 6,000 (approx. EUR 3,000); *second instance*: drafting appeal, no hearing: BAM 3,000 (approx. EUR 1,500); *third instance*: one brief, no hearing: BAM 3,000 (approx. EUR 1,500).	
COMPLEX CASE	**RS: Assumptions based on an amount in dispute of BAM 10,000,000 (approx. EUR 5,000,000)**: *first instance*: preparation of lawsuit BAM 2,000 (approx. EUR 1,000); preparation and presence at preliminary hearing (meetings with client, witnesses, correspondence with client, etc.) BAM 2,000 (approx. EUR 1,000); preparation and presence at main hearing BAM 2,000 (approx. EUR 1,000); In total BAM 6,000 (approx. EUR 3,000); *second instance*: drafting appeal, no hearing: BAM 3,000 (approx. EUR 1,500); *third instance*: one brief, no hearing: BAM 3,000 (approx. EUR 1,500).	

JURY TRIALS	There are no jury trials in BiH.
CLASS ACTIONS	Limited. The FBiH Law on Civil Proceeding does not provide for a special proceeding for collective redress. Traditional tools of multiparty practice such as joinder and consolidation of proceedings are applied. Consumer organizations often have similar claims of several consumers assigned to them and may file one complaint. Apart from the traditional tools of multiparty service, the latest amendments of the RS Law on Civil Proceedings introduced a possibility of collective redress. In particular, associations, authorities, institutions or other organizations organized under the relevant laws, which are established for the protection of legally defined collective rights and interests of citizens, can file a claim for the protection of such rights and claims to the competent court. These rights can be interests related to environment protection, moral, ethical, consumer or antidiscrimination and other rights which are defined by the relevant laws and that can be harmed or jeopardized by a business activity or by a general action. The claim may be filed against a natural person or a legal entity that, by performing a certain commercial activity or by acting (*radom*) or not acting, severely harms or jeopardizes the relevant collective rights and interests.
DOCUMENT PRODUCTION	Yes. Documents are subject to disclosure. If a party itself referred to the document in the course of the proceedings, the party is obliged to hand the document over by substantive law or the document is qualified as a "joint deed" between the parties. A court order to produce such documents is not enforceable. Failure to comply with the order can only be considered by the court in its evaluation of the case. The court may, however, order a third party to disclose certain documents if such party is obliged to disclose it by substantive law, or the document is qualified as a "joint deed" between such third party and a party to the proceeding that initiated the disclosure. Such order can be enforced in accordance with the Law on Enforcement Proceedings.
MANDATORY REPRESENTATION BY COUNSEL	No. The representation by a counsel is not mandatory in civil proceedings.
PRO BONO SYSTEM	Yes. There is legal aid available to those who cannot afford the costs of legal proceedings.
BUSINESS CRIME	
APPROXIMATE DURATION	Although the BiH, FBiH, RS and BD criminal procedure codes provide for relatively quick court proceedings, depending on the backlog of pending cases before the relevant courts and the circumstances of a given case, in practice criminal procedures may last for at least one year, with the exception of certain aspects of the criminal procedure, such as the procedure of issuance of warrant for the pronouncement of a sentence (*kazneni nalog*), or the procedure for admission of guilt and plea bargaining.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES** *SIMPLE CASE*	According to FBiH and RS law, the costs for criminal procedures typically include attorneys' fees, detention costs, remuneration for experts and witnesses, translation expenses, etc. The court determines and sets out the amount of court fees in the court judgment for each individual case. If the accused is found guilty, it will bear all costs of the procedure. On the other hand, if the accused is found not guilty, the costs of the procedure are borne by the state/entity's/district budget. **FBiH: Assumptions based on the criminal procedure before a sole judge of a municipality court.** *Investigation procedure*: representation of the suspect during questioning: BAM 300 (approx. EUR 150) for the first hour and BAM 60 (approx. EUR 30) for every following hour of the questioning; participation as defence attorney in the activities pertaining to collection of evidence (e.g. search of an apartment, facilities, persons, etc.):

	BAM 150 (approx. EUR 75) for the first hour and BAM 60 (approx. EUR 30) for every following hour of the evidence activities; participation as defence attorney in the investigation procedure: BAM 60 (approx. EUR 30) per hour. *First instance*: objection to the indictment: BAM 300 (approx. EUR 150); representation of the accused: BAM 300 (approx. EUR 150); in cases when the main hearing lasts longer then one day, the attorney is entitled to BAM 300 (approx. EUR 150) for the first day of the hearing and 50% of the fee for the second and every following day of the main hearing and BAM 60 (approx. EUR 30) per hour from the second hour onwards of the main hearing. *Second instance*: defence of the suspect before a panel of judges in second instance; BAM 900 (approx. EUR 450); drafting an appeal: BAM 300 (approx. EUR 150). **RS: Assumptions based on the criminal procedure before a sole judge of the basic court:** *Investigation procedure*: for partici-pation in the investigation procedure, plea bargaining and admission of guilt: BAM 200 (approx. EUR 100). *First instance*: for drafting petitions upon confirmation of the indictment and during the main hearing: BAM 100 (approx. EUR 50); objection to the indictment: BAM 150 (approx. EUR 75); defence of the accused and representation of the accused at the main hearing: BAM 200 (approx. EUR 100). *Second instance*: for drafting an appeal: BAM 150 (approx. EUR 75).	
COMPLEX CASE	**In FBiH:** in particularly complex cases, for attorneys appointed by the court, the court will approve a lump sum exceeding the attorneys' fees defined by the FBiH Attorneys' Tariff. **In RS:** attorneys' fees can be increased up to 100% if, *inter alia*, the case requires special expertise or specialized knowledge or if the case is particularly complex.	
JURY TRIALS	No. There are no jury trials in BiH.	
CLASS ACTIONS	No. Class actions are not possible in criminal proceedings.	
DOCUMENT PRODUCTION	Yes. During the investigation, the defence attorney may review the documents and any obtained objects which are in favour of the suspect. The attorney can be denied this right in case the disclosure can jeopardize the purpose of the investigation. Upon raising the indictment, the accused and the attorney may access all files and evidence. The judge or the panel of judges and the prosecutor are obliged to provide the defence attorney with access to any new evidence, information or facts that they have obtained and which can serve as evidence in the course of main hearing.	
MANDATORY REPRESENTATION BY COUNSEL	Yes.	It is mandatory that the accused is represented by a defence attorney: if he/she is a minor; ▪ at the time of the first questioning, if he/she is deaf or mute; ▪ if he/she is a suspect of a criminal offense that is punishable with a long-term imprisonment; ▪ after the court determined detention before a trial and during such a detention;

	.	▪ when the indictment is delivered, if the indictment has been raised for a criminal offense punishable with ten years of imprisonment, or for a criminal offense punishable with a severe punishment.
PRO BONO SYSTEM	Yes.	If the requirements for mandatory defence have not been met and if the accused cannot bear the costs of counsel representation, the court will appoint a counsel *ex officio* in the following situations: ▪ if the procedure concerns a criminal offense punishable with imprisonment of three years or a criminal offense punishable with a severe penalty; or ▪ if the interest of equity require so, irrespective of the type of punishment.
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	Resolutions on preliminary injunctions are generally rendered within a period of 2–12 months. The procedure is generally more efficient in family matters.	▪ The preliminary injunction can be proposed before the start, during and upon completion of the court proceedings until enforcement is finished.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	**Example for Canton Sarajevo**: 50% of the court tax for the regular civil proceeding, but cannot exceed BAM 1,000 (approx. EUR 500) both for the motion and the court's decision. **Example for RS**: 50% of the court tax for the regular civil proceeding. **In FBiH:** 75% of the fees that would be charged by the attorney for actions in a standard civil proceeding (which depend on the amount in dispute); the same is true for the motion, response to the motion as well as representation at any hearings in relation to the preliminary injunction. **In RS**: Same as in civil proceedings.	▪ With the request for a preliminary injunction the applicant must provide available evidence, e.g., documentary evidence and affidavits that can be examined by the court right away. Foreign language documents should be presented with a translation into one of the official languages of BiH (Serbian, Bosnian or Croatian). ▪ The applicant must advance the costs of the preliminary injunction proceeding, if the request for preliminary injunction is applied for outside of a main proceeding. ▪ The court will decide who will bear the costs of the preliminary injunction proceeding, if the request for a preliminary injunction is applied for during the civil proceeding. ▪ The court may order the applicant to pay a security deposit.

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 JUDGMENTS AND 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 judgment or arbitral award: ▪ original or certified copy of the foreign judgment or 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 judgment or 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 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.	
INSOLVENCY PROCEEDINGS		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	In case of insolvency of a company, either the company itself or any person/entity with legal interest (e.g. a creditor whose claims are accrued and unsettled), is entitled to file a petition for bankruptcy proceedings. In the relevant court practice and legal theory, a third party is not entitled to seek the opening of bankruptcy proceedings, if such party can recover its debt through a less burdensome process. Accordingly, it can be considered that a secured creditor does not have the necessary legal interest in initiating bankruptcy proceedings if the creditor has an enforceable title over the collateral. However, if a secured creditor proves that its claims would not be fully settled from the value of the collateral in the course of the enforcement proceedings, it would generally be considered that such creditor has the necessary legal interest in initiating bankruptcy proceedings.	
APPROXIMATE DURATION	1 year to several years. In very complex cases, a duration of more than 10 years is possible.	

APPROXIMATE COSTS	
COURT FEES	**Canton Sarajevo**: filing BAM 100 (approx. EUR 50); for appeal against the court decision: 1% of the value of the claim but never less than BAM 100 (approx. EUR 50) or more than BAM 10,000 (approx. EUR 5,000). **RS**: filing: BAM 100 (approx. EUR 50); appeal against the court decision: 1% of the value of the claim but never less than BAM 100 (approx. EUR 50) or more than BAM 10,000 (approx. EUR 5,000).
ATTORNEYS' FEES (NET)	**FBiH**: the fees for filing the motion for opening of the insolvency proceedings are the same as in standard civil proceedings. Other actions are generally charged at 50% of the fees for standard civil proceedings. **RS**: the fees for filing the motion for opening of the insolvency proceedings are the same as in standard civil proceedings.

This chapter was written by Naida Custovic and Ilma Kasumagic.

NAIDA CUSTOVIC
Partner

Wolf Theiss, Bosnia & Herzegovina

T. +387 33 953 444
naida.custovic@wolftheiss.com

ILMA KASUMAGIC
Associate

Wolf Theiss, Bosnia & Herzegovina

T. +387 33 953 444
ilma.kasumagic@wolftheiss.com

WOLF THEISS

BULGARIA

1. LEGAL SYSTEM

The Republic of Bulgaria is a parliamentary republic. The Bulgarian Constitution adopted in 1991 provides for the separation of powers between the legislative, executive and judicial pillars. The Constitutional Court is charged mainly with the interpretation of the Constitution and control over the compliance of the laws adopted by the National Assembly – the Parliament with the Constitution, as well as to check on the conformity of any international treaties concluded by the Republic of Bulgaria with the Constitution prior to their ratification.

The Bulgarian court system consists of Regional Courts, District Courts, Military Courts, Specialized Criminal Court, Courts of Appeal (including an Appellate Specialized Criminal Court and Military Court of Appeal), the Supreme Court of Cassation (the judicial instance, dealing with civil, commercial and criminal cases as cassation instance) and the Administrative Courts and the Supreme Administrative Court (the administrative jurisdictions, dealing with administrative cases). Bulgaria is an EU Member State since 1 January 2007, thus it is party to the EU Treaties and should implement and comply with EU law.

Litigation in civil and commercial cases, and the recognition and enforcement of judgements and other acts of competent authorities of EU Member States is governed by the Civil Procedure Code (promulgated in State Gazette Issue No. 59/20.07.2007, in force as of 1 March 2008, as amended from time to time). Administrative disputes are handled according to the Administrative Procedure Code (promulgated in State Gazette issue No. 30/11.04.2006, as amended from time to time).

The competence of the Bulgarian Courts over disputes with an international element, and the recognition and enforcement of foreign judgements and other acts is regulated by the Private International Law Code (promulgated in State Gazette Issue No. 42/17.05.2005, as amended from time to time) and the other applicable EU legislation, including Regulation (EU) No. 1215/2012, of the European Parliament and of the Council of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Recast).

2. LITIGATION

The Bulgarian Regional and District Courts are competent for both civil/commercial and criminal cases. The jurisdiction of the courts with respect to civil and commercial cases is determined based on the type of claims, permanent domicile or seat of the defendant, the amount of the dispute, etc.

The Regional Courts have general jurisdiction to decide civil and criminal matters. Regional Courts may also act as an appeal instance against administrative penalty rulings.

The District Courts can be both first and second instance courts. At first instance, District Courts generally have the competence to decide upon the following:

- claims to establish or challenge parentage, to terminate adoption, any claims for imposing judicial disability to individuals or for revocation of such judicial disability;
- claims for ownership and other rights *in rem* in respect to immovable property where the value of the claim exceeds BGN 50,000 (approximately EUR 25,564);
- claims in civil and commercial cases where the value of the claim exceeds BGN 25,000 (approximately EUR 12,782), with the exception of any claims for alimony obligations, for labour disputes, and for receivables due to deficiency in accounts;
- claims to establish inadmissibility or nullity of a registration (for instance in the Commercial Register or the Real Estate Register), as well as for non-existence of a registered circumstance, where explicitly provided for in a law;

- claims, regardless of their value, which are joined in a single claim request containing at least one claim, for which a district court would be competent; and
- any claims which, under other laws, are subject to examination by the district court.

All other claims should be reviewed by the Regional Courts as first instance courts.

District Courts are also competent to decide upon, as a second instance, appeals against first instance decisions of the Regional Courts within their jurisdictional area.

The Courts of Appeal are competent to decide upon, as a second instance court, appeals against first instance decisions of the District Courts within their jurisdictional area.

In Bulgaria currently there are 28 District Courts and 5 Courts of Appeal.

Some particular criminal cases (e.g. for corruption, organized crime etc.) are referred to the Specialized Criminal Court and the Specialized Criminal Court of Appeals, both situated in Sofia.

With the exception of administrative matters, the Supreme Court of Cassation acts as a court of cassation and exercises supreme judicial control over the unfair, inaccurate or contradictory application of the law by the inferior courts. The decisions and decrees issued by the Supreme Court of Cassation and the Supreme Administrative Court are final and binding, with some very limited exceptions. The final decisions and rulings could be subject to annulation upon very limited grounds.

Administrative Courts are competent to hear all cases concerning:

- issuing, amending, terminating or declaring administrative acts as invalid;
- declaring agreements concluded between an individual/legal entity with administrative authorities with respect to administrative cases as invalid;
- protection against unjustified actions and/or omissions of the administrative authorities;
- protection against unlawful compulsory enforcement of administrative acts;
- indemnity for damages arising out of unlawful acts or omissions committed by administrative authorities;
- indemnity for damages arising out of compulsory enforcement; and
- establishing the lack of authenticity of administrative acts.

There are 28 Administrative Courts in Bulgaria.

The Supreme Administrative Court exercises supreme judicial control over the application of the law with respect to administrative matters. The Supreme Administrative Court is also competent to act both as a first and cassation instance where provided by law. The Supreme Administrative Court is competent to hear claims as first instance with respect to:

- appeals against secondary legislation, except for those issued by the Municipal Councils;
- appeals against administrative acts issued by the Council of Ministers, the Prime Minister, the Deputy Prime Ministers or other Ministers;
- appeals against decisions issued by the Supreme Judicial Council; and
- appeals against administrative actions of the bodies associated with the Bulgarian National Bank.

Simultaneously, the Supreme Administrative Court acts as a cassation instance with respect to:

- complaints and appeals against court decisions rendered by the Administrative Courts at first instance; and
- requests for annulment of acts issued in Administrative Court cases.

3. BUSINESS CRIME

Business crimes are regulated by the Bulgarian Criminal Code (promulgated State Gazette issue No. 26/02.04.1968, as amended from time to time). The Criminal Code contains general rules regarding criminal offences in Bulgaria, as well as the specific qualifications for each crime.

The Criminal Code is applicable to all Bulgarian citizens, as well as foreigners who are resident on Bulgarian territory or territory under Bulgarian jurisdiction (with the exception of foreigners covered by immunity provisions). Under the Bulgarian penal system the principle of innocent until proven guilty is in place.

Under Bulgarian law, legal entities (private corporations, institutions, NGOs, etc.) are not subject to criminal liability. They are allowed to participate in the criminal process only to the extent of claiming damages, in case they are victims of crimes (as "civil plaintiffs").

Most business crimes are set out in the chapter of the Criminal Code entitled "Crimes against the economy". However, some crimes, which are not closely related to business, are placed in other chapters of the Criminal Code, e.g. common cases, such as fraud or asset misappropriation, but also crimes against creditors, banks and tax systems.

According to Bulgarian penal legislation it is illegal for a manager to conclude deals when it is known in advance that these deals will damage the interests of the company or its creditors. Bribery, regardless of whose initiative it is, is also considered a crime. If a legal entity is insolvent, but the respective District Court is not notified within 30 (thirty) days of the actual insolvency, the manager and/or accountants may be prosecuted. The same applies for managers, assignees and other persons who destroy documents related to insolvency and jeopardize the performance of the respective procedures.

Business crimes also include crimes against the customs regime such as, among others, storage and distribution of excise goods with unpaid excise, import and export of goods without payment of the due taxes and fees and violations of the customs notification and registration regimes. Bulgarian legislation prohibits the counterfeiting of papers, money, payment and bank documents, their distribution and usage. Money laundering and other violations of the Act on measures against money laundering (promulgated State Gazette issue No. 85 of 24.07.1998, as amended from time to time) are also prosecuted under Bulgarian law. Persons are not allowed to prepare and use fake documents and to conduct illegal activities which may lead to their or their company's exemption from tax obligations.

Fraud and misappropriation of EU funds may also be considered a business crime in Bulgaria. The procedures for investigating the committed crimes, the perpetrators and the caused damage are mainly addressed in the Criminal Procedure Code (promulgated State Gazette issue No. 86/28.10.2005, as amended from time to time). The Criminal Procedure Code also contains rules regarding the conduct of investigations and the court procedures in a criminal process.

The criminal procedure in Bulgaria is divided into two phases. In the first phase an investigation is conducted to determine the specific facts and qualifications of the crime, including the identity of the perpetrators and the victims and the respective damages. The investigation authorities (the police, customs officers, as well as officers of other public institutions, such as the National Investigation Service, State Agency "National Security" etc.) are the active authorities in this phase. The process is supervised by a public prosecutor from the competent

Prosecution office. It may be the Regional Prosecution office, the District Prosecution office or the Specialized Prosecution office, depending on the type of crime.

Once the pre-trial phase begins the investigation authorities are allowed, under the conditions of the Criminal Procedure Code, to search for and collect evidence in offices, houses or other places and/or people, to question witnesses, etc. in order to find out the actual occurrence of events. During the investigation the defendant should be provided with and made aware of all documents and prosecution acts. The investigating bodies should collect not only incriminating, but also exculpatory evidence.

The investigation should be completed and the file should be sent to the prosecutor within 2 (two) months at the latest as of the date of initiating an investigation. However, in cases of significant complexity the investigation may be extended by a further 4 (four) months as many times as necessary, as long as the absolute time limitation for the prosecution of the crime has not expired. When enough evidence is collected or it is not possible to collect further evidence, the competent supervising public prosecutor decides whether to file the prosecution act in the respective court, or to dismiss the case.

Once the prosecution act is at the court, the second, judicial phase begins. In this phase the court reviews the evidence, questions witnesses and hears the defendant and the public prosecutor. This should happen in a reasonable period of time, but case duration may significantly differ. The court panels consist of either one or three judges depending on the severity and type of crime. After the court hearings are concluded the court decides whether the defendant is guilty, not guilty or whether the case needs more investigation. If the defendant is found guilty, the respective sentence should also be rendered by the court based on the court file. Sentences may be appealed before the respective second instance courts (Appeal Court when the case has been heard at first instance by a District Court; or a District Court when the case has been heard at first instance by a Regional Court). The appeal decision may be subject to further cassation appeal (only on points of law and not on points of fact) before the Supreme Court of Cassation.

Bulgarian legislation provides two ways to protect harmed persons or legal entities. During the judicial phase of the crime process, persons and legal entities are allowed to file civil claims against the defendant in the same court case with a request for compensation for the caused damage. Another option is to file a new court claim before the respective civil court and to initiate an independent proceeding.

The costs for the case are borne by the defendant if found guilty. The “civil claim“ costs are also borne by the defendant if the court sustains the claim.

The duration of a criminal process in Bulgaria depends on the specifics of each case, but usually lasts from 18 (eighteen) months to 3 (three) years.

4. INSOLVENCY

In Bulgaria insolvency proceedings may be initiated with respect to commercial companies and individuals acting as sole traders and cooperatives. A limited number of entities with the status of a public enterprise (e.g., special purpose legal entities fully owned by the state), which are either granted a state monopoly, or established under special legislation, are outside the scope of insolvency laws. There is no insolvency of individuals in Bulgaria, except for those conducting a business as sole proprietors or general partners.

Insolvency proceedings are regulated by the Commercial Act (promulgated in State Gazette Issue No. 48/18.06.1991, in force as of 1 July 1991, as amended from time to time). Additionally, there are sector-specific laws that apply to the insolvency of banks, insurance companies, pension funds and funds of management companies.

Bulgarian insolvency law does not legally differentiate between different types of proceedings. Each process begins by the filing of a claim for opening insolvency proceedings with the competent insolvency court. However,

this single-entry may have multiple exits depending on the particular circumstances. The three main categories of possible exits are as follows:

- restructuring of the debtor;
- insolvency of the debtor, which is followed by a liquidation procedure; and
- agreement between the creditors and the debtor.

An agreement between all creditors with accepted and undisputed claims and the debtor may be undertaken (at any stage of the proceedings) without the assistance of the Administrator. The insolvency court's involvement is limited to supervision of the legality of such agreement and its approval.

A petition for initiating insolvency proceedings must be filed when the debtor is over-indebted or illiquid. Insolvency proceedings based on over-indebtedness can only be initiated for corporations, i.e., for limited liability companies, joint stock companies and partnerships limited by shares.

If the company is in a liquidation procedure, the debtor and the liquidator are required to file a petition for initiating insolvency proceedings upon the occurrence of Illiquidity or over-indebtedness. The filing obligation is incumbent on the managing bodies of the debtor, and further on the sole traders and their heirs. Non-compliance with this requirement may trigger civil and criminal liability of the relevant responsible person.

The creditors and the National Revenue Agency may choose when (and whether) to initiate insolvency proceedings. Only creditors of "commercial transactions" are entitled to initiate proceedings and there has been a considerable amount of litigation on this definition.

By law, the debtor is required to file for insolvency within 30 (thirty) days of first becoming illiquid or over-indebted. Within that period attempts should be made to remedy the illiquidity or over-indebtedness and if such efforts are unsuccessful, the executive officers are required to file for insolvency.

The District Court where the debtor has its registered seat at the time of filing the application is in charge of ruling on the application for the opening of insolvency proceedings, and of conducting the entire case. The District Court therefore acts as Insolvency Court. The proceedings are conducted before a commercial division judge. The same judge decides all matters related to the insolvency case, except for disputes raised by a creditor or debtor for establishing the existence of a non-approved creditor's claim. In such disputes, a different judge from the same Insolvency Court adjudicates the claim. For companies having their place of registration in Sofia, Bulgaria, the competent Insolvency Court is the Sofia City Court.

As with any other District Court decisions, the rulings and decisions of the Insolvency Court can be appealed before the respective Court of Appeal and, in particular cases, an appeal to the Supreme Court of Cassation is possible.

Bulgarian law provides for a temporary insolvency Administrator to be appointed ("Temporary Administrator"). The Temporary Administrator is appointed by the Insolvency Court prior to the opening of the proceedings if this is necessary for the preservation of the debtor's property or if it is specified in the initial ruling of the Insolvency Court with respect to the opening of Insolvency Proceedings. The Temporary Administrator will be replaced in the course of the proceedings by a permanent Insolvency Administrator.

All creditors of the debtor shall file their claims with the Insolvency Court within 1 (one) month of the registration with the Commercial Register of the Insolvency Court's decision to initiate insolvency proceedings. Claims are to be filed in writing together with the supporting documentation.

Within 1 (one) week from the expiration of the above-mentioned period, the Administrator has to prepare a list of all claims filed by creditors (whether justified or not) and include *ex officio* all payments due to employees and outstanding public liabilities. If a claim is not recognized, the respective creditor is entitled to object to the rejection before the Insolvency Court.

Creditors, who have omitted to file their claims within the 1 (one) month period, may still file claims within 3 (three) months of the registration with the Commercial Register of the Insolvency Court's decision to initiate proceedings. However, the rights of such creditors are restricted, in that they are precluded from objecting to claims already admitted, and such late filers enter into the proceedings as they stand.

Following the expiration of the 3 (three) month period, only claims for debts, which have not been paid when they were due and which only occurred after or on the opening date of the Insolvency Proceedings with regard to the on-going activity of the debtor, can still be filed, following the general procedure of the filing, but no later than the approval of a restructuring plan.

Under the Bulgarian Commercial Act, creditors' claims are to be satisfied from the proceeds of the debtor's assets in the following order of priority:

i. claims secured by a pledge or mortgage, or by a freezing order registered pursuant to the Law on Registered Pledges, out of the proceeds of the assets subject to the relevant security;

ii. claims secured by a lien, out of the proceeds of the assets, subject to the lien;

iii. administrative expenses (which include the administrator‘s remuneration, the state fees for the insolvency proceedings, the expenses for the collection, management, valuation and distribution of the insolvency estate, the salaries of employees (if the activity of the company has not been terminated). The law also sets forth that, in general, the expenses up to the opening of the insolvency are also administrative costs. Claims deriving from employment contracts, which have matured before the date of the Insolvency Court‘s decision on the opening of insolvency proceedings;

iv. obligations for the payment of allowances owed by law by the debtor to third parties (applicable only with respect to the rare cases where individuals may be in insolvency);

v. public claims of the State and the municipalities such as taxes, customs duties, fees, obligatory social security contributions, as well as other claims which have emerged prior to the date of the decision on the opening of insolvency proceedings;

vi. claims which have occurred after the date of the Court‘s decision with regards to the opening of insolvency proceedings and which have not been paid at maturity, deriving from the continuing operations of the debtor. Typically these are all expenses arising in connection with the continued operation of the estate, such as the purchase of supplies and services, which do not fall under the definition of administrative costs;

vii. other unsecured claims that may have occurred prior to the date of the decision on the opening insolvency proceedings;

viii. claims for payment of interest on unsecured receivables accruing after the date of the decision on the opening of insolvency proceedings;

ix. claims for repayment of loans granted to the debtor company by a shareholder;

x. claims concerning gratuitous transactions; and

xi. claims of creditors for their own insolvency proceedings expenses, except where a creditor has paid the initial expenses for the insolvency proceedings in advance.

All creditors of the company have to present their claims before the Insolvency Court for inclusion in the list of allowed claims prepared by the Administrator. *Ex officio* added to the list are all salary claims of employees and warrants for public receivables (e.g. taxes, custom duties) which have entered into force. The Administrator has to publish the list. Submitted but disputed claims must be specifically marked. Objections against the claims in

this list must be raised before the Insolvency Court within a week of its announcement. In case that there are no objections registered within the statutory term, the Insolvency Court approves the list of allowed claims.

The Insolvency Court is not authorized to make any judgment regarding the allowed claims if they have not been disputed. The only amendments the Insolvency Court can make *ex officio* are in respect to the general obligation of the Insolvency Court to check for any technical mistakes made by the Administrator, such as names, addresses of the creditors or calculations due to currency exchange. In the case of objections, the Insolvency Court resolves any disputes after reviewing the arguments of the creditors, the Administrator and the debtor. The ruling of the Insolvency Court in the objection procedure is not subject to appeal. However, as described in the following paragraph, further contested proceedings are possible.

If no restructuring plan is adopted, or if the approved restructuring plan is not complied with, the insolvency proceedings continue with the Insolvency Court's decision declaring the company insolvent and terminating its activities. The Administrator will then sell the assets of the company, and distribute the proceeds among the creditors according to the ranking of their claims. In certain exceptional cases, with the prior approval of the Insolvency Court, the assets of the company may be sold in the insolvency proceedings before the final stage of liquidation. After the debtor's obligations have been paid, or the insolvency estate has been depleted, the company is deleted from the Commercial Register following the Insolvency Court's decision, i.e., the company ceases to exist.

In 2016, the Commerce Act was amended to introduce new stabilization proceedings for merchants at immediate insolvency risk. The provisions became effective as of 1 July 2017. The new proceedings aim to prevent bankruptcy by allowing merchants at such risk to reach an agreement with their creditors on the repayment of obligations and, as a result, to continue their business activities.

The stabilization request shall include, *inter alia*, a detailed list of the merchant's obligations towards its creditors, an overview of the circumstances due to which the merchant is at immediate risk of insolvency, the reasons for proposing a stabilization plan and a suggestion for the manner, terms and conditions for repayment. The stabilization plan can envisage partial write-off of obligations or deferred payment to creditors. Partial write-off is allowed, if at least 50% of the amount due will be paid. Payments can be deferred for up to 3 (three) years upon completion of the stabilization proceedings.

If the court finds that the merchant is at insolvency risk, the court opens the stabilization proceedings, appoints a trustee (*доверено лице*) and schedules a court hearing for the review and adoption of the stabilization plan. The court order for opening of stabilization proceedings and the list of the merchant›s creditors are announced in the Commercial Register. At this point the court may impose restrains or other preserving measures over the merchant›s assets.

5. 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

Pursuant to the provisions of the Bulgarian Civil Procedure Code, certain foreign court judgments and arbitral awards can be enforced in Bulgaria.

The law distinguishes between the enforcement of decisions and acts issued by competent foreign authorities of other EU Member States, and the decisions and acts issued by competent authorities of other foreign countries (Third Country Decisions).

Decisions or other acts issued by courts in EU Member States are recognized and directly enforceable through the foreign court ruling, without any additional court proceedings in Bulgaria. Such decisions and/or acts are recognized directly by the respective Bulgarian authority upon the presentation of the decision and enclosed certificate (provided that this is a requirement of an act of the European Union).

When an interested party seeks recognition of a court decision or another act issued in an EU Member State it shall file a request to the District Court at the registered seat or domicile of the responding party (Sofia City Court if the responding party has its seat in Sofia) or, if such address is not within the territory of the Republic of Bulgaria, before the District Court of its own registered seat or domicile.

In case both the requesting party and the responding party have their registered seats or domicile outside the Republic of Bulgaria, the request shall be filed at the Sofia City Court. The Court will then decide upon the recognition of the foreign court decision and/or acts. Following the Court's formal recognition, the foreign judgment or act, issued in an EU Member State, has the same effect as a domestic judgement rendered by a Bulgarian court. The decision on the recognition may also be subject to appeal before the respective Court of Appeal and the Supreme Court of Cassation.

The recognition of a Third Country Decision is performed by the authority before which the request for recognition is submitted. A dispute regarding the conditions for the recognition of a Third Country Decision can be filed with the Sofia City Court.

Generally, Third Country Decisions are recognized by Bulgarian courts providing that the following conditions are met:

- the foreign court or body was competent pursuant to Bulgarian law principles;
- the defendant was served with a copy of the claim, the parties involved were properly summoned and the main principles of Bulgarian law regarding the parties' rights to defend the claims have not been violated;
- there is no decision or pending litigation before a Bulgarian court between the same parties that is based on the same grounds and the same claim; and
- the recognition or enforcement of the Third Country Decision does not contradict Bulgarian public order.

A Third Country Decision becomes enforceable through the filing of a request at the competent District Court (or Sofia City Court) along with a copy of the Third Country Decision. The decision must be certified by the respective foreign court, and a certificate from the same is also required, stating that the decision has entered into force. Those documents are to be translated into Bulgarian, and if required, certified and legalized by the Bulgarian Ministry of Foreign Affairs.

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
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	Simple cases: 4–8 months for one instance. Complex cases: 12–24 months for one instance	
APPROXIMATE COSTS		▪ Litigation costs include court fees, attorneys' fees and expenses for expert reports and witnesses. ▪ Litigation costs are awarded against the losing party which must reimburse the winning party. However, the court may decide to reduce the amount of attorneys' fees to be reimbursed to the levels provided for in the Ordinance on the Minimum Attorneys' Fees. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. ▪ Court fees have to be paid upon filing the claim and evidence of the payment shall be presented to the court together with the claim.
COURT FEES	Court fees depend on the material interest of the claim and whether a special expert report is requested by the parties. For common cases, court fees amount to 4 % of the material interest of the claim. In certain cases, such as when the material interest cannot be determined, the court fees are fixed by the court. In some cases, such as labour disputes, etc., a fixed minimal fee is determined. In certain cases, the claimant does not pay any court fees (also common in labour disputes).	
ATTORNEYS' FEES (NET)	In Bulgaria, lawyers are free to determine and agree with clients on their fees. However, attorneys' fees cannot be lower than the amounts determined in the Regulation on Minimum Attorneys' Fees. Depending on the amount of the material interest of the claim, the minimum remunerations start from BGN 300 (approx. EUR 153) for cases with material interest of up to BGN 1,000 (approx. EUR 511) and reach BGN 830 (approx. EUR 424) + 3% for an amount over BGN 10,000 (approx. EUR 5,112). The Ordinance on the Minimum Attorneys' Fees should be taken into account also in cases where the arrangement between the attorney and the client is on a "success fee" basis, i.e., in no case shall the lawyer's remuneration be below the minimum amounts provided in the ordinance.	▪ Usually, lawyers charge higher fees than the minimum ones provided for in the Ordinance on the Minimum Attorneys' Fees. ▪ In order for a party to be able to claim its attorney fees in a case, it must produce evidence of the effective payment of such fees. It is therefore recommended to proceed with the payment before the oral hearings in the case.
JURY TRIALS	There are no civil jury trials in Bulgaria.	
CLASS ACTIONS	The Bulgarian Code of Civil Procedure provides for special proceedings for collective claims.	The Ordinance on the Minimum Attorney Fees does not provide for separate instructions on structuring fees for such claims and therefore the criteria for awarding reimbursement of attorney fees applied by courts follow the standard principles described above.

DOCUMENT PRODUCTION	Limited.	▪ There is no formal discovery in Bulgaria. ▪ Documents are subject to disclosure if the party itself referred to the document in the course of the proceedings. The party is obliged to hand over a certified copy of the document. ▪ A court order to produce such documents is not enforceable. Failure to comply with the order can only be considered by the court in its evaluation of the case. ▪ The parties to a dispute may request the court to order a third party to provide documents. In case of a refusal by the third party to comply with such a request, the court may impose a fine.
MANDATORY REPRESENTATION BY COUNSEL	Representation by an attorney is mandatory in cassation appeals.	
PRO BONO SYSTEM	Yes. There is legal aid for people who cannot afford the costs of legal proceedings.	
BUSINESS CRIME		
APPROXIMATE DURATION	Approximately 8–12 months per instance.	Duration depends on the court and the severity of the punishment provided.
APPROXIMATE COSTS	All documents and papers related to criminal cases are free of charge; no court fees are collected. Depending on the type and severity of the punishment provided in the Criminal Code for a particular offense, minimum remunerations vary from BGN 400 (approx. EUR 204) to BGN 3,000 (approx. EUR 1,533).	Lawyers usually charge higher fees (3–4 times higher than the minimum ones) in criminal cases.
JURY TRIALS	The Bulgarian courts hear criminal cases in first instance in a panel composed of: ▪ a single judge; or ▪ a judge and two court assessors, if the criminal offence entails more than 5 years of deprivation of liberty as a punishment; or ▪ two judges and three court assessors, if the criminal offence entails no less than 15 years of deprivation of liberty or another, more severe punishment.	▪ Court assessors are randomly selected by the system for each case, and their remuneration is paid for by the budget of the justice system. ▪ Other participants in a court case are not allowed to appoint court assessors and are not required to ensure their payment.
CLASS ACTIONS	Not available in criminal cases.	
DOCUMENT PRODUCTION	Limited.	

MANDATORY REPRESENTATION BY COUNSEL	In some cases.	Mandatory if (i) the criminal offence entails more than 10 years of deprivation of liberty or a more severe punishment; (ii) the defendant does not speak Bulgarian; (iii) the defendant is under arrest; or (iv) the defendant is not present at the court hearing.
PRO BONO SYSTEM	Yes. The Legal Aid Act provides for aid for people who cannot afford the costs of legal proceedings, but who want a counsel and if the interests of justice require so.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	Generally, a decision on a request for a preliminary injunction is rendered within a period from 3 days to 3 weeks. The preliminary injunction becomes an injunction for the full duration of the court proceedings if not lifted.	▪ Along with the request for a preliminary injunction, the applicant must provide strong evidence, e.g., documentary evidence and affidavits that can be immediately examined by the court. ▪ Documents in foreign languages should be presented together with official Bulgarian translations.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	BGN 40 (approx. EUR 20). If the request for preliminary injunction is applied for together with a complaint in the main proceedings, no extra court fees have to be paid. The attorney fees are calculated in the same way as in standard civil proceedings but the amount of the material interest/fixed fee is reduced by 50%.	▪ The Court may order the applicant to pay a security deposit. The deposit usually amounts to approximately 10% of the interest of the case, depending on the judge's assessment. ▪ The reimbursement of costs incurred by a successful applicant in preliminary injunction matters can only be sought in the main proceedings.
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 JUDGMENTS AND ARBITRAL AWARDS		
APPROXIMATE DURATION	The law distinguishes between enforcement of decisions and acts issued by competent foreign authorities of other EU Member States, and decisions and acts issued by competent authorities of other foreign countries (Third Country Decisions). *Acts issued by courts in EU Member States (if submitted for recognition)*: 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. *Acts issued by Third Country Courts*: 2 to 3 months until a decision on recognition and enforcement is rendered in first instance; 6 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.
APPROXIMATE COSTS **COURT FEES**	Application for recognition/ enforcement: BGN 50 (approx. EUR 25).	▪ Decisions not included in the scope of application of the relevant EU Regulations must be submitted in the original or in a certified copy issued by the court that rendered the judgment.
ATTORNEYS' FEES (NET)	Attorneys' Fees are calculated as in standard civil procedures.	▪ A certified translation of the decision must be submitted. ▪ 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.
INSOLVENCY PROCEEDINGS		
APPROXIMATE DURATION	1 to several years; in very complex cases, a duration of more than 10 years is possible.	
APPROXIMATE COSTS **COURT FEES**	Court fees for applications for insolvency of: Sole trader: BGN 50 (approx. EUR 25); Company: BGN 250 (approx. EUR 127).	
ATTORNEYS' FEES (NET)	Calculated as in standard civil procedures but not less than BGN 200 (approx. EUR 102).	

This chapter was written by Anna Rizova, Radoslav Mikov and Oleg Temnikov.

ANNA RIZOVA
Partner

Wolf Theiss, Bulgaria

T. +359 2 8613 700
anna.rizova@wolftheiss.com

RADOSLAV MIKOV
Partner

Wolf Theiss, Bulgaria

T. +359 2 8613 700
radoslav.mikov@wolftheiss.com

OLEG TEMNIKOV
Senior Associate

Wolf Theiss, Bulgaria

T. +359 2 8613 700
oleg.temnikov@wolftheiss.com

WOLF THEISS

CROATIA

1. LEGAL SYSTEM

The Croatian legal system is founded on the principle of separation of powers between the legislative, administrative and judicial branches of government. An independent and impartial judiciary exercises the judicial power, bound by the Constitution and the laws passed by the Parliament. International agreements ratified by the Parliament and published in the Official Gazette of Croatia (*Narodne novine*) form part of the Croatian legal order and take precedence over nationally enacted laws. Croatia is a civil law country where court decisions are generally not considered as precedents, although lower courts tend to follow the opinions and decisions of the higher courts.

In general, a distinction can be made between courts of general jurisdiction and specialized courts which have exclusive jurisdiction over certain subject matters.

During 2015 and 2016, Croatia underwent a reform aimed at rationalization of the court system. As a result, certain courts ceased to exist and certain others were merged, which ultimately led to a reduction of the total number of courts.

The courts of general jurisdiction include the Municipal Courts (24, as opposed to 78 before the reform), the County Courts (15), and the Supreme Court. The specialized courts include Commercial Courts (8, as opposed to 7 before the reform), the High Commercial Court (1), Misdemeanour Courts (22, as opposed to 25 before the reform), the High Misdemeanour Court (1), and the Administrative Court (4, as opposed to 1 before the reform). A High Administrative Court, serving as an appellate court for cases heard by Administrative Courts, was founded during the previous reform in 2012.

In addition, there is the Constitutional Court which is technically not a part of the judiciary but a special body established by the Croatian Constitution that is competent for constitutional review of Acts of Parliament and individual constitutional complaints against public authorities.

2. LITIGATION

Litigation in Croatia follows an adversarial procedure in which the parties must actively participate in establishing the facts of the case. Otherwise, the court may dismiss the claim because the party has not sufficiently met the required burden of proof according to the procedural rules. The only exception where the trial judge establishes facts based on the judge's own motion is when the parties' dispositions violate the mandatory rules of law or standards of public moral. Nonetheless, judges have a very active role in the litigation process. Thus, lay-witnesses, expert witnesses and the parties are primarily questioned by the judge during the evidence gathering procedure, while attorneys may only pose additional questions and make follow-up remarks. The result is that the emphasis is placed on the procedure and exchange of written briefs between the parties prior to any hearing rather than conducting extensive and time consuming hearings before the court.

The litigation procedure commences when the claimant submits a statement of claim to the court. However, the claim becomes effective only upon effective service of the statement of claim on the defendant. The defendant has a duty to file a statement of defence within the time limit granted by the court which may range from a minimum of 30 (thirty) to a maximum of 45 (forty five) days. In the event the defendant does not file the statement of defence or fails to appear before the court for the first hearing, the court may render a default judgment against the defendant. However, in practice a default judgment is rare because one of the requirements is that the court finds the claimant's claims are well-founded based on the supporting facts.

All decisions of a court of first instance may be appealed before a court of second instance. Also, the law allows for two extraordinary legal remedies against final decisions: (i) a review of the second instance court decision, which is always available in matters where the amount in dispute exceeds HRK 200,000, approximately EUR 26,700 (in case of a High Commercial Court decision HRK 500,000, approximately EUR 68,495), or in other matters if certain additional requirements are met; and (ii) reopening the first instance court proceedings

in matters concerning serious violations by the participants, or the discovery of new facts and/or evidence which may lead to a different decision.

Commercial Courts hear the following disputes:

- disputes between companies, sole traders (*trgovci pojedinici*) and craftsmen (*obrtnici*), provided that disputes between sole traders and craftsmen relate to the performance of their economic activities;
- corporate disputes arising from the establishment of a company, the company's operations (including the termination of operations), the transfer of shares, shareholder relations, shareholder-management relations, piercing the corporate veil, and liability of a company's managers;
- disputes involving a party involved in bankruptcy proceedings, except for disputes falling within the exclusive jurisdiction of Municipal Courts;
- maritime and air transport disputes;
- intellectual property disputes; and
- unfair competition related disputes.

Although there are eight Commercial Courts in Croatia, in certain specialized situations the competence to hear a particular matter may be restricted to one of the four Commercial Courts located in Osijek, Rijeka, Split and Zagreb. These specialized Commercial Courts possess special competence over disputes involving matters:

- regarding ships and navigation by the sea and/or inland waterways, except for passenger transports;
- regarding aircrafts and air navigation and aviation, except for passenger transports; or
- intellectual property disputes.

Furthermore, the County Court of Zagreb and the Commercial Court of Zagreb have a special competence in matters concerning court assistance for arbitration proceedings or challenges of arbitral awards.

Generally, other than the matters previously discussed, all other disputes fall within the competence of the Municipal Courts. Also, certain disputes are under the exclusive jurisdiction of the Municipal Courts, such as labour disputes, family law disputes, trespass, etc.

Litigation costs mainly include court fees, attorneys' fees and expenses for expert witness and opinions. Normally, costs are awarded against the losing party in accordance with the rules of civil procedure. In some situations, the court may award costs against a party, or a party's representative, who caused a delay to a hearing. A counsel may also be ordered to bear the costs of a hearing if the proceedings had to be postponed because he or she was not prepared for the hearing.

Court fees are rather moderate, which allows litigation to be accessible to all individuals. Generally, court fees range from HRK 100 (approx. EUR 14) for amounts in dispute up to HRK 3,000 (approx. EUR 411), to the highest fee of HRK 5,000 (approx. EUR 685), for amounts in dispute exceeding HRK 465,000 (approx. EUR 63,700).

Attorneys' fees are prescribed by the Croatian Bar's Tariff and may range from HRK 250 (approximately EUR 35) for a brief or a hearing in a case with an amount in dispute up to HRK 2,500 (approximately EUR 343), up to the highest fee of HRK 100,000 (approximately EUR 13,700) for a brief or a hearing in a case with an amount in dispute of HRK 22,500,000 (approximately EUR 3,090,200) or more. The fees can be decreased for less demanding briefs or hearings, and can be increased for appeals, extraordinary legal remedies and arbitration proceedings. Although in practice the attorney and the client may agree upon higher fees, only fees that are in accordance with the Bar's Tariff will be recognized by the court for the purpose of reimbursement.

3. BUSINESS CRIME

Proceedings related to business crime recently started rising in importance in Croatia, especially in cases in which shareholders attempted to defraud company creditors by hiding company assets.

The purpose of criminal proceedings is usually to put additional pressure on the perpetrators or to gain access to information which only the prosecutor can access and which would otherwise remain unknown to the victim. In addition to this, successful convictions usually open the route to collecting the debt from the perpetrator's private property, which is another reason why victims decide to engage in criminal proceedings.

The first step to initiate criminal proceedings is reporting a potential crime to the competent state prosecutor. The prosecutor has a priority right to decide whether to initiate the proceedings.

The prosecutor usually instructs the police to make preliminary investigations which should help the prosecutor assess whether there are grounds for a criminal conviction. If the prosecutor finds that there could be an arguable case, the prosecutor initiates an official investigation in order to collect relevant evidence.

If the prosecutor makes a *prima facie* assessment that there are no grounds for criminal liability, the prosecutor grants the victim an opportunity to assume prosecution. The victim has 8 (eight) days to declare whether it assumes prosecution and to propose investigations that the victim deems appropriate for collecting relevant evidence.

Formal accusation can be brought before the court once the prosecutor or the victim assuming prosecution collects sufficient evidence. Depending on the gravity of the alleged crime, criminal cases may be heard by specialized criminal departments of Municipal or County Courts.

Croatia traditionally had for many years an inquisitorial system in which the presiding judge played the main role in conducting the trial and taking evidence. As part of the changes of the criminal procedure in 2011 many adversarial features were introduced into the system. The parties now play a more active role in putting forth their case before the judge who acts as an independent decision maker.

Parties are entitled to appeal against a court decision rendered in a first instance trial. The appeal is heard either by a County Court, if the first instance trial was heard by a Municipality Court, or by a Supreme Court, if the first instance trial was heard by a County Court. The law allows for a second appeal against decisions of the appellate courts if the perpetrator is convicted with a long term jail sentence or if the appellate court overturns an acquitting decision and finds the perpetrator guilty.

There are three extraordinary legal remedies available against appellate decisions: (i) reopening the trial in matters concerning serious violations by the participants, or discovery of new facts and/or evidence which may lead to a different decision; (ii) revision of a court decision in case of a breach of fundamental human rights; or (iii) revision of the court decision if there is a suspicion that was a serious violation of the rules of due process.

The state prosecution office is generally entitled to initiate proceedings and act as prosecution during the trial for the majority of criminal offenses. In addition to the state prosecution office, there is a special department for fighting corruption and organised crime called "Uskok". This department has competence over cases involving corruption, such as giving and taking a bribe, abuse of power in business or by state officials, human trafficking, certain cases of drug trafficking, and crimes committed by organised groups.

Both organisations have wide authorities in collecting evidence and prosecuting before the court. They can also request the court to allow surveillance measures such as wiretapping or physical surveillance.

As already described above, victims may assume the prosecution role if the state prosecution office declines to prosecute. In such cases, private prosecutors have wide competencies to propose the collection of evidence to investigation judges, but private prosecutors may lack the professional support enjoyed by the state prosecution.

Crime victims may participate in criminal proceedings either as aggrieved parties on the same side as the state prosecution or as private prosecutors.

In both roles victims may propose the taking of evidence, cross examining the defendant and the witnesses or filing appeals against court decisions. They can also request the criminal court to order the defendant to compensate them for financial losses or other damages that the victims suffered as a consequence of the crime. Filing such a request prevents the limitation period otherwise applicable to the damages claim from expiring. If such a claim is rejected by the criminal court, the victim is not prevented from filing a damage claim before a civil court.

Criminal courts may issue preliminary injunctions against defendants. Documents and evidence collected during criminal proceedings may generally be used in civil proceedings as well.

The duration of investigations and trial procedures largely depends on the nature of the criminal offense and the availability of evidence. State prosecution and criminal courts are generally very fast in conducting investigations, so investigations usually do not last for more than 1 (one) year. Trial proceedings usually last between 6 (six) months and 2 (two) years.

There are no court fees for reporting criminal offenses or initiating criminal proceedings.

Victim's counsel costs are prescribed by the Croatian Bar's Tariff and they may range between HRK 1,000 (EUR 133) for a hearing in proceedings for an offense with the maximum sentence up to 3 (three) years, HRK 4,000 (EUR 533) for a hearing in proceedings for an offense with a maximum sentence of more than 10 (ten) years. Brief costs usually vary between HRK 250 and HRK 4,000 (EUR 33 – EUR 533).

Counsel costs are recognized by the courts and, in the case of a conviction, the defendant may be ordered to pay the costs of the proceedings together with the victim's counsel costs.

4. INSOLVENCY

Croatian bankruptcy law mirrors the German insolvency law (*Insolvenzordnung*). According to Croatian law, bankruptcy proceedings can be administered over legal entities and private individuals that are under an obligation to pay income tax or profit tax.

Generally, bankruptcy proceedings must be initiated in the event of (i) insolvency; or (ii) over-indebtedness. In the event the bankruptcy involves a legal entity, such as a corporation, the management is obliged to apply for the initiation of bankruptcy proceedings within 21 (twenty one) days of the occurrence of a bankruptcy reason. A debtor may initiate bankruptcy proceedings in the event of imminent insolvency, when the debtor is able to prove it will most likely not be able to fulfil its current financial obligations.

A debtor is deemed to be insolvent if it cannot fulfil its due financial obligations on a continuous basis. A debtor is always presumed insolvent if (i) there are one or more enforcement orders pending against it for more than 60 (sixty) days; or (ii) it was not able to pay three consecutive salaries to the employee(s).

A debtor is considered over-indebted if the debtor's liabilities exceed its assets, unless (i) there are circumstances or options available, such as reorganization plans or other available financial resources that clearly indicate that the debtor will be able to fulfil its financial obligations to creditors; or (ii) the debtor's obligations are backed up by a private individual's personal property (usually that of a shareholder), provided that such property is not a part of a bankruptcy procedure.

Bankruptcy proceedings are conducted exclusively by the Croatian Commercial Courts. For companies registered in Croatia, the competence of an individual Commercial Court is determined according to the location of the company's registered seat.

With respect to bankruptcies involving an international element, the law prescribes the exclusive competence of the Croatian Commercial Courts for all debtors having their principal place of business (*središte poslovnog djelovanja*) in Croatia, which may differ from their registered seat. Thus, a foreign court may be competent for bankruptcy proceedings of a company registered with the Croatian register of companies if the company has its principal place of business outside Croatia and vice versa, unless the law of the state where the company has its principal place of business does not apply the principal place of business concept (i.e., there is no reciprocity).

Upon receiving an application for bankruptcy, the court sets a date for a hearing. The court may also appoint a temporary receiver, order an expert opinion or impose preliminary measures of protection or injunctions as the court deems necessary. At the hearing, the court will determine whether one of the two reasons for opening bankruptcy proceedings exists, and if so, grant the application, commence main bankruptcy proceedings, and appoint a permanent receiver. The decision may be appealed before the High Commercial Court; however, other than an appeal to the High Commercial Court, there are no other extraordinary legal remedies available against the final decision on whether or not to institute bankruptcy proceedings.

Following the court's decision to initiate bankruptcy proceedings, the time limit for creditors to make claims over the debtor's property begins to run. The creditors are allowed to make claims within 60 (sixty) days beginning on the 9th (ninth) day following the publication of the decision on the E–notice board of the Croatian Ministry of Justice. This requirement also applies to property owners whose property has been included in the debtor's non-exempt assets by mistake, or creditors with claims secured by a mortgage or similar lien over the debtor's property (*razlučni i izlučni vjerovnici*).

After the expiry of the time limit for notification of a creditor's claims, the court holds a hearing to determine the validity of each claim. If a claim is contested by the receiver, the creditor may only file a lawsuit against the debtor. If a claim is confirmed by the receiver and is contested by another creditor, the other creditor may file a lawsuit against the creditor that brought the initial contested claim.

Following the hearing, the court holds a subsequent hearing where the creditors determine the method of any further proceedings.

Under Croatian law, there are three types of bankruptcy proceedings: (i) bankruptcy leading to liquidation; (ii) reorganization through a bankruptcy plan; and, (iii) personal administration. The method of mandatory settlement (*prisilna nagodba*) was abandoned following the introduction of the new bankruptcy law in 1997.

In the first type of bankruptcy proceeding, the debtor's non-exempt assets are collected and sold and the proceeds are distributed amongst creditors. Once the process is completed, a notification is delivered to the corresponding commercial registrar in order to remove the debtor from the register. Consequently, by removing the debtor from the register, a legal entity will cease to exist, whereas an individual simply loses the capacity of a sole trader or a craftsman.

The second type of proceeding is a reorganization bankruptcy where a debtor reorganizes/restructures its assets and debts through a bankruptcy plan. The plan must be approved by the creditors and the bankruptcy judge. Also, the plan may involve the liquidation of some or all of the debtor's assets.

The third type of bankruptcy is a personal administration proceeding where the debtor continues to administer and dispose of its assets under the supervision of a court-appointed commissioner.

5. 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND 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).

Foreign state court judgments are subject to different provisions and must satisfy more stringent requirements as opposed to arbitral awards. The recognition and enforcement of foreign judgments may be refused if:

- the judgment is not accompanied by a valid confirmation of the judgment's finality and legal enforceability issued by the issuing court or other competent foreign body;
- the subject-matter of the foreign judgment falls within the exclusive competence of Croatian courts or other Croatian public authority;
- the same subject-matter has previously been decided upon by a Croatian Court or other Croatian public authority, or another foreign judgment involving the same subject-matter has previously been recognized in Croatia;
- the judgment is contrary to the Croatian Constitution;
- there is no reciprocity between Croatia and the foreign state issuing the judgment; reciprocity is presumed unless the opposing party claims the contrary, in which case the Court must seek an official notice from the Croatian Ministry of Justice regarding the existence of reciprocity; or
- the party against whom the judgment is being enforced proves that it was unable to present its case due to a procedural irregularity, such as improper service of documents, summons, etc.

The proceedings for the recognition and enforcement of foreign judgments are conducted by the Municipal and Commercial Courts, depending on the subject-matter of the judgment.

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
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases**: *first instance*: within 18 months; *second instance*: 1 to 2 years; *third instance*: 2 to 3 years. **Complex cases**: *first instance*: 2 to 5 years; *second instance*: 2 years; *third instance*: 2 to 3 years.	The duration of court proceedings usually depends on which court hears the case. For example, courts in Zagreb and Split are heavily overloaded with cases, which may cause the proceedings to last longer than they would in other courts.
APPROXIMATE COSTS **COURT FEES**	Court fees are based on the Court Fees Act and depend on the amount in dispute. Examples: ▪ Amount in dispute HRK 100,000 (approx. EUR 13,700): court fees: HRK 2,700 (approx. EUR 370) in the first instance; ▪ Amount in dispute HRK 465,000 (approx. EUR 63,700) and higher: court fees are fixed at HRK 10,000 (approx. EUR 1,370) in the first instance. Court fees for appellate proceedings are increased by 100%.	▪ Litigation costs include court fees, attorney fees and expenses (e.g. for expert opinions, travel expenses for witnesses, etc.). ▪ Court fees generally include fees for the statement of claim and fees for the court decision. ▪ Court fees for the statement of claim have to be paid upon filing the claim, while court fees for the court decision are payable after a court decision has been rendered. ▪ Court fees in the first and second instances are to be paid by the party filing the statement of claim or the appeal. ▪ If a claim is filed by a foreign party and enforcement of a decision on reimbursement of litigation costs is not safeguarded, the foreign party can be ordered to pay a security deposit. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. ▪ Attorneys' fees are determined on the basis of the Attorneys' Tariff and depend on the amount in dispute. Attorneys' fees may be agreed differently than as provided in the Tariff. However, a court will only award fees calculated on the basis of the Tariff. The actual attorneys' fees of a party (depending on the fee agreement between attorney and client) may thus be substantially higher, but are of no relevance to the opposing party. ▪ Agreements on contingency fees are allowed, but the fee is capped at 30% of the awarded amount.
ATTORNEYS' FEES (NET) *SIMPLE CASE*	**Assumptions based on an amount in dispute of EUR 1,000,000**: *first instance*: preparation of two briefs, four hearings of 1 h, 2 h, 4 h and 6 h, respectively, preparation of hearings/meetings with client, witnesses, correspondence with client: In total EUR 18,000 to EUR 35,000; *second instance*: one brief, no hearing: EUR 5,000 to EUR 18,000; *third instance*: one brief, no hearing: EUR 5,000 to EUR 18,000.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: *first instance*: preparation of four comprehensive briefs, six hearings with duration of 2 h, 4 h, and 4 x 8 h; preparation of hearings/ meetings with client, witnesses, correspondence with client: In total EUR 50,000 to EUR 180,000; *second instance*: one brief, no hearing: EUR 15,000 to EUR 30,000; *third instance*: one brief, no hearing: EUR 15,000 to EUR 30,000.	
JURY TRIALS	There are no civil jury trials in Croatia.	

CLASS ACTIONS	Yes. **Simple cases**: *first instance*: within 18 months; *second instance*: 1 to 2 years; *third instance*: 2 to 3 years **Complex cases**: *first instance*: 2 to 5 years; *second instance*: 2 years; *third instance*: 2 to 3 years.	▪ Only legal entities, which are entitled to protect certain collective interests and rights by virtue of law (e.g. consumer protection associations), may file a class action. ▪ A class action may be filed in cases of grave breaches or denial of legally protected collective interests such as environmental rights, living conditions, ethical interests, consumer rights, or non-discrimination rights. ▪ An individual who seeks protection of its individual interests or rights may rely on a final and binding court decision rendered in the proceedings initiated by class action because the court deciding on the individual claim is bound by the previous decision on class action.
DOCUMENT PRODUCTION	Limited.	▪ There is no formal discovery in Croatia. ▪ Documents are subject to disclosure if the party itself referred to the document in the course of the proceedings, the party is obliged to hand the document over by substantive law, or the document is qualified as a "joint deed" between the parties. ▪ A court order to produce such documents is not enforceable. Failure to comply with the order can only be considered by the court in its evaluation of the case.
MANDATORY REPRESENTATION BY COUNSEL	Generally no. Apart from some exceptions, counsel representation is only mandatory in the proceedings before the Supreme Court of Croatia.	
PRO BONO SYSTEM	Yes. There is legal aid for people not able to afford litigation costs.	
BUSINESS CRIME		
APPROXIMATE DURATION	**Simple cases**: *first instance*: within 18 months; *second instance*: within 12 months; *third instance*: within 12 months. **Complex cases**: *first instance*: 1 to 3 years; *second instance*: 12 months; *third instance*: within 12 months.	The duration of court proceedings usually depends on which court hears the case. Similar to civil proceedings, trials may last longer in courts which are overloaded with cases.
APPROXIMATE COSTS **COURT FEES**	In general, there are no court fees for initiating or conducting criminal proceedings that are prosecuted by the State Prosecutor.	▪ Convicted persons may be ordered to pay the costs of criminal proceedings. ▪ The court has a discretionary power to decide whether the procedural costs will be borne by the convicted person. ▪ All the expenses are advanced from the court's budget (e.g. for expert opinions, travel expenses for witnesses, etc.).

ATTORNEYS' FEES (NET) *SIMPLE CASE (INVESTIGATION PROCEEDINGS NOT INCLUDED)*	**Assumptions based on a charge with the maximum penalty of 5 years of imprisonment**: *first instance*: preparation of 4 comprehensive briefs, four hearings of 1h, 2h, 4h and 6h, respectively, preparation of hearings/meetings with client, witnesses, correspondence with client: EUR 3,000 to EUR 5,000; *second instance*: one brief, one hearing: EUR 700 to EUR 1,300; *third instance*: one brief, one hearing: EUR 1,000 to EUR 2,000.	▪ The court may also bear the defence costs if the defence counsel has been appointed by the court. ▪ If there are more convicted persons, the costs will be divided among the convicted persons. ▪ Attorneys' fees are determined on the basis of the Attorneys' Tariff or on the basis of the regulation issued by the Ministry of Justice (in case of *ex officio* defence) and depend on the penalty for the crime with which the accused has been charged. ▪ Attorneys' fees may be agreed differently than as provided in the Tariff. However, a court will only award fees calculated on the basis of the Tariff.
COMPLEX CASE (INVESTIGATION PROCEEDINGS NOT INCLUDED)	**Assumptions based on a charge with the maximum penalty of more than 10 years of imprisonment**: *first instance*: preparation of 15 comprehensive briefs, 12 hearings with a duration of 6 x 2h and 6 x 4h; preparation of hearings/meetings with client, witnesses, correspondence with client: In total EUR 24,000 to EUR 40,000; *second instance*: two briefs, one hearing: EUR 3,000 to EUR 4,000; *third instance*: one brief, one hearing: EUR 3,000 to EUR 5,000.	
JURY TRIALS	There are no criminal jury trials in Croatia.	
CLASS ACTIONS	There are no criminal class actions in Croatia.	
DOCUMENT PRODUCTION	Limited. There is no formal discovery procedure in Croatia. The police may, upon a court order, perform a search of premises and seize any document that is important for the case.	
MANDATORY REPRESENTATION BY COUNSEL	Mandatory representation is required if the accused is a foreigner and does not understand the Croatian language, or if the accused is not capable of defending him/herself due to health reasons. Mandatory representation is also required if the statutory prescribed penalty consists of more than 10 years of imprisonment.	
PRO BONO SYSTEM	Yes. There is legal aid available to individuals who cannot afford a defence attorney.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	*First instance*: a decision on a request for a preliminary injunction is usually rendered within 2 weeks to 2 months; *second instance*: 2 to 6 months; *third instance*: 4 months to 1 year.	▪ In practice, courts generally avoid issuing preliminary injunctions without hearing the opponent, which consequently extends the duration of the proceedings. ▪ Under the Enforcement Act, the appellate court is obliged to pass the appellate decision within 30 days upon the receipt of the appeal. However, in practice courts pass their decisions within 2 to 6 months.

APPROXIMATE COSTS		
COURT FEES	The court fees for filing preliminary injunctions are reduced by half in the first instance in relation to standard civil proceeding fees.	▪ A preliminary injunction may be requested before, during and after the court proceedings, but not after the claim has been collected. ▪ With the request for a preliminary injunction the applicant must provide available evidence, e.g., documentary evidence and affidavits that can be examined by the court right away. ▪ Documents in foreign languages should be presented together with Croatian translations. ▪ In order to protect the opponent against losses incurred by a preliminary injunction, the court may order the applicant to pay a security deposit.
ATTORNEYS' FEES (NET) *SIMPLE CASE*	**Assumptions: only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent**: EUR 2,500 to EUR 6,000 in the *first instance*; *second instance*: one brief, no hearing: EUR 4,000 to EUR 8,000; *third instance*: one brief, no hearing: EUR 4,000 to EUR 8,000.	
COMPLEX CASE	**Assumptions: apart from filing the request for a preliminary injunction, two comprehensive counter statements are filed in reply to two statements from the opponent; witnesses are heard**: Total costs (including meetings with client/witnesses) in the *first instance*: EUR 18,000 to EUR 35,000; *second instance*: one brief, no hearing: EUR 5,000 to EUR 18,000; *third instance*: one brief, no hearing: EUR 5,000 to EUR 18,000.	▪ An applicant may also offer to grant a security deposit in order to expedite proceedings if the case may seem to be difficult. ▪ Attorneys' fees are determined on the basis of the Attorneys' Tariff and depend on the amount in dispute. Attorneys' fees may be agreed differently than as provided in the Tariff. However, a court will only award fees calculated on the basis of the Tariff.
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. **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 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. ▪ 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 JUDGMENTS AND 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.	▪ A party seeking recognition/ enforcement must submit a copy of the judgment and a certificate confirming that the judgment became final and binding/ enforceable under the law of the country in which it was rendered. ▪ For non-EU countries, if there is no treaty on recognition and enforcement of foreign court judgments between Croatia and the state in which the judgment was rendered, the recognition of such judgment would, generally, be subject to reciprocity requirements. ▪ 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.	
INSOLVENCY PROCEEDINGS		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	Creditors file their claims directly with the receiver.	▪ A court's decision on the commencement of insolvency proceedings is published in the Official Gazette. ▪ The time period for filing the claims is set out in the published decision and may not be shorter than 15 days or longer than one month.
APPROXIMATE DURATION	1 year to several years. In very complex cases, duration of more than 10 years is possible.	
APPROXIMATE COSTS		
COURT FEES	Court fees depend on the amount of the claim, but are capped at HRK 500 (approx. EUR 70).	
ATTORNEYS' FEES (NET)	Filing of insolvency claim: *Simple case*: approx. EUR 400 to EUR 600 *Complex case*: approx. EUR 2,000 to EUR 5,000.	

This chapter was written by Luka Tadic-Colic and Dalibor Valincic.

DALIBOR VALINCIC
Partner

Wolf Theiss, Croatia

+385 1 49 25 400
dalibor.valincic@wolftheiss.com

LUKA TADIC-COLIC
Partner

Wolf Theiss, Croatia

+385 1 49 25 400
luka.tadic-colic@wolftheiss.com

WOLF THEISS

CZECH REPUBLIC

1. LEGAL SYSTEM

The Czech legal system is based on the codified principles of civil law. The cardinal source of law is written legislature and its main areas are codified. The forms of court proceedings are prescribed in Act No. 99/1963 Coll., Civil Procedure Code ("Civil Procedure Code"), and in Act No. 292/2013 Coll., on Special Civil Proceedings ("Special Civil Proceedings Act"). Although judicial precedents (i.e., interpretation by the courts) are generally non-binding, the Supreme Court of the Czech Republic regularly comments on case decisions to provide guidance and establish uniformity among the lower courts, which are likely to adhere to these.

On 1 January 2014 the long-awaited Act No. 89/2012 Coll., Civil Code ("Civil Code") came into effect, and brought many changes into the Czech legal system. Simultaneously, the Civil Procedure Code was recently modified and amended. One of the most significant modifications is the change of terminology (due to the new Civil Code) and several other changes (such as which court is the court of first instance in particular cases or the modification of forms of enforcement of judgments).

Civil dispute proceedings are divided into two groups: (i) "indisputable (*nesporné*) proceedings", e.g. inheritance proceedings, trust fund proceedings or legal capacity proceedings, which are governed by the Special Civil Proceedings Act; and (ii) "disputable (*sporné*) proceedings" which are governed by the Civil Procedure Code.

Next to the regulation of civil dispute proceedings, Act No. 150/2002 Coll., Code of Administrative Justice also provides for the possibility to submit a claim against an administrative body.

The Czech Republic is a member of the European Union and therefore is bound by European legislature, in particular by EU Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels I bis") and EU Regulation No. 593/2008 on the law applicable to contractual obligations ("Rome I").

2. LITIGATION

The Czech Republic has a four-tier system of courts and two instance proceedings. The Czech court system is composed of district courts, regional courts, two high courts, two supreme courts as well as the Constitutional Court of the Czech Republic which stands separately from the other (i.e. general) courts. The courts in the Czech Republic operate independently from each other. The first supreme court (Supreme Court of the Czech Republic) is responsible for civil (including commercial) and criminal matters while the second supreme court (Supreme Administrative Court of the Czech Republic) is responsible for administrative matters (including taxes). Court proceedings are oral and public, with exemptions stated by the law (juvenile justice). The procedure is based on an inquisitorial system with features of the adversarial system. There is no jury.

Each court handles civil (including labour), commercial and criminal matters. In general, cases are first heard before the district court while the regional court serves as an appellate court. However, the regional court may also act as a court of first instance (especially in some commercial disputes) in cases where an appeal is decided by the high courts. Administrative proceedings are carried out by the regional and the Supreme Administrative Court. Currently in the Czech Republic, there are 86 district courts and 8 regional courts.

The general as well as the specific jurisdiction is stipulated in the Civil Procedure Code, in the Special Civil Proceedings Act and in the Code of Administrative Justice.

In appropriate cases, it is possible to submit a petition to the district or regional courts for granting interim measures of protection, such as a preliminary injunction.

Currently, legal proceedings in the Czech court system are generally viewed as being rather slow. Depending on the complexity of the case, a dispute may take anywhere from a few months to a couple of years before

a final settlement. Generally, under Czech civil procedure law, there are no prescribed periods within which the courts are obliged to decide (with the exemption of procedural acts such as preliminary injunctions or decisions in commercial register matters, etc.).

Disputes involving a claim for payment of a specific amount usually take a shorter period of time. For example, the court may decide to make a judgment based strictly on the application for a payment order, without a hearing or examining the defendant. The court may issue the payment order if the exercised right follows from the facts stated by the claimant; however, an explicit demand by the claimant is not required, and the payment order has the same effect as a final judgment in the matter. The court may also issue an order to pay a bill (cheque) without a hearing, if the claimant submits an original copy of a bill of exchange, or cheque, whose authenticity is uncontested. It is also possible to issue an electronic order for payment or a European order for payment.

Generally in the Czech legal system, the only legal remedy against a judgment by a court of first instance is to make an appeal. The devolutionary effect of the appeal applies under Czech law. This means that the contested decision of a lower level court will be resolved by the appellate court; however, reconsideration is possible, and certain appellate decisions can be resolved by the first instance court.

A party may appeal most decisions of the first instance courts. On appeal, a party may challenge any procedural irregularities or the erroneous application of substantive law, and in some very rare and specific situations it may be possible to offer new facts and evidence in support of the appeal.

The court of second instance will either deny or allow the appeal. If the appeal proceeds, the court will review the factual and legal aspects of the case which have been considered by the court of first instance, and may accept new facts and evidence. The court is not restricted by the submission of the appellant, nor is the court bound by the reasoning stated in the appeal. The court is only bound by the scope of the appeal. According to the rules of appellate procedure, after reconsidering the relevant facts, the court will either (i) affirm the first instance judgment; or (ii) overrule the judgment and change the ruling. Furthermore, the appeal court can annul or vacate the previous decision and remand the matter to the court of the first instance, or terminate the proceeding.

In addition to the appeal procedure which is an ordinary remedy, Czech law allows the use of extraordinary legal remedies under a strictly defined set of conditions such as: revision (pertaining to legal aspects), petition for retrial (dealing with factual aspects), and petition for nullity (dealing with procedure aspects).

Court fees are based on the Court Fees Act and depend 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;
- higher than CZK 40,000,000, the court fee is CZK 2,000,000 and 1% of the value exceeding CZK 40,000,000. The value higher than CZK 250,000,000 is not taken into account.

Litigation costs mainly include court costs, attorneys' fees, and expenses for expert opinions, evidence and language translations/interpretations, which are normally paid by the unsuccessful party.

Any individual that receives a valid judgment and is entitled to request performance of the judgment from another person may, in the absence of voluntary execution or performance within the period specified in the judgment, file a petition for enforcement of the judgment. The execution can be carried out on the basis of a court order or with a private (self-employed) judicial executor. There are also several pecuniary forms of judicial enforcement including wage deductions, an order to pay from an account at a specified financial institution, a sale of assets, a sale of enterprise, a sale of movable assets and real estate, management of real estate or a judicial lien. In addition, there are non-monetary forms of enforcement that include clearance of real estate, seizure of property, division of common property, performance of works or suspension of a driving license.

3. BUSINESS CRIME

The legal provisions covering business crimes went through an enormous development lately. The area of business crime and the criminal offences falling within this area have been extended and the sanctions made more restrictive. Concurrently, the criminal liability of legal entities has been introduced by Act No. 418/2011 Coll, on Corporate Criminal Liability. In cases of fraud (in particular credit fraud), embezzlement, bribery, or breach of duty in property administration, business crime plays a substantive role in the Czech Republic.

In comparison with civil proceedings, criminal proceedings are distinctly faster and also cheaper (there are no court fees). Parties attempt to initiate criminal proceedings for various reasons; one reason is often to get hold of information which only the State Prosecutor can access and which would be otherwise unknown to the victim of the crime. Thus, business crime victims often initiate criminal proceedings to gain access to evidence, in order to use this in civil proceedings (which may be carried on concurrently). The victim claiming damages in the criminal proceeding does not need to specify the amount of damages and if the harm is proven, the proceedings to recover damages are usually very fast.

In criminal cases there are also two instances; whereby an appeal against the first instance decision is possible. Nevertheless, there are no separate criminal courts in the Czech Republic for particular crimes. Criminal cases are decided by specialized judges and panels. In the Czech Republic criminal proceedings are initiated by the police, as the police are obliged to conduct all necessary investigations to reveal the fact that a crime was committed. Anyone may file a criminal complaint of a crime being committed to the State Prosecutor's Office or to the police, in which case the police are supervised by the State Prosecutor. If the justified facts suggest that a crime was committed, the police initiate the criminal prosecution immediately. A copy of the decision to initiate the criminal prosecution is served to the accused no later than the beginning of the first interrogation and within 48 (forty eight) hours to the State Prosecutor and the defence counsel.

The preliminary proceedings are led by the State Prosecutor and only he/she can either submit the indictment to the court, in case he/she has enough evidence proving the guilt of the accused, or discontinue the criminal proceedings.

After studying the indictment submitted by the State Prosecutor, the judge orders a trial (*hlavní líčení*). The trial is the most important part of the criminal prosecution. Within the proceedings the State Prosecutor is obliged to prove the guilt of the accused while the principle *in dubio pro reo* applies – if the authorities cannot sufficiently prove the facts, it shall be assumed that the facts are not proven. The accused has the right, but not an obligation, to prove his/her innocence. The judge evaluates the evidence (e.g., examination of witnesses, examination of the accused, expert opinions). In business crime proceedings the most important evidence includes the examination of witnesses, expert opinions and economic analyses – it is often important to prove the correctness of final accounts, or other sophisticated economic evidence. Moreover it is very important to establish whether the offence was intentional or caused through negligence. The trial ends with a judgment – either a guilty verdict (a sentence) or a verdict of not guilty (an acquittal) or another procedural decision (e.g. abatement, postponement or settlement if possible).

A guilty verdict may be appealed by the accused or by the State Prosecutor, while an acquittal may be appealed only by the State Prosecutor. The accused can appeal the decision of the court of lower instance before the court of higher instance (e.g. from the district court to the regional court).

The appellate court reviews the legality and justification only of those sentences of the judgment against which an appeal was filed, including the correctness of the criminal proceedings in terms of alleged errors. The appellate court can (i) uphold the appeal; or (ii) revoke the contested judgment. Furthermore, the appellate court may deviate from the factual findings of the court of the first instance only if it presents important evidence for the factual findings which were already presented during the main trial, or if it presents new evidence.

The criminal law enforcement authorities are the court, the State Prosecutor and the police. Simple cases before the district court are decided by sole professional judges and in difficult cases by a panel of one professional judge and two lay judges. The main "player" is the State Prosecutor, which is the only body capable of bringing a criminal action – the indictment. The organization of the State Prosecutor's Office corresponds to the organization

of the courts (i.e. district, regional, high and Supreme State Prosecutor's Office). The State Prosecutors' Office is a part of the Ministry of Justice.

If the business crime caused damages, the injured party may ask for a remedy within the criminal proceedings (*adhezní řízení*) or may initiate separate civil proceedings. The surrender of the unjust enrichment may also be required. Civil and criminal proceedings may therefore run concurrently. The court in the civil proceedings is bound by the verdict of the criminal court. Under the Act No. 45/2013 Coll., on Victims of Crimes, effective from 1 August 2013, a new specific role of the "victim" was established. The main difference between a victim and an injured party is that a victim may only be an individual and thus in a specific situation a bereaved person may also be considered a victim. Under this Act the victim of a business crime benefits from new rights. For example, the victim may make a statement regarding the impact of the crime on his/her life which may help the court to decide about the appropriate and fair judgment. Moreover, the victim may be defended by a principal for free (newly, the principal may be a legal entity or an organization specialized in providing social services). In addition to the defending principal the victim may also have a confidant who helps the victim to deal with the consequences of the crime.

Every party may apply for the production of evidence in criminal proceedings, i.e., the State Prosecutor, the accused, or the victim. The judge can even call for the production of evidence which nobody applied for. The judge decides if the production of evidence is important, or if this is redundant and therefore merely an obstruction to the proceedings.

The victim may (if approved by the judge) question the accused, but only after the judge has already finished the examination.

Interim injunctions may be granted during the proceedings. These represent an enumerative area of duties that the court may grant to the accused within the criminal proceeding. The aim of these interim injunctions is to secure the rights and freedom of the victim such as life, freedom or human dignity. The court can grant interim injunctions only if there is enough evidence proving the guilt of the accused. Types of interim injunctions include e.g. a ban on contact with the victim, a ban on entry into a common residence with the victim or a ban on traveling abroad.

If the documents were legally gained within the criminal proceeding, they can be used further in the civil proceedings. The principle of free evaluation of the evidence (*zásada volného hodnocení důkazů*) applies particularly in the criminal proceedings. Therefore, the evidence might be anything which is able to contribute to the clarification of the crime and which is admitted by the court as evidence.

Compared to civil proceedings criminal proceedings are usually significantly faster. Generally, the time frame for the criminal proceeding depends on the complexity and the uniqueness of the case. Simple cases are decided by the court of first instance within 1 (one) year and by the appellate court within 18 (eighteen) months. Complex cases, especially those regarding business, may take a longer time. The court itself is not bound by any statutory period of time.

Contrary to civil proceedings, in criminal proceedings court fees do not exist; ergo criminal proceedings are initiated *ex officio*. On the other hand, the accused has to bear the costs for any expert's opinion (if not required by the court itself) and the attorney's fees. The attorneys specialized in criminal proceedings may bill their hourly rate to the client, but the court will adjudicate only a fee prescribed by the secondary legislation.

Corporate Criminal Liability

The Act No. 418/2011 Coll, on Corporate Criminal Liability, effective from 1 January 2012 implemented the requirements set out by EU Directive 2009/52/EU, so called "direct liability of legal entities". Under this Act, a legal entity may be prosecuted if the crime has been committed by one of the persons listed in this Act and which is imputable to the legal entity. The commitment of a crime by actions of (i) a statutory body of the legal entity; (ii) a member of the statutory body; (iii) a person acting in a managerial capacity carrying out management or control activities; or (iv) a person exercising a decisive influence over the management of the legal entity is imputable to the legal entity.

The commitment of a crime by an employee or a person having a similar status is imputable to the legal entity only if (i) this person has acted according to the instructions of the above-mentioned bodies or persons; (ii) the above-mentioned bodies or persons have not performed sufficient control over the activity of employees or other subordinates; or (iii) have not taken sufficient measures to avoid or avert the consequences of the committed crime.

All crimes as set out in the Criminal Code give rise to prosecution with the exception of those crimes enlisted in an enumerative list contained in this Act.

Legal entities are mostly subject to financial sanctions for any violation of the law. The ultimate sanction is the dissolution of the legal entity.

According to publicly accessible information only very few proceedings with legal entities are waiting to be heard before the courts in the Czech Republic at the moment.

4. INSOLVENCY

According to the insolvency law (Act No. 182/2006 Coll. the Insolvency Act), a debtor is bankrupt if it has payable financial liabilities in arrears more than 30 (thirty) days and is unable to satisfy these obligations. An entrepreneur or other legal entity is considered bankrupt if it has become over-indebted, i.e., the debtor's liabilities exceed the debtor's assets. In all situations, the Insolvency Act requires a plurality of creditors.

An application for the opening of insolvency may be filed either by the debtor itself or by any of its creditors. The Insolvency Act incorporates several forms of solutions to insolvency, including: (i) straight bankruptcy proceedings (*Konkurs*); (ii) reorganization (*Reorganizace*); (iii) debt relief or discharge from debts (*Oddlužení*); and (iv) special forms of insolvency solutions (e.g. insolvency of a financial institution). In addition to the new forms of solutions to insolvency, the Insolvency Act implements the use of the Insolvency Register, which is a public register that contains a list of debtors and creditors and the documentation related to each insolvency case.

Insolvency proceedings are published on the website of the Czech Ministry of Justice at http://www.justice.cz.

The insolvency courts are not separate courts; instead, they are specialized departments within the regional courts. The role of the insolvency courts is to supervise and approve any measures undertaken by the insolvency receiver and the creditors. The ultimate aim of the bankruptcy is to achieve a proportional satisfaction of the creditors from the debtor's property belonging to the bankruptcy estate.

On the other hand, reorganization serves the satisfaction of creditors by preservation of the debtor's business. In general, a reorganization is possible only for large debtors whose total annual net turnover in the previous accounting period has reached at least CZK 50 million (i.e. approximately EUR 2 million), or for those that employ more than 50 employees. With the consent of the majority of secured and unsecured creditors, reorganization is also permissible for smaller companies subject to other conditions.

The debt relief is applicable only to non-business debtors and makes available a discharge from the balance of the debtor's liabilities, provided that a part (at least 30%) of the debts is repaid.

5. 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

Council Regulation 1215/2012 deals with the recognition and enforcement of judicial decisions in civil and commercial matters. According to this Regulation, decisions issued by a court of any EU Member State shall be recognized by other EU Member States without a special procedure. Czech judicial decisions dealing with civil and commercial matters that were issued prior to the Czech Republic's entry into the EU, and decisions given in connection with proceedings initiated before entry into the EU, cannot normally be enforced in any other EU Member State.

Furthermore, since 21 October 2005 and the enactment of EC Regulation No. 805/2004 of the European Parliament, any European Enforcement Order for an uncontested claim is valid in the Czech Republic unless:

- pursuant to Act No. 91/2012 Coll., on International Private and Procedural Law effective from 1 January 2014, the provisions of the Act shall apply unless an international treaty or European law binding on the Czech Republic stipulates otherwise. Pursuant to the Czech Act on International Private and Procedural Law, decisions of foreign authorities as well as foreign judicial settlements and foreign notary deeds shall be effective in the Czech Republic if they are final and conclusive, confirmed by the foreign authority and recognized by Czech authorities. However, foreign decisions shall not be recognized or enforced if the foreign decision impedes the exclusive jurisdiction of the Czech Courts, the proceedings could not have been conducted under the authority of the foreign state; and, the provisions concerning the competence of the Czech Courts have been applied to the consideration of jurisdiction of the foreign authority;
- a final and conclusive decision has been issued by Czech authorities, or a final and conclusive decision of an authority of the third state has been recognized in the Czech Republic;
- the authority of the foreign state failed to allow the party against whom the judgment or the award is to be enforced, to participate in the proceedings, especially if the participant was not personally served with notice of the lawsuit or the writ of summons;

- recognition of the foreign award would violate Czech public order; or,
- reciprocity of the award is not guaranteed, or reciprocity is not required because the foreign decision is not directed against a Czech citizen or a Czech legal entity, or if a Czech legal entity has agreed in writing that the foreign court has a competence (property disputes).

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
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases**: *first instance*: 1 year; *second instance*: 8 to 12 months. **Complex cases**: *first instance*: 1 to 2 years: *second instance*: 1 to 2 years	▪ The duration of court proceedings depends on the number of hearings and the extent of evidence. ▪ A third instance is not permissible in the Czech Republic. A legally effective judgment may be contested by so called appellate review in the Supreme Court. The appellate review is an extraordinary remedy.
APPROXIMATE COSTS **COURT FEES**	Court fees are based on the Court Fees Act. In general, the court 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 claim up to a maximum amount of CZK 2,000,000; ▪ above CZK 40,000,000, the court fee is CZK 2,000,000 plus 1% of the value exceeding CZK 40,000,000. A value higher than CZK 250,000,000 is not taken into account.	▪ Litigation costs include court fees, attorneys' fees, and expenses for expert opinions and witnesses. ▪ Court fees at the first and second instances are due at the court's request after the action/appeal has been filed. ▪ Court fees exceeding CZK 5,000 must be paid by bank transfer to the court's bank account. Court fees not exceeding CZK 5,000 may be paid by duty stamps. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ The actual attorney fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are of no relevance to the opposing party.

	Court fees for electronic compulsory payment orders also depend on the amount in dispute. If the amount in dispute is: ▪ up to CZK 10,000, the court fee is CZK 400; ▪ from CZK 10,000 to CZK 20,000, the court fee is CZK 800; ▪ above CZK 20,000, the court fee is equal to 4 %. The electronic compulsory payment order may be issued only if the amount in dispute does not exceed CZK 1,000,000	
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Assumptions based on an amount in dispute of EUR 1,000,000**: *first instance*: preparation of the claim/ responses, court hearings, preparation of the hearings (meetings with client, witnesses, correspondence with client): In total EUR 25,000 to EUR 40,000; *second instance*: preparation of the appeal/ responses, court hearing: In total EUR 7,000 to EUR 15,000.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: *first instance*: preparation of the claim/ responses, court hearings, preparation of the hearings (meetings with client, witnesses, correspondence with client): In total EUR 50,000 to EUR 200,000; *second instance*: preparation of the appeal/responses, court hearings: In total EUR 20,000 to EUR 50,000.	
JURY TRIALS	There are no civil jury trials in Czech Republic.	
CLASS ACTIONS	Class actions are not permitted in the Czech Republic.	The Czech Code of Civil Procedure does not provide for a special proceeding for collective redress. Consumer organizations may file, on behalf of consumers, claims against unlawful behaviour. However they cannot sue for damages. In such cases, each consumer must file a separate action.
DOCUMENT PRODUCTION	In civil litigation (in particular in case of actions for performance), the court adjudicates on the basis of evidence submitted/offered by the parties. In non-contentious proceedings (e.g. proceedings on personal status), evidence may be produced even though the parties do not offer to present evidence.	▪ Documents shall be submitted in Czech. Czech translations must be attached to documents in foreign languages. ▪ The court is entitled to ask the parties or third parties to submit other documents besides documents referred to as evidence. ▪ One copy of documents (documentary evidence) shall be submitted to the court. The counter-party is obliged to make their own copies using the copies

MANDATORY REPRESENTATION BY COUNSEL	Yes. The law prescribes compulsory representation by an attorney-at-law in cases of appellate review proceedings at the Supreme Court.	
PRO BONO SYSTEM	Yes. There is legal aid for people who cannot afford the costs of legal proceedings. Legal aid *ex officio* is provided for by the Czech Bar Association and governed by the Bar Act.	
BUSINESS CRIME		
APPROXIMATE DURATION	**Simple cases**: *first instance*: 6 months; *second instance*: 1 year. **Complex cases**: *first instance*: 1 year: *second instance*: 1 to 1½ years	Criminal proceedings are significantly faster than standard civil proceedings, but in very complex cases (e.g., in cases of business crime) the proceedings may be much longer.
APPROXIMATE COSTS	There are no court fees. The accused may bear the costs for experts' opinions and attorney's fees. On the other hand, the attorneys may bill in accordance with the secondary legislation and not their usually hourly rate.	
JURY TRIALS	There are no jury trials in the Czech Republic.	
CLASS ACTIONS	Class actions are not permitted in the Czech Republic.	
DOCUMENT PRODUCTION	The principle of free evaluation applies in criminal proceedings. Everything that can contribute to solving the crime may be submitted as evidence.	▪ Documents shall be submitted in Czech. Czech translations must be attached to documents in foreign languages. ▪ The court is entitled to ask the parties or third parties to submit other documents besides documents referred to as evidence. ▪ Copies of documents (documentary evidence) shall be submitted to the court. The counter-party is obliged to make their own copies using the copies from the court file at its own expense.
MANDATORY REPRESENTATION BY COUNSEL	The accused shall be represented by counsel if ▪ the accused is (i) in custody, prison or protective treatment; (ii) incapacitated or deprived of full legal capacity by a court decision); or (iii) fugitive; ▪ if an agreement on guilt or punishment is being negotiated; ▪ if the court decides on extradition, transfer to another EU Member State, enforcement of a foreign criminal law decision or imposition of protective treatment; or ▪ if the offence is punishable with a minimum of 5 (five) years of imprisonment (the accused may forfeit his/her right to the mandatory defence). Each court has a list of counsel from which the counsel are chosen.	
PRO BONO SYSTEM	Yes.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	*First instance*: the court shall make a decision no later than 7 days after the motion for a preliminary injunction has been filed; *appellate proceedings*: 2 to 8 months in second instance.	The motion for preliminary injunction must be accompanied by all the evidence that the applicant bases the motion on.

APPROXIMATE COSTS		For the purpose of securing damages that could arise as a result of preliminary injunction, the applicant is obliged to deposit a returnable security in the amount of CZK 10,000 at the court. In commercial matters, the amount is CZK 50,000.
COURT FEES	Court fees are based on the Court Fees Act and amount to approximately CZK 1,000.	
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Assumptions: only the request for a preliminary injunction is filed**: *first instance* EUR 3,000 to EUR 7,000; *second instance*: preparation of the appeal/responses, no court hearing: EUR 3,000 to EUR 6,000.	
COMPLEX CASE	**Assumptions: the request for a preliminary injunction is filed, meeting with the client**: *first instance*: EUR 15,000 to EUR 30,000; *second instance*: preparation of the appeal/responses, meeting with the client: EUR 7,000 to EUR 15,000.	
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).
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.	▪ 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%.
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 OF FOREIGN JUDGMENTS AND 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.	▪ Under EC Regulation 44/2001 and the Lugano Convention, the party seeking recognition/ enforcement must submit a copy of the judgment which should be accompanied by a Certificate of Authenticity issued either by the court that rendered the judgment or by another competent institution of the state of origin. ▪ Further, in order to avoid any delays, attaching a certified translation of the judgment is highly recommended.
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;	▪ Judgments that fall outside the scope of application of the EC Regulation/Lugano Convention must be submitted in the original or in a copy issued by the court that rendered the judgment. A certified translation of the judgment must be submitted. ▪ 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.

	▪ 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 judgment: *Simple case*: EUR 500 to EUR 1,000. *Complex case*: EUR 1,000 to EUR 3,000.	
INSOLVENCY PROCEEDINGS		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	The insolvency proceedings are initiated on the day of service of the insolvency petition at the insolvency court. No decision on the commencement of insolvency proceedings is made, only a notice is published in the Insolvency Register.	The commencement of insolvency proceedings is published by edict (e.g., on the website of the Czech Ministry of Justice under http://www.justice.cz). In the edict, the period for the filing of insolvency claims is set.
APPROXIMATE DURATION	6 months to several years.	
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	There is no fee for filing the petition for the commencement of insolvency proceedings. Filing of insolvency claim: *Simple case*: EUR 600 to EUR 1,000. *Complex case*: EUR 1,000 to EUR 3,000.	If a debtor files an insolvency petition, the duty to make an advance payment for the costs of the insolvency proceedings amounting up to CZK 50,000 may be imposed on the debtor.

This chapter was written by Petr Syrovatko.

PETR SYROVATKO
Counsel

Wolf Theiss, Czech Republic

T. +420 234 765 223
petr.syrovatko@wolftheiss.com

WOLF THEISS

HUNGARY

1. LEGAL SYSTEM

Hungary has been traditionally considered to have a "continental" legal system, in which the main source of law comes from acts adopted by the Parliament, rather than case precedents made by the courts. The major governing principles of the Hungarian legal system are set forth in the Constitution Act enacted on 25 April 2011.

The Constitution Act replaced the previous Constitution that had been in force since 1949, and which had undergone several significant amendments and revisions. The Constitution Act reflects a democratic basis of government. As a member of the European Union since 2004, Hungary has the continuing obligation to ensure that all Hungarian laws and subordinated pieces of legislation are in accordance with *acquis communautaire*.

2. LITIGATION

A completely renewed and restructured Act No. CXXX. of 2016 on Civil Procedures (Civil Procedural Act) entered into force on 1 January 2018 which contains the relevant procedural rules for civil lawsuits. Court decisions are generally not deemed as binding case precedents, but are often referred to in litigation to strengthen the grounds of the parties' respective positions. It is the responsibility of the Curia (playing the role of the Supreme Court of Hungary) to lay down uniform guidelines for the lower level courts in the judicial hierarchy. As part of this function, the Curia adopts harmonized decisions and publishes all its rulings. A harmonization procedure shall be conducted if (i) a harmonized decision is required in a matter of doctrine to achieve improvements in precedent cases or for the approximation of sentencing policies; or (ii) a panel of the Curia intends to deviate from a legal issue in a decision adopted by another adjudication of the Curia.

The Hungarian civil court system is divided into three levels in terms of ordinary litigation proceedings: local courts (*járásbíróság*), county courts (*törvényszék*) and courts of appeal (*ítélőtábla*). This hierarchy prevails in both civil and criminal law cases. The Curia, in addition to its competence described in the preceding paragraph, serves as an extraordinary forum to judge supervisory review requests submitted against final and binding civil judgments on an exceptional basis.

Local courts have jurisdiction to decide in first instance on (i) matters with a case value not exceeding HUF 30 million (except a statutory list of matters set out in the Civil Procedural Act, i.e. copyrights and related rights matters, industrial property rights matters, claims for damages caused by public servants, certain types of litigations related to corporate law actions, etc.); (ii) matters concerning the status of a person; and (iii) lawsuits related to enforcement.

Special courts of public administration and labour law are, in first instance, exclusively dealing with litigations arising from (i) labour law relations; and (ii) the challenge of final decisions of public administrative organs.

County courts, in first instance, are considered as courts with general competence, meaning that local courts have competence only in procedures listed in the Civil Procedural Act. County courts, as second instance forum, are competent to decide on appeals submitted against the judgments of (i) local courts; and (ii) courts of public administration and labour law. County courts allocate cases, by their nature, to criminal, civil, commercial, labour law and public administrative panels acting within their organisation.

Courts of appeal, in civil procedural cases, act as a second instance forum to decide on appeals submitted against the first instance judgments of county courts.

Generally, the ordinary remedy available to a party is to appeal against the first instance judgment to a court of second instance. There is no ordinary remedy against the second instance court's decision. In other words, the judgments of second instance courts are final, non-appealable and binding. Only an extraordinary legal remedy is available (*felülvizsgálati kérelem*) to challenge such a decision before the Curia. To achieve this, the Curia grants an extraordinary remedy (typically the annulment or alteration of the first and/or second instance judgment).

The applicant must evidence that a material breach of substantive law has occurred, or certain fundamental procedural rules have been breached.

On the basis of general experience, it may be stated that first instance procedures in civil cases last between 8 (eight) to 18 (eighteen) months, but this duration may be exceeded in more complex cases (in particular when expert evidencing is required).

The Civil Procedural Act introduces a divided process structure – in time and function – during the first instance procedures. Namely, the procedure is divided into two consecutive parts: (i) first the preparatory phase (*perfelvételi szak*) and then (ii) the hearing / evidencing phase (*érdemi tárgyalási szak*). The purpose of the preparatory phase is to identify the substance and the procedural framework of the legal dispute and hence to facilitate the decision-making process in the hearing / evidencing phase. In the course of the preparatory phase, the parties have to make their full statements of facts and law, make all procedural motions and submit their available evidence. All these statements and matters will be heard at a preparatory hearing where further statements will be possible, but once the preparatory hearing is closed, statements and motions will not be altered. When the court closes the preparatory phase it is bound by its resolution thereon. The hearing/evidencing phase continues on the basis of such established statements and motions and its function will be to hear and decide on evidence.

Under the Civil Procedural Act, parties must fully support the expeditious conduct of the procedure, must make their statements and submit their evidence in a timely manner and in good faith, and their statements must reflect the truth. Failure to observe these rules may result in fines and other sanctions.

The principle and specific rules of active judge control authorize judges to efficiently apply all reasonable tools to expedite the procedure, in particular to clarify contradictions between a party's statements, call parties to supplement their statements, give directions on evidencing matters, set the legal frameworks of the case and promote appropriate exercise of the parties' procedural rights.

The Civil Procedural Act provides an efficient tool to the claimant in order to safeguard its rights and interests in cases where time is of the essence. As a new legal instrument, a request on interim measures can be filed before the full statement of claim is submitted to the court, provided that the claimant demonstrates that any delayed order on interim measures would render the purpose impossible. However, it is a precondition of continuing effect of the interim measure that the claimant submits its full statement of claim and commences the litigation procedure.

The Civil Procedural Act lays down the specific rules for class-actions (*társult per*) and defines also the scope of application, such as (i) claims arising out of consumer contracts; (ii) labour disputes; and (iii) certain environmental claims. At least ten claimants may pursue claims on grounds of the same rights and facts. The claimants are required to file a request for class-action in the statement of claim, which has to be approved by the court. Before the launch of class-actions, the claimants have to conclude a contract in respect of the class-action; the content of which is determined in detail in the Civil Procedural Act.

In general, legal representation during the procedure is mandatory unless otherwise provided by law. However, legal representation is not mandatory in case of lawsuits belonging to the local courts' competence.

The Civil Procedural Act introduces the "private expert" concept, meaning that, if a professional aspect of the case has to be examined, a party may decide to appoint a private expert to support its case. However, the party appointing the expert must contact the opposing party as well in order to produce a neutral and unbiased expert report on technical matters.

Litigation costs mainly consist of stamp duties, party counsels' fees and costs of expert opinions, evidencing actions and translations/interpreters. Generally, stamp duties, payable in advance at the outset of the case, are equal to 6% of the amount in dispute subject to a cap of HUF 1.5 million. Appeals against first instance judgments in general carry a stamp duty of 8% of the amount in dispute subject to a cap of HUF 2.5 million. In case of challenging a judgment before the Curia, in general a stamp duty of 10% of the amount in dispute shall be paid subject to a cap of HUF 3.5 million.

In addition to the above, Act No. I of 2017 on Public Administration Procedures, which entered into force on 1 January 2018, is specifically tailored to public administration disputes.

Not part of the ordinary litigation system, Hungary's Constitutional Court is responsible for interpreting the provisions of the Constitution and supervising the continued conformity of laws adopted under the Constitution.

3. BUSINESS CRIME

Business crime offences in general include bank fraud, bribery, blackmail, counterfeiting, embezzlement, forgery, insider trading, money laundering, tax evasion and antitrust violations, and are most often committed for illegal monetary gain. Although the importance, volume and complexity of such criminal cases have shown increasing trends over the past 5 to 6 (five to six) years, the ratio of such offences within the overall criminal statistics does not qualify as outstandingly significant. Certain trends have been clearly visible in recent years: commercial entities use more and more the legal tool of criminal reports against suppliers, competitors and business partners; while banks are turning their growing attention from client frauds to internal frauds.

In business crime matters the instrument of plea bargaining has a greater significance than in general criminal cases to counter-balance the often very high degree of difficulties and inefficiency of investigation work in business crimes.

It is a fundamental peculiarity of business crime matters that, unlike in general criminal cases, the suspected person is formally charged only at a late stage of the police investigation, and the overwhelming amount of the investigation work (witness interrogations, collection of evidence, expert work) is completed before such formal charge is notified. This gives the police more room for timing and planning the strategy of the case.

Criminal cases typically commence with a criminal report filed with the competent police or the prosecutor's office. The police then decide whether to (i) order an investigation; (ii) request more information; or (iii) reject the report. In business crime matters, due to their complexity and technical elaboration, it is essential that the criminal report is prepared by legal experts of the particular business field in order to give a proper description and legal ammunition to the police to enable them to successfully proceed with the case. Reports prepared improperly are often rejected without any investigation on the merits, due to the police's lack of adequate and in-depth knowledge of the particular business.

If an investigation is ordered, the police will take the procedure forward. When all relevant investigation actions are completed (such as collection of documents, hard drives, interrogation of the injured party, witnesses, expert work) the police formally closes the investigation and refers the file to the prosecutor with a proposal to formulate a charge. The prosecutor (who usually supervises the entire investigation work) will decide whether a charge is properly grounded. If so, the prosecutor prepares and files the bill of indictment with the competent court. It is the court that finally judges the indictment.

The first stage of a criminal process is investigation. This is conducted by the competent bodies of the police or the national tax and customs authority. Business crimes are usually investigated by the local police department or, in high value cases, the county police departments. In the event of organised crime, country-wide crimes or in highly specialised fields the investigation is conducted by the specialised investigation office of the national police headquarters. In addition, certain business crimes are investigated by the central criminal directorate of the national tax and customs authority.

The public prosecutor overviews and supervises the process of investigation. Once the investigation is closed and the file is transferred from the police (or the national tax and customs authority) to the public prosecutor, it will decide whether to (i) formally submit a charge to the competent first instance court; (ii) refer the file back to the police for supplementary investigation; or (iii) drop the charges.

The Hungarian criminal court system is divided into three levels in terms of ordinary criminal procedures: local courts (*járásbíróság*), county courts (*törvényszék*) and courts of appeal (*ítélőtábla*). In addition, the Curia acts in certain cases as a third level of appeal. Similarly to civil litigation proceedings, a usual criminal court case consists of two instances, and the final and binding judgment is adopted by the second instance court. As an exception, if the first and second instance judgments are completely contradictory to each other, only in respect of finding or not finding the charged person guilty, an appeal is possible to the third instance court, which then adopts the final and binding judgment.

There is no ordinary remedy against the second or third instance court's decision. In other words, these judgments are final, non-appealable and binding. Only an extraordinary legal remedy is available (*felülvizsgálati kérelem*) to challenge such a decision before the Curia. To achieve this, the Curia grants an extraordinary remedy (typically the annulment or alteration of the previous judgments). The applicant must evidence that a material breach of substantive law has occurred, or certain fundamental procedural rules have been breached.

The injured party (typically the person filing the criminal report with the police) has a legitimate right to pursue civil law claims to recover the damages that it suffered as the consequence of the business crime offence. Such a claim may be presented in the criminal proceedings free of any charges or duties (excluding legal fees of counsel). In order to secure such claims the investigation authority may order a freeze over bank accounts or assets or other means of security.

The injured party's best tool to expedite its interests in the criminal proceedings is to retain highly qualified legal advisors experienced in the field of commercial law and business crime. Such advisors will keep in contact with the relevant authorities to gain up-to-date knowledge on the status of the proceedings, and they can present motions to accelerate the case and to improve the chances of recovery of the damages caused by the criminal offence. It is important that a criminal report, once filed with the police, may no longer be withdrawn, and therefore this cannot be a tool of settlement with the criminal offender.

The investigation stage of the proceedings lasts in general 1 to 2 (one to two) years, subject to the complexity of the case. After a lapse of 1 (one) year the prosecutor introduces a more scrutinised control and supervision over the investigation process. After a lapse of 2 (two) years, the investigation must be closed. All such deadlines start from the first interrogation of the suspect. Given that suspects are usually interrogated for the first time in a late stage of the investigation, the duration of the investigation may in practise be significantly extended.

Following the completion of the investigation the procedural stage before the prosecutor's office may last 30 (thirty) days to 6 (six) months. Court cases usually terminate after a period of up to 3 (three) years.

All costs of the criminal proceedings (in particular, expert fees) are advanced by the state, and are finally borne by the charged person if found guilty at the completion of the court case. If the investigation is cancelled, the charge is dropped or the charged person is released due to lack of any criminal offence or insufficient evidence, all costs are finally borne by the state (and not the injured party which filed the criminal report).

Business crimes are criminal offences of public prosecution (and not private), and the injured party which files the criminal report in such cases does not have to pay any stamp duties.

4. INSOLVENCY

The Act No. XLIX of 1991 on Reorganization Proceedings and Liquidation Proceedings (Insolvency Act) originally entered into force on 1 January 1992 and has been amended from time to time.

Hungarian insolvency law distinguishes between two kinds of insolvency proceedings: reorganization proceedings *(csődeljárás)* and liquidation proceedings *(felszámolási eljárás).*

A debtor's petition for reorganization proceedings is an attempt to reorganize the business of a financially solvent debtor, which is experiencing financial turbulences. The reorganization proceeding is aimed at granting a temporary relief (payment moratorium) for 120 (one hundred and twenty) days or 240 (two hundred and forty) days (if agreed by the creditors) to the debtor for performing its financial obligations and achieving an arrangement with the creditors. Reorganization proceedings do not necessarily lead to the debtor's termination. On the contrary, if the creditors are willing to co-operate with the debtor and support the reorganization agreement, the debtor goes back to its ordinary course of business. On the other hand, if the reorganization proceedings do not conclude in a reorganization agreement, the reorganization proceedings will automatically be converted into liquidation proceedings.

The aim of liquidation proceedings is to liquidate the assets of an insolvent debtor, to satisfy the creditors' claims, and ultimately to terminate the debtor without legal successor. In Hungary, liquidation is more common than reorganization and is used primarily to satisfy creditors' claims where a company seems to be insolvent.

The usual scenario of a liquidation proceedings consist of three stages:

- in the first stage the creditor files its request with the competent court for the debtor's liquidation. Thereafter, the court investigates the financial standing of the debtor. The first stage ends, when the court renders its decision and orders the commencement of liquidation proceedings;

- the second stage commences when the court publishes its decision about the commencement of the liquidation proceedings in the Company Gazette. During the second stage the court-appointed liquidator liquidates the debtor‘s assets. At the end of the second stage, the liquidator submits to the court the final liquidation balance sheet with his/her proposal for the distribution of the debtor‘s assets;

- in the third stage the court examines and decides on the final liquidation balance sheet and the liquidator‘s proposal for the distribution of the debtor‘s assets. Simultaneously it orders the termination of the debtor without legal successor and closes the liquidation proceedings.

The debtor itself and its creditors have the right to file a petition for liquidation with the competent court. In some cases the court may commence liquidation proceedings *ex officio* following unsuccessful reorganization proceedings, or upon the request of the company courts or the criminal courts. If the liquidation proceedings were initiated by the company itself or by the creditors the legal representation of the petitioner is mandatory.

Most commonly creditors initiate liquidation proceedings against their debtor. In such cases the court examines the request made by the creditor and orders the commencement of liquidation proceedings against the debtor, if, according to the documents filed by the creditor:

- the debtor failed to settle or dispute its previously undisputed or acknowledged respective payment obligation within 20 (twenty) calendar days from its due date and following the expiration of such date it has failed to satisfy such obligations upon receipt of the creditor's written demand note;

- the debtor failed to settle its payment obligations within the deadline set forth in a final and binding judgment;

- enforcement proceedings against the debtor were unsuccessful; or

- the debtor did not fulfil its payment obligations set out in a reorganization agreement or a settlement agreement in reorganization proceedings or liquidation proceedings, respectively.

If the liquidation proceedings are requested by creditors, creditors must prove that the debtor is insolvent, by indicating the title, the amount, the due date of the underlying overdue payment obligations of the debtor (i.e., claims against the debtor) and specifying the reasons for the debtor's alleged insolvency. The nominal amount of the creditor's claim must exceed HUF 200,000 in order to form the basis of a request for the commencement of liquidation proceedings.

In order for a claim to qualify as the basis for the commencement of liquidation proceedings against a debtor, various timing requirements must be observed for sending demand notes to the debtor and granting a final cure period to the debtor for the payment of the underlying claim. The demand note sent to the debtor must, *inter alia*, indicate the title, amount and the due date of the claim and must specify the final deadline after which the creditor intends to file a petition for liquidation in the event of non-compliance.

Typically, the debtor's assets are sold to the highest bidder, via auction sales or public tenders by the liquidator. Both forms of sale process take place electronically.

Creditors' claims are ranked in the order of priority prescribed by the Insolvency Act; however claims which are secured will enjoy priority in satisfaction irrespective of such order.

The procedural fee for filing a petition for liquidation amounts to HUF 80,000 if the debtor is a company with legal personality, such as limited liability companies (*Kft. or korlátolt felelősségű társaság*) and public or private companies limited by shares (*Nyrt. or nyilvánosan működő részvénytársaság* and *Zrt. or zártkörűen működő részvénytársaság*). If the debtor is a company without legal personality such as partnerships (*Kkt.* or *közkereseti társaság* and *Bt.* or *betéti társaság*) the procedural fee amounts to HUF 30,000. The publication fee for the liquidation proceedings amounts to HUF 25,000, irrespective of the debtor's legal personality.

In liquidation proceedings initiated by the debtor, the court orders the commencement of liquidation proceedings, if the debtor has liabilities, the amount of which exceeds the value of its assets, or the debtor is unable or presumably will not be able to settle its debt on the respective due date, and the shareholders of the debtor fail to guarantee the funds necessary to overcome such financial shortfalls.

In both proceedings, creditors may form a creditors' committee for the protection of their interests, the representation before the competent court, and especially to keep monitoring the activities of the administrator (*vagyonfelügyelő*) and the liquidator (*felszámoló*).

In addition, in both proceedings the most effective procedural tool available for creditors is the objection. By way of filing an objection with the competent court, diligent creditors may contest any unlawful acts or omission of the administrator or the liquidator (in practice, typically the classification of other creditors' claims).

5. 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

Since Hungary is a member of the European Union, the rules of Council Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters apply in enforcement proceedings between EU Member States.

Under Act No. XXVIII. of 2017 on private international law, decisions of foreign courts and authorities adopted in third countries concerning matters not within the exclusive jurisdiction of Hungarian courts or authorities shall be

recognized and enforced in Hungary, provided that: (i) the jurisdiction of the foreign court or authority is legitimate under the rules of Hungarian private international law; (ii) the decision is considered as final and binding or has an equivalent effect according to the law of the foreign state in which the decision was rendered; and (iii) none of the legal grounds of rejection prevails. In general, in case of commercial matters reciprocity between Hungary and the state of the foreign court or authority is required. Notwithstanding the aforesaid requirements, reciprocity is not required in commercial matters where the jurisdiction of the foreign court is based on the parties' submission to that jurisdiction which is in compliance with Hungarian law.

A foreign judgment will not be recognized if:

- it violates Hungarian public order;
- a party could not attend the proceedings either in person or by proxy, because the subpoena, statement of claim or other document which formed the basis for the proceedings was not properly served upon the individual or not served in a timely manner;
- prior to the commencement of the proceedings outside of Hungary, a Hungarian court or authority commenced proceedings on the basis of the same facts, same rights and between the same parties;
- a Hungarian court or authority previously adopted a final judgment or decision on the basis of the same facts, same rights and between the same parties; or
- a court of a foreign state, other than the state of the court adopting a final judgment or decision, previously adopted a final judgment or decision on the basis of the same facts, same rights and between the same parties which meets the domestic conditions of recognition.

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
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases**: *first instance*: 1 year; *second instance*: 6–12 months; *extra-ordinary remedies* (significant new facts or violation of proceeding rules): 6–12 months. **Complex cases**: *first instance*: 1 to 2½ years; *second instance*: 1 year; *special remedies* (significant new facts or violation of proceeding rules): 12–18 months.	▪ The duration of proceedings may depend on the competent court. ▪ Longer proceedings can be expected at those courts with heavy workloads, such as the Metropolitan Court.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	The stamp duty depends on the amount in dispute, as follows: *first instance*: 6% of the amount in dispute, subject to a cap of HUF 1.5 million; *second instance*: 8% of the amount in appeal, subject to a cap of HUF 2.5 million; *extra-ordinary remedies*: 10% of the amount in dispute subject to a cap of HUF 3.5 million. As a general rule, attorneys' fees are subject to the engagement letter between the client and the attorney. In the absence of an engagement letter or if the court believes that the legal expenses are overstated, the court will decide on the attorney fees in accordance with a statutory provision amounting to 1–5% of the value of the case.	▪ Litigation stamp duties do not include attorney fees. ▪ Stamp duties must be paid simultaneously with filing a statement of claim. ▪ Stamp duties will be borne by the losing party. ▪ In the event of a partial win, the costs for both sides are divided on a pro-rata basis. ▪ Courts usually do not award the winning party's full legal expenses, and therefore these expenses are seldom recovered in full.
JURY TRIALS	There are no jury trials in Hungary.	
CLASS ACTIONS	The Civil Procedural Act lays down the specific rules for class actions (*társult per*) and defines also the scope of application, such as (i) claims arising out of consumer contracts; (ii) labour disputes; and (iii) certain environmental claims.	
DOCUMENT PRODUCTION	As a general rule documents and evidence must be produced by the party who wishes to rely on these. As a narrow exception the court may order the opposing party to produce documents provided that such documents are strictly specified in evidence, facts, or legal relations concerning the party that requested the document production. Document production cannot be a "fishing expedition" and is granted only in exceptional cases.	
MANDATORY REPRESENTATION BY COUNSEL	In general, legal representation during the procedure is mandatory unless otherwise provided by law. However, legal representation is not mandatory in case of lawsuits belonging to the local courts' competence.	
PRO BONO SYSTEM	Yes. The Hungarian state provides legal aid to people who cannot afford a legal representative.	
BUSINESS CRIME		
APPROXIMATE DURATION	*Investigation stage of proceedings*: 1 to 2 years (subject to the complexity of the case). *Procedural stage before the prosecutor's office*: 30 days to 6 months. Court cases usually terminate after a period of up to 3 years.	

APPROXIMATE COSTS	All costs of the criminal proceedings (in particular expert fees) are advanced by the state and are finally borne by the charged person if found guilty. As a general rule, attorneys' fees are subject to the engagement letter between the client and the attorney.	
JURY TRIALS	There are no jury trials in Hungary.	
CLASS ACTIONS	There are no class actions.	
DOCUMENT PRODUCTION	All documents are collected by the investigation authority *ex officio*. They may request the production of documents from the suspect, the witnesses and the injured party.	
MANDATORY REPRESENTATION BY COUNSEL	It is not mandatory for an injured party to retain a legal counsel, but in practice this is highly advisable to promote their interests and to improve the chances of recovery of damages caused by the criminal offence.	
PRO BONO SYSTEM	Yes. The Hungarian state provides legal aid to people who cannot afford a legal representative.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	A request on interim measures can be filed before the full statement of claim is submitted to the court, provided that the claimant demonstrates that any delayed order on interim measures would render the purpose impossible. Besides this, preliminary evidencing is also possible. Generally, a decision on a request for a preliminary evidencing is rendered a few days after filing the request with the public notary or between 1 day and 2–4 weeks after filing the request with the competent court.	Evidence taken by a public notary can be utilized in a litigation proceeding as evidence taken by a court. Public notaries are entitled to appoint an expert if special expertise is needed. After filing a claim, only the competent court is entitled to proceed.
APPROXIMATE COSTS **COURT FEES**	The public notary's fee is based on hourly rates in preliminary evidencing procedures: *Simple cases*: (without expert appointment): EUR 200 – EUR 300, according to general practice experience. *Complex cases* (with expert appointment): EUR 400 – EUR 600, according to general practice experience. Court fees: Standard civil proceeding rules apply.	After a preliminary evidencing procedure, the court fee is reduced to 50 %.
ATTORNEYS' FEES (NET)	Subject to the engagement.	
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 JUDGMENTS AND 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.
LIQUIDATION PROCEEDINGS		
FILING OF LIQUIDATION CLAIMS BY CREDITORS	The order of liquidation against insolvent companies is most commonly requested by creditors on the basis of contractual claims. Such order is issued by the competent court, if the debtor failed to settle or dispute its previously undisputed or acknowledged respective payment obligation within 20 calendar days from its due date and following the expiration of such date it has failed to satisfy such obligations upon receipt of the creditor's written demand note. If the liquidation proceedings are requested by creditors, creditors must prove that the debtor is insolvent, by indicating the title, the amount, the due date of the underlying overdue payment obligations of the debtor (i.e., claims against the debtor) and specify the reasons for the debtor's alleged insolvency. The nominal amount of the creditor's claim must exceed HUF 200,000 in order to form the basis of a request for the commencement of liquidation proceedings.	▪ Upon the court's resolution on ordering the liquidation proceedings, the court must arrange for the publication of the liquidation proceeding in the Company Gazette. ▪ Publication in the Company Gazette takes place on the official website of the Company Gazette at www.cegkozlony.hu.

APPROXIMATE DURATION	The court must issue the resolution on the commencement of the liquidation proceedings within 60 days of receipt of the request for liquidation. Following the end of the second year from the date of the court resolution ordering the liquidation proceedings, a closing liquidation balance sheet must be prepared. On that basis the court decides on the insolvency (except if a creditor has a pending lawsuit against the debtor in which case the liquidation proceeding may last for several years, i.e., until the closing of the lawsuit). The court then orders the dissolution of the debtor without a legal successor.	
APPROXIMATE COSTS		
COURT FEES	The procedural fee for filing a petition for liquidation amounts to HUF 80,000, if the debtor is a company with legal personality, such as limited liability companies (*Kft*. or *korlátolt felelősségű társaság*) and public or private companies limited by shares (*Nyrt*. or *nyilvánosan működő részvénytársaság* and *Zrt*. or *zártkörűen működő részvénytársaság*). If the debtor is a company without legal personality such as partnerships (*Kkt*. or *közkereseti társaság* and *Bt*. or *betéti társaság*) the procedural fee amounts to HUF 30,000. The publication fee for the liquidation proceedings amounts to HUF 25,000, irrespective of the debtor's legal personality.	
ATTORNEYS' FEES (NET)	Subject to the engagement.	

This chapter was written by Zoltán Faludi and Enikő Lukács.

ZOLTÁN FALUDI
Partner

Wolf Theiss, Hungary

T. +36 1 4848 800
zoltan.faludi@wolftheiss.com

ENIKŐ LUKÁCS
Associate

Wolf Theiss, Hungary

T. +36 1 4848 800
eniko.lukacs@wolftheiss.com

WOLF THEISS

KOSOVO

1. LEGAL SYSTEM

Kosovo's legal order is based on the principle of separation of powers, whereby the judiciary is governed by the Kosovo Judicial Council, subject to the check-and-balance mechanisms provided for by the Constitution that came into effect on 15 June 2008. The Constitution is based on the Comprehensive Proposal for a Status Settlement for Kosovo, submitted by the United Nations Special Envoy for the resolution of Kosovo's status (the "Ahtisaari Plan"), which provides for supervised independence, overseen by two international mechanisms, namely the European Union Rule of Law Mission in Kosovo (EULEX), and the International Civilian Office (ICO). The Ahtisaari Plan authorizes EULEX to assist the Kosovo authorities in the rule of law area, with a particular focus on police, judiciary and customs. In this respect, EULEX retains limited executive powers, in particular to investigate, prosecute and adjudicate serious and sensitive criminal offences in cooperation with the Kosovo justice institutions. The ICO, on the other hand, is responsible for supervising the implementation of the Ahtisaari Plan.

Kosovo's legal system is based on the continental law tradition, whereby court decisions are generally not considered as precedents, although lower courts tend to follow the opinions and rulings of higher courts.

In light of Kosovo's declaration of independence on 17 February 2008, the applicable law in Kosovo stems from four different sources with the following order of precedence:

- laws passed by the Kosovo Assembly enacted on 15 June 2008 and thereafter;
- regulations enacted by the United Nations Interim Administration in Kosovo (UNMIK) between 10 June 1999 and 14 June 2008;
- laws dated prior to 22 March 1989, enacted before the abolishment of Kosovo's autonomy within the Socialist Federal Republic of Yugoslavia; and,
- laws dated between 22 March 1989 and 10 June 1999, enacted after the abolishment of Kosovo's autonomy, provided that they are not discriminatory and are required to fill a legal gap.

Kosovo's court system is comprised of seven Basic Courts with 20 branches, the Court of Appeals, and the Supreme Court. In addition to this, since June 2009 Kosovo has a Constitutional Court, which is responsible for ensuring the constitutionality of acts of public authorities and for hearing individual complaints regarding the violation of constitutionally guaranteed human rights.

The Basic Courts are comprised of five departments, each dealing with specific issues, namely: Department for Commercial Matters (operating in the Basic Court of Prishtina for the entire territory of Kosovo), Department for Administrative Issues (operating in the Basic Court of Prishtina for the entire territory of Kosovo), Department for Serious Crimes, General Department and Department for Minors.

The Commercial Department hears cases pertaining to commercial disputes between domestic and foreign businesses regarding their commercial affairs and reorganization. This includes but is not limited to: lawful commercial operations within business organizations, which refer to the partners' rights in general partnerships, holders of proprietary interests in limited liability companies or joint stock companies, claims lodged by a limited liability partner who is prevented from transferring the proprietary interest to a third person, claims lodged by the holder of the proprietary interest who is prevented from access to information, claims submitted by the holder of the proprietary interest who is prevented from leaving the organization or who is dismissed from the organization, claims lodged by shareholders, whose rights have been violated by the merger of the limited liability company or joint stock company, etc.

Furthermore, the Commercial Department also deals with matters related to bankruptcy and liquidation of legal entities, unless otherwise provided by law, disputes regarding obstruction of possession, disputes regarding infringement of competition, intellectual property disputes, disputes involving aviation companies and other matters provided by law.

The Administrative Department adjudicates and decides on administrative conflicts. The Serious Crimes Department of the Basic Court hears cases related to various criminal offenses, which include but are not limited to: smuggling of immigrants, hostage taking, aggravated murder, kidnapping, torture, election fraud and destruction of voting documents, rape, counterfeiting money, organized crime, criminal offenses against official duty, including abuse of official position or authority, misappropriation in the office, fraud, accepting bribes and related conduct. Finally, as far as the Basic Court is concerned, the General Department mainly deals with minor offenses and various civil cases in the first instance, which have not been specifically assigned to other departments.

The Court of Appeals is a second instance court meaning that it only deals with complaints lodged against the decisions of the first instance courts. Furthermore, the Court of Appeals shall decide on conflicts of jurisdiction between the Basic Courts.

The Supreme Court consists of two departments, namely: (i) the Appeals Panel of the Kosovo Property Agency, which deals with cases relating to property rights lost through discriminatory laws following the rescinding of Kosovo's autonomous status on 22 March 1989, cases arising from informal property transactions during the aforementioned period, cases arising from interference with property rights through illegal occupancy; and (ii) the Special Chamber of the Supreme Court which has jurisdiction to adjudicate claims and counterclaims relating to the decisions or actions of the Kosovo Trust Agency, and its legal successor the Privatization Agency of Kosovo. In light of the above, the Supreme Court adjudicates on the following cases:

- requests for extraordinary legal remedies against final decisions of the courts of the Republic of Kosovo, as provided by law;
- revisions against second instance decisions of the courts on contested issues, as provided by law;
- Kosovo Property Agency cases as defined by law;
- (in its Special Chamber) Privatization Agency of Kosovo or Kosovo trust Agency cases as provided by law; and
- other matters as provided by law litigation.

Furthermore the Supreme Court is also responsible for defining principle attitudes and legal remedies for issues that are important for the unique application of laws by the courts in the territory of Kosovo.

The Law on Contested Procedure provides that first instance cases as well as extraordinary appeals for the repetition of proceedings are adjudicated by a single judge, while second instance cases and extraordinary appeals for revision are handled by a panel of three judges. Cases involving the determination of the territorial jurisdiction of the court as well as the resolution of jurisdictional disputes between lower courts are also heard by a panel of three judges.

Minor offenses such as violations of sanitary standards, as well as violation of traffic safety laws and public order rules fall under the competence of Basic Courts' General Departments.

2. LITIGATION

Civil proceedings in Kosovo are governed by the Law on Contested Procedure, which was enacted on 30 June 2008. According to this law, civil litigation is based on the adversarial model, whereby the process is driven by the actions of the parties. Namely, representatives of the parties are responsible for presenting their claims and counter claims as well as the examination of witnesses and experts. In this respect, while the court is allowed to examine the witnesses and experts at all times, judges' questions are usually supplementary and they intervene only to ensure the observance of mandatory provisions of law.

The litigation process begins with the filing of the statement of claim by the claimant. However, the claim becomes legally effective only upon its service to the respondent. Prior to the commencement of the main hearing, the court is required to hold a preparatory hearing, which shall be scheduled latest 30 (thirty) days after the receipt of the statement of defence by the respondent. During the preparatory hearing the court determines the object of the dispute and the evidence that will be admitted in support of the parties› claims and counterclaims. The claimant is entitled to seek an injunction order to secure its claim in cases where: the existence of the claim is made believable by the claimant, and there is a risk that if the injunction is not ordered the opposing party will hinder or will make it considerably difficult for the claimant to realize its claim, particularly by disposing of or concealing its assets.

The imposition of an injunction order may be conditional upon the claimant providing a guarantee (the amount and the form of which is determined by the court) to secure the potential damages caused to the opposing party by the unwarranted imposition of the order. The injunction order can be sought prior to the filing of the claim as well as during the time period after the conclusion of the proceedings and until the entry into effect of the judgment. In cases when the injunction is sought prior to the filing of the claim, the claimant is required to file the lawsuit during a time period of not less than 30 (thirty) days.

The appellate procedure includes regular remedies and extraordinary legal remedies. A regular appeal can be filed for the following reasons: Violation of the provisions of the Law on Contested Procedure; inaccurate or incomplete determination of the factual situation; and, wrongful application of the substantive law. Extraordinary legal remedies, which include Revision, Repetition of the Proceedings, and Request for the Protection of Legality, can be exercised only in cases that meet a set of stringent requirements. It should be noted that the Law on Contested Procedure provides for special provisions regarding cases dealing with labour disputes, obstruction of possession, commercial disputes, and payment order procedures as well as for disputes of minor value.

Court expenses in Kosovo are rather low, which results in a very high number of litigation cases. By way of example, for cases in which the amount in dispute is more than EUR 10,000 the court fees for the initiation of proceedings are EUR 100 plus 0.5% of the amount in dispute, whereby the total fee may not exceed EUR 1,000. According to the Law on Contested Procedure the losing party is required to reimburse the opposing party for all of its court expenses.

Kosovo courts suffer from a high degree of inefficiency due to the low number of judges and a considerable backlog of cases. Consequently, while court proceedings are relatively swift once they commence, it usually takes a considerable amount of time before cases are heard (unless urgent preliminary measures are sought). By way of example, at the beginning of 2013 the Basic Courts in Kosovo had 342,323 unresolved cases inherited from the past years, while for the first three months of 2013 the Basic Courts accepted 109,231 new cases. During this time period, the Basic Courts in Kosovo were able to resolve 86,433 cases, leaving 365,121 unresolved cases at the end of the first trimester of 2013.

According to the 2016 enforcement of contract survey conducted by the World Bank “Doing Business” project, the enforcement of a contract in Kosovo, without the appellate procedure, takes 330 days. The survey notes that the costs of enforcing a contract in Kosovo amounts to 34.4% of the claim, of which 25.2% are attorney costs, 7.8% are court costs and 1.4% are enforcement costs.

3. BUSINESS CRIME

Corruption remains a serious challenge for Kosovo. A survey by the Kosovo Democratic Institute indicates that 73% of the respondents in Kosovo believe that since 2007, the level of corruption has increased, while only 8% think that corruption has decreased. According to the World Bank’s Worldwide Governance Indicators, Kosovo’s control of corruption has shown little improvement since 2003, and remains low at more or less 30% (100% representing full control of corruption), with no clear tendency since 2005.

A more recent study, the 2015 Corruption Perceptions Index by Transparency International indicates similar results. Since 2010, Kosovo's total rank and score (shown in brackets, whereas 0 indicates corruption to be perceived as very high and 100 indicates an environment very clean of corruption) has somewhat improved from 110th (28) to 95th (36) of 176 participating countries in 2016.

Our own perception of this issue seems to confirm the above studies.

The main regulations concerning combating business crime are recorded in Articles 284–318 of the Kosovo Criminal Code. These articles regulate a variety of crimes, such as the violation of patent rights, unauthorized communication of trade secrets, damaging creditors, causing of bankruptcy, use or production of counterfeit money, tax evasion, unjustified gift giving and acceptance and many more. The extent of the catalogue is comparable with catalogues from other countries in Europe.

Besides the Criminal Code, there are several other laws which regulate offenses connected with business crime. The most important examples are the Law on Internal Trade, which contains the basic principles of trading and the Law on Liability of Legal Persons for Criminal Offenses.

On 1 February 2012 the Project against Economic Crime in Kosovo (PECK) was initiated by the European Union and the Council of Europe. PECK's overall objective is to contribute to democracy and the rule of law through the prevention of corruption, money laundering and financing of terrorism in Kosovo. A large number of agencies and authorities are taking part in this project. The key players are the Kosovo Anti-Corruption Agency (KAA), the Financial Intelligence Unit (FIU), the Office for Good Governance Human Rights and the Equal Opportunities and Gender Issues (OGG) at the office of the Prime Minister. During the project, numerous laws have been revised (e.g., the Criminal Code) and new laws have been adopted.

A criminal trial in Kosovo is divided into several stages. It starts with a pre-trial, conducted by the competent state prosecutor and the judicial police, in which investigations are carried out and evidence is recorded. The aim of the pre-trail is to decide whether to file an indictment or to discontinue proceedings. In case there is sufficient proof the state prosecutor will bring in an action and the main trial will commence.

The main trial is terminated by a judgment by the competent court. The judgment is rendered and announced in the name of the people and either rejects the charge or acquits the accused of the charge or pronounces the accused guilty. If the accused is guilty, there are three principal punishments: long-term imprisonment, imprisonment and fines. Within 15 (fifteen) days of the day the copy of the judgment has been served authorized persons are able to file an appeal. "Authorized persons" in accordance with the Criminal Procedure Code are: the parties, the defence counsel, the legal representative of the accused and the injured party. Also the public prosecutor may file an appeal either to the detriment or to the benefit of the accused. An appeal has to be filed with the court which rendered the judgment in first instance.

The court of first instance will serve the opposing side with a copy of the appeal with the opportunity to reply to the appeal within 8 (eight) days of the service of the copy. The court of first instance then sends the appeal, the reply and all related files to the court of second instance. The court of second instance takes its decision in a session of the panel or in a hearing. The court of second instance is able to dismiss an appeal as belated or inadmissible; reject an appeal as unfounded and affirm the judgment of the court of first instance; annul the judgment and return the case to the court of first instance for retrial and decision; or modify the judgment of the court of first instance. An appeal against a judgment of a court of second instance can be filed with the Supreme Court of Kosovo but only in the following instances:

- if a court of second instance has imposed a punishment of long-term imprisonment or has affirmed the judgment of a court of first instance by which such punishment was imposed;

- if a court of second instance after conducting a hearing has made a different determination of the factual situation from the court of first instance and based its judgment on such factual determination; or

- if a court of second instance has modified a judgment of acquittal by the court of first instance and rendered instead a judgment of conviction.

The Supreme Court considers the appeal in a session of the panel; a hearing does not take place.

The basic power and the main function of the state prosecutor are the investigation of criminal offences and the prosecution of their perpetrators. The state prosecutor is an impartial institution and acts in accordance with the Constitution and the law. The organization, competencies and duties of the state prosecutor are defined by law. Concerning criminal crimes, the state prosecutor has the power to:

- undertake the necessary measures connected with the detection of criminal offences and the discovery of perpetrators and to undertake investigative actions while directing or supervising the investigation in preliminary criminal proceedings;

- file and present the indictment or summary indictment before the competent court; and to

- file appeals against decisions of the court that have not become final and to file extraordinary legal remedies against final decisions of a court.

The Kosovo Prosecutorial Council is a fully independent institution, which ensures equal access to justice for all persons in Kosovo. The Kosovo Prosecutorial Council recruits, proposes, promotes, advances, transfers, and disciplines prosecutors in a manner provided by law.

Mandatory representation is provided according to the Criminal Procedure Code:

- if the defendant is mute, deaf, or displays signs of mental disorder or disability and is therefore incapable of effectively defending him or herself;

- at hearings regarding detention on remand and throughout the time when the defendant is in detention on remand;

- if indictment has been brought against a defendant for a criminal offence punishable by imprisonment of at least 8 (eight) years; and

- for proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability or a punishment of long-term imprisonment has been imposed.

According to the Criminal Procedure Code a person who has been arrested by the police authorities has the right to legal representation. The competent court decides on the granting of a public defender. A public defender can be granted for defendants who are accused of a crime which can be punished with a prison sentence of at least 8 (eight) years. Moreover, granting a public defender is possible due to special requirements of the case. The costs for the support of a public defender are carried by the public budget. All police stations, courts and detention centres are legally required to enable an arrested person contact to a lawyer.

The Criminal Procedure Code guarantees an accused person several rights which are necessary for his/her defence. The defendant has the right to make statements on all the facts and evidence, which incriminate him/her, and to state all facts and evidence favourable to him/her. Further the defendant has the right to examine or to have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her. The defendant or his/her representative has the right to request the recording of evidence. It is the duty of the state prosecutor to present the facts on which he/she bases the indictment and all necessary evidence for these facts. The defendant and the state prosecutor have the status of equal parties. The suspect and the defendant have the right to be assisted by a defence counsel during all stages of the criminal proceedings.

The injured party has the right to file a property/civil/damages claim in criminal proceedings. During all stages of the criminal proceedings, the injured party has the right to draw attention to all facts and to propose evidence which has a bearing on establishing the criminal offence, on finding the perpetrator of the offence or on establishing his/her property claims. Further the injured party has the right to inspect the record and documents and objects that serve as evidence. In the main trial, the injured party has the right to propose evidence, to put questions to the defendant, witnesses and expert witnesses, to make remarks or give other statements, present clarifications concerning their testimony and to file motions. In case the state prosecutor withdraws the indictment, the criminal procedure will be concluded. In a judgment pronouncing the accused guilty the court may award the injured party the entire civil/property/damages claim or may award him/her only part of it and refer the injured party to civil litigation for the remainder. If the data collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award, the court will instruct the injured party that he/she may pursue the entire property claim in civil litigation.

It is hardly possible to determine the exact duration of a criminal trial – it differs from case to case. The Criminal Procedure Code merely states that fair criminal proceedings have to be conducted within a reasonable time. However a more precise definition or time limitation is missing.

In legal disputes the unsuccessful party generally bears all the costs. According to the Criminal Procedure Code such costs for example are: the costs of witnesses, expert witnesses, interpreters, specialists, technical recordings, transportation costs or the costs of a site inspection. Every judgment and ruling which discontinues criminal proceedings contains a decision on who will cover the costs of the proceedings and the amount of the costs. If the court finds the defendant guilty, he/she must reimburse the costs of the proceedings; when criminal proceedings are terminated or when a judgment is rendered, which acquits the defendant or rejects the charge the costs are paid from budgetary resources.

According to Law No. 04/L-017 on Free Legal Aid, under certain circumstances Kosovo citizens are able to claim legal aid for civil, criminal, labour and administrative matters before courts and authorities.

The attorney fees are basically determined by the Kosovar Bar Association. An English-language version can be found on its website: http://www.oak-ks.org/repository/docs/1.EXSTRAT_from_Tarifs_895441_715118.pdf. However, experience has shown that many lawyers charge higher fees. In principle all fees are based on the possible jail sentence, divided into four stages: (i) up to 3 (three) years; (ii) up to 5 (five) years; (iii) up to 10 (ten) years; and (iv) more than 10 (ten) years. Basic charges for a defence range from EUR 100 up to EUR 200. For every extra hour the attorney is entitled to charge an additional 30% of the basic charge. The costs for actions, such as a criminal private prosecution or an examination application, start at EUR 130 and go up to EUR 360. For appeals and all other extraordinary remedies, attorneys are entitled to charge EUR 200 up to EUR 530 depending on the possible jail sentence.

4. INSOLVENCY

Insolvency proceedings for business organizations, such as general partnerships, limited partnerships, limited liability companies and joint stock companies, are governed by the law on bankruptcy, which was enacted on 7 July 2017.[1] The law on bankruptcy is partially in accordance with EU Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings. It is applicable to all forms of business organizations; however it is not applicable to institutions, banks, insurance companies, pension funds and socially owned enterprises under the administration of the Privatization Agency of Kosovo or to publicly owned enterprises.

According to the law on bankruptcy, for the voluntary initiation of a case, a debtor files either a petition in reorganization or a petition in liquidation. A debtor does not need to be insolvent to be eligible as a debtor under this law. In case a debtor files a petition for an improper purpose or in a manner intended to deceive, defraud or

1 Law No. 05/L-083 on Bankruptcy.

subvert creditors, the court may fine the debtor or individual members of the debtor's management or governing body. It is considered that a debtor has filed its petition for an improper purpose or with the intent to deceive or cause damage to creditors, if a debtor (i) files a case without listing its name properly; (ii) does not list all prior material names under which it has conducted business; (iii) does not list a material creditor and that creditor therefore is not informed of the proceeding; or (iv) provides fraudulent information in any phase of the procedure or tries to manipulate the procedure in any way.

Two or more creditors can file a petition for the initiation of insolvency proceedings in cases when:

- the debtor has failed to pay a debt due to each of the petitioning creditors;
- the debtor has failed to pay its debt that is at least 90 (ninety) days overdue;
- the total amount of the debt overdue exceeds EUR 3,000;
- each debt is not conditional or subject to pending court proceeding or an ongoing arbitration; and
- the debtor does not usually pay its debts in a timely manner, and the total of unpaid debts exceeds EUR 5,000.

According to this law, the Basic Court, Commercial Department is the competent court for bankruptcy cases and the use of extraordinary legal remedies is not allowed. Within 3 (three) days following the receipt of a petition for the initiation of insolvency proceedings, the court appoints an administrator. The court should promptly notify the debtor within 3 (three) days of the filing of the petition for initiation of the bankruptcy proceeding. The court should also set the term by which the debtor may respond to the petition as well as a hearing session on the acceptability of the petition. All this information should be contained in the notice delivered to the parties. In the interim, the court shall issue an order to the parties with the purpose of protecting the petitions of debtor and creditors. Such order should be required and proved as necessary by the parties.

Each creditor must file a proof of claim to the court to establish the validity and amount of its claim. The court provides the parties with a specific form for the registration of the claim and proof of the existence of the claim. In absence of a specific form, the creditors shall file at the court a written statement, which is considered a statement under oath if it includes the following information: (i) description of the claim, including whether the claim is deemed to be unsecured, priority, or secured; (ii) the amount of the claim as of the date of the opening of the case; and (iii) appending, if available, accurate and complete copies of the documents related to the claim or to any security related to such claim. Unless the creditor files a proof of claim, it will not be able to participate in any distribution of property of the bankruptcy estate to creditors, serve on any creditors' committee or vote on any plan of reorganization.

In a liquidation case, a creditor must file a proof of claim within 60 (sixty) days of the date of the notice of the opening of the bankruptcy proceeding. In a reorganization case, unless the court orders otherwise according to the needs of the reorganization, a creditor must file a proof of claim within 30 (thirty) days of the date of the notice of the opening of the bankruptcy proceeding. Until 30 (thirty) days after the deadline for filing proofs of claims has passed, the bankruptcy estate representative may file a proof of claim on behalf of any creditor. Such filing must be made in good faith. The claims register shall be open to the public when the court is open, and the court shall allow for reasonable procedures for the inspection and copying of all documents contained in the register.

Debtors, bankruptcy administrators, creditors, equity holders, creditor committees, and government units may object to the claims. If any of the above objects to a claim, the court shall determine the validity and amount of the claim in EUR according to applicable laws, as of the date of the opening of the bankruptcy case. The objecting party shall prove its objection. Unless otherwise requested by the party objecting to a claim or as ordered by the court, the presumption of validity of a proof of claim persists until a court rules to the contrary. After the resolution of all challenges, the administrator will, no later than 10 (ten) days after resolution of all claim objections, provide the court with the entire list of claims in the priority order set forth by law. If no objection to the list is filed within 30 (thirty) days of submission to the court, then the list shall be deemed to be final for all purposes.

The payments of creditors' claims in cases of liquidation are made in the following order or priority:

- Secured claims: secured by duly perfected/registered collateral, i.e. mortgages, pledges or other liens. Secured claims are limited by the value of the collateral securing its repayment. The amount of the secured claim that exceeds the collateral is considered an unsecured claim.

- Unsecured claims: administrative costs (including but not limited to unpaid salaries and unpaid tax obligations since the initiation of bankruptcy, loans taken by the bankruptcy administrator with the approval of the court, fees of professionals engaged by the bankruptcy administrator with the approval of the court; and the bankruptcy administrator's fees); claims deriving from family obligations and requests for compensation of victims; claims deriving from employment relations; claims deriving from tax obligations; and any other unsecured claim.

- Equity interest: is defined as the property on the capital or other property rights to shares or parts of a legal person or other business organization, the holder of which may be a shareholder, owner, partner or similar.

In cases where the debtor seeks the reorganization of its enterprise, the debtor in possession has the exclusive right to file a plan of reorganization within 120 (one hundred and twenty) days after the opening of the case. This time limit is interrupted if the debtor in possession files a plan before the expiration of the deadline. The court may shorten or extend the above-mentioned debtor's exclusive period on request of a party in interest, if such party in interest proves that such shortening or extension will likely enhance the debtor's prospects for reorganization. After the expiration of the above-mentioned term or extension or shortening of such term, each party in interest shall file a plan of reorganization of the debtor.

A plan proponent must file a disclosure statement with the plan of reorganization. The disclosure statement must contain sufficient information to allow creditors and holders of equity interest to make an informed vote on the plan. Such information shall include, but not be limited to, (i) short descriptions or summaries of why the debtor or the bankruptcy estate representative requested reorganization; (ii) how the changes to be made by the plan of reorganization will benefit the reorganized debtor; (iii) why distributions to creditors under the plan will exceed the distributions such creditors could reasonably expect in a liquidation; and (iv) the reorganized debtor's prospective cash flow for the 5 (five) year period following the anticipated confirmation, or if creditors will receive all distributions under the plan before the passing of the 5 (five) year period, a summary of the prospective cash flow until the last proposed distribution under the plan.

Before the plan proponent may distribute the plan of reorganization to creditors for a vote, or solicit any votes on the plan of reorganization, the court must approve the disclosure statement. The court shall approve a disclosure statement if the plan proponent proves that it contains all material information necessary for a reasonable creditor to make an informed decision on whether to accept or reject the plan. If the court approves the disclosure statement, it will then order the plan proponent to distribute the plan of reorganization, the disclosure statement, and the ballot sheet to all creditors or equity holders who are entitled to vote on the plan. The decision regarding distribution shall set the date for the return of ballot sheets, the date for any objections to be filed, and the hearing on plan confirmation. The plan proponent does not need to submit the ballot sheets or to provide a disclosure statement and the plan of reorganization to any class that is deemed to accept or to reject such a plan.

The plan of reorganization is deemed to be accepted, if creditors holding at least 50% of all claims voting in that class accept the plan of reorganization. Moreover, the plan of reorganization is deemed to be accepted without the need of solicitation, if it leaves the claims or equity interests unimpaired. The plan of reorganization is deemed to be rejected without the need for solicitation, if it eliminates the claims or equity interests.

The provisions of a confirmed plan of reorganization bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor or equity holder, whether or not the claim or interest of such creditor or equity holder is impaired under the plan of reorganization and whether or not such creditor or equity holder has accepted the plan. Except otherwise provided in the plan of reorganization or the decision confirming the plan, the confirmation of a plan of reorganization vests all of the property of the bankruptcy estate

to the debtor. The court shall decide by ruling to close a reorganization case when all obligations under a plan of reorganization have been fulfilled.

It should be noted that the voluntary dissolution of business organizations is governed by the Law on Business Organizations. At the same time, the procedures for the reorganization or liquidation of enterprises and their assets are currently under the administrative authority and management of the Privatization Agency of Kosovo and are governed by UNMIK Regulation 2005/48.

5. 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 rights. 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.

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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND 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.

While foreign criminal sanctions are regulated by the Law on Execution of Penal Sanctions (Law No. 04/L-149) adopted in July 2013, civil execution procedures are regulated by the Law on Executive Procedure (Law No 03/L-008) which was adopted in June 2008. Article 17 of the Law on Executive Procedure allows an execution of a foreign decision by a Kosovo court only if it fulfils the conditions for recognition and execution of Kosovo law or of international treaties.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	The approximate duration for the enforcement of a contract at the Basic Court, Commercial Department, in Prishtina is 420 days, which includes: ▪ 60 days for filing and service of claim; ▪ 180 days for trial and judgment; and ▪ 180 days for enforcement of judgment. The aforementioned estimates are based on a case that includes a claim assumed to be equivalent to 200% of the income per capita.	▪ The first instance procedure con. sists of two parts: the preparatory proceedings and the main trial. ▪ According to the Kosovo Judicial Council (KJC) Statistical Report 2014, Kosovo Courts have a backlog of 455,699 of total unresolved cases inherited from the past years, while for the first three months of 2014, the Basic Courts accepted 225,236 new cases. During this time period, the Basic Courts in Kosovo were able to resolve 222,551 cases, leaving 438,383 unresolved cases in front of Basic Courts and 463,301 unresolved cases in total at the end of the first trimester of 2014.
APPROXIMATE COSTS	Official fees in Kosovo Courts range from EUR 20 for a claim up to EUR 1,000 to EUR 1,000 for a claim of over EUR 100,000. According to the World Bank's Doing Business in Kosovo Report 2016, approximate costs for a case, including a claim assumed to be equivalent to 200% of the income per capita, are as follows: ▪ attorney costs: 25.2% of the claim; ▪ court costs: 18% of the claim; ▪ enforcement costs: 18% of the claim. In the World Bank's Doing Business in Kosovo Report of 2016, no significant improvements can be detected. The recovery rate remains at 38.8% with costs of an average of 15% of the estate.	
JURY TRIALS	There are no jury trials in Kosovo. The first instance trial is chaired by an individual judge, while the second instance proceedings are chaired by a three-member panel of judges.	
CLASS ACTIONS	Yes. Collective redress is foreseen by law in cases when the object of the claims derives from the same or similar factual or legal basis.	
DOCUMENT PRODUCTION	Parties have the right to access and inspect the case files. The law is silent on whether the parties have the right to compel the production of a document from another party. Notwithstanding the above, the court is authorized to verify facts that the parties have not presented, subject to certain legal requirements.	
MANDATORY REPRESENTATION BY COUNSEL	No. Parties can represent themselves in civil proceedings and/or they can authorize any other person, fit to stand before the court, to represent them even if the latter is not an Attorney-at-Law.	
PRO BONO SYSTEM	Yes. There is legal aid system for people who cannot afford the cost of legal proceedings which is provided by Kosovo Legal Aid Commission.	

BUSINESS CRIME		
APPROXIMATE DURATION	It is hardly possible to determine the exact duration of a criminal trial. It differs from case to case.	The Criminal Procedure Code merely states that fair criminal proceedings have to be conducted within a reasonable time. There is no precise definition or time limitation.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	The unsuccessful party generally bears all the costs. The fees are determined by the Kosovar Bar Association.	According to the Criminal Procedure Code, costs may include, for example, the costs of witnesses, expert witnesses, interpreters, specialists, technical recordings, transportation costs and the costs of a site inspection.
JURY TRIALS	There are no jury trials in Kosovo. The first instance trial is chaired by an individual judge, while the second instance proceedings are chaired by a three-member panel of judges. The Supreme Court considers an appeal in a panel session.	
CLASS ACTIONS	No.	
DOCUMENT PRODUCTION	The parties to a dispute have the right to access and inspect the case files. In the main trial, the injured party has the right to propose evidence, to put questions to the defendant, witnesses and expert witnesses, to make remarks, give other statements and present clarifications concerning their testimony and to file motions. The private prosecutor and the subsidiary prosecutor have the same rights as the public prosecutor, excluding those rights belonging to the public prosecutor as a public official.	
MANDATORY REPRESENTATION BY COUNSEL	Mandatory representation is provided for a defendant according to the Criminal Procedure Code: ▪ if the defendant is mute, deaf, or displays signs of mental disorder or disability and is therefore incapable of effectively defending him/herself; ▪ at hearings on detention on remand and throughout the time when he or she is in detention on remand; ▪ If indictment has been brought against him or her for a criminal offence punishable by imprisonment of at least eight years; and ▪ in proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability, or a punishment of long-term imprisonment has been imposed.	
PRO BONO SYSTEM	According to Law No. 04/L-017 on Free Legal Aid, under certain circumstances Kosovo citizens are able to claim legal aid for civil, criminal, labour and administrative matters before courts and authorities.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION AND COSTS	With respect to time limits for seeking injunctive relief, the following deadlines should be considered: An *Order to Secure the Claim*, as it is referred to by the Law on Contested Procedure, can be sought even before a claim is filed with the Court. However, in these cases the claim must be submitted no later than 30 days after the request for an Order to Secure the Claim.	▪ In cases when the Court determines that the party that is subject to the injunction order may suffer damages, the Court will request the claimant to provide a security for the Order to Secure the Claim. ▪ According to the law, injunctions can be ordered for securing a monetary claim, securing a claim involving an object or preservation of existing circumstances.

	The Court may decide on the request without notifying the party but in that case the Court must inform the opposing party after the decision is taken. In these cases, the opposing party has 3 days to file an objection, which triggers a hearing. Otherwise, in regular cases, the Court sends the request to the opposing party prior to making a decision and the opposing party has 7 days to respond. The Order to Secure the Claim can remain in effect until 30 days after the award becomes enforceable. Due to limited experience there is insufficient information available to determine the costs and duration for these proceedings, except for what is stated above on the wide range of court fees.	▪ Due to the Kosovo courts being overloaded with pending cases and the different approaches of individual judges, certain judges tend to reject any Order to Secure the Claim for formal reasons. ▪ In the event an Order to Secure the Claim is considered, it is advisable to talk to judges to whom the case may be assigned before filing the Order to Secure the Claim.
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 JUDGMENTS AND 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 foreign judgments is facilitated by the Ministry of Justice of the Republic of Kosovo, Section on International Legal Cooperation.	▪ Kosovo is not part of the Brussels Regime, which consists of the Brussels Convention, the Lugano Convention, and the Brussels I Regulation. Enforcement of judgments is conducted based on the principle of reciprocity. ▪ Attaching a certified translation of the judgment in the Albanian language is highly recommended in order to avoid delays. ▪ 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, except for what is stated above on the wide range of court fees.
INSOLVENCY PROCEEDINGS	
FILING OF INSOLVENCY CLAIMS BY CREDITORS	Creditors can file a claim for insolvency proceedings in cases when ▪ the Debtor has not paid the debt for 90 days after the debt was due for payment; ▪ the amount of the debt exceeds EUR 3,000; ▪ the debt is not conditioned; and ▪ the Debtor is generally not able to settle its debts.
APPROXIMATE DURATION	According to the law, direct liquidation processes must be completed within 90 days (for unsecured debts) and within 60 days (for secured claims) after the case was assigned to an Administrator.
APPROXIMATE COSTS	To date, the Basic Court (Commercial Department) in Pristina has not had any liquidation cases which have been completed.

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www.pallaska-associates.org

CHRISTIAN MIKOSCH
Partner

Wolf Theiss, Austria; Kosovo Desk

T. +43 1 515 10 5310
christian.mikosch@wolftheiss.com

WOLF THEISS

POLAND

1. LEGAL SYSTEM

The Polish legal system is based on codified principles of civil law. Judicial precedents are not binding; however adjudicating courts do take other rulings in similar cases into consideration.

The Polish court system is composed of District Courts (*Sąd Rejonowy*), Regional Courts (*Sąd Okręgowy*), Courts of Appeal (*Sąd Apelacyjny*) and the Polish Supreme Court (*Sąd Najwyższy*). Within the above framework there are specialised court divisions that rule on specific subject matters, e.g., the commercial division (*wydział gospodarczy*) decides commercial disputes and the labour division (*wydział pracy i ubezpieczeń społecznych*) handles labour and employment disputes.

Generally, cases where the value in dispute is not more than PLN 75,000 (approximately EUR 18,000), are heard before District Courts in the first instance, and Regional Courts act as appellate courts. Major cases, i.e. cases where the value in dispute is more than PLN 75,000, are heard before Regional Courts in the first instance, and appeals are decided by Courts of Appeal. However, irrespective of the case value, District Courts always handle specified types of matters, e.g., claims for alimony, civil cases concerning disturbance of possession, updating the land and mortgage register to the actual legal state, as well as cases concerning electronic payment orders.

Currently, there are 321 District Courts, 45 Regional Courts and 11 Courts of Appeal in Poland.

At the top of the judicial hierarchy is the Polish Supreme Court. It functions primarily as a court of cassation. Grounds for cassation are limited to substantive law and major procedural issues. Generally, cassation is inadmissible in civil disputes concerning property rights in cases valued below PLN 50,000 (approximately EUR 12,000). In addition, irrespective of the case value, cassation is inadmissible in specified types of matters, e.g., cases concerning rent for lease or tenancy, disturbance of possession or civil cases heard in summary proceedings.

2. LITIGATION

Civil proceedings are commenced by filing a statement of claim (in litigious proceedings) or a motion (in non-litigious proceedings) with the competent court. The statement of claim must contain allegations of the facts on which the claim is based and offer evidence in support of those facts. Under Polish law, the claimant must also precisely specify the request and, in matters concerning property rights, indicate the claim value, unless the subject matter of the case is a specified amount of money.

Depending on the type of legal protection sought, statements of claim are divided into three general categories:

- actions for performance of an obligation, e.g., to pay a specified sum of money, to deliver or surrender moveable property, to pay damages or to cease a particular behaviour;
- actions for determination of the existence or non-existence of a right or legal relationship; and
- actions for creating, amending or dissolving a legal relationship.

After the statement of claim is filed, the court considers whether it has jurisdiction over the claim and whether there are any grounds to reject the statement of claim (e.g. *litis pendentio*, *res iudicata*). If the court has jurisdiction over the dispute and there are no other procedural impediments, the court serves the statement of claim on the defendant. The defendant is entitled to submit a statement of defence before the first court hearing. The chairperson can request the defendant to submit a statement of defence within a specified period of time, no shorter than 2 (two) weeks.

Once the statement of claim is served on the defendant, the court initiates the trial proceedings which typically consist of several oral hearings. Generally, the trial is held and decided upon before a judge or a panel of judges

depending on the type and stage of the proceedings. Only specific first instance cases concerning labour law and family matters are heard by a judge and two jurors.

Hearings serve the important purpose of allowing the presentation and gathering of evidence. In accordance with the adversarial principle, generally it is the duty of the parties (or their attorneys) to present the facts and evidence to the court. Under Polish law, the court is authorized to admit evidence not presented by the parties. It is, however, admissible only in exceptional cases, e.g., in order to guarantee the factual equality of the parties to the dispute, especially when one of the parties is not represented by professional counsel.

Evidence presented by either party during the proceedings may include, *inter alia*, documents, electronic materials, witnesses, expert witnesses (the court decides whether the expert's opinion is to be presented orally or in writing), inspections and testimony of the parties involved in the dispute. After the hearing and submission of evidence has been concluded, the judge closes the proceedings and issues a judgment.

In simple cases, a first instance judgment may be rendered within 6 (six) months. According to statistics provided by the Polish Ministry of Justice, first instance proceedings pending before District Courts take on average a little less than 5 (five) months; in Regional Courts, the average time is 8 (eight) months. In appellate proceedings, the court often relies on evidence gathered by the lower court. Appellate proceedings usually take between 4 (four) months and 1 (one) year. However, in complex cases, the duration of court proceedings can be considerably longer.

A party can request interim remedies. A court may order a preliminary injunction to secure claims either before or during litigation. In order to have a preliminary injunction granted, the party must make it plausible to the court that (i) the claim exists; and (ii) the party has a legal interest in the granting of the injunction. Preliminary injunctions aimed at securing pecuniary claims may include, *inter alia*, attachment of movables, wages, freezing of bank accounts, attachment of other claims or property right and compulsory mortgages.

The final judgment issued by the court includes an order specifying which party has to bear the costs of the proceedings. Litigation costs are mainly composed of court and attorney's fees, expenses for expert opinions and travel expenses for witnesses. Generally, costs of litigation are awarded against the losing party. However, if a party prevails only with a portion of his/her claim, the costs are divided on a pro-rata basis. In exceptional circumstances, the court may order the losing party to reimburse only a part of the costs of litigation to its opponent or not charge it with such costs at all.

In Poland, contingency fees that entitle an attorney to a certain percentage of the amount awarded to the claimant are not prohibited by law. However, under codes of ethic by the Bar Council and the Chamber of Legal Advisors, the contingency fee must be only a part of the remuneration for rendering legal services – the remuneration must not be based solely on a contingency fee.

3. BUSINESS CRIME

In cases of business crimes, the perpetrator may often be subject to civil and criminal liability. For this reason, criminal proceedings are often conducted parallel to civil litigation. Taking part in criminal proceedings against a perpetrator may be an effective way of obtaining evidence and gaining an advantage over the opposing party. Evidence gathered in the course of criminal proceedings may also be submitted to the civil court, unless it contains classified information.

Judges presiding over business crime cases often lack relevant business experience and market knowledge. This is mainly caused by insufficient training programs and, most of all, by the fact that there is no specialization of judges, i.e. no special court divisions handling only economic offences. As a consequence, even for experienced attorneys it is often difficult to predict the final outcome of a case.

The Act on Liability of Collective Entities of 28 October 2002 allows a penalty to be imposed on a legal entity, if: (i) an officer or employee of the company has been convicted of a crime specified in the act (e.g. bribery,

offences against trade) or the committing of such a crime has been determined in any proceedings; (ii) the crime was committed in connection with the activities of the entity; (iii) the offence was committed due to at least lack of due diligence in the choice or supervision of the person who committed the offence or due to the improper organization of the company; and (d) the crime was or could be beneficial (either economically or non-economically) to the entity.

The catalogue of penalties includes: (i) a fine up to the amount of PLN 5 million (approximately EUR 1,2 million), but no more than 3% of the yearly income of the entity; (ii) mandatory forfeiture; and (iii) optional bans imposed for a period between 1 to 5 (one to five) years, e.g. prohibition on the use of public aid or subventions, prohibition on advertising and prohibition on participation in public tenders. As the procedure to hold a company liable is rather burdensome, the Act on Liability of Collective Entities is rarely applied in practice.

The two main stages of criminal proceedings are preliminary proceedings and court proceedings, which are commenced by submitting an indictment act to court.

Preliminary proceedings are obligatory in cases of offences prosecuted *ex officio*. The main purpose of preliminary proceedings is to gather and record evidence. These proceedings are divided into two stages, i.e., proceedings *in rem*, the purpose of which is to clarify whether an offence has been committed and proceedings *in personam,* conducted against a specific suspect. Preliminary proceedings can be conducted by the prosecutor, by the police (in minor cases), or other authorities (in specific cases). The organizational structure of the public prosecutor's office and the police, unlike that of the courts, provides for divisions specializing in economic offences.

If the preliminary proceedings are not discontinued and on the basis of evidence gathered the prosecutor is of the opinion that there are high chances that a crime was committed, the prosecutor prepares an indictment act and submits it to the competent court. Court proceedings in Poland are composed of two instances. Additionally, a cassation to the Supreme Court can be filed against a final and binding judgment rendered by the appellate court.

During the preliminary proceedings stage, the prosecutor and the police are the most relevant players. In the case of economic offences it is, however, also worth mentioning:

- the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*), a public authority overseeing the capital market and banking sector;
- the Office of Competition and Consumer Protection (*Urząd Ochrony Konkurencji i Konsumentów*) whose main role is to safeguard compliance with competition law; and
- the Tax Audit Offices (*Urzędy Kontroli Skarbowej*) which are competent with respect to ensuring the payment of tax liabilities.

The above-mentioned institutions are authorized to conduct investigations within the scope of their statutory competences and often discover facts that may lead to the initiation of preliminary proceedings. Moreover, pursuant to the Polish Code of Criminal Procedure, the Prosecutor General (*Prokurator Generalny*) and the Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*) are authorized to file a cassation in criminal proceedings.

Under Polish regulations on criminal procedure, the aggrieved party is authorized to act as an auxiliary prosecutor along with or instead of the prosecutor (in case the prosecutor refuses to initiate or discontinues the preliminary proceedings).

The outcome of criminal proceedings can be of key importance for civil litigation for a couple of reasons. Firstly, a criminal court may order in its ruling that the convicted person must remedy the damage caused by committing the offence. As a result, a party awarded damages in a criminal case cannot claim them again in the civil proceedings. Secondly, the findings contained in a final condemnatory sentence of a criminal case are binding for the civil court as to the fact of the accused having committed the offence. In such cases, it is completely up to the civil court to estimate the damage incurred by the victim (claimant).

The approximate duration of preliminary proceedings in Poland is 18 (eighteen) months. Court proceedings last on average an additional 2 (two) years.

The notification of suspicion of a criminal offence having been committed is not subject to any fee. Only specific motions of the convicted party (e.g. motion for suspension of the sentence) are subject to fees. Moreover, the filing of a cassation is subject to a court fee, the amount of which depends on the type of court which rendered the judgment subject to cassation.

As indicated above, the scope of court fees in criminal proceedings is very limited. Therefore, the costs incurred by the parties are mostly composed of attorney fees, travel expenses, and other costs, e.g., remuneration of private experts.

4. INSOLVENCY

Since 1 January 2016 Polish insolvency proceedings are regulated by two separate acts – the Restructuring Law of 15 May 2015 and the Bankruptcy Law of 28 February 2003.

The purpose of the restructuring proceedings is to agree on a voluntary debt restructuring arrangement with the creditors and to conduct remedial actions, while securing legitimate rights of creditors and ensuring the continued existence of the debtor. The Bankruptcy Law in general regulates the rules of vindication of claims against insolvent debtors, so it usually leads to the winding-up of the debtor's estate and the distribution of its assets among its creditors.

Restructuring Proceedings

Restructuring proceedings may be conducted against a debtor that is insolvent or threatened by insolvency. The definition of insolvency (*niewypłacalność*) is very wide, but generally a debtor is insolvent if he/she has lost the ability to fulfil their obligations.

The new Restructuring Law introduced four types of proceedings:

- arrangement approval proceedings *(postępowanie o zatwierdzenie układu)*;
- accelerated arrangement proceedings *(przyspieszone postępowanie układowe)*;
- arrangement proceedings *(postępowanie układowe)*; and
- remedial proceedings *(postępowanie sanacyjne)*.

Arrangement approval proceedings apply if debtors are able to reach an arrangement with the required majority of creditors without the court's involvement and the sum of disputed claims does not exceed 15% of the total claims. If debtors and creditors fail to reach an agreement on their own, the other types of proceedings apply. Standard arrangement proceedings apply if the sum of disputed claims exceeds 15% of the total claims. An accelerated arrangement proceedings, which is a simplified procedure (and should take approximately 2 (two) months), applies if disputed claims do not exceed 15% of the total claims. The last type of restructuring proceedings are remedial proceedings, which are the most regulated and aimed at improving the economic situation of the debtor and restoring the debtor's capability to discharge obligations, while ensuring protection against execution.

All types of restructuring proceedings as a rule are initiated when a motion is filed by the debtor. Generally, during the restructuring proceedings, the debtor remains in charge of managing his/her estate; however, he/she is supervised by a court supervisor (*nadzorca sądowy*) or, in case of arrangement approval proceedings, an arrangement supervisor (*nadzorca układu*). Furthermore, in some cases, the court may appoint an administrator (*zarządca*) to take charge of managing the debtor's estate. Appointing an administrator is mandatory in remedial proceedings.

A proposed arrangement is voted at a creditors' meeting (except in the case of arrangement approval proceedings, where the debtor collects votes in writing). As a rule, an arrangement is agreed upon, if it is accepted by the majority of voting creditors, who hold in aggregate at least two-thirds of the total sum of claims held by the voting creditors.

It is also possible to conclude a partial agreement, concerning only certain liabilities the restructuring of which have a fundamental impact on the continued functioning of the debtor's business. This applies in particular to debts stemming from investment credits and most important business agreements of the debtor, including those for the supply of raw materials for production, lease agreements, etc. An arrangement accepted by the required majority of creditors is subject to the approval of the court.

Bankruptcy proceedings

Bankruptcy proceedings may be conducted only against a debtor who is insolvent. According to the Bankruptcy Law, a debtor is presumed to be insolvent, if:

- it is late in paying its obligations for more than 3 (three) months;
- the value of its monetary obligations exceed the value of its assets.

Proceedings are initiated by a motion filed by the debtor or any of its personal creditors. If the conditions for declaring insolvency are fulfilled, the court issues a ruling containing a declaration of bankruptcy, calling upon the creditors to submit their claims within 30 (thirty) days of the announcement of the ruling. In the ruling, the court appoints a judge-commissioner (*sędzia komisarz*), who is in charge of the bankruptcy proceedings, as well as a deputy and a receiver (*syndyk*). The receiver takes over the management of the bankrupt's assets and conducts the liquidation of the bankruptcy estate (*masa upadłości*).

The receiver is obliged to prepare a list of the bankrupt's debts and a plan of distribution of the funds obtained from the liquidation of the bankruptcy estate, as well from the running of the bankrupt's enterprise.

After the above funds are distributed among the creditors, the bankruptcy proceedings are closed by the court.

5. 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

The procedure for the enforcement in Poland of judgments issued in EU Member States is subject to a standardized and simplified procedure governed by Council Regulation (EC) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Under the above-mentioned regulation there are only limited grounds on which the recognition of such judgment can be denied. These include, *inter alia*, cases in which the recognition of a judgment is manifestly contrary to Polish public policy or the judgment was rendered in violation of due process.

As long as the judgements are enforceable in the country of origin, they are subject to automatic enforcement in Poland. As a result, there is no need to obtain a declaration of enforceability before Polish courts.

In order to enforce a judgement, it is merely necessary to present the court enforcement officer with a copy of the judgement to be enforced and a certificate issued in the country of origin confirming the enforceability of the judgement. A translation may also be necessary.

It is important to note that the above procedure is applicable only to judgements issued on or after 10 January 2015. With regard to judgements of EU Member States issued before that date, EU Regulation No. 44/2001 is applicable.

In addition, EU regulations No. 805/2004 (uncontested claims), No. 1896/2006 (European payment procedure) and No. 861/2007 (small claims) are applicable to claims specified therein. Such claims are also subject to automatic enforcement.

The enforcement of judgments from non-EU countries is contingent on the issuance of a declaration of enforceability by the competent Polish court. The enforcement proceedings are governed by the Polish Civil Procedure Code, unless an international convention binding Poland is applicable in a given case. The general requirement for the issuance of a declaration of enforceability is that the foreign judgment is enforceable in the country of its origin. Reciprocity is not required. The declaration of enforceability is denied on exhaustively listed grounds, *inter alia*, if the foreign judgment is not final and binding in the country of its origin, the jurisdiction of Polish courts was exclusive in the given case, the judgment is contrary to a prior Polish judgment or the judgment violates Polish public order.

A declaration of enforceability is issued by a competent District Court upon the request of the creditor. The debtor opposing the enforceability of the claim is allowed to present its position to the court. The court's decision on enforceability is subject to an appeal and cassation.

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.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases**: *first instance* (District Court): approx. 5 months; *second instance*: 15 months. **Complex cases**: *first instance* (Regional Court): approx. 8 months; *second instance*: 36 months.	▪ The duration of court proceedings depends on the number of hearings and the scope of evidence presented. ▪ There are two instances before which the case may be heard. However, in many cases, a final and binding judgment can be contested by an extraordinary remedy, i.e., cassation submitted to the Supreme Court.
APPROXIMATE COSTS **COURT FEES**	Court fees are based on the Court Fees Act and generally depend on the amount in dispute: ▪ in general, the court fee amounts to 5% of the claim value; ▪ the court fee for a class action amounts to 2% of the claim value; ▪ the minimum amount of court fee is PLN 30; ▪ the maximum amount of court fee is PLN 100,000.	▪ Litigation costs include court fees, attorneys' fees, and expenses for expert opinions and witnesses. ▪ Court fees in the first and second instance are to be paid by the party filing the statement of claim/appeal. ▪ Court fees can be paid by a bank transfer to the court's bank account or by duty stamps. ▪ Litigation costs are generally awarded against the losing party. ▪ Reimbursement of attorneys' fees is limited to the amounts specified in the Regulation on Attorneys' Tariffs and the Regulation on Legal Advisors' Tariffs. The actual attorneys' fees (depending on the fee agreement between the attorney and the client) can be substantially higher.
ATTORNEYS' FEES (NET) *SIMPLE CASE*	**Assumptions based on an amount in dispute of EUR 1,000,000**: *first instance*: preparation of the claim/response, court hearings/meetings with client: in total: EUR 30,000 to EUR 50,000; *second instance*: preparation of the appeal/response, court hearing: in total: EUR 8,000 to EUR 15,000.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: *first instance*: preparation of the claim/response, court hearings/meetings with client: in total: EUR 70,000 to EUR 200,000; *second instance*: preparation of the appeal/responses, court hearing: in total: EUR 20,000 to EUR 50,000.	
JURY TRIALS	In the first instance, specific cases concerning labour law and family law are heard by a judge and two jurors.	
CLASS ACTIONS	Class actions are regulated under the Act on Class Actions of 17 December 2009 (amended on 1 June 2017).	▪ The Act on Class Action applies to claims for liability for damage caused by a dangerous product, torts, liability for non-performance or improper performance of a contract, for the return of unjust enrichment, and in cases of consumer claims. With some important limitations, class actions may be also used to pursue claims for the infringement of personal rights. ▪ A class action may only be filed by a minimum of 10 persons.

DOCUMENT PRODUCTION	Limited. The court generally adjudicates based on the evidence offered by the parties at their own initiative. Only under exceptional circumstances or on the request of one of the parties, may the court order the other party to provide documentation not offered by that party on its own initiative.	▪ Copies of documents should be submitted to the court (one copy for the court and a copy for every opponent). In the course of the proceedings, attorneys representing both parties are obliged to deliver every court letter along with attachments directly to each other. ▪ The court is entitled to order the parties to submit additional written submissions or to present specified documentation. Non-compliance with such obligations can result in preclusion of evidence and can influence the evaluation of the case by the court.
MANDATORY REPRESENTATION BY COUNSEL	Generally no. However, representation by professional counsel (attorney or legal advisor) is mandatory in proceedings before the Supreme Court and in class actions.	
PRO BONO SYSTEM	Yes. Legal aid is provided to persons who cannot afford costs of the legal proceedings.	
BUSINESS CRIME		
APPROXIMATE DURATION	*Preliminary proceedings*: approx. 18 months. *Court proceedings*: approx. 24 months.	The duration of preliminary and court proceedings depends on the location of the court. Courts in smaller cities usually have a smaller case load and thus the proceedings are more expeditious
APPROXIMATE COSTS		
COURT FEES	The criminal proceedings are generally free of charge. However, if a party is convicted to imprisonment, a fee of PLN 60 to PLN 600 must be paid at first instance (depending on the judgment) and in the case of a fine, 10% to 20% of the fine, but not less than PLN 30. If the appeal filed in favour of the accused is not taken into account, the court will charge the same fee for the appeal proceedings. Filing of a cassation is subject to a court fee in the amount of PLN 450 (in case of cassation against the judgment of a district court) or PLN 750 (in case of cassation against the judgment of a regional court).	
ATTORNEYS' FEES	*Simple Case*: EUR 5,000 to EUR 10,000. *Complex Case*: EUR 10,000 to EUR 20,000.	In practice, hourly rates in the amount of ca. EUR 250 and reimbursement of costs are preferred, as the amount of work is difficult to assess in advance.
JURY TRIALS	Cases concerning business crimes are usually heard by only one judge, but jury trials may occur in complex cases (panels are composed by one judge and two jurors, or two judges and three jurors).	

CLASS ACTIONS	No.	
DOCUMENT PRODUCTION	The prosecutor and the police may order any person to produce documents necessary for the purpose of criminal proceedings. The same may be done by the court. Evidence gathered in the course of criminal proceedings can be submitted to the civil court, unless it contains classified information.	Litigants often use or try to use criminal proceedings to obtain evidence.
MANDATORY REPRESENTATION BY COUNSEL	Representation by counsel is mandatory in cases subject to a long imprisonment sentence or if the sanity of the defendant is questionable or if he/she is physically impaired.	
PRO BONO SYSTEM	Yes. Legal aid is provided for persons who cannot afford the cost of legal representation.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	As a rule, a motion for preliminary injunction should be decided upon within 1 week from its filing. In practice, however, this deadline may be extended, which is often the case. Appellate proceedings take from 2 to 4 months.	A party seeking a preliminary injunction must make it plausible to the court: ▪ that the claim exists; and ▪ that it has a legal interest in the granting of the injunction. Legal interest is deemed to exist if the lack of an injunction may prevent or seriously hinder the enforcement of a future judgment.
APPROXIMATE COSTS **COURT FEES**	If filed along with a statement of claim, the request for a preliminary injunction is not subject to any court fees. If filed separately, the request is subject to a court fee in the amount of PLN 40 (non-pecuniary claim) or PLN 100 (pecuniary claim). The court fee for the appeal is equal to half of the base fee.	▪ Prior to granting an injunction, the court may request an applicant to provide a security. ▪ Generally, the costs relating to injunction proceedings constitute a part of the litigation costs and are awarded by the court in the final decision rendered in the main proceedings.
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Assumptions: only the request for a preliminary injunction is filed, the court renders its decision behind closed doors**: EUR 4,000 to EUR 7,000 in *first instance*; *second instance*: preparation of appeal/response, one hearing: EUR 6,000 to EUR 10,000.	
COMPLEX CASE	**Assumptions: the request for preliminary injunction is filed, court hearing and meetings with the client**: *first instance*: EUR 10,000 to EUR 30,000; *second instance*: EUR 15,000 to EUR 35,000.	

ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The usual duration of arbitration proceedings is between 8 months and 2 years.	▪ The costs of arbitration depends, 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 JUDGMENTS AND ARBITRAL AWARDS		

APPROXIMATE DURATION	Rulings issued in EU Member States are subject to direct enforcement.
	In the case of judgements by non-EU courts – 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.
		▪ Under EU Regulation 1215/2012, judgements of EU Courts are automatically recognized and operate as enforcement titles.
		▪ In order to initiate enforcement proceedings, the creditor shall provide the competent enforcement authority with:
		  ▪ a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
		  ▪ a certificate saying that the judgment is enforceable.
		▪ In order to avoid delays, attaching a certified translation of the judgment is highly recommended.
		▪ Judgments issued in non-EU countries are subject to the procedure on recognition of the judgement or declaring its enforceability pursuant to the provisions of the Civil Procedure Code. The applicant must submit a certified copy of the judgement, a document confirming the validity of the judgement and, in case of application for enforcement, a document confirming the enforceability of the award. All the above documents must be submitted with a certified translation.
		▪ 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.	
INSOLVENCY PROCEEDINGS		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	Insolvency proceedings are initiated on the day of service of the application for the declaration of bankruptcy at the court. Restructuring proceedings are formally initiated upon publication in the official gazette (*Monitor Sądowy i Gospodarczy*) of a statement by the debtor that restructuring proceedings have commenced.	

APPROXIMATE DURATION	The duration of restructuring proceedings depends on the type of procedure ▪ arrangement approval proceedings can be very efficient and take about 2 weeks; ▪ accelerated arrangement proceedings – 2 to 3 months; and ▪ standard arrangement proceedings – 6 to 10 months. Bankruptcy proceedings may take from 1 year to several years (depending on the number of creditors and complexity of the individual case).
APPROXIMATE COSTS	
COURT FEES	Filing of an application for the declaration of bankruptcy is subject to a court fee in the amount of PLN 1,000. Filing of an application for commencement of restructuring proceedings is subject to a court fee in the amount of PLN 200.
ATTORNEYS' FEES (NET)	Filing of an application for the declaration of bankruptcy/commencement of restructuring proceedings. *Simple case:* EUR 1,000 to EUR 1,500. *Complex case:* EUR 2,000 to EUR 5,000.

This chapter was written by Marcin Asłanowicz and Paweł Bukiel.

MARCIN ASŁANOWICZ
Partner

Wolf Theiss, Poland

T. +48 22 378 89 00
marcin.aslanowicz@wolftheiss.com

PAWEŁ BUKIEL
Associate

Wolf Theiss, Poland

T. +48 22 378 89 00
pawel.bukiel@wolftheiss.com

WOLF THEISS

ROMANIA

1. LEGAL SYSTEM

The Romanian legal system is based on codified principles of civil law. Judicial precedents are non-binding but are taken into consideration by courts and the parties in dispute.

2. LITIGATION

The Romanian judicial system was modified and updated by the entry into force of the New Civil Procedure Code ("NCPC") on 15 February 2013. The aim was to create a new framework for combating delays in solving civil litigations and for enforcing the decisions of the courts in a more efficient manner. The provisions of the NCPC are applicable to cases and enforcement proceedings which started after the entry into force of the NCPC.

One of the most relevant changes in the NCPC was the reduction of the duration of trials by introducing a new administrative procedural stage prior to the actual trial.

Therefore prior to the first hearing before the judge, if there are any irregularities concerning the claim, the claimant may be ordered by the court to correct these under the sanction of having the claim declared null. Generally the term is a maximum of 10 (ten) days from the receipt of the resolution of the court.

After such irregularities are solved, the court shall communicate the claim and its supporting documents to the respondent who shall usually file a statement of defence within 25 (twenty five) days from the receipt of the claim. This term may be shortened if the case is tried as a matter of urgency (i.e. as a challenge against a forced enforcement). The claimant shall file its response to the statement of defence within 10 (ten) days from the receipt of the statement of defence. Within 3 (three) days from the receipt of the response to the statement of defence, the judge shall issue a resolution with the date of the first hearing which shall not be later than 60 (sixty) days from the date of the resolution.

The Romanian court system is composed of Local District Courts (*judecatorii*), County Courts (*tribunale*), Courts of Appeal (*curti de apel*) and the High Court for Cassation and Justice (*HCCJ; Inalta Curte de Casatie si Justiti*e).

In comparison to the former Civil Procedure Code of 1865, under the NCPC Local Courts are no longer considered to be the main ordinary courts as their subject matter jurisdiction was severely reduced; the previous initial threshold of RON 500,000 (approximately EUR 110,000) was reduced to RON 200,000 (approximately EUR 44,000). Cases which are tried in the first instance by the Local Courts may be appealed before the County Courts. A case which is initially heard by the County Courts may be appealed before the Courts of Appeal and the final appeal (recurs) may be filed with the HCCJ (if a final appeal is regulated for the said case). The final appeal must be grounded on at least one of the eight grounds for appeal, which are stipulated in the NCPC.

The organization of the High Court of Cassation and Justice, the Courts of Appeal, tribunals, specialized courts and courts of first instance is provided for by Law No. 304/2004 regarding the organization of the judicial system, which has been republished with several subsequent amendments and additions.

The Courts of Appeal contain specialized sections. Depending on the case, there are panels for hearing civil, criminal or commercial cases, matters involving minors and family disputes, administrative or tax disputes, labour disputes and social insurance matters. Additionally and depending on the nature and number of cases, the Courts of Appeal may sometimes hear matters concerning maritime or domestic waterways disputes.

Romania also has tribunals which are courts organized at the level of each county and the city of Bucharest. The jurisdiction of each tribunal includes all first instance courts in the county or in the city of Bucharest. Tribunals have specialized sections. Depending on the case, there are panels for civil and criminal cases, commercial cases, cases involving minors and family disputes, administrative and fiscal disputes, cases regarding labour disputes and social insurance, as well as maritime and inland waterways matters. Depending on the nature and number of cases, specialized sections or panels may be set up in the courts of first instance.

The Romanian legal system distinguishes between lower and higher civil courts, determining jurisdiction by a dual mechanism that takes into account the value of the claim and the particular type of case regardless of the value of the claim(s).

Article 94 of the NCPC stipulates that courts of first instance shall hear all monetary claims up to the value of RON 200,000 (approximately EUR 44,000), as well as cases concerning the evacuation from premises held or occupied without legal grounds, etc. First instance courts may also hear claims against decisions made by public administrative authorities acting in matters of jurisdiction and other administrative bodies with similar fields of activity, allowed by law and any other matters assigned by law (such as the Land Book registration of real estate assets).

As pointed out above, the competence to hear commercial (litigation between professionals) and civil cases depends upon the value of the amount in dispute. In civil and commercial cases, the tribunal may hear the matter as a first instance court if the amount in dispute is over RON 200,000 (approximately EUR 44,000).

There is also a set of rules that establish subject matter jurisdiction on the basis of criteria other than value. For instance, jurisdiction is assigned to the tribunal in matters involving, *inter alia*, private claims, such as labour and social insurance claims, intellectual and industrial property rights, administrative disputes, acknowledgment and the approval of enforcement of foreign court rulings, insolvency matters, and public procurement litigations.

In addition to the initial and final appeal, the Romanian Civil Procedure Code enables the use of extraordinary legal remedies, which are applications that allow the annulment of a decision (grounded mostly on alleged errors of law), and the application for the revision of a decision (grounded on procedural aspects such as new facts or evidence).

Litigation costs are mainly composed of court and attorneys' fees and expenses for expert opinions and the production of evidence. Generally, the costs are paid by the unsuccessful party.

The final decisions of the courts of justice may be voluntarily executed or enforced by means of private judicial officers. However, enforcement may be challenged and/or suspended, at the request of the party opposing enforcement, based on grounds of judicially recognized irregularities.

3. BUSINESS CRIME

In Romania, it is considered that the business crime phenomenon has been on a downward trend over the past few years. However, although the number of companies that have reported such problems has decreased since 2005, the amount of money involved in frauds has doubled.

Studies have shown that over 36% of Romanian companies were victims of business crimes in the past two years. On average, every Romanian company participating in the study was a victim of over seven economic crimes in the past two years. Average losses incurred by the companies have doubled during this timeframe. The total reported loss due to business crimes amounts to USD 13.7 million, meaning approximately USD 450,000 per affected company; twice the average amount registered in 2005.

Companies most affected by this phenomenon are large ones, with over 5,000 employees (62%), while companies with less than 200 employees were less affected (36%). The statistics show that insurance and retail are the most affected industries, with 57% of companies in these industries affected, followed by 44% of companies in the automobile industry, and up to 27% in the pharmaceutical industry being affected.

The most frequently used fraud methods reported by Romanian companies are: asset misappropriation (23%), copyright infringements (15%), accounting frauds and corruption (10%). With over USD 5.5 million spent on dealing with business crimes in the past two years, this segment is treated very seriously by the Romanian public authorities.

Business crimes are regulated in the Romanian Criminal Code ("RCC") as well as in other special laws such as Law No. 241/2005 for the prevention and fight against tax evasion.

The RCC and other relevant laws regulate crimes such as: profiteering, measurement fraud, quality fraud, disclosure of economic secrets, trademark counterfeiting, circulating counterfeited products, unfair competition, non-compliance with regulations regarding import and export, embezzlement, non-compliance with regulations regarding import and export.

In Romania, in accordance with the Romanian Criminal Procedure Code ("RCPC") a criminal case is comprised of four major phases: the criminal investigation, the preliminary room proceedings, the trial and the enforcement of the final decision. In order to initiate a criminal investigation, the judicial authorities can be notified either by a criminal complaint or by denouncement, by the notification of other authorities or they can start the investigation *ex officio*.

The criminal investigation can be started *in rem*, when the perpetrator is unknown, or *in personam*, when the identity is known to the police. If the police consider that it has enough evidentiary support, it will charge the perpetrator with the crime. When the criminal investigation is finalized, the prosecutor may order the following solutions: (i) send the case to court for trial; (ii) return the file to the police for further investigation; (iii) reach and conclude a plea bargain with the defendant; or (iv) not bring the case to trial.

Following the completion of the criminal investigation, if the prosecutor decides to send the case before the court, the preliminary room proceedings are initiated. These proceedings consist of verifying the competence of the court and its legal referral, as well as verifying if the evidence was legally administrated and if the criminal investigation was conducted according to the law. The duration of these proceedings shall not exceed 60 (sixty) days.

Once the preliminary room proceedings are finalized the preliminary chamber judge can either (i) send the case before the court; or (ii) send the case back to the prosecutor in order to complete the investigation, if the judge considers this necessary. In the event the case is sent to trial and the court, subpoenas are sent to the parties and the prosecutor. The first instance case is comprised of: (i) prior measures (the appointment of the judges, ensuring the defence, drafting and displaying the hearing list); and (ii) the hearing, the deliberation and the delivery of the judgment.

First instance decisions may be challenged with an appeal which is the only ordinary remedy provided by the RCPC.

The Courts of Appeal judge the appeals filed against the decisions issued in first instance by the Local Courts and Tribunals. These decisions, except the ones referring to the retrial of the cause can be challenged with cassation appeals (*recurs in casatie*). The cassation appeal is judged by the High Court of Cassation and Justice which verifies if the decisions were issued in compliance with the applicable rules of law. The grounds on which the cassation appeal can be admitted are limited (e.g. in case the defendant was convicted for a deed that is not provided for by the criminal law, the punishments was given in other limits than those permitted by the law, etc.).

The RCPC provides for two other extraordinary remedies that serve the purpose of repairing errors contained in final criminal court decisions. These extraordinary remedies are: the challenge for annulment (*contestatie in anulare*) and the extraordinary appeal (*revizuire)*.

Another legal remedy is the challenge (*contestatia*) which can be filed in cases expressly mentioned in the code (i.e., the decision issued by the judge during the criminal investigation by which a person is ordered to be taken into custody). A decision issued once the challenge is heard cannot be subject to any remedy.

The Romanian prosecution body competent to solve business crimes consists of prosecutors organized in the Public Ministry, whilst the police and other investigating bodies have the competence of carrying out investigation activities, but only under the strict supervision of a prosecutor.

Specific corruption crimes such as bribery or exertion of influence are, in strictly regulated situations, prosecuted by a special body organized within the Public Ministry – the National Anticorruption Division. Other economic and financial crimes such as IT criminality, organized crime and racketeering, money laundering, terrorism and others are prosecuted by the Directorate for Investigating Organized Crime and Terrorism.

According to the RCPC, the injured person is the person who suffered a physical, material or moral injury by the offense. The injured person is not a party in the criminal trial however he/she has the right to become a civil party until the indictment document is read aloud in court.

The injured party has the following rights:

- the right to an attorney;
- the right to be informed regarding its rights;
- the right to file applications, raise preliminary issues and submit final pleadings;
- the right to examine the criminal file and to be informed about the status of the case;
- the right to request certain evidence to be taken;
- the right to be heard; and
- the right to examine the defendant, experts and witnesses.

If the injured person chooses to become a civil person, its financial losses may be recovered directly through the criminal case. If the victim does not want to recover damages this way and files a separate claim in front of civil courts, then the decision in the criminal case shall have *res judicata* authority in the civil case with respect to the existence of the felony, the defendant and the establishment of guilt.

With respect to interim injunctions, the RCPC provides for two categories of measures. The first category includes actions that apply strictly to cases when the defendant has medical problems and represents a danger to society: mandatory medical treatment and forced medical hospitalization. The second type of interim measures may be taken when there is the need to prevent concealment, destruction, disposal or removal of the assets engaged in the trial, such as seizure of assets and accounts.

The duration of criminal cases in Romania can vary from 2 (two) years up to 5 (five) or even 7 (seven) years, depending on the number of remedies used. The long duration of criminal cases is a serious issue in Romania, especially in the criminal investigation phase.

It is extremely difficult to assess what the overall costs for a criminal case will be. In Romania, criminal cases are exempted from stamp duty. The most significant costs are incurred by procedures related to gathering evidence, such as wiretapping, DNA testing and experts, in case the court orders surveys and also by the administering of other types of evidence such as witnesses or other material evidence.

Judicial expenses arising from the criminal case are forwarded either by the state or by the parties. In case of conviction, the defendant has to pay the judicial expenses forwarded by the state/other party with the exception of interpreters and legal aid, these costs being always borne by the state. If there is more than one defendant, the court will decide the allocation of costs, depending on their share in incurring the expenses.

The judicial expenses are born as follows:

- In case of acquittal
  - by the injured person , if the costs were caused by this person;
  - by the civil party, if the claim for damages was rejected completely, proportional with the expenses caused by this party;
  - by the defendant, if though acquitted, it was ordered by the court to pay damages;
- In case of termination of the criminal case
  - by the defendant, if measures were taken to replace criminal liability or a cause for impunity exists;
  - by both parties, in case of reconciliation of the parties;
  - by the injured party, in case of a waiver or if the complaint was submitted too late;
  - by the party who signed the mediation agreement, if criminal mediation intervened.

In case of appeal/cassation, the judicial expenses are to be borne by the losing party. If the case does not go to trial, the legal expenses shall be borne by the party who made the complaint.

Criminal Liability of a Legal Entity

Legal entities (with the exception of the state and public authorities which conduct an activity which is not subject to a private domain) are liable for criminal offences committed in achieving the object of their activity or in the interest or in the name/behalf of the legal entity if the criminal offence was deliberately committed.

The liability of the legal entity does not exclude the liability of the natural person who contributed in any manner to the commitment and perpetration of the criminal offence.

According to Article 137 of the RCC (in force from 1 February 2014), a legal entity committing a criminal offence is subject to a fine which may vary between RON 3,000 and RON 3,000,000 (approximately between EUR 7.500 and EUR 700,000).

Additional sanctions provided by the RCC may be the following: dissolution of the legal entity, the suspension of the activity of the legal entity, publishing of the conviction decision, closing of business units, prohibition to participate to public tenders or placing under judicial supervision.

4. INSOLVENCY

On 25 June 2014, Law No. 85/2014 (the “Insolvency Code”) was published by the Romanian Parliament with the goal of enacting a complex legislative act meant to cover the entire insolvency-related legal framework. The Insolvency Code entered into force on 28 June 2014.

According to the provisions of the Insolvency Code, it shall apply only to proceedings initiated after the law entered into force. Since this date the provisions of all the other separate legal regimes for banks and other institutions, insurance undertakings, investment undertakings, including collective investment undertakings or entities of the capital market were repealed (Government Ordinance No. 10/2004 regarding the bankruptcy of credit institutions). The Insolvency Code also repeals the provisions of Law 85/2006 regarding insolvency proceedings and Law No. 381/2009 regarding the introduction of the ad-hoc mandate and the preventive concordat.

Insolvency is the status of a debtor's estate characterized by the lack of available financial resources for the payment of outstanding debts and which may occur in the following forms: (i) "presumed insolvency" occurs when the debtor is not able to pay an outstanding debt towards one/several creditors within 60 (sixty) days of the maturity of such debt; and (ii) "imminent insolvency" occurs when it is proven that the debtor shall not be able to pay at maturity its debts with the funds available at the moment of such maturity.

Either a legal entity or a natural person, specifically a tradesman, acting individually (with the exception of liberal professions or entities with a special insolvency regime), may be subject to insolvency proceedings per the provisions of the Insolvency Code.

The Insolvency Code introduces the possibility for the Financial Surveillance Authority to file an application for the initiation of insolvency proceedings with regard to the legal entities that fall under its scope (i.e., banks and other credit institutions, insurance undertakings, investment undertakings, including collective investment undertakings, or entities of the capital market). Moreover, autonomous state-owned entities may be subject to insolvency proceedings.

The Insolvency Law classifies insolvency proceedings as one of the following: (i) general proceedings (*procedura generala*); or (ii) simplified proceedings (*procedura simplificata*).

The general proceeding is applicable exclusively to legal persons in a state of insolvency or imminent insolvency and means that the debtor will have the option to first use the reorganization procedure and then the bankruptcy procedure, if reorganisation is not possible or fails.

Simplified proceedings are limited to the bankruptcy procedure and represent a rapid, simple and efficient means of liquidation. In cases of simplified proceedings, the debtor is directly subject to bankruptcy proceedings, either at the same time as the commencement of the insolvency proceedings, or after a supervision period of maximum 20 (twenty) days.

A petition for the initiation of insolvency proceedings can be presented in court by the debtor or creditor, including the Ministry of Public Finances which is required to file for the opening of insolvency proceedings regarding the fiscal debts of corporate debtors. The Insolvency Code implements the concept of the "private creditor test", meaning that a comparative analysis is conducted with respect to the fulfilment of a budgetary claim in a preventive insolvency procedure or in a judicial reorganisation procedure, as opposed to a bankruptcy procedure. This concept is derived from the EU Court of Justice case law and it basically states that if a budgetary creditor votes in favour of a plan (reorganisation or composition) that ensures a higher recovery rate of a claim that it would in a bankruptcy procedure, this is not deemed as state aid.

The insolvency may be ascertained by the bankruptcy tribunal at the request of a creditor which may demonstrate that the debtor has an unpaid debt of more than RON 40,000 (approximately EUR 9,000) which has been overdue for at least 60 (sixty) days. The debtor in a state of insolvency is obliged to bring an application to court within 30 (thirty) days of the occurrence of the state of insolvency. The use of the bankruptcy procedure may be directly requested by the debtor in its application to the court.

After the insolvency proceedings are initiated each creditor of the debtor is required to file a formal claim, referred to as a statement of debt (*declaratie de creanta*), within the time period set out in the judgment delivered by the bankruptcy tribunal. All creditors, as listed in documentation submitted by the debtor to the judicial receiver, will be informed of the time limits for filing the statements of debts, appeals, preparing the claims charts and any other items related to the proceedings in a notice published in the Insolvency Gazette, in a circulated newspaper and in a communication to each creditor as per the NCPC (usually by post). This is also applicable to foreign creditors. In case the foreign creditors have an undertaking in Romania, the notice shall be communicated to such undertaking.

The statement of debt must be submitted to the bankruptcy tribunal and to the bankruptcy trustee together with supporting documentation and proof of payment of the judiciary stamp tax.

The bankruptcy trustee or representative reviews the claim and either grants and registers the claim in a preliminary claims chart, or rejects the claim. Creditors have the right to appeal (*contestatie*) if their claimed statements of debts are rejected, in whole or in part, and/or if the claims are not properly registered in the preliminary claims chart. This appeal must be filed in court within 7 (seven) days from the publication in the Insolvency Gazette of the preliminary claims chart. Unless appealed by the debtor, bankruptcy trustee or representative, or the creditors, a claim is presumed valid and correct. The final claims chart is registered in the court registry and posted at the tribunal. In practice, the final claims chart is filed in the tribunal's archive for reference purposes. Until the closure of the proceedings, further objections may be filed only upon the discovery of manifest errors, fraud, counterfeits or previously unknown claims to property title.

Simplified insolvency proceedings apply to debtors that: (i) fall under one of the categories provided by law; and (ii) have become insolvent and are unable to satisfy their financial obligations. Debtors may be subject to simplified proceedings provided that:

- no assets can be identified;
- the by-laws or the company books cannot be found;
- the directors are unreachable;
- the registered office no longer exists or does not correspond to the address registered with the trade register;
- the required documentation has not been presented in court;
- the relevant company has been dissolved prior to the petition;
- the relevant company has declared its intention to enter into bankruptcy or is not entitled to benefit from the reorganization procedure; or
- the entity was not legally authorised to conduct its services.

The costs and expenses of insolvency proceedings are incurred by the insolvent estate in the order of priority assigned to the claims of the secured and unsecured creditors. In the absence of sufficient funds, the costs of the insolvency proceedings are satisfied by the liquidation fund or may be advanced by the creditors in specific cases.

Should the debtor be subject to a reorganisation plan, the Insolvency Code sets out specific majority requirements for the voting of such a reorganisation plan. Those creditors entitled to vote upon the reorganisation plan within the Creditors' Meeting are in general divided into five different classes established for the purposes of such a vote, as follows: (i) the creditors that have a preference right (i.e., secured); (ii) the budgetary creditors; (iii) the employees; (iv) the unsecured essential supplier creditors (i.e., those suppliers in the absence of which the activity of the company cannot continue); and (v) the remaining unsecured creditors.

The Insolvency Code introduces the "double-voting" rule, establishing an additional prerequisite for the approval of a reorganisation plan which requires that creditors holding at least 30% of all the registered claims must approve the respective plan. Besides the above-mentioned rule, in order for the Creditor's Meeting to vote in favour of the reorganisation plan the majority of votes – computed by value of claims within each class – is required.

In order to protect entities in financial difficulties, the Insolvency Code also regulates specific procedures for the avoidance of insolvency, these being the ad-hoc mandate and the preventive concordat.

The ad-hoc mandate

The ad-hoc mandate is a confidential procedure initiated by the debtor in which an ad-hoc attorney negotiates with the creditors to reach an agreement with one or more of them, which will resolve the debtor's financial difficulties.

The aim is to reach an agreement between the debtor and one or more of its creditors within a 90 (ninety) days deadline, by partial or total release of debt, debt rescheduling, personnel dismissals etc.

The mandate can be terminated as follows: (i) once an agreement is reached; (ii) if no agreement is reached within the deadline; or (iii) unilaterally, by the debtor or the ad-hoc attorney.

The preventive concordat

The preventive concordat is an agreement concluded between the debtor and creditors by which the creditors and the debtor agree on a plan to restructure the debtor's business and re-pay its debts.

This procedure is available only for legal persons who intend to continue activity, with the following exceptions: (i) debtors against which a definitive court decision for economic crime has been issued; (ii) debtors which in the last 3 (three) years before the offer of the preventive concordat have benefited from another similar procedure; and (iii) the representatives of the debtor have been liable according to the Insolvency Law or a special legal provision.

The debtor must ask the court for the initiation of the preventive concordat proceedings and for the appointment of an insolvency practitioner. The debtor and the insolvency practitioner must prepare a list of creditors and the concordat offer.

Among other things, the concordat must include: (i) steps which will be taken to change the way the debtor conducts its business; (ii) the means by which the debtor intends to solve its difficulties; (iii) the percentage by which the receivables of the creditors will be covered; and (iv) the term within which the debts must be paid (not more than 36 (thirty six) months from the date the concordat is signed).

For fiscal debts, the approval of the tax authorities must be obtained and state aid rules must be complied with as per the private creditors' test procedure provided by the Insolvency Code.

The debtor may ask the court to temporarily suspend any enforcement proceedings while the concordat offer is being analysed by the creditors. After the recognition of the concordat, all enforcement measures against the debtor will be suspended by the court.

The concordat may be recognised if the value of disputed and litigated receivables does not exceed 25% of the total amount of the receivables, and if the concordat has been approved by creditors holding at least 75% of the total value of the receivables.

The creditors which voted against the concordat may request its cancelation within 15 (fifteen) days from the date the preventive concordat was recognised by the judge.

5. 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

Recognition and 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 private international law 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.

Recognition and enforcement of foreign judgments issued in an EU Member State

The enforcement of foreign judgments (i.e. judgments that are not issued by national courts) is regulated differently depending on the state of issuance. If the foreign judgment is issued in an EU Member State then the provisions of the applicable European regulations shall be mandatory and shall supersede any other provisions in the Romanian laws. For the enforcement of judgments issued in a non-Member State, the provisions of the NCPC shall apply.

As Romania is a Member State of the European Union since 2007, all EU regulations are directly applicable in Romania. The most relevant regulations are Regulation No. 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Regulation 1215"); Regulation No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims ("Regulation 805") and Regulation No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure ("Regulation 1896").

According to Regulation 1215, a judgment given in another Member State can be used/enforced in Romania if the party presents a copy of the judgment which satisfies the conditions necessary to establish its authenticity (along with a translation in the Romanian language); and the certificate issued pursuant to Article 53 of Regulation 1215.

In all cases, enforcement procedures are governed by Romanian law if the enforcement is conducted on Romanian territory.

Recognition and enforcement of foreign judgments issued in a non-EU Member State

The recognition and enforcement of foreign judgments issued in a non-EU Member State is regulated by the provisions of Article 1.093-1.101 and 1.102-1.109 of the NCPC.

Article 1094 of the NCPC provides that foreign judgments are fully recognized, *de jure*, in Romania if:

- the foreign judgment refers to the civil status of the citizens of the state where such judgments were issued;
- the foreign judgment, issued in a third party state, has been firstly recognized by the foreign states where the parties are citizens; or
- lacking such recognition, the foreign judgments issued under the applicable international private Romanian law, are not contrary to the Romanian public order of international private law and the right to a defence was observed.

Judgments other than those referred to in Article 1.094 of NCPC may be recognized in Romania and enjoy the benefits of *res judicata*, if the judgment satisfies the following cumulative criteria:

- the judgment is final according to the law of the state where it is issued;
- the foreign court issuing the judgment had competence to judge the matter in accordance with the law of the state of issuance, without this competence being established exclusively because of the defendant or the defendant's assets, without having any direct relation to the litigation proceedings in the state of issuance; and
- there is reciprocity between Romania and the foreign state that rendered the judgment.

The application for the recognition of a foreign judgment must be accompanied by the following documents: (i) a copy of the foreign judgment; (ii) proof that it is final and binding; (iii) proof that the opposing party was correctly summoned in the main case (if the party did not attend the hearings); and (iv) any other document that can prove that the judgment complies with the provisions of the NCPC. The above-mentioned documentation must be accompanied by authorized translations if submitted in a language other than Romanian.

After the recognition of the foreign judgment is approved by the court, the party can request the enforcement of the foreign judgment. Also, the foreign judgment must be considered enforceable according to the law of the state of issuance. The party must file an application for enforcement with the tribunal where the opposing party refusing to acknowledge the foreign judgment is located.

The court that accepts the application for enforcement also issues an enforcement order based on which the enforcement is carried out.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases**: *first instance*: 1 to 5 months; *second instance*: 1 to 4 months; *third instance*: 1 to 2 months (calculated after setting the first hearing). **Complex cases**: *first instance*: 1 to 3 years; *second instance*: 1 to 2 years; *third instance*: 1 to 1½ years (calculated after setting the first hearing).	
APPROXIMATE COSTS **COURT FEES**	Court fees are based on the Emergency Ordinance No. 80/2013 on judicial stamp taxes and depend on the amount in dispute. Examples: ▪ Amount in dispute EUR 500,000: Court fees: EUR 6,000 in first instance; ▪ Amount in dispute EUR 1,000,000: Court fees: EUR 11,000 in first instance; ▪ Amount in dispute EUR 5,000,000: Court fees: EUR 51,000 in first instance.	▪ Litigation costs include court fees, attorneys' fees, and expenses for experts appointed by the court and witnesses. ▪ Court fees have to be paid upon filing the claim. ▪ Court fees in the second and third instances are to be paid by the party filing the appeal. The fees are 50% of the due court fees based upon the amount claimed in first instance or the amount challenged in the appeal (if this is different than the amount claimed in first instance). ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. Courts tend to decrease the initial amount but this can only be done with the attorneys' fees and not with other costs. ▪ In order to claim the attorneys' fees the party must submit proof of payment otherwise the application is rejected. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, attorneys' fees may be decreased by the court depending on the complexity of the case. ▪ There are certain provisions related to attorneys' fees in the law regarding the organization and practice of the profession of attorney-at-law. ▪ The actual attorneys' fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are of no relevance to the opposing party. ▪ Agreements on *Quota litis* fees are prohibited for Romanian lawyers in all types of proceedings.
ATTORNEYS' FEES (NET) *SIMPLE CASE*	**Assumptions based on an amount in dispute of EUR 1,000,000**: *First instance*: preparation of two briefs, four hearings with a duration of 2 to 6 hours respectively, preparation of hearings/meetings with the client, witnesses, technical surveys, cross-examination correspondence with client: In total EUR 15,000 to EUR 30,000; *second instance*: one brief, no hearing: EUR 8,000 to EUR 15,000; *third instance*: one brief, no hearing: EUR 6,000 to EUR 15,000.	
COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: *first instance*: preparation of 4 comprehensive briefs, six hearings with a duration of 2 h, 4 h, and 4 x 8 h; preparation of hearings/meetings with client, witnesses, technical surveys, correspondence with client: In total EUR 50,000 to EUR 150,000; *second instance*: one brief, no hearing: EUR 15,000 to EUR 20,000; *third instance*: one brief, no hearing: EUR 15,000 to EUR 25,000.	
JURY TRIALS	There are no civil jury trials in Romania.	

CLASS ACTIONS	Limited.	▪ The Romanian Civil Procedure Code does not provide for a special proceeding for collective redress. Traditional tools of multiparty practice such as joinder and consolidation of proceedings are applied. ▪ There are cases where several co-claimants (over 50 parties) have filed actions against banks
DOCUMENT PRODUCTION	Limited.	▪ Documents are subject to disclosure if the party itself referred to the document in the course of the proceedings. ▪ If the opposite party has in its possession a certain document relevant for the case, the court may order that party to present it.
MANDATORY REPRESENTATION BY COUNSEL	Legal entities may be represented only by counsellors or attorneys. The appeal grounds and the representation before the appeal court may be done only by attorneys or counsellors under the sanction of nullity.	
PRO BONO SYSTEM	Yes. There is a special legislation which provides legal aid for people who cannot afford the cost of legal proceedings.	
BUSINESS CRIME		
APPROXIMATE DURATION	*Complex cases/criminal investigations*: 6 months to 1 year; *preliminary room proceedings*: 60 days; *first instance*: 6 months to 1 year; *second instance*: 6 months.	
APPROXIMATE COSTS	Criminal cases are exempt from stamp duties according to Romanian law.	
JURY TRIALS	Not available.	
CLASS ACTIONS	Not available.	
DOCUMENT PRODUCTION	Various, such as testimonies of the defendant, of the injured person, of the civil party or of the party who may be held liable for the monetary side of the case, witnesses' testimony, written documents, audio and video recordings, photographs, material means of evidence (object of the crime), technical and medical reports and other surveys.	
MANDATORY REPRESENTATION BY COUNSEL	The perpetrator is entitled to assistance by a counsel during the criminal investigations and the trial. It is mandatory if the perpetrator faces the risk of life sentence or a sentence of 5 or more years in prison, or if he/she has mental problems, is underage, is held in custody, or is otherwise unable to represent him or herself.	
PRO BONO SYSTEM	Yes.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	Generally, a decision on a request for a preliminary injunction is rendered between 1 day and 3 months depending on the preliminary issues raised by the opposing party. *Appellate proceedings*: if a preliminary injunction is subject to an appeal, it may take between 1 to 2 months.	There are 3 conditions provided by the Romanian Civil Procedure Code in order for an injunction to be allowed by the court: ▪ urgency of the matter; ▪ the measures taken by filing the injunction, must have a temporary effect; ▪ the court may not try the substance of the matter during such a procedure.

		As a general rule, due to the urgent character of such proceedings, only written notes are admitted as evidence (occasionally cross-examination). All documents should be presented in Romanian.
APPROXIMATE COSTS		▪ The court may order the applicant to pay a security deposit. ▪ In general, litigation costs will be borne by the unsuccessful party. ▪ In some cases, costs incurred by a successful applicant in preliminary injunction matters can only be sought in the main proceedings.
COURT FEES	The cost may consist of ▪ a fixed amount for non-monetary claims; or ▪ variable amounts depending on the actual value of the monetary claim. An appeal is 50% of the initial amount. **Example**: in case of a preliminary injunction (*ordonanta presedintiala*), if the object is not of a monetary nature, the stamp duty is RON 20 (approx. EUR 4). If it is of a monetary nature, the stamp duty is RON 200 (approx. EUR 44) for a value exceeding RON 2,000 (approx. EUR 440).	
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Assumptions: only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent**: EUR 4,000 to EUR 6,000 in *first instance*; *second instance*: one brief, 1–3 hearings: EUR 4,000 to EUR 7,000 (the appeal generally implies the presence of the parties).	
COMPLEX CASE	**Assumptions: Apart from filing the request for a preliminary injunction, two comprehensive counter statements are filed in reply to two statements of opponent**: Total costs (including meetings with client/witnesses) of *first instance*: EUR 10,000 to EUR 20,000; *second instance*: one brief, 2–3 hearings: EUR 10,000 to EUR 25,000 (the appeal generally implies the presence of the parties).	
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 JUDGMENTS AND 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	▪ Judgments that fall outside the scope of application of the EC Regulation/Lugano Convention must be submitted in the original or in a copy issued by the court that rendered the judgment. ▪ A certified translation of the judgment must be submitted. ▪ 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.
INSOLVENCY PROCEEDINGS[1]		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	The commencement of insolvency proceedings is published by edict on the website of the Romanian Insolvency Bulletin under https://portal.onrc.ro/ONRCPortalWeb/ONRCPortal.portal. In the edict, the period for filing of insolvency claims is set.	
APPROXIMATE DURATION	1 year to several years; in very complex cases, a duration of more than 3 years is possible.	
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	Court fees of EUR 45 for each filing *Simple case*: EUR 2,000 to EUR 3,000 (no representation in court) *Complex case*: EUR 3,000 to EUR 6,000 (no representation in court)	

1 Also see the section "The new Romanian Insolvency Code" above.

This chapter was written by Ligia Popescu, Andreea Zvac, Sorin Dumitru and Alexandru Roman.

LIGIA POPESCU
Partner

Wolf Theiss, Romania

T. +40 21 308 8100
ligia.popescu@wolftheiss.com

ANDREEA ZVAC
Senior Associate

Wolf Theiss, Romania

T. +40 21 308 8100
andreea.zvac@wolftheiss.com

SORIN DUMITRU
Associate

Wolf Theiss, Romania

T. +40 21 308 8100
sorin.dumitru@wolftheiss.com

ALEXANDRU ROMAN
Associate

Wolf Theiss, Romania

T. +40 21 308 8100
alexandru.roman@wolftheiss.com

WOLF THEISS

SERBIA

1. LEGAL SYSTEM

The Serbian legal system is based on codified principles of civil law. Judicial precedents and opinions are non-binding but are strongly taken into consideration by the courts.

2. LITIGATION

According to the Law on Organization of Courts, the court system of Serbia is divided into courts of general jurisdiction and specialized courts. Courts of general jurisdiction are the basic and higher courts, the courts of appeal, and the Supreme Court of Cassation. Specialized courts include the commercial courts, the Commercial Appellate Court, the misdemeanor courts, the Misdemeanor Appellate Court and the Administrative Court. In addition, a Constitutional Court hears and decides matters that involve the constitutionality of laws, regulations, and other official acts.

The 66 basic and 25 higher courts decide cases in both civil and criminal matters and have jurisdiction in matters concerning, *inter alia*, civil litigation, enforcement, contentious procedures, employment, media and copyright. Basic courts are exclusively courts of first instance with jurisdiction over civil matters of lesser importance, as well as criminal offenses punishable with up to 10 (ten) years of imprisonment. Higher courts serve as courts of second instance and hear appeals from basic court decisions, but also exercise first instance jurisdiction in matters of a more serious nature. Decisions of basic and higher courts may be appealed to the courts of appeal.

The courts of appeal are located in 4 cities: Belgrade, Kragujevac, Nis, and Novi Sad. Decisions rendered by the higher or basic courts in the first instance are reviewed and decided upon by one of these four appellate courts in the second instance.

Commercial courts of Serbia are specialized courts having jurisdiction over a wide range of commercial matters, including status of commercial entities, copyright infringement, privatization, recognition and enforcement, foreign investment disputes, unfair competition, maritime law, insolvency proceedings, and other disputes arising out of commercial activities. There are 16 commercial courts located throughout Serbia, and their decisions may be appealed to the Commercial Appellate Court in Belgrade. The decisions of the Commercial Appellate Court may be appealed to the Supreme Court of Cassation.

The misdemeanor courts and the Misdemeanor Appellate Court decide in matters concerning misdemeanours. The Administrative Court exercises first instance jurisdiction over administrative disputes and has the authority to review administrative acts throughout the entire territory of Serbia.

Finally, the Supreme Court of Cassation is the highest court of general jurisdiction in Serbia which decides on extraordinary legal remedies against decisions rendered in civil litigation, commercial litigation, criminal proceedings, as well as administrative disputes. As such, it is in a position to provide a country-wide uniform application of law by the courts. The Supreme Court of Cassation, therefore, hears and decides on extraordinary legal remedies against decisions of the courts of appeal and the Commercial Appellate Court. The Supreme Court of Cassation may also issue advisory opinions on draft laws.

It should also be mentioned that the Constitutional Court of Serbia has the authority to decide on conformity of laws, regulations, and other normative acts adopted by state bodies of the Republic of Serbia with the Serbian Constitution. Furthermore, it also resolves conflict of jurisdiction between courts and state bodies.

Focusing here on litigation, the procedural aspects of litigation are covered by the Serbian Law on Civil Procedure. This law was amended several times since it was first adopted in 2011 mostly to introduce instruments intended to prevent unjustified and unnecessary delays in court proceedings. The last amendments were introduced in May 2014 and changed the provisions on competences of sole judges (compared to panels of three judges), on representation in civil proceedings, and on extraordinary legal remedies, among other changes.

Generally, the Serbian court system can be said to be rather slow, especially concerning civil litigation where proceedings may last several years. In response to delays, in 2015 Serbia adopted a new separate Law on Protection of Right to Speedy Trial which came into effect on 1 January 2016, as described in more detail below.

With respect to litigation costs, these mainly consist of court and attorneys' fees, expenses for expert opinions, travel expenses for witnesses, notaries' and translators' expenses, which are generally paid by the unsuccessful party.

Protection of Right to Speedy Trial

The Law on Protection of Right to Speedy Trial aims to provide court protection of the right to speedy trial and thereby prevent violations of this right.

A party in court proceedings, including enforcement proceedings, non-contentious proceedings, and criminal proceedings (including investigations led by the public prosecutor), may exercise the protection of this right under the terms of this law. The legal means for achieving this protection include submitting (i) an objection aiming to speed up the proceedings; (ii) an appeal; and (iii) a request for equitable settlement. These submissions are free of court fees, are urgent and take precedence in deciding compared to other submissions. This law prescribes the procedure for each type of recourse in more detail.

The law provides the possibility of monetary compensation in the amount of up to EUR 3,000 in RSD counter-value. The law came into effect on 1 January 2016. The effects in the first 2 (two) years of application can be said to be positive in the cases where it was applied, but any overall effects on the general efficacy of the court system are yet to be seen.

3. BUSINESS CRIME

Business crime as a legal field in Serbia is still within the boundaries of general Criminal Law. However, efforts are being made to develop the group of criminal offences against commerce within the separate section of the Serbian Criminal Code. Namely, in 2016, new criminal offences were introduced to this group at the initiative of the Serbian Government expanding the number of criminal offences from 25 to 29. The aim of these amendments was to adapt the existing incriminations, which used very dated language, to modern times and also to introduce more contemporary criminal offences in the field of business crime. Thereby, 8 new criminal offences were introduced or amended, including, fraud, insurance fraud, embezzlement, abuse of good faith, abuse in privatizations, conclusion of restrictive agreements, passive and active bribery, and more. The provisions, introducing the new criminal offences against commerce and amending the existing ones, come into effect on 1 March 2018.

The Law on Responsibility of Legal Entities for Criminal Offences came into force several years ago, on 4 November 2008, and this law mainly contains procedural rules for deciding on the responsibility of legal entities; primarily, the rules to derogate or complete the application of the Law on Criminal Proceedings. As mentioned above, criminal offences themselves are proscribed by the Criminal Code of the Republic of Serbia.

The proceedings in criminal cases consist of pre-criminal, preliminary criminal and main criminal proceedings. The public prosecutor is the authorized prosecutor for criminal offences tried *ex officio*, whereas a private prosecutor is authorized for criminal offences tried by private claim. According to Article 35 of the Law on Responsibility of Legal Entities for Criminal Offences, the proceedings may be initiated against the legal entity, its responsible person or both, in which case the proceedings are to be held jointly. The state and other authorities, persons and legal entities have a duty to report criminal offences of which they become aware. Not reporting a criminal offense may be considered a criminal offence.

In the pre-criminal proceedings the public prosecutor is in charge of the investigation, although the police also have extensive investigative authority. In preliminary criminal proceedings an indictment is raised against the accused. If the court accepts this indictment, the main criminal proceedings are initiated.

The main criminal proceedings are composed of the preliminary hearing and the main hearing. The main hearing is a central part of criminal proceedings and the presentation of evidence is its key feature. After the weighing of evidence, the court decides on the matter by way of a verdict. The final part of the main hearing is the reading of the verdict. The verdict may dismiss the indictment, or acquit or convict the accused.

An appeal is a regular legal remedy against the verdict which can be filed by the prosecutor, the accused, his/her defender, or the injured party within 15 (fifteen) days after delivery of the verdict. The appeal is first filed with the first instance court for review of procedural preconditions. The first instance court may reopen the main hearing if the conditions are fulfilled. The first instance court than delivers all file documentation to the second instance court for review. If the court in the second instance overturns the acquitting verdict of the first instance court, an appeal is also allowed against such second instant verdict. Extraordinary legal remedies against final court verdicts are the reopening of criminal proceedings and a request for protection of the law.

Of course, a pivotal role in criminal proceedings belongs to the public prosecutor. According to Article 43 of the Law on Criminal Proceedings, the public prosecutor is in charge of pre-investigation proceedings, conducting the investigation, deciding on initiating criminal prosecution, raising the indictment and filing appeals and extraordinary legal remedies against court decisions.

The police and other relevant authorities involved in pre-investigative proceedings have a duty of compliance with requests of the public prosecutor and of informing him or her of every action undertaken in this respect. Failure to comply with such requests may lead to disciplinary action.

The injured party has a focal role as well. It may participate in the proceedings as an injured party, as an injured party prosecutor, or as a private prosecutor. An instrumental right of the injured party in criminal proceedings is the right to submit a property claim. A property claim may be a claim for damages, return of possession or setting aside of a specific legal transaction.

As an injured party prosecutor, the injured party represents the indictment and assumes the rights of the public prosecutor in this regard, with the exception of those rights which the public prosecutor has as a state official. As a private prosecutor, the injured party represents a private claim before the court. Interestingly, the accused against whom a private criminal claim was raised may submit a counterclaim against the private prosecutor.

As illustrated above, the injured party has significant authority in criminal proceedings. It may indicate facts and propose evidence, and has a right to inspect files and objects of evidence. During the hearings, the injured party may be in attendance or it may have a lawyer present as representative. If the public prosecutor withdraws from criminal prosecution, the injured party may take over.

Moreover, by way of submitting a property claim, an injured party may claim damages and reclaim financial losses without having to undergo litigation. In addition, it may submit propositions and evidence for its property claim. The injured party may also request an interim injunction in order to secure the property claim.

However, if the injured party choses to initiate litigation against a criminal offender, the civil courts are bound by the criminal court's convicting verdict on the existence of the crime as well as the criminal liability of the offender. Notwithstanding certain limitations concerning confidential information, documents obtained in criminal proceedings may be used in later litigation.

There are currently no available statistics that would show the average time span of any part of criminal proceedings in business crime cases as the criminal offences vary in difficulty and the time span would greatly depend on a number of factors including, for example, the quantity of evidence.

With respect to costs, other than court fees, costs of criminal proceedings are comprised of fees and expenses for witnesses, court interpreters, experts, expert advisors, translators, transportation costs for officials and the accused, possible medical expenses of the accused if he or she was incarcerated, necessary expenses of the defence lawyer, the private prosecutor or injured party prosecutor and other costs.

When the court finds the accused guilty, it will order him or her in the verdict to reimburse the costs of the criminal proceedings. If the criminal proceedings are discontinued or the accused is not found guilty, the court budget or the private prosecutor will bear the costs of proceedings. The private prosecutor may agree on sharing the costs with the accused if the private claim is withdrawn.

From a public law perspective, business crime can be observed as a constant combat of the state against corruption and malpractice in business transactions. For example, under the Law on Public Companies, general managers of public companies are not able to hold posts in political parties. In relations between private parties, a criminal conviction eases the process of claiming damages as may be seen further below.

Other than the above, a noteworthy novelty from a wider business crime perspective is a Central Record of Measures which operates as of 1 June 2016 which provides an online record of decisions, verdicts, and other documents by which state authorities issued measures in criminal, misdemeanour, or any of a large number of administrative proceedings conducted under Serbian law, thereby increasing the transparency of doing business in Serbia. This public record contains information on sanctions issued by a number of Serbian authorities and required a joint effort of the Serbian Business Registers Agency, the Serbian courts, the National Bank of Serbia, but also the tax authority and over 30 other inspectorates.

The measures included in this record include any prohibitions and limitations to performing business activities and also of the ability to dispose of company funds or of shares/stock in commercial entities. This record also contains valuable information on revocation of any licences. With respect to individuals, this record contains information of those prohibited from acting as responsible persons for companies and entrepreneurs, within the meaning of Serbian law, although the scope of information provided is subject to data protection and criminal record regulations. The Central Record of Measures, therefore, provides a valuable single point of reference where the public and interested parties, usually prospective or current business associates, can inquire as to the conduct of certain persons in Serbian commerce, whether they have been issued any of the above measures or otherwise fail to comply with Serbian business law.

4. INSOLVENCY

Insolvency proceedings are governed by the Serbian Insolvency Law. The latest amendments of this law came into force on 25 December 2017.

There are two different ways in which insolvency proceedings may be carried out: (i) through a bankruptcy of an insolvent debtor; or (ii) through reorganization. Insolvency proceedings are carried out in a special department of the Commercial Court.

The main distinction between bankruptcy and reorganization proceedings is that in bankruptcy, the insolvent debtor's assets (or if the debtor is a legal entity, the legal entity) are sold and the proceeds of the sale are distributed to the debtor's creditors. Whereas in reorganization proceedings, the creditors and the insolvent debtor may agree on the reorganization of the debtor and its liabilities, which should in turn result in the future settlement of those liabilities. In short, bankruptcy proceedings result in the liquidation of the insolvent debtor, whereas in the case of reorganization, the debtor continues to exist.

The purpose of the bankruptcy proceedings is for the insolvent debtor's estate to be liquidated and distributed to the creditors in accordance with the procedure established by the Insolvency Law. Bankruptcy proceedings may be initiated by creditors or the debtor, as well as by the liquidation administrator. In addition, in certain situations the Public Defender, the Public Prosecutor or the Republic Tax Office may initiate bankruptcy proceedings. The

petition to initiate bankruptcy proceedings may be withdrawn before the opening of the bankruptcy proceedings, which begins with a posting on the court's announcement board. Bankruptcy proceedings generally consist of: (i) preliminary proceedings, where the reasons for the bankruptcy proceedings are stated and evaluated; and (ii) the main bankruptcy proceedings.

When the requirements for initiating bankruptcy proceedings are met, the debtor, the bankruptcy administrator, the creditors (holding at least 30% of the respective claims towards the debtor) and persons holding at least 30% of the debtor's capital may propose reorganization. Reorganization may also be proposed simultaneously with the filing of the petition to initiate bankruptcy proceedings, and generally cannot be proposed later than 90 (ninety) days after bankruptcy proceedings have been initiated. Once approved by the creditors, the reorganization plan becomes a new agreement for the settlement of the claims specified, and this new agreement is directly enforceable. However, the debtor remains under the supervision of the bankruptcy administrator, and bankruptcy proceedings may be re-initiated if the debtor breaches the obligations set forth in the reorganization plan or the provisions of the Bankruptcy Law.

Liquidation proceedings are regulated separately by the Serbian Commercial Entities Act and carried out in a special department of the Commercial Court. The purpose of liquidation is to compensate all of the company's creditors before the company ceases to exist. If conditions for initial bankruptcy proceedings exist, liquidation proceedings will not be conducted.

5. 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 arbitrations 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).

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

Foreign judgments and 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.

Enforcement of a foreign judgment in Serbia is subject to the requirement of reciprocity, unless the creditor in the judgement is a Serbian citizen, or if the dispute is of a marital nature or for the purpose of determining paternity or maternity. In all other cases, there must be reciprocity with the foreign state that rendered the judgement. Even if diplomatic reciprocity does not exist, factual reciprocity is deemed sufficient. Generally, factual reciprocity is presumed unless it is proven to the contrary. If there is doubt, an inquiry should be made to the Ministry of Justice to determine whether reciprocity exists whereby the Ministry provides an explanation thereto.

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
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases**: *first instance*: 1 to 2 years; *second instance*: 9 to 12 months; *third instance*: within 1 year. **Complex cases**: *first instance*: 3 to 4 years; *second instance*: 9 to 12 months; *third instance*: within 1 year.	The Law on Civil Proceedings introduces the obligation of the court to conduct the proceedings in accordance with a predetermined time-frame.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)** *SIMPLE CASE*	Court fees are based on the Law on Court Fees and depend on the amount in dispute. Examples for commercial disputes: ▪ Amount in dispute: EUR 47,620; court fees: EUR 1,000 in the first instance; ▪ Amount in dispute: EUR 95,240; court fees: EUR 2,750 in the first instance. **Assumptions based on an amount in dispute of EUR 1,000,000**: *First instance*: preparation of two briefs, four hearings with a duration of 1h, 2h, 4h, and 6h, respectively, preparation of hearings/ meetings with client, witnesses, correspondence with client: In total EUR 20,000 to EUR 40,000; *second instance*: one brief, no hearing: EUR 5,000 to EUR 15,000; *third instance*: one brief, no hearing: EUR 4,000 to EUR 12,000.	▪ Litigation costs include court fees, attorneys' fees and expenses for expert opinions and witnesses. ▪ Court fees have to be paid upon filing the claim. ▪ Court fees in the first and second instances have to be paid by the filing party. ▪ If a claim is filed by a foreign party, a defendant may file a request for a security. If the court accepts such a request, the foreign party shall be obligated to pay such security. Otherwise, the claim shall be deemed revoked. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a party has been partially successful, the court may order that each party bears its own costs, or that one party reimburses the other party a proportional amount of the costs. ▪ Regardless of the outcome, a party must reimburse the costs of the other party that result as a fault of that party or by events that happened to that party.

COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: *First instance*: preparation of 4 comprehensive briefs, six hearings with a duration of 2h, 4h, and 4 x 8h; preparation of hearings/ meetings with client, witnesses, correspondence with client: In total EUR 35,000 to EUR 120,000; *second instance*: one brief, no hearing: EUR 15,000 to EUR 30,000; *third instance*: one brief, no hearing: EUR 15,000 to EUR 30,000.	▪ Unless the parties agree otherwise, or if otherwise prescribed with another statute, each party bears its own costs if the litigation results in a court settlement or a settlement after mediation. ▪ Reimbursement of attorneys' fees has to be made on the basis of the fees provided for in the Act on Attorneys' Tariffs. ▪ The actual attorney fees of the party (depending on the fee agreement between attorney and client) may be substantially higher but they are of no relevance to the opposing party. ▪ Agreements on *Quota litis* and contingency fees are generally prohibited.
JURY TRIALS	Yes. According to the Law on Judges, a lay judge may be an adult citizen of the Republic of Serbia who is honourable for such a function. The lay judge may not be a lawyer and may not provide chargeable legal services.	▪ The Serbian Civil Procedure Code prescribes that in the first instance, the court may be comprised of a panel of judges or a sole judge. The panel of judges consists of one judge, the president of the chamber, and two lay judges. ▪ The sole judge tries property disputes if the amount in the dispute does not exceed EUR 50,000 in RSD counter-value on the middle exchange rate of the National Bank of Serbia on the day of filling the appeal. ▪ In the second instance, the court is comprised of a panel of three judges. There are no jury trials in the second instance. In the third instance the Supreme Court of Cassation adjudicates in a chamber of three judges. ▪ Judges who rule on Family Law matters must have experience in working with children. ▪ With respect to commercial disputes, the sole judge tries such disputes in the first instance. In the second instance, the court is comprised of a panel of three judges.
CLASS ACTIONS	Limited. The Civil Procedure Code does not provide for a special proceeding for collective redress. Traditional tools of multiparty practice such as joinder and consolidation of proceedings are applied.	
DOCUMENT PRODUCTION	The Civil Procedure Code prescribes special rules for the disclosure of documents.	▪ The party is obligated to provide the court with any document which is used as a proof of that party's arguments. The party must make all relevant claims, state all relevant facts, state the value of the dispute, and include all other information which is duly enclosed with every submission and make all evidence proposals at the preliminary hearing at the latest.

		▪ If the party refers to a document but claims that the document is in the possession of the other party, the court shall request the other party to present the document within a determined period of time. ▪ The party may not refuse to present the document if (i) the party itself referred to the document in the course of the proceedings; (ii) the party is obliged to hand the document over by substantive law; or (iii) the document is qualified as a "joint deed" between the parties. ▪ The court may order a third person to present the document only when such obligation is provided by substantive law, or the document is qualified as a "joint deed" between the party that refers to the document and the third party. This court order is enforceable. The court may impose a fine up to EUR 1,300 for a physical person or a fine up to EUR 8,700 for a legal entity.
MANDATORY REPRESENTATION BY COUNSEL	No.	▪ A party who has legal capacity may take part in the court proceedings independently. The party may act personally or may engage a representative to act in the name and on behalf of such party. ▪ A party who does not have legal capacity must be represented by a legal representative. ▪ As an exception, a party must be represented by a lawyer in proceedings initiated on the basis of a request for protection of legality.
PRO BONO SYSTEM	Yes.	▪ If the party's financial situation does not allow the party to bear litigation costs, the court shall exempt the party from payment of such costs. ▪ The party may be exempted from payment of (i) all litigation costs (i.e. court fees, attorney fees and other expenses), in which case the president of the court shall appoint the party's legal representative from the list of the lawyers submitted to the court by the Bar Association; or (ii) only court fees.

BUSINESS CRIME		
APPROXIMATE DURATION	Varies.	▪ Official statistics are currently unavailable. In practice however, criminal proceedings tend to be very lengthy and may go on for years. ▪ In some simple cases, a minimum duration would be 2 years, and in more complex cases the investigation proceedings alone may last up to 5 years.
APPROXIMATE COSTS	Varies, both with respect to court fees and attorneys' fees.	It is difficult to estimate costs in criminal proceedings due to their indeterminate length but also due to other factors depending on the complexity of a given case.
JURY TRIALS	There is no jury in a traditional sense.	In the first degree, the court tries the case in a panel of one judge and two lay judges for criminal offences punishable by 8 to 20 years imprisonment, and two judges and three lay judges for criminal offences punishable by 30 to 40 years imprisonment.
CLASS ACTIONS	No.	Traditional tools of multiparty practice such as joinder and disjunction of proceedings are applied.
DOCUMENT PRODUCTION	Documents are obtained by the competent authorities or are submitted by the parties themselves, *ex officio* or upon request of a party in the proceedings.	▪ If a person or state entity refuses at the request of authorities to voluntarily surrender a document, it will be obtained by a decision of the court. ▪ If the original of a document was destroyed, is missing or is for any other reason impossible to obtain, a copy of the document will be obtained.
MANDATORY REPRESENTATION BY COUNSEL	Limited.	▪ Criminal proceedings are generally held by oral hearings. The indictment is orally presented by the prosecutor. The injured party may orally submit its property claim. Oral presentations are in the majority of circumstances established as a right, rather than a duty. ▪ The prosecutor's closing argument must contain an assessment of the evidence, conclusions derived from presented facts, an indication of relevant provisions in criminal and other laws, as well as extenuating and aggravating circumstances to be taken into consideration, and a proposition of type and extent of criminal sanctions.

		▪ The *ex officio* defence counsel has a duty to present the closing argument, unless the defendant expressly objects. The defendant has the right to declare whether he or she accepts the defence counsel's closing argument as well as to correct it and supplement it. ▪ Only an attorney can act as a defence counsel.
PRO BONO SYSTEM	Yes.	▪ A defendant who is unable to pay counsel fees and expenses due to his/her financial status is assigned a defence lawyer upon request, if the criminal charges may result in incarceration for longer than three years or if such appointment of counsel is considered just. The costs of defence in this case are borne by the court budget. ▪ The defence lawyer is appointed by the president of the court from a list provided by the Bar. ▪ Representation may be assigned to an injured party prosecutor, if the criminal charges may result in incarceration for longer than five years, if it is in the interest of the proceedings and if the party is unable to bear the costs of its representation. ▪ In certain criminal cases, the defendant must have a lawyer representing him or her. If the defendant, for any reason, is without representation, an *ex officio* counsel will be assigned to him or her by court decision from the list provided by the Bar.
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	Generally, a decision on a request for preliminary/temporary injunctions is rendered within 10 days. Appellate proceedings: 1 to 2 months in the *second instance*; 3 to 4 months in the *third instance*.	▪ The Law on Enforcement and Security provides for two types of injunctions: (i) preliminary injunctions; and (ii) temporary injunctions. ▪ The preliminary injunction may be imposed by a domestic court on a monetary claim which has not become final or enforceable, if an enforcement creditor establishes the probability that there is a risk that, without such securing, satisfaction of the claim would be impossible or made significantly more difficult.

		▪ The temporary injunction may be ordered before or in the course of court or administrative proceedings as well as after termination of such proceedings, until enforcement is conducted. ▪ The temporary injunction for securing monetary claims may be ordered if the enforcement creditor has shown the probability of the existence of the claim and the risk that, without such temporary injunction, the enforcement debtor would prevent or considerably hinder satisfaction of the claim by disposing of, hiding or otherwise making unavailable his property or means. ▪ The temporary injunction may be ordered to secure a non-monetary claim, if the enforcement creditor has shown the probability of the existence of the claim and a risk that otherwise satisfaction of the claim would be prevented or considerably hindered.
APPROXIMATE COSTS		
COURT FEES	If the request for a preliminary injunction is applied for together with a claim in the main proceedings, the court fee for the claim as well as for the request for the preliminary injunction has to be paid.	
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Assumptions: Only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent:** *first instance*: EUR 2,000 to EUR 4,000; *second instance*: one brief, no hearing: EUR 4,000 to EUR 8,000; *third instance*: one brief, no hearing: EUR 4,000 to EUR 8,000.	
COMPLEX CASE	**Assumptions: Apart from filing the request for a preliminary injunction, two comprehensive counter statements are filed in reply to two statements of opponent; witnesses are heard**: Total costs (including meetings with client/witnesses) in *first instance*: EUR 15,000 to EUR 25,000; *second instance*: one brief, no hearing: EUR 10,000 to EUR 25,000; *third instance*: one brief, no hearing: EUR 10,000 to EUR 25,000.	

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 JUDGMENTS AND ARBITRAL AWARDS		
APPROXIMATE DURATION	Varies.	
APPROXIMATE COSTS		
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.	▪ The party seeking recognition/ enforcement of foreign judgments must provide the court with the following documentation: the original foreign judgment, a certified translation of the judgment, and a certificate issued by the competent foreign court proving that the judgment is legally binding/enforceable.

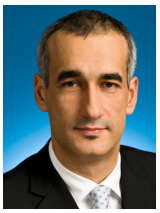
ATTORNEYS' FEES (NET)	Application for recognition/ enforcement: *Simple case*: EUR 250 to EUR 450. *Complex case*: EUR 1,000 to EUR 4,000.	▪ Pursuant to the Arbitration Act and the New York Convention, the party seeking recognition/ enforcement of an arbitral award must provide the court with the following 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.
INSOLVENCY PROCEEDINGS		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	The Insolvency Law prescribes that insolvency proceedings may be initiated on a motion filed by a creditor, an insolvency debtor or a liquidator. The insolvency proceedings shall be opened when at least one of the following reasons is established with respect to insolvency debtor: ▪ permanent insolvency; ▪ pending insolvency; ▪ over-indebtedness; and ▪ failure to comply with the adopted reorganization plan or if the reorganization plan was put into effect in a fraudulent or unlawful manner.	▪ The decision on opening of the insolvency proceedings shall be delivered, on the same day it was rendered, to the debtor, the authorized petitioner, the organization carrying out the enforced collection procedure, the business register kept with the Business Registers Agency, or other relevant registry, as well as to other persons (if the court estimates that there is a need for such delivery). ▪ Immediately after rendering the decision on opening of the insolvency proceedings, the insolvency judge shall draft the announcement on opening of the insolvency proceedings. ▪ The announcement on opening of the insolvency proceedings shall be published on the court's board, on the court's electronic board, in one high-circulation daily newspapers distributed across the entire territory of the Republic of Serbia, and in the "Official Gazette of the Republic of Serbia".
APPROXIMATE DURATION	2½ years. In very complexes cases, duration of more than 10 years is possible.	
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	An amount of EUR 10 has to be paid for each filing. Filing of insolvency claim: *Simple case*: EUR 400 to EUR 600. *Complex case*: EUR 2,000 to EUR 5,000.	

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

MIROSLAV STOJANOVIĆ
Partner

Wolf Theiss, Serbia

T. +381 11 3302 900
miroslav.stojanovic@wolftheiss.com



VIDAK KOVAČEVIĆ

Advokat / Attorney-at-Law

T. +381 11 3302 900
vidak.kovacevic@wolftheiss.com

ANĐELKA TODOROVIĆ

Advokat / Attorney-at-Law

T. +381 11 3302 900
andjelka.todorovic@wolftheiss.com

WOLF THEISS

SLOVAK REPUBLIC

1. LEGAL SYSTEM

The Slovak legal system is based on codified principles of civil law. Acts and some other legal provisions are published in the Collection of Laws (*Zbierka zákonov*) upon which they become valid and generally known. The efficiency of laws is specifically set forth in the respective law.

Judicial precedents are not binding but generally taken into consideration by courts and the parties in dispute. However, decisions of Slovak courts are not necessarily published and made available to the public.

The Slovak court system is composed of District Courts (54), Regional Courts (8) and the Supreme Court. All courts deal with civil (including labour), criminal, commercial and administrative matters. In general, cases are heard before District Courts, and Regional Courts act as Appellate Courts. Exceptionally, Regional Courts may act as first instance courts, in particular, in some social security matters, and the Supreme Court then functions as Appellate Court.

In addition, certain District Courts are appointed to handle very specific matters. For example, the District Court Bratislava II is competent for competition matters for all of Slovakia, and the District Court Banská Bystrica is competent with respect to all enforcement proceedings. Special criminal cases (e.g. organized crime, corruption etc.) are handled by the Specialized Criminal Court, having the position of Regional Court, and appeals are subsequently decided by the Supreme Court.

The Supreme Court never acts as a first instance court.

Furthermore, the Constitutional Court serves as an independent body protecting and upholding the principles of the Slovak Constitution. It is competent to decide on the constitutional compliance of laws with the Slovak Constitution, competence conflicts between public authorities (unless decided by other bodies) and individual constitutional complaints of natural persons or legal entities against public authorities claiming violation of fundamental rights and freedoms.

2. LITIGATION

The Slovak court system is currently viewed as being rather slow. Depending on the complexity of the case, a dispute may take anywhere from 6 (six) months to 2 (two) years to be decided at the first instance level.

The proceedings generally start upon a motion of a party. Only in exceptional cases (such as custody of children, inheritance, legal capacity of an individual, etc.), proceedings may be commenced without a motion.

In addition to the exact identification of the parties, the motion must contain the description of the matter, identification of the alleged evidence and the petition. The petition is to concern in particular the following:

- claim for consolidaation of rights and obligations of the parties, if such consolidation results from special regulation;
- performance of an obligation;
- determination of existence of a legal fact, if it results from special regulation; or
- determination if there is a legal relationship or right subject to the existence of an urgent legal interest.

There is generally no deadline for courts to render a decision under Slovak law (except for some cases such as interim injunctions etc.). Therefore, court delays and long proceedings are not rare in Slovakia.

Disputes claiming the right to payment of a pecuniary amount or performance are usually shorter (approximately 3 (three) months) if decided within the order procedure. The court may rule strictly on the application without examining the defendant or holding hearings if it determines that the exercised right follows from the facts as stated by the claimant. If no objection, including reasoning, is filed against the issued order within 15 (fifteen) days, it shall have the effect of a final judgment. In addition, the court may issue a payment order (cheque) without hearings if the claimant submits the original copy of a bill of exchange or cheque whose authenticity is uncontested. The court may also issue a European order for payment pursuant to Regulation (EC) No. 1896/2006 and order the fulfilment of any other obligation as a pecuniary payment.

Furthermore, in small claims matters up to EUR 1,000, a simplified procedure is available (e.g. no oral hearing; only written evidence).

A court decision of a first instance court may be challenged by an appeal. It is the only ordinary legal remedy against a non-final judgment of a first instance court in Slovakia. The contested decision of a lower-level court is resolved by the superior court (so-called devolutionary effect).

A party may appeal almost all first instance decisions and their respective proceedings. Procedural irregularities or erroneous substantive law applications may be challenged and new facts and evidence may be offered in support of the appeal.

Generally, the appellate proceedings are governed by the concentration principle, and new facts or evidence may be accepted only in exceptional cases (e.g. a party could not present these previously through no fault of their own).

The second instance court will either decline or proceed with the appeal. In the latter case, it may consider additional facts and review the factual and legal aspects considered by the court of first instance. The second instance court is generally bound by the extent and reasons for the appeal. After a full reconsideration of the relevant facts, the second instance court may:

- confirm the first instance decision;
- reverse the first instance decision and return the matter to the first instance court, interrupt or terminate the proceeding; or
- change the first instance decision and issue a new ruling on the matter.

Appellate courts usually decide on a matter without a hearing. The hearing is compulsory only in specific cases set forth by law (e.g. in cases where a hearing is required by public interest etc.).

In addition to appeals, Slovak law enables the use of extraordinary legal remedies under strictly defined conditions, including petition for retrial and recourse and extraordinary recourse, to contest decisions issued in civil or commercial matters.

In some cases, courts may grant interim measures, e.g. preliminary injunctions especially if there is a need to urgently consolidate legal relationship(s) prior, during or after the court proceeding itself.

Litigation costs are mainly composed of court and attorneys‘ fees, expenses for expert opinions and travel expenses for witnesses incurred directly in relation to the court proceedings, and are generally paid by the unsuccessful party.

Any person entitled to a valid judgment requesting performance from another person may, in the absence of voluntary performance by the other party within the period specified in the judgment, request the services of a self-employed judicial executor who is appointed and authorised by the District Court Banská Bystrica (judicial enforcement is possible only in cases of child-rearing). The statutory duration of enforcement of judgments by a judicial executor is unlimited. Depending on the complexity of the case at hand, it may last weeks or even years.

3. BUSINESS CRIME

Despite the fact that according to publically available data business crime only represents less than 1% of all crimes dealt with by Slovak authorities, its growing sophistication and the substantial damages caused motivated the legislator to introduce various innovative methods for its suppression. The Special Criminal Court and the special prosecutor's Office dealing with, *inter alia*, cases of corruption are the leading examples of these efforts.

A common problem with business crime in Slovakia is that it often remains undisclosed. The primary reason for this is the ineffectiveness of the respective authorities in revealing and investigating this form of criminal activity. Further, it is often the case that companies are reluctant to admit the failure of their internal controls or consider the potential reputational harm too severe and, as a consequence, try to conceal the offences. For this reason the number of reported business crime cases represents only a fraction of the overall criminal activity of this kind.

The investigation of criminal offences is undertaken by police bodies, investigators and prosecutors. Providing that the results of an investigation warrant further action, judicial criminal proceedings are initiated on the basis of an indictment filed by a prosecutor.

The judicial proceedings comprise of (i) the pre-trial stage; and (ii) the proceedings before the court. The pre-trial stage starts with the opening of an investigation and ends with, *inter alia*, the filing of an indictment, reference of the case, suspension, or (conditional) staying of criminal prosecution before laying an indictment.

Once an indictment has been filed, court proceedings are initiated. After a non-mandatory preliminary hearing of the indictment, the main hearing before the District, Regional, Specialized or Supreme Court (depending on the nature and stage of the case) is opened. Criminal cases are heard in an open court, however in exceptional circumstances public attendance can be excluded.

At the main hearing the prosecutor presents the indictment. Subsequently, evidence is taken by the court on the basis of witness statements and expert testimonies, and by questioning the accused. If there are no other motions for evidence examination or if the court rules that no other evidence will be taken, the presiding judge of the panel declares the evidence examination for closed and gives the floor for final addresses. After the prosecutor's final address, the representatives of the injured party and the defendant have the floor. After the final addresses are presented and prior to leaving for their final conference, the presiding judge of the panel grants the defendant the last word.

The court rules in a judgment whether the defendant is found guilty or acquitted from the indictment. An appeal may be lodged against a sentence.

It should be noted that as of 1 July 2016, the Slovak Republic has introduced Act No. 92/2016 Coll. on Criminal Liability of Legal Entities, as amended according to which even legal persons may be subject to criminal sanctions and may be found guilty of criminal offenses explicitly stipulated in the said act.

The investigation of criminal offences is in the competence of police bodies, investigators and prosecutors. In court proceedings, the prosecution is conducted by a prosecutor or a special prosecutor. The difference between the two is that while the first one can be considered "general", meaning he/she appears before a "regular" court, the special prosecutor only deals with cases falling under the authority of the Specialized Criminal Court (e.g., corruption, organized crime). The supervision of all prosecutors is carried out by the Prosecutor General.

The prosecutor has the authority to supervise the observance of the law prior to the commencement of prosecution and in the pre-trial proceedings (*inter alia*, to give binding instructions for the investigation). Further, the prosecutor is authorized to file an indictment, order the seizure of the accused person's property, or secure the injured party's title to damage compensation.

With respect to court proceedings, as a general rule, District Courts serve as first instance courts (Regional Courts being the courts of appeal); however in certain cases, Regional Courts also serve that purpose (with the

Supreme Court being the court of appeal). In cases of corruption, for instance, the court of first instance is the Specialized Criminal Court (with the Supreme Court being the court of appeal).

Cases with a potential penalty of up to 8 (eight) years imprisonment are decided by single judges, while cases above that threshold are dealt with by a panel of judges. Appeals are always decided by a panel of judges.

The injured party is authorized to take an active part in the proceedings. The most important rights of the injured party are, *inter alia*, the right to (i) consent to criminal prosecution of the accused party (in respect to specific crimes); (ii) file motions for the taking of evidence; (iii) have access to files; (iv) attend the court hearing; (v) give an opinion on the submitted evidence; (vi) present a closing speech: and (vii) apply for legal remedies with regard to the part of the judgment dealing with damage.

As indicated, the injured party has the right to submit a motion asking the court to sentence, in its judgment, the accused party to compensation for the damage caused by its criminal act. Such motion must be submitted no later than at the main hearing before the taking of evidence.

Despite the fact that the Slovak Criminal Procedure Code stipulates that the court in its judgment may sentence the accused party to damage compensation, the practice is that the injured party is in most cases referred by the criminal courts to seek damage recovery in civil proceedings as generally further examination of evidence is expected to be required in these instances.

In light of the foregoing, the number of cases where damage was recovered in criminal proceedings is far less than those where damage was recovered in civil proceedings. Importantly, however, having a prior sentencing judgment does make the damage recovery in civil proceedings considerably easier.

Further, if there are reasonable grounds to believe that the settlement of the injured party's claim for damages inflicted as a result of a crime will be impeded or frustrated, it is possible to secure the claim by issuing an attachment order on the corresponding part of the accused's property.

As regards the duration of the proceedings, this is determined by two major factors – the complexity of the case and the authority in charge ("regular" courts vs. the Specialized Criminal Court and the Special Prosecutors Office). The proceedings before the Specialized Criminal Court are generally shorter. Simple cases are generally resolved within months (typically; 2 (two) months pre-trial stage, 6–18 (six to eighteen) months court proceedings in first instance, 6–12 (six to twelve) months for second instance proceedings), while complex cases often take years to investigate and decide (up to 2 (two) years pre-trial stage, 2–4 (two to four) years court proceedings in first instance, 1–2 (one to two) years for second instance proceedings).

The overall costs incurred by the defendant over the course of criminal proceedings are extremely individual and depend on the complexity of the case, the number of instances, and the defence counsel appointed.

The costs of criminal proceedings, including sentence enforcement proceedings, are borne by the Slovak Republic. The defendant bears his/her own costs. There is generally no right for reimbursement of costs incurred by the defendant.

If the defendant was found guilty in a final sentence, he/she is obliged to reimburse the Slovak Republic for (i) any costs incurred by his/her remand in custody; (ii) the fee and cash expenditures of the counsel assigned by the Slovak Republic unless the defendant is entitled to a free defence counsel; (iii) the costs incurred for serving an imprisonment sentence; and (iv) a lump sum for other costs borne by the Slovak Republic. Further, the defendant is required to reimburse the costs incurred by the injured party in connection with damage recovery in the course of the criminal proceedings.

4. INSOLVENCY

Slovak insolvency law is applicable only if Council Regulation (EC) No. 2015/848 of 20 May 2015 on insolvency proceedings (recast) does not provide otherwise.

The bankruptcy courts are not organized as separate courts. Bankruptcy proceedings are conducted by the District Courts having the same seat as the Regional Courts. The Regional Courts in Bratislava, Banská Bystrica and Košice serve as appellate courts. The main role of the bankruptcy courts is to supervise and approve any measures undertaken by the trustee and the creditors.

In general, a debtor is considered bankrupt when it is: (i) insolvent, i.e., it is not able to satisfy at least two monetary obligations within 30 (thirty) days following their maturity date to more than one creditor; or (ii) over-indebted, i.e. it has financial obligations, where its liabilities exceed its assets and it has more than one creditor. The assessment of the value of liabilities and assets is made based on the accounting books or in an expert opinion, whereby the expert opinion has preference.

Slovak insolvency law distinguishes between two main types of insolvency proceedings:

- Bankruptcy proceedings: The purpose of which is to sell the debtor's assets, and to satisfy the debtor's creditors pro rata (subject to statutory exceptions), from the proceeds of the sale, in accordance with the rules set out in the insolvency law; and

- Restructuring/business reorganization proceedings: These are insolvency proceedings in accordance with the court's approval of a reorganization plan, under which the debtor is obliged to fulfil its debts by agreement with the creditors.

The aim of bankruptcy and restructuring is to achieve a proportional satisfaction for the creditors from the debtor's assets.

The debtor is obliged to file a bankruptcy application within 30 (thirty) days of discovering or learning of its incapability to settle or maintain a solvent financial status. The bankruptcy application may also be filed by the debtor's creditors. The court decides about the commencement of the bankruptcy proceeding within 15 (fifteen) days from the filing of the application.

The commencement of bankruptcy proceedings has, in particular, the following effects: (i) the debtor is obliged to restrict the performance of its activities only to day-to-day legal acts; (ii) enforcement (execution) proceedings are suspended or cannot be commenced; (iii) except for some exceptions (e.g. receivables from the bank account, government bonds, transferable securities), it is not possible to commence or continue with the enforcement of collateral rights on the assets of the debtor, due to the obligation of the debtor secured by the collateral right; (iv) the winding up procedure without liquidation is terminated; and (v) no merger, acquisition or de-merger can be decided upon or can be validly registered with the respective Commercial Register.

If there are sufficient assets for the payment of bankruptcy costs, the court declares bankruptcy over the assets of the debtor. Otherwise, the bankruptcy proceeding is suspended. A creditor may prevent the suspension of bankruptcy proceedings by taking over the pre-payment of the bankruptcy costs.

In case of a creditor's motion for a debtor's bankruptcy, the court is generally required to hold an oral hearing prior to bankruptcy being declared.

The declaration of bankruptcy has, *inter alia*, the following effects: (i) disposal over bankruptcy assets passes to the bankruptcy trustee; (ii) unpaid obligations become mature; (iii) court and any other proceedings are suspended; and (iv) no security instruments over the bankruptcy assets may be established.

The creditors are obliged to register their receivables within 45 (forty five) days from the declaration of bankruptcy over the debtor's assets. Late registration is considered within insolvency proceedings; however, the creditor

cannot exercise any potential voting or other rights associated with the registered receivables and the receivables may be satisfied only from the general assets even if they were secured.

In case of restructuring, the receivables shall be registered not later than 30 (thirty) days after the authorisation of the restructuring.

The creditor or trustee of a debtor's assets is entitled to protest against the following legal acts of the debtor: (i) legal acts without sufficient consideration; (ii) advantageous legal acts; (iii) shortening of legal acts; and (iv) legal acts made after the cancellation of the bankruptcy proceeding. The right to protest expires within 1 (one) year after the commencement of the bankruptcy proceeding.

In cases involving the conversion of a debtor's assets into financial means, the trustee is not bound by the contractual pre-emption rights, but solely by the statutory pre-emption rights of third parties.

If bankruptcy poses a threat to the debtor or if bankruptcy proceedings have already started, the debtor may authorize the trustee to prepare a restructuring report. If the restructuring report is not older than 30 (thirty) days and recommends it, the debtor or creditor may file an application for restructuring with the court. The court will approve the restructuring proceeding and the restructuring plan if: (i) the debtor conducts business activities; (ii) the debtor is or is likely to become insolvent; (iii) the reasonable assumption exists that the essential part of the debtor's assets will remain unaltered; and (iv) there is a reasonable assumption that more creditors will be satisfied in bankruptcy.

If the restructuring proceedings start during the bankruptcy proceedings, the court suspends the bankruptcy proceedings.

If the debtor is a natural person who is not an entrepreneur or if at least two of the following conditions are fulfilled, the court may decide within the so-called "small" bankruptcy proceeding: (i) the respective assets will probably not exceed EUR 165,000; (ii) the income of the debtor did not exceed EUR 333,000 in the previous accounting period; or (iii) the debtor will probably not have more than fifty creditors. If any of these conditions are met, the court shall decide the matter within a shorter time period. The court may decide to replace the "small" bankruptcy with "ordinary" bankruptcy proceedings and vice versa, if the circumstances change. The "small" bankruptcy is also envisaged in case of the confiscation of property imposed in criminal proceedings against a natural person or a legal entity.

Natural persons are entitled to ask for the discharge of any claims through the means of bankruptcy proceedings or via an instalment schedule. Moreover, Slovak insolvency law contains special provisions concerning cross-border insolvencies (of EU/non-EU entities) as well as domestic financial institutions including health insurance companies. With financial institutions and insurance companies, the bankruptcy application may only be filed by the supervising institution (e.g. the National Bank of Slovakia).

5. 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

Since its entry into the European Union on 1 May 2004, the Slovak Republic is a party to the Brussels Convention. Pursuant to the Slovak Act on International Private and Procedural Law, decisions of foreign courts, as well as foreign judicial settlements and foreign notary deeds, are effective in the Slovak Republic if the judgments have become final according to a foreign authority that is recognized by the Slovak authorities.

The foreign decision shall be neither recognized nor enforced if:

- the subject matter falls within the exclusive jurisdiction of the Slovak courts, or the proceedings could not have been conducted before any authority of a foreign state if provisions concerning the competence of the Slovak courts had been applied to the foreign authority's consideration of jurisdiction;
- in the same case, a final decision has been issued by Slovak authorities or a final and conclusive decision of an authority of a third state has been recognized in the Slovak Republic;
- the authority of the foreign state prevented the participant against whom the decision is to be recognized from taking part in the proceedings properly, particularly if the participant was not served the lawsuit or the writ of summons personally or if the defendant was not served the lawsuit personally;
- the recognition is contrary to Slovak public order;
- the decision is not valid or enforceable in the issuing foreign state; or
- the decision is not a decision on the merits of the case.

Pursuant to the Slovak Act on International Private and Procedural Law, the provisions of this act shall apply unless an international treaty binding on the Slovak Republic stipulates otherwise. In civil matters, the following conventions recently became binding for the Slovak Republic: Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption, European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Convention Abolishing the Requirement for Legalization of Foreign Public Documents, and Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

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.

The following European regulations are directly applicable in Slovakia: Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast); Regulation No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility; Regulation No. 805/2004 creating a European Enforcement Order for

uncontested claims; Regulation No. 1896/2006 creating a European order for payment procedure; Regulation No. 861/2007 establishing a European small claims procedure; and Regulation No. 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

With respect to the recognition and enforcement of criminal judgements issued within the EU, the applicable piece of European legislation is the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, which has been transposed into Slovak law.

Pursuant to Act No. 549/2011 Coll. on Recognition and Enforcement of Criminal Judgements on Custodial Penalties in the European Union, as amended, custodial criminal judgements shall be recognized and enforced in the Slovak Republic. Furthermore, with regard to criminal judgements on non-custodial penalties, these are also recognized and enforced in the Slovak Republic by virtue of Act No. 533/2011 Coll. on Recognition and Enforcement of Criminal Judgements on Non-custodial Penalties in the European Union, as amended.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases**: *first instance*: 1 to 2 years; *second instance*: 8 to 18 months. **Complex cases**: *first instance*: 1 to 5 years; *second instance*: 1 to 3 years.	
APPROXIMATE COSTS **COURT FEES**	Court fees are based on the Court Fees Act and depend on the amount in dispute (6% of the amount in dispute; to a maximum of EUR 16,596.50 and a maximum of EUR 33,193.50 in commercial matters). **Examples: Amount in dispute EUR 1,000,000**: Court fees: EUR 16,596.50 or EUR 33,193.50 in *first instance*; IP rights: EUR 331.50 in *first instance*; Invalidity/cancellation of arbitration decision: EUR 331.50 in *first instance*.	▪ Litigation costs include court fees, attorneys' fees, and expenses for expert opinions and witnesses incurred directly in the proceeding. ▪ Court fees have to be paid upon filing the claim or upon the request of the court; otherwise, the court normally terminates the proceeding. ▪ Court fees in the first and second instances are to be paid by the filing party and are the same amount; court fees in the recourse proceeding are double this amount. ▪ Court fees are payable by a bank transfer, postal money order, by card or in cash. ▪ Some proceedings are exempt from court fees. ▪ Litigation costs are generally awarded against the losing party who must reimburse the winning party.
ATTORNEYS' FEES (NET) *SIMPLE CASE*	**Assumptions based on an amount in dispute of EUR 1,000,000**: *First instance*: Preparation of two briefs, four hearings with a duration of 1h, 2h, 4h, and 6h respectively, preparation of hearings/meetings with client, witnesses, correspondence with client: In total EUR 25,000 to EUR 35,000; *second instance*: One brief, no hearing: EUR 2,500 to EUR 10,000.	

COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: *First instance*: Preparation of four comprehensive briefs, four hearings with a duration of 2 x 2h, and 2 x 4h; preparation of hearings/ meetings with client, witnesses, correspondence with client: In total EUR 200,000 to EUR 300,000; *second instance*: One brief, no hearing: EUR 21,000 to EUR 35,000.	▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, reimbursement of attorney fees is only made on the basis of the fees provided for in the Regulation on Attorneys' Tariffs. ▪ The actual attorney fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are of no relevance to the opposing party. ▪ Agreements on *Quota litis* and contingency fees are generally permitted for Slovak lawyers in all types of proceedings, but the attorneys' fees may not exceed 20% of the dispute amount (value).
JURY TRIALS	There are no civil jury trials in Slovakia.	
CLASS ACTIONS	Limited. The Slovak Civil Dispute Procedure Code does not provide for a special proceeding for collective redress. Traditional tools of multiparty practice such as joinder and consolidation of proceedings are applied. Consumer organizations often have similar claims of consumers assigned to them and file one complaint.	
DOCUMENT PRODUCTION	Limited.	▪ In general, there is no formal discovery in Slovakia. ▪ Documents are subject to disclosure if the party itself referred to the document in the course of the proceedings. ▪ The party is obliged by substantive law to hand over the document referred to, or the court may order another person or entity to submit the document. ▪ Failure to comply with the order to produce such documents can be subject to a procedural fine up to EUR 500 (if repeated up to EUR 2,000).
MANDATORY REPRESENTATION BY COUNSEL	Generally no, with the exception of cases relating to bankruptcy and restructuring, competition law, unfair competition, trade secret breach or infringement, and in cases relating to intellectual property.	
PRO BONO SYSTEM	Yes. There is legal aid for people who can't afford (full or partial) costs of legal proceedings (if the dispute is not apparently arbitrary or unsuccessful).	
BUSINESS CRIME		
APPROXIMATE DURATION	**Simple cases**: *first instance* (pre-trial stage): up to 2 months; *court proceedings*: 6–18 months; *second Instance*: 6–12 months. **Complex cases**: *first instance* (pre-trial stage): up to 2 years; *court proceedings*: 2–4 years; *second instance*; 1–2 years.	Specialized criminal court cases are generally shorter.

APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)** *SIMPLE CASE* *COMPLEX CASE*	 There are no court fees. The costs of criminal proceedings, including sentence enforcement proceedings, are borne by the Slovak Republic. The defendant bears his/her own costs, except in a situation that warrants pro bono representation. *First instance*: representation at two interrogations with duration of 2 x 2h, preparation of two briefs 4h + 6h, participation at two court hearings with a duration of 2 x 2h, preparation of hearings/meetings with client, witnesses, correspondence with client: In total EUR 10,000 to EUR 15,000; *second instance*: One brief, one hearing: EUR 6,000. *First instance*: participation at a large number of interrogations, face-to-face confrontations, preparation of 4 complex briefs 4h, 2 x 6h, 8h, preparation of hearings/meetings with client, witnesses, correspondence with client. In total from EUR 30,000 upwards; *second instance*: One brief, one hearing: EUR 15,000 and upwards.	If the defendant is found guilty in a final sentence, he/she is obliged to reimburse the Slovak Republic: ▪ the costs incurred by his/her remand in custody; ▪ the fee and cash expenditures of the counsel assigned by the Slovak Republic unless the defendant is entitled to a free defence counsel; ▪ the costs incurred by serving an imprisonment sentence; ▪ a lump sum for other costs borne by the Slovak Republic; and ▪ the costs incurred by the injured in connection with damage recovery in the course of the criminal proceedings.
JURY TRIALS	There are no criminal jury trials in Slovakia.	
CLASS ACTIONS	Limited.	▪ The Slovak Code of Criminal Procedure does not specifically regulate class actions. However, it provides for joint proceedings in respect to criminal offences committed by the accused and all the persons accused of interrelated criminal offences. ▪ The court may jointly hear cases the indictments for which were filed separately, hold joint proceedings and make a joint decision.
DOCUMENT PRODUCTION	Limited.	▪ The burden of proof is on the side of prosecution. ▪ The defendant is not required to submit documents which would be to his/her detriment. However, a person who has an item (document) in his/her possession relevant to criminal proceedings is required to surrender it upon request of the police, prosecutor or the court. Such an item (document) may be seized upon an order issued by a prosecutor, investigator or the police.

MANDATORY REPRESENTATION BY COUNSEL	During the pre-trial proceedings the accused person must be represented by a counsel (i) if he/she is remanded in custody, serves an imprisonment sentence or is held for observation at a medical institution; (ii) if he/she is deprived of legal capacity or his/her legal capacity is restricted; (iii) in case of a particularly serious felony; (iv) if he/she is a juvenile and/or an escaped prisoner; (v) if the court or the prosecutor in pre-trial proceedings deem it necessary because they are in doubt whether, in view of his/her physical or mental handicap, the accused is capable of proper defence, or; (vi) in case of extradition proceedings. In the sentence enforcement proceedings (in which the court decides in an open court hearing), a counsel is mandatory when the accused person (i) is deprived of or has a restricted legal capacity; (ii) is a juvenile released on parole who, at the time of the open court hearing, is younger than 18 years of age; (iii) is remanded in custody; or (iv) if there are any doubts concerning the ability of the accused person to properly defend himself/herself. In the proceedings held in respect of complaints alleging the breach of law and proceedings involving the motion for a new trial, counsel representation is mandatory (i) if the accused person is remanded in custody, serves an imprisonment sentence or is held for observation at a medical institution; (ii) is deprived of legal capacity or his/her legal capacity is restricted; (iii) if the case concerns a particularly serious felony; (iv) if the accused is a juvenile who, at the time when the complaint alleging the breach of law or the motion for a new trial is heard in an open court hearing, is less than 18 years old; (v) if there is any doubt concerning the accused person's ability to properly defend himself/herself; and (vi) if the proceedings are conducted against a sentenced person who died.	
PRO BONO SYSTEM	Yes. There is legal aid for people who can't afford a defence counsel.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	Depending on the type of the preliminary injunction, the decision is rendered between 1 and 30 days after the delivery of the request. *Appellate proceedings*: Depending on the type of the preliminary injunction, the decision should be issued within 1 to 30 days after the submission of the matter pursuant to the Civil Dispute Procedure Code.	▪ In the request for a preliminary injunction, the applicant must explicitly justify its claim and prove the existence of the danger of immediate threatening damages. ▪ Appellate proceedings: In practice, the duration may be up to 3 months.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)** *SIMPLE CASE*	The court fee for any type of preliminary injunction is EUR 33. If the request for a preliminary Injunction is filed outside main proceedings, the court fees are reduced to half in first instance. **Assumptions based on an amount in dispute of EUR 1,000,000:** Only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent: EUR 1,300 to EUR 5,000 in *first instance*; *second instance*: one brief, no hearing EUR 1,300 to EUR 5,000.	▪ The court may (and often does) decide about the preliminary injunction without a hearing. ▪ The court is not obliged to examine evidence. However, it must verify the existence of the claimed right and general facts proving the necessity of the preliminary injunction. ▪ Costs incurred by a successful applicant in preliminary injunction matters can only be sought in the main proceedings.

COMPLEX CASE	**Assumptions based on an amount in dispute of EUR 10,000,000**: Apart from filing the request for a preliminary injunction, two comprehensive counter statements are filed in reply to two statements of opponent; witnesses are heard: Total costs (including meetings with client/ witnesses) of *first instance*: EUR 40,000 to EUR 50,000; *second instance*: one brief, no hearing: EUR 10,000 to EUR 20,000.	▪ If the preliminary injunction is cancelled or terminated for reasons different from the satisfaction of the applicant's claim, the applicant is obliged to compensate the injured party for incurred damages. The court ordering the preliminary injunction decides about this compensation upon motion of the injured party.
ARBITRATION PROCEEDINGS		
APPROXIMATE DURATION	The usual duration of arbitration proceedings is between 1 month and 2 years.	
APPROXIMATE COSTS		▪ 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%.
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.	
SIMPLE CASE	**Assumption: 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 JUDGMENTS AND 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.	▪ Under EC Regulation 1215/2012, the party seeking recognition/ enforcement must submit a copy of the judgment which should be accompanied by a Certificate of Authenticity issued either by the court that rendered the judgment or by another competent institution of the state of origin. ▪ Similarly, under EC Regulation 805/2004, the decision has to be certified as a European Enforcement Order. ▪ Further, in order to avoid any delays, attaching a certified translation of the judgment is highly recommended.
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	▪ Judgments that fall outside the scope of application of EC laws described above must be submitted in the original or in a copy issued by the court that rendered the judgment, along with information about its validity or enforceability and evidence that the other party was duly delivered the court documents and decisions. ▪ A certified translation of the judgment must be submitted.

		▪ 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.
INSOLVENCY PROCEEDINGS		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	A creditor may file a motion for insolvency proceedings if a debtor is ▪ insolvent, i.e., is not able to satisfy at least two monetary obligations within 30 days following their maturity date to more than one creditor; or ▪ over-indebted, i.e., has financial obligations where its liabilities exceed assets and has more than one creditor.	▪ The commencement of insolvency proceedings and the declaration of insolvency are published in the official commercial journal (available on the website of the Slovak Ministry of Justice under http://www.justice.gov.sk/yyyy.aspx). ▪ The period for registration of insolvency claims is 45 days as of the published declaration of bankruptcy and 30 days as of the published approval of restructuring. ▪ Late registration is considered within insolvency proceedings (not within restructuring); however, the creditor cannot exercise any potential voting or other rights associated with the registered receivables. Its receivables – though secured – will be satisfied only from the general assets and
APPROXIMATE DURATION	1 year to several years; in very complex cases duration of more than 10 years is possible.	
APPROXIMATE COSTS		
COURT FEES	The initiation of insolvency proceedings and registration of insolvency claims are free of charge. Court fees are paid upon the sale of assets from the achieved proceeds.	
ATTORNEYS' FEES (NET)	Registration of insolvency claim (depends on the fee arrangement): *Simple case*: Approx. EUR 400 to EUR 600. *Complex case*: Approx. EUR 2,000 to EUR 5,000.	

This chapter was written by Katarína Bieliková and Vladimíra Roštárová.

KATARÍNA BIELIKOVÁ
Counsel

Wolf Theiss, Slovak Republic

T. +421 2 591 012 40
katarina.bielikova@wolftheiss.com

VLADIMÍRA ROŠTÁROVÁ
Associate

Wolf Theiss, Slovak Republic

T. +421 2 591 012 40
vladimira.rostarova@wolftheiss.com

WOLF THEISS

SLOVENIA

1. LEGAL SYSTEM

On 25 June 1991, following its secession from the former Yugoslavia, the Republic of Slovenia adopted the Constitutional Decision on Sovereignty and Independence. The Constitution set forth the legal foundations and structure defining the legal system and the legal entities of the new state. The old Yugoslavian laws remained in effect, as long as these were not in contradiction with the new Slovenian constitution.

The Slovenian judicial system is organized according to the principle of hierarchy. The uniform judicial system of the Republic of Slovenia includes courts of general and specialized jurisdiction; the latter having jurisdiction only in the areas of labour, social law and administrative law. Generally, in the first instance, the Municipal Courts and District Courts decide multiple types of cases, involving both civil and criminal matters. Additionally, the four Labour Courts and one Social Court operate as specialized courts at a level equal to a District Court and hear disputes in the first instance concerning most labour and social matters.

Generally, appeals can be made from a court of first instance to the second instance courts which are the Appellate Courts (i.e. Higher Courts), which have jurisdiction to decide appeals from the lower courts. In limited situations, an appeal in the third instance can be made to the Supreme Court of the Republic of Slovenia. However, these are extremely rare.

The Slovenian legal system also has a Constitutional Court which operates as a court of extraordinary jurisdiction. The Constitutional Court is an autonomous and independent state authority. It is the highest judicial body responsible for protecting the Slovenian Constitution by exercising its constitutional authority to review and protect constitutional rights, and to ensure the legality of state actions.

2. LITIGATION

In 1999, a new Civil Procedure Act (*Zakon o pravdnem postopku*), governing legal proceedings in Slovenian Courts was enacted. Since its coming into force on 15 July 1999, the Civil Procedure Act has been amended numerous times; the most recent amendments introducing some new procedural instruments (e.g. cascade lawsuit) came into force on 14 September 2017.

According to the Slovenian Constitution, court decisions are generally not viewed as precedents and judges are under no legal obligation to follow the legal interpretation of the higher courts. However, lower courts generally do tend to follow the opinions of the higher courts and the Supreme Court.

In the first instance, Municipal Courts are competent to decide on cases punishable either by fines or by up to 3 (three) years imprisonment and civil disputes where the amount in dispute is under EUR 20,000. Municipal Courts also monitor, maintain and administer the land registers.

Regardless of the amount in dispute, the Municipal Courts are vested with jurisdiction over the following matters:

- minor criminal cases, excluding penal acts of slander or libel, that are committed by the press, radio or television or through any other means of mass media;
- civil cases concerning claims for damages or property rights up to a certain value;
- cases concerning execution and security;
- all civil cases concerning easements, trespass (of land), lease or tenancy relations;
- legal obligations regarding maintenance/alimony, if the matter is not dealt with in conjunction with marriage disputes or disputes over the establishment or contestation of paternity; and
- probate or other non-litigious matters, land registers, and civil enforcement.

Currently, there are 44 Municipal Courts established in Slovenia.

District Courts are competent to decide on cases punishable by more than 3 (three) years imprisonment and civil matters where the amount in dispute exceeds EUR 20,000. In addition, District Courts are vested with jurisdiction over the following:

- criminal and civil cases which exceed the jurisdiction of municipal courts;
- juvenile criminal cases;
- execution of criminal sentences;
- family disputes, excluding maintenance/alimony;
- confirmation of rulings of a foreign court;
- commercial disputes;
- bankruptcy, forced settlements and liquidation;
- copyright and intellectual property cases; and
- the District Courts, whose competence includes the sea-territory of the Republic of Slovenia, in cases concerning ships and navigation on the sea, exploitation of the sea and the sea floor and cases which demand the use of maritime law.

The 11 District Courts currently established throughout Slovenia are also responsible for monitoring and administering the commercial register.

The Labour Court and Social Court have the position of a District Court and have jurisdiction to rule only on matters expressly provided by law, since the law determines the presumption of jurisdiction of courts of ordinary jurisdiction.

The four Slovenian Higher Courts function as courts of appeal over judgments made by the Municipal and District Courts. In addition to the determination of appeals against decisions of the Municipal and District Courts in their territories, they also determine disputes of jurisdiction between Municipal and District Courts.

Two further specialized courts, the Administrative Court and the Higher Labour and Social Court, also have the rank of courts of appeal. The Higher Labour and Social Court serves as an appeals court against first instance judgments in labour and social disputes. The Administrative Court is competent to decide matters concerning the judicial protection of the rights and legal interests of physical persons and legal entities in connection with decisions and actions of administrative bodies and other public authorities. The authority of the Administrative Court includes the authority to review the legality of the decisions and actions of the various administrative bodies and public authorities.

At the top of the judicial hierarchy is the Slovenian Supreme Court. It functions primarily as a court of cassation. It acts as a court of appellate jurisdiction in criminal and civil cases, commercial lawsuits, cases of administrative review and labour and social security disputes. It is the court of third instance in almost all cases within its jurisdiction. The grounds for appeal to the Supreme Court (defined as extraordinary legal remedies), are limited to issues of substantive law and breaches of procedure. In addition to administering justice, the Supreme Court also determines most jurisdictional disputes between the lower courts, grants the transfer of jurisdiction to another court in cases provided by law, and keeps records of the judicial practice of courts.

Most court decisions issued by the Supreme Court or the Higher Courts are published and made available online.

The main novelties introduced into civil proceedings as of 14 September 2017

One of the real novelties of the amended Civil Procedure Act is the mandatory programme for managing proceedings (*program vodenja postopka*), which shall be carried out by the judge after consultation with the parties at the initial preparatory hearing. Furthermore, parties are, in absence of court's express summons, limited to two preparatory filings each before the first ("preparatory") hearing takes place. A new type of lawsuit – the cascade lawsuit (*stopničasta tožba*) – has been introduced. This has proven to be a useful instrument in many foreign national legislations. The new type of lawsuit will give a party the possibility to combine two claims; the second one being subsidiary to the first and undetermined and unreasoned at the beginning of the procedure. The determination and identification of the second claim is dependent on the court's decision on the first claim of the party. The party however has to specify in detail the second claim and state its reasoning (by providing facts and evidence) only after the decision on the first claim becomes final, but within the court's given timeline.

Finally in commercial litigation appellate procedures the courts now have the new possibility to give prior notification to the appellant that its appeal does not have any chance of success. Such notification can be issued, if the senate of judges unanimously so decides and the appeal is obviously groundless, providing that the decision is not essential for the establishment of legal certainty and/or uniformity of jurisprudence on the subject. The party is given the possibility to withdraw its appeal and in the event of the latter, the court returns a part of the court fees.

3. BUSINESS CRIME

While business crimes represent only approximately 15% of all detected crimes, the damage caused by these crimes amounts to approximately 80% of all damage caused by criminal activity in the country. This development is reflected in the creation of specialized authorities competent for the investigation and prosecution of complex crimes.

Legal entities can be held liable for criminal offences, together with or independently of the responsible physical persons (usually management). The penalties for legal entities found guilty of a criminal offence range from pecuniary penalties to the cessation of the legal entity, if the entity was mainly used for the purpose of committing criminal offences. Criminal procedure against a legal entity is usually combined with the legal procedure against the responsible person of the legal entity.

A complaint that a crime has been committed can be made or transferred to the competent public prosecutor, either before or after the police have collected the evidence they deem to be relevant for the proceedings. After that the public prosecutor will either:

- dismiss the complaint if it deems the evidence to be insufficient; or
- in case of crimes with a maximum statutory penalty of up to 3 (three) years: bring a charges proposal (*obtožni predlog*); or
- in case of all other crimes: bring formal charges without an investigation or request that the investigative judge conducts an investigation.

After the public prosecutor has brought a charges proposal or formal charges and the indictment becomes final, a pre-trial hearing usually takes place in which the accused makes a statement regarding his or her guilt.

The main trial is public. The criminal procedure is, in principle, inquisitorial, which means that the trial is led by the judge, who is seeking to establish the material truth. After the trial, the verdict and – if applicable – the penalty is delivered orally and publicly. The court has 15 (fifteen) days to prepare a written verdict, which is served to all parties in the proceedings, and, where applicable, the victim and the injured parties.

Each first instance verdict can be appealed within 15 (fifteen) days after service of the judgment. The public prosecutor can appeal in favour as well as to the detriment of the accused. A non-appealed judgment becomes final. A second instance judgment becomes final upon its delivery, unless

- the highest penalty has been pronounced (30 (thirty) years or life-long imprisonment);
- the appeals court reached its verdict based on different facts than the first instance court; and
- the appeals court convicted the accused after the first instance court acquitted him/her.

In these three instances, the parties have the right to file an appeal to the Supreme Court.

Extraordinary remedies are also available to a limited scope.

The National Investigation Bureau, a specialized unit of the police, was established in 2009. It is responsible for the investigation of crimes, which demand the co-operation of various state offices, complex crimes the investigation of which requires specialized knowledge, crimes with an international element, crimes that have gravely harmed state finances or that have led to high illegal monetary gains and crimes allegedly committed by public officials. Despite the specialization of the National Investigation Bureau, it remains subordinate to the prosecutors and investigative judges in the same way as other police units in the country.

Several district prosecution divisions (*okrožna državna tožilstva*) have prosecutors which are solely responsible for business crime. In November 2011 a specialized public prosecution division was also formed and is responsible for the prosecution of organized crime, terrorism, corruption and other complex crimes.

The public prosecutor may authorize the secret observation of a person. When more intrusive methods are used (video or audio recording) or if they are used against people, who are not suspects, only the investigative judge can authorize this. There are statutory maximum time limits for secret observations.

The public prosecutor may authorize the fake giving and receiving of gifts and the fake giving and receiving of bribes.

The investigative judge may further authorize the monitoring of a suspect's financial data/activity, his/her communication data, including monitoring of computer systems, eavesdropping and observations with technical devices and entry into foreign premises. These investigative methods are limited to certain crimes, including certain business crimes.

The police may detain a suspect for up to 48 (forty eight) hours. After that (and sometimes even before) the investigative judge needs to authorize detention.

The public prosecutor may steer the work of, *inter alia*, the police, as well as bodies dealing with taxes, customs, financial operations, shares, competition, money laundering, corruption, drugs and inspections, with binding instructions, expert opinions and suggestions for collecting data and other measures within their competence, in order to find the suspect and to determine whether the suspect shall be prosecuted.

The public prosecutor is authorized to conduct plea-bargaining with the alleged perpetrator, with a mandatory legal assistance of attorney.

In case an indictment becomes final, the criminal proceedings continue as outlined above.

During the investigation of crimes, which are prosecuted *ex officio*, the victim can give suggestions regarding evidence to be collected in order to identify a crime, its perpetrator and to determine the sum of the victim's (civil) indemnification claim.

During the trial, the victim can suggest evidence and put questions to the accused, witnesses and experts. The victim is, subject to limitations applicable when he/she is also a witness, allowed to consult the file and evidence.

If the public prosecutor discontinues the investigation or prosecution of a crime that is prosecuted *ex officio*, he or she must inform the victim, who can then prosecute in his/her own name. At trial, the victim can bring an indemnification claim. If the accused is found guilty, the criminal court can recognize the entire claim or recognize the claim in part or refer the victim to the civil court. The civil court is bound by a criminal court's finding of guilt. The victim can also approach the civil court if the accused is found not guilty, since the civil court is not bound by an acquittal in criminal proceedings.

The available statistics combine all criminal proceedings. The majority of cases at the first instance take between 1 (one) and 2 (two) years. More than half of the cases at the second instance take less than 3 (three) months.

The costs for proceedings include expenses for witnesses, costs of external viewings, fees and expenses of experts, interpreters and professionals, transportation expenses for the accused, costs incurred in investigating the accused or the arrested person, transportation and travel expenses for officials, medical expenses for the accused while in detention and expenses for child delivery, court tax, fees and necessary expenses for defence counsel, necessary expenses for the private prosecutor and the injured party acting as prosecutor and for their representatives, necessary expenses of the injured party and his/her legal representatives, and the fees and expenses of those.

4. INSOLVENCY

The Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju*, hereinafter the "Insolvency Act") governs insolvency in Slovenia and was enacted in 2007. Since coming into force on 15 January 2008, the Insolvency Act has been amended numerous times, the most recent amendments having entered into force on 22 October 2016.

The Insolvency Act governs: (i) the financial operations of companies; (ii) pre-insolvency and insolvency proceedings; (iii) cross-border insolvency proceedings; and (iv) proceedings of compulsory dissolution (compulsory liquidations and the deletion of a company from the court's registry without liquidation). The majority of the provisions of the Insolvency Act on insolvency proceedings apply to legal persons although the compulsory settlement rules also apply to sole entrepreneurs. In addition, there are also provisions in the Insolvency Act dealing with the insolvency of a natural person and the insolvency of an estate.

Pre-Insolvency and Insolvency Proceedings

In May 2013, amendments to the Insolvency Act introduced a so-called simplified compulsory settlement (*postopek poenostavljene prisilne poravnave*), which is available only to micro and small companies as well as small sole entrepreneurs. These proceedings enable companies to negotiate and agree on conditions for repayment of their debt directly with their creditors instead of through formal court proceedings.

The rules regarding personal bankruptcy proceedings apply in cases of bankruptcy of natural persons, including independent business persons, self-employed persons and consumers. During personal bankruptcy proceedings the debtor may request remission of the claims against the debtor

In November 2013, the amendments to the Insolvency Act introduced the possibility of preventive financial restructuring (*postopek preventivnega prestrukturiranja*) that can be initiated by a debtor, which is (i) a middle-sized or large company; and (ii) still solvent, but is likely to become insolvent within a year. Preventive restructuring covers only financial claims. In addition, there are two kinds of insolvency proceedings for legal persons under the Insolvency Act:

- Compulsory settlement (*postopek prisilne poravnave*), in which the debtor undergoes financial reorganization and can be released from parts of its debts. To initiate a compulsory settlement, a debtor needs to show that creditors will be repaid under better conditions than they would have been if

bankruptcy proceedings are initiated.

- Bankruptcy proceeding (*stečajni postopek*), which aims at the dissolution of the debtor, sale of the debtor's property and distribution of proceeds among the creditors.

Assumptions of Insolvency

Statutory assumptions of insolvency of a debtor are:

- Insolvency shall be the situation where the debtor:
  - within a longer period of time is not able to settle all its liabilities falling due within such a period of time; or
  - becomes insolvent.
- Unless it is proven otherwise, a debtor shall be considered continuously insolvent:
  - if it is a legal entity, entrepreneur or individual and:
    - the debtor is more than 2 (two) months in arrears with the payment of at least 20% of the debt shown in its last published balance sheet; or
    - the funds of the debtor's bank account(s) do not suffice for a fulfilment of enforcement orders for at least 60 (sixty) days without interruption or for 60 (sixty) out of 90 (ninety) days; or
    - the debtor has no bank account in Slovenia and did not fulfil its obligations under an enforcement order for more than 60 (sixty) days.
  - if it is subject to a confirmed compulsory settlement or simplified confirmed compulsory settlement and is in default with its obligations for more than 2 (two) months:
    - by paying its obligations on the grounds of confirmed compulsory settlement or simplified compulsory settlement; or
    - by paying its obligations to creditors with the rights to separate settlement, which occurred before the beginning of the proceeding of compulsory settlement or simplified compulsory settlement; or
    - by carrying out other financial restructuring measures, which are set out in the financial restructuring plan.
  - if he/she is a consumer and:
    - is delayed for more than 2 (two) months in meeting one or more liabilities in the total amount exceeding three times the amount of his/her salary, compensation or other remunerations received in a regular manner in periods not longer than 2 (two) months; or
    - is unemployed and does not receive any other regular remunerations and is delayed in meeting his/her liabilities for more than 2 (two) months, in an amount exceeding EUR 1,000.
- Unless proven otherwise, a debtor shall be considered insolvent if:
  - the value of its assets is smaller than the sum of its liabilities; or

  - the debtor's loss for the current financial year, together with the loss brought forward, exceeds half of the registered capital and this loss cannot be covered from net profit/reserves.

- The debtor is late with the payment of employees' salaries up to the amount of the minimum salary or with the payment of taxes and deductions from those salaries for more than 2 (two) months.

- The debtor is subject to a confirmed compulsory settlement or simplified compulsory settlement, which was finished with a final confirmation of compulsory settlement or simplified compulsory settlement, applies, if not proven otherwise.

Commencement of Insolvency Proceedings, Challenge of Debtor's Transactions and Liability of Shareholders

The debtor is required to initiate insolvency proceedings after insolvency occurs. The debtor may propose compulsory settlement if it provides proof that: (i) the financial restructuring activities will abolish the causes of insolvency; and (ii) the creditors will achieve satisfaction of their claims against the debtor, with equal treatment of all creditors' claims under better conditions than in case of bankruptcy proceedings. After the court renders a decision for the commencement of proceedings, the management of the company is required to deliver to the court a report regarding the company's financial restructuring plan and payments of the claims to the creditors on a regular basis.

The rights of creditors to initiate insolvency proceedings have been gradually expanded. If the debtor is insolvent, the creditors are entitled to file for bankruptcy proceedings. In addition, the latest amendments to the Insolvency Act introduced specific rules for medium-size and large companies that allow creditors having at least 20% of all financial claims against the debtor to initiate a compulsory settlement. The Public Guarantee and Maintenance Fund of the Republic of Slovenia is also entitled to file a bankruptcy petition on the basis of employees' claims against the insolvent debtor if the debtor is more than 2 (two) months late with its payments. Both bankruptcy and compulsory settlement proceedings can be initiated also by a personally liable shareholder of the debtor.

Within 6 (six) months after the commencement of bankruptcy proceedings the bankruptcy administrator and the creditors are entitled to challenge the validity of transactions for remuneration, entered into by the debtor within the last 12 (twelve) months prior to the filing of a bankruptcy petition and until the commencement of bankruptcy proceedings. In 2013, the period for the contestation of validity of gratuitous transactions was extended from 12 (twelve) to 36 (thirty six) months prior to the filing of a bankruptcy proposal. A challenge is possible if the consequence of the transaction resulted in a diminishment of the assets available to meet creditors' claims in the bankruptcy and/or if as a result of the transaction an individual creditor gained a more favourable position than other creditors.

The Insolvency Act contains also a provision determining that the deletion of a company from the Court Register does not affect the right of the creditors of the deleted company to claim repayments from the shareholders of the company on the basis of the rules on the piercing of the corporate veil. A creditor may also claim damages from the management or supervisory board of the company, even after the company has been removed from the court register.

The main novelties introduced into insolvency proceedings

According to Article 221.j the creditors' can adress a proposal for instituting compulsory settlement proceedings against the debtor which, according to Article 55 of the Slovenian Companies Act (ZGD-1), meets the criteria of a medium or large company. In this context, the issues surrounding the following topics are addressed: the formation of a creditors' committee in the compulsory settlement proceedings, appointment of the debtors' authorised representative, casting votes in the compulsory settlement proceedings and the delegation of powers to manage the debtors' business to creditors.

Briefly the main novelties introduced into insolvency proceedings by the amending act to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act ZFPPIPP-F, whose primary purpose was to enable the

framework for the restructuring of the Slovene economy. The amending Act raises some questions that might arise in the practice of insolvency proceedings and which will have to be decided in the courts' case-law.

5. 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

The recognition and enforcement of foreign judgments in Slovenia falls within the bounds of EU Regulation No. 1215/2012 ("Brussels I Bis Regulation"), EU Regulation No. 2201/2003 ("Brussels II Bis Regulation"), and EC Regulation No. 805/2004 ("European Enforcement Order for uncontested claims").

In the event that the said EC Regulations do not apply (because the parties are not from the EU or the subject matter is not covered by the scope of application of the Regulations), the procedure for recognition and enforcement of foreign judgments will be made in accordance with the applicable provisions of the Slovenian Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku*).

According to the Slovenian Private International Law and Procedure Act, a party seeking the recognition and enforcement of a foreign judgment must submit a request for recognition to the competent court in Slovenia. The request must include the original judgment or a certified copy, a certificate of finality of the judgment or a certified copy, and a certified translation of the judgment into Slovenian or another official language recognized by the Slovenian Courts.

Generally, the recognition or enforcement of the foreign judgment will not be granted if, upon objection of the party against which the foreign decision was issued, the court finds that:

- the due procedural rights of the individual against whom the enforcement is sought were breached;
- the subject matter of the judgment falls within the exclusive jurisdiction of the Slovenian courts;
- the jurisdiction of the foreign court was based solely on the nationality of the claimant, or on the assets of the claimant or personal service of the claim or any other document by which the litigation proceedings were commenced;

- the foreign court that granted the judgment did not comply with the bilateral agreement granting jurisdiction to the Slovenian courts;
- the case involved issues that were barred by *res judicata*, because the matter had previously been ruled upon by another court, and the issues were prohibited from being adjudicated again in a different court, based on issues that were previously judged;
- the effect of recognition and enforcement would be contrary to the public order of the Republic of Slovenia; or,
- if no reciprocity is established between the Republic of Slovenia and the foreign court which issued the award.

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
STANDARD CIVIL PROCEEDINGS		
APPROXIMATE DURATION	**Simple cases**: *First instance*: 11 months; *second instance*: 8 months; *extraordinary remedies*: 7 months. **Complex cases**: *First instance*: 2 or more years; *second instance*: 12 months; *extraordinary remedies*: 1 year or more.	In a Slovenian civil procedure, at the beginning of a dispute the court will offer mediation as an alternative dispute resolution method. The parties may give or refuse to give their consensus to participate in such proceeding.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)** *SIMPLE CASE* *COMPLEX CASE*	Court fees are based on the Court Fees Act and depend on the amount in dispute. Examples: ▪ Amount in dispute EUR 500,000: Court fees: EUR 6,525 in *first instance*; ▪ Amount in dispute EUR 1,000,000: Court fees: EUR 9,525 in *first instance*; ▪ Amount in dispute EUR 5,000,000: Court fees: EUR 36,225 in *first instance*. **Assumptions based on an amount in dispute of EUR 500,000**: *First instance*: Preparation of briefs, attendance on hearings, correspondence with client, in total: EUR 4,937.50; *second instance*: preparation of briefs, attendance at hearings, correspondence with client, in total: EUR 5,530; *extraordinary remedies*: preparation of briefs, attendance at hearings, correspondence with client, in total: EUR 6,320 **Assumptions based on an amount in dispute of EUR 5,000,000**: *First instance*: preparation of briefs, attendance at hearings, correspondence with client, in total: EUR 27,435.50; *second instance*: Preparation of briefs, attendance on hearings, correspondence with client, in total: EUR 30,730; *extraordinary remedies*: Preparation of briefs, attendance at hearings, correspondence with client, in total: EUR 35,120.	▪ The above-mentioned mediation proceedings are usually for free (paid for out of the state's budget). ▪ Commercial disputes are no longer free. An average commercial mediation costs approx. EUR 94 per party (excluding attorneys' fees). ▪ Litigation costs include court fees, attorneys' fees and expenses for expert opinions and witnesses. ▪ Court fees have to be paid upon filing the claim. ▪ Court fees in the first and second instances are to be paid by the party filing the appeal. ▪ If a claim is filed by a foreign party and enforcement of a decision on reimbursement of litigation costs is not safe-guarded, the foreign party can be ordered to pay a security deposit (subject to international conventions and EU Law). Security deposits cannot be ordered for EU citizens. ▪ Litigation costs are generally awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, reimbursement of attorney fees only has to be made on the basis of the fees provided for in the Act on Attorneys' Tariffs. ▪ The actual attorney fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are of no relevance to the opposing party.
JURY TRIALS	There are no civil jury trials in Slovenia.	
CLASS ACTIONS	There are no class actions in Slovenia.	
DOCUMENT PRODUCTION	Document production occurs within the standard civil procedure.	▪ There is no formal investigation in Slovenia.

		▪ Documents are subject to disclosure if the party itself referred to the document in the course of the proceedings, the party is obliged to hand the document over by substantive law, or the document is qualified as a "joint deed" between the parties. ▪ A court order to produce such documents is not enforceable. Failure to comply with the order can only be considered by the court in its evaluation of the case.
MANDATORY REPRESENTATION BY COUNSEL	Generally no.	▪ Mandatory presentation by Counsel is required only in proceedings concerning extraordinary remedies (*izredna pravna sredstva*). ▪ Should a party decide to be represented, it may empower: ▪ anyone with full contractual capacity (*poslovna sposobnost*) in front of a Municipal Court; and ▪ a Counsel (Attorney-at-Law) or a person with the bar exam in front of a District, High or Supreme Court.
PRO BONO SYSTEM	Yes. There is legal aid for people who cannot afford the costs of legal proceedings.	
BUSINESS CRIME		
APPROXIMATE DURATION	*First instance*: Most criminal proceedings take 1 year or between 1 and 2 years; *second instance*: Approx. 3 months.	▪ After the investigation has produced enough evidence for an indictment, an indictment hearing will take place. ▪ There is the possibility of conducting a plea bargaining agreement. ▪ After the indictment hearing, a trial date is set. It is encouraged for trials to not take more than one day; however, in complicated cases trials can last for months (usually because of various forms of more or less successful delaying techniques). ▪ The trials are public and their course is dictated by an inquisitorial judge who is required to find the material truth, although the criminal procedure, especially the main hearing consist of many elements of criminal adversarial procedure.

APPROXIMATE COSTS		▪ Litigation costs include the costs of an attorney and court fees. Both are borne by the state (as far as acknowledged by the judge and up to the statutory amounts) if a not-guilty verdict is rendered. ▪ In case of a conviction, the accused has to pay the court fee upon the finality of the verdict. ▪ It is not uncommon for the attorney and the client to agree on different remuneration, however, this has no bearing on what is being reimbursed.
COURT FEES	*First instance* fees which apply in case of final convictions to prison sentences: EUR 70 to EUR 1,400; *unsuccessful appellate proceedings*: EUR 35 to EUR 2,800.	
ATTORNEYS' FEES (NET)		
SIMPLE CASE	**Attorneys' Fees for the representation of an individual in a criminal case with the maximum statutory penalty of 3 years** (studying file, presence at investigate steps), representation in pre-indictment proceedings, defence in first instance, representation at main trial in first instance (one day in court), representation in second instance (no days in court): EUR 575 to EUR 695 (every additional day in court costs from EUR 120 to EUR 240).	
COMPLEX CASE	**Attorneys' Fees for representation of an individual in a criminal case with the maximum statutory penalty of 15 years**: EUR 600 to EUR 740 (every additional day in court costs from EUR 140 to EUR 280).	
JURY TRIALS	There are no criminal jury trials in Slovenia.	
CLASS ACTIONS	There are no class actions in Slovenia.	
DOCUMENT PRODUCTION	Both parties can present and suggest evidence. The court might produce evidence *proprio motu*.	▪ Slovenian criminal trials are mixed; combining both inquisitorial and inquisitorial elements of criminal trial. Which means that while both parties can make suggestions as to what evidence to use (e.g., whom to call as witness), the judge is free to accept or deny suggestions by both parties. He/she can also gather evidence *proprio motu*. ▪ When deciding, the judge is not bound by any evidentiary rules and can decide at his/her own discretion how much weight to attach to individual pieces of evidence.
MANDATORY REPRESENTATION BY COUNSEL	Depending on the mental and physical state of the accused and the maximum statutory penalty imposed for a crime, representation by counsel becomes mandatory either from the very first hearing or later on during the proceedings.	Representation by a Counsel is not mandatory, except in the following cases: ▪ from the first hearing if the suspect/accused is deaf, mute, or otherwise incapable of defending him or herself; ▪ from the first hearing if the maximum statutory penalty is 30 years or life imprisonment; ▪ from the first hearing if prolonged arrest could be imposed;

		▪ if, at the first hearing before the investigating judge, the public prosecutor announces that he/she will prosecute the suspect and ask for arrest or another measure the purpose of which is to ensure the suspect's/accused's presence during trial, prevent repetition of the crime and to ensure successful conduct of the proceedings, until the judge has decided upon the request for such a measure; ▪ during the entire time that measures for the deprivation of liberty are implied; ▪ when being served the indictment for a crime the statutory maximum penalty for which is 8 years or more; ▪ while engaging in plea bargaining.
PRO BONO SYSTEM	Yes. There is legal aid for people who cannot afford the costs of legal proceedings.	
PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	Generally, a decision on a request for a preliminary injunction is rendered within 1 week	
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)** *SIMPLE CASE* *COMPLEX CASE*	Court fees for a preliminary injunction amount to EUR 16, regardless of the disputed amount. **Assumptions based on an amount in dispute of EUR 1,000,000**: Only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent: *first instance*: EUR 892.50; *second instance*: EUR 1,785. **Assumptions based on an amount in dispute of EUR 1,000,000**: Only the request for a preliminary injunction is filed, with a hearing: *first instance*: EUR 1,785; *second instance*: EUR 3,570.	
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 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.

	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:	▪ 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.	
ATTORNEYS' FEES (NET)		
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.	
DOCUMENT PRODUCTION	Very limited. Document production is only allowed according to the applicable arbitration rules.	
ENFORCEMENT OF FOREIGN JUDGMENTS AND 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.	▪ Under EC Regulation 44/2001, the party seeking recognition/ enforcement must submit a copy of the judgment which should be accompanied by a Certificate of Authenticity issued either by the court that rendered the judgment or by another competent institution of the state of origin. ▪ To avoid any delays, attaching a certified translation of the judgment is highly recommended. ▪ Judgments that fall outside the scope of application of the EC Regulation must be submitted in the original or in a copy issued by the court that rendered the judgment. A certified translation of the judgment must be submitted.

		▪ 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.	
INSOLVENCY PROCEEDINGS		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	Creditors should generally file their claims within three months after the insolvency proceeding begins.	▪ The commencement of insolvency proceedings is published on the webpage http://www.ajpes.si/eObjave/ ▪ On the webpage, all the relevant periods (e.g. for filing of claims, for appeals) are set.
APPROXIMATE DURATION	1 year to several years; in very complex cases, duration of more than 10 years is possible.	
APPROXIMATE COSTS		
COURT FEES	**Assumptions:** Claim filed by a creditor in the amount of EUR 500,000: court fees amount to EUR 2,000.	
ATTORNEYS' FEES (NET)		
COMPULSORY SETTLEMENT PROCEEDINGS	Claimed amount is EUR 500,000, representation of creditor in preliminary proceeding and main proceeding: approx. EUR 2,970. Claimed amount is EUR 500,000, representation of debtor in preliminary proceeding and main proceeding: approx. EUR 7,900.	
BANKRUPTCY PROCEEDINGS	Claimed amount is EUR 500,000, representation of creditor in preliminary proceeding and main proceeding: approx. EUR 2,970. Claimed amount is EUR 500,000, representation of debtor in preliminary proceeding and main proceeding: approx. EUR 3,950.	

This chapter was written by Žiga Dolhar.

MARKUS BRUCKMÜLLER
Partner

Wolf Theiss, Slovenia

T. +386 1 438 00 00
markus.bruckmueller@wolftheiss.com

ŽIGA DOLHAR
Associate

Wolf Theiss, Slovenia

T. +386 1 438 00 00
ziga.dolhar@wolftheiss.com

WOLF THEISS

UKRAINE

1. THE LEGAL SYSTEM

The Ukrainian legal system is based on codified principles of civil law. In Ukraine disputes may be resolved through four types of court proceedings: (i) civil; (ii) commercial; (iii) administrative; and (iv) criminal. Recent legislative changes also introduce separate proceedings for adjudication of IP and anticorruption cases, but no procedural acts governing such proceedings have been enacted yet.

The procedural rules for conducting the relevant proceedings are established by the relevant codes of Ukraine: the Civil Procedure Code of Ukraine No. 1618-IV, dated 18 March 2004, the Commercial Procedure Code of Ukraine No. 1798-XII, dated 6 November 1991, the Code of Administrative Proceedings of Ukraine No. 2747-IV, dated 6 July 2005, and the Criminal Procedure Code of Ukraine No. 4651-VI, dated 13 April 2012.

The Ukrainian court system is composed of courts of constitutional jurisdiction and general jurisdiction.

Constitutional jurisdiction in Ukraine is exercised exclusively by the Constitutional Court of Ukraine, which is authorized to consider cases *inter alia* on the interpretation of the Constitution of Ukraine, on the compliance with the Constitution of Ukraine of statutes and regulations issued/passed by Ukrainian official bodies (the Parliament, the President, the Cabinet of Ministers), etc.

The courts of general jurisdiction are authorized to consider civil, commercial, administrative, and criminal cases as well as cases on administrative offences. The system of courts of general jurisdiction consists of:

- first instance courts, being the local common courts and specialized courts (i.e., local commercial and administrative courts);
- second instance courts, being the appellate common courts and appellate specialized courts;
- the Higher IP Court and the Higher Anticorruption Court - being the high specialized courts responsible for adjudicating these specific type of cases as the first instance court (both courts have been recently introduced and are not yet functional); and
- the highest instance court, being the Supreme Court.

Generally, cases on civil matters (including labour, alimony and child custody), administrative offences (i.e. minor, non-criminal offences) and criminal matters are first heard by local common courts. These courts have territorial jurisdiction over comparatively small administrative territories. They are the courts of first instance and their decisions are subject to appeal to common courts of appeal. The decisions of courts of appeal are subject to appeal (so-called cassation appeal) to the Supreme Court (namely, its chambers called the Civil Cassation Court and the Criminal Cassation Court).

Disputes with respect to commercial matters involving companies and other legal entities as well as individual entrepreneurs are considered by commercial courts. Local commercial courts have territorial jurisdiction over disputes in the *oblasts* (the Ukrainian provinces). There is a separate commercial court in the city of Kyiv.

Usually, the jurisdiction of the commercial courts of appeal covers the first instance commercial courts located in several adjacent oblasts. The decision of local commercial courts can be appealed to the designated commercial court of appeal. The Supreme Court (its chamber called the Commercial Cassation Court) is the final level of appeal (cassation) of the commercial courts.

The jurisdiction of administrative courts covers public administrative disputes with respect to different legal acts of state authorities and/or related to their power and authority (save for administrative offences, as provided for by the Code on Administrative Offences of Ukraine, and criminal cases). Decisions of the local administrative courts may first be appealed to appellate administrative courts, and then to the Supreme Court (its chamber called the Administrative Cassation Court), which is the final appeal (cassation) court level for administrative disputes.

The Supreme Court is the highest judicial body within the system of courts of general jurisdiction. The Supreme Court acts as a final cassation body for Ukrainian courts of general jurisdiction and consists of the following chambers: (i) the Great Chamber of the Supreme Court (in certain cases this acts as appeal/cassation instance for other chambers of the Supreme Court, analyses and summarizes legal positions of the Supreme Court); (ii) the Administrative Cassation Court; (iii) the Commercial Cassation Court; (iv) the Criminal Cassation Court; and (v) the Civil Cassation Court.

Although judicial precedents are not officially binding on Ukrainian courts and are not the source of law, starting from July 2010, decisions of the Supreme Court of Ukraine rendered upon conflicting applications by lower courts of the same legal provisions have binding effect on state bodies and state officials and must be followed by the Ukrainian courts of lower instances. Furthermore, the Supreme Court, as well as lower specialized courts, regularly issue their interpretations and recommendations on court practice for the purpose of ensuring uniformity in the application and interpretation of the law by Ukrainian courts. As a matter of practice, these interpretations and recommendations are usually taken into account and followed by lower courts in Ukraine.

2. LITIGATION

A lawsuit is initiated by filing a claim. The court at which a claim is filed verifies whether the submitted claim meets all formal requirements and, provided it does meet the requirements, issues a court ruling accepting the claim into consideration (i.e. initiates proceedings in the case) and sets the first hearing date. Usually, a court requires a defendant to provide a statement of defence stipulating whether the defendant admits the claim and, if not, to provide its objections; the claimant may in its turn respond to the defendant's objections, etc. Such statement of defence may or may not be provided subject to the defendant's discretion. Obviously, a defendant that is interested in presenting its position to the court will provide a statement of defence. The defendant may also file a counterclaim.

Following the filing of the claim and the statement of defence, preliminary proceedings lasting up to 60 (sixty) days (in certain cases up to 90 (ninety) days) shall commence and the preliminary hearing shall be scheduled. The purpose of the preliminary proceedings is to initially consider the scope and details of the claim and the relief sought, to obtain all written pleadings from the parties, to file counterclaims (if any), to identify individuals and/or legal entities that should participate in the trial, to identify relevant facts that need to be established, to specify the list of evidence, and, if needed, to obtain such evidence, to secure the evidence and/or the claim. At a preliminary court hearing the court also sets the date of the hearing at which the merits of the case will be considered. There is no preliminary stage in certain types of cases (such as labour law cases or "insignificant cases") – proceedings there start with the consideration of the merits of the case.

Upon completion of the preliminary proceedings the court will decide to either (i) close the proceedings in the case; (ii) leave the claim without consideration; or (iii) close the preliminary proceedings and set the date for the first hearing on the merits.

The consideration of the merits of the claim should commence no later than 60 (sixty) days following the initiation of proceedings in the case and should last no more than 30 (thirty) days. The courts, especially in commercial proceedings (unless the case at hand is complicated or involves multiple parties), do tend to meet this requirement. When it comes to other proceedings, a court case consideration can sometimes be a lengthy process. Several months to up to several years may elapse before a final decision is issued.

At the first hearing, after addressing certain procedural/technical issues (i.e., the verification of the parties involved and the powers of their representatives as well as an announcement of the panel of judges or sole judge and an explanation of the procedural rights of the parties), the court considers the parties' applications and motions. A procedural ruling will be made in respect to each application and/or motion.

After considering the parties' motions, the court begins with its consideration of the merits of the case and the parties may present their legal positions and statements. The claimant (plaintiff) is the first to present its position

and claims; with the respondent following with its position and objection. The parties also have the right to pose questions to one another. At court hearings the court examines the evidence presented by the parties and the parties may comment upon the evidence presented.

A court case may involve several court hearings depending on the complexity and nature of the lawsuit. The hearing of the case is concluded by the court issuing a court decision (judgment).

If one of the parties fails to attend a court hearing, the court has discretion to reschedule the hearing for another date. Subsequent failures to attend court hearings may have the following consequences: (i) if the plaintiff fails to attend (and the court is not notified that the case may be heard without the claimant attending), the court may dismiss the statement of claim without consideration; and, (ii) if the defendant is absent, the court renders a decision based solely on the evidence and arguments already contained in the case. A party has the right to ask a court to conduct hearings in its absence.

A court may issue an order for injunctive relief either prior to the submission of a claim or after the court opens the proceedings in accordance with the procedure provided by the relevant procedural code of Ukraine.

Litigation costs include court fees, parties' legal fees, expenditures of witnesses, experts, etc. The court fees depend on the subject of the claim (whether it is a monetary or a non-monetary claim, etc.), the type of application (a statement of claim or a motion), and on the type of court (civil, administrative, commercial and instance level).

For example, in a commercial proceeding, the court fee for the submission of a monetary statement of claim equals 1.5% of the amount of the claim, but may not be less than 1 subsistence level (approximately EUR 50) and more than 350 subsistence levels (approximately EUR 18,000).

Court fees are to be paid prior to the filing of a statement of claim, an appeal, a cassation claim, or any other procedural document to which a fee applies. In certain cases, when the amount of fees may not be known prior to filing the above documents, the fees (or the balance of the fees) may be paid at a later stage. Security for costs is available for the respondent.

Court fees are awarded according to the general principle that the losing party pays (i.e. a party is awarded court fees pro rata to the extent the court decision is rendered in its favour); however, courts do have and may apply a certain discretion in this respect.

3. BUSINESS CRIME

As is the situation in most countries, business crime is a matter of increasing concern in Ukraine. Considering the growth of the digital business environment, cybercrime will continue to increase with particular fraud hotspots likely to be Ukraine's governmental agencies as well as banks, other financial institutions, insurers, and retailers. Other frequently committed business crimes include corruption, accounting fraud, tax evasion, money laundering, copyright related crimes and smuggling of goods.

Ukraine has stepped up its attempts to develop its criminal legislation to prevent and to fight business related crimes. Developments and progress in this regard have also been significantly affected by international pressure on Ukraine.

Ukraine is a member of the Group of States against Corruption (GRECO), which is the Council of Europe's anti-corruption monitoring body. Further, as a member of the Council of Europe, Ukraine and its law and practice are subject to the influence of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

Ukraine currently recognizes criminal liability both for individuals and legal entities (including companies). The criminal liability for legal entities was introduced only recently (in 2014) in the course of the implementation of the recommendations of GRECO and MONEYVAL, as well as the implementation of a number of international treaties to which Ukraine is a party. Under Ukrainian criminal law, legal entities may be liable, *inter alia*, for crimes of money laundering, acts of terrorism and illegal warfare, war propaganda, genocide, various illegal actions with weapons, violent seizure of state power, bribery and improper influence on officials of companies and state bodies, abuse of power, kidnapping or hostage taking committed by authorized representatives of such legal entities on their behalf or in the interest of such legal entities.

The current Criminal Procedure Code of Ukraine ("CPC") came into effect on 20 November 2012 and replaced the prior law which had been in effect since the 1960's. Criminal proceedings include the following stages:

Pre-trial investigation

In general, criminal proceedings are initiated by (i) the reporting of a criminal offence to an investigator or a prosecutor; or (ii) an investigator or a prosecutor discovers the fact of crime commission. Investigation shall be officially commenced within 24 (twenty four) hours upon the report of or discovery of a crime.

The way of initiation of criminal proceeding depends on whether a particular crime is subject to public, private or public-private accusation. For example, bringing criminal charges on business crimes such as the illegal use of trademarks and commercial names, interference with lawful commercial activity, causing bankruptcy, unlawful collection, use or disclosure of commercial or banking secret information, unlawful use of insider information, unlawful actions with electronic data, abuse of official authority (in case the above actions haven't caused any aggravating consequences) are matters of private accusation and can be initiated exclusively upon a complaint by an injured party.

During the pre-trial investigation an investigator undertakes all the measures necessary to discover all elements of the crime. After a pre-trial investigation is finalized and subject to sufficient evidence of crime, the case is handed over to a prosecutor for the prosecutor to verify and approve the conclusion of a formal criminal charge, and to send the case to court.

Judicial proceedings

During the course of judicial proceedings and court hearings, courts directly examine all the evidence in the case, question the accused persons and witnesses, analyse the conclusions of experts, review and analyse protocols and other documents, and consider other evidence relevant to the case. Such direct evidence examination by courts, rather than by investigation authorities at the pre-trial investigation stage, was introduced by the CPC and aims to overcome the possibly inappropriate influence on investigation authorities during the pre-trial investigation.

Both the accusing side (prosecutor, victim or civil claimant and their legal representatives) and the defence side (the accused, defence attorney or civil defendant and legal representative) enjoy equal procedural rights under the law, including the right to file objections, submit evidence and to appeal procedural decisions and the final court verdict. A trial by jury was introduced by the CPC and is now available for an accused (at his/her discretion) facing a potential life sentence. However, most crimes punishable by a life sentence are not business crimes, though such crimes may accompany business crimes in certain situations.

In addition, the CPC introduced a significant new concept in Ukrainian criminal procedure which is the opportunity to conclude (i) a reconciliation agreement between the suspect (or accused) and the victim in which the parties agree upon certain compensation; and (ii) a plea bargain, i.e. an agreement between the prosecutor and a suspect (or an accused) on the admission of guilt in return for the prosecution arguing for a more lenient sentence. Either of these agreements can be entered into at the pre-trial stage or during the judicial proceeding, but in any case before the court begins to deliberate its verdict.

Challenging a verdict of a court

A verdict of a court of first instance can be appealed within 30 (thirty) days after being passed. A court of appeal is limited by the issues raised in the appeal and can only review the case beyond these limits in exceptional circumstances and provided that this does not worsen the situation for the accused.

Verdicts and other decisions of courts of appeal may be appealed further within a 3 (three) month period to the court of cassation. The court of cassation examines the case within the limits of the cassation appeal, does not have the right to examine evidence and consider certain circumstances of the case which were decided by the lower courts. Instead, the court of cassation verifies whether the lower courts applied procedural and substantial legal provisions in a correct way.

In addition, a court verdict that has already entered into legal force may be reviewed if new circumstances important for the case were subsequently discovered that may warrant overturning it.

The key authorities involved in criminal proceedings are the investigation authorities, prosecutor offices and courts.

Investigator

As mentioned above, an investigator has the right to initiate criminal proceedings in cases of public accusation. An investigator is a key authority at the pre-trial investigation stage, during which he or she undertakes all the measures necessary to discover all elements of the crime, including finding evidence, verifying existing evidence (including that provided by the victim), verifying the grounds for the crime, identifying a person(s) who committed the crime, etc. An investigator must also undertake investigation measures that can prove the innocence of the suspect and other measures requested by the defence side.

Pre-trial investigation is generally handled by police investigators, although certain types of crimes may be investigated by other, more specialized agencies, such as, *inter alia,* the Security Service of Ukraine, which conducts investigations into acts of terrorism and crimes against state security, and the tax authorities which conduct investigations of tax-related crimes.

Prosecutor

Similar to an investigator, a prosecutor also has the right to initiate criminal proceedings in cases of public accusation. At the pre-trial investigation stage, a prosecutor generally controls the investigation process and approves the conclusion of a formal criminal charge before sending the case to court.

At the judicial proceedings stage, a prosecutor generally represents state interests during a trial. If the state prosecutor decides not to proceed with the prosecution of the alleged perpetrator the victim may assume prosecution in the case.

Court

Although control over the investigation process is carried out by a prosecutor, with the effect of the new CPC certain control functions at this stage were transferred to courts. In particular, specially appointed investigative judges in the courts of general jurisdiction consider complaints filed against any illegal actions or omissions committed by investigators or prosecutors.

In addition, a prior approval by the investigative judge is required for certain investigation actions and restraint measures, including the arrest of a suspect, seizure of property, imposition of monetary penalties, bringing a person to court, suspension of an accused person from his or her job, granting to an investigator temporary access to certain objects or documents, temporary suspension of an accused person from using a special right (e.g., right to conduct entrepreneurial activity, driver's license, etc.), and temporary retrieval of property.

When the investigation is finalized and provided there is sufficient evidence of crime, the case is sent for judicial proceedings. Criminal cases in Ukraine are considered by courts of general jurisdiction.

Business crimes frequently entail not only criminal but also civil liability. A victim or a suffering person has the right to compensation for damage suffered as a consequence of a crime. For this, a filing of a civil lawsuit within the same criminal proceedings or a separate lawsuit within separate civil proceedings should be conducted by the victim.

Criminal courts may issue preliminary injunctions against defendants. A civil claimant has the right to request an imposition of a property seizure in order to secure a civil claim within a criminal case or within separate civil proceedings.

If a victim opts for separate civil law proceedings (rather than bringing a civil lawsuit within the same criminal proceedings), the guilt of the person that committed a crime, if established by a verdict in the criminal proceedings, does not have to be proven again in the civil proceeding.

Pre-trial investigation against an individual normally should not exceed 2 (two) months but may be extended in certain circumstances up to a maximum of 12 (twelve) months. There is no precise term during which the trial proceedings should be finished, but the CPC requires that such term should be reasonable. Depending on the complexity of the case, the trial may take from 1 (one) month to 1 (one) year or even longer.

There are no fees for reporting criminal offenses or initiating criminal proceedings. There are, however, the following procedural expenses:

- the cost of legal services; a suspect/accused bears the cost for his/her defence attorney, except where a defence attorney is appointed to represent the suspect/accused at the state's expense as:
  - this is obligatory but the suspect/accused failed to retain a defence attorney;
  - this is requested by the investigator, prosecutor or investigative judge at their discretion; or
  - the suspect/accused is unable to pay for a counsel.
- the cost of legal representation of the victim, civil claimant and civil defendant is borne by those parties individually;
- costs related to transportation to the place of pre-trial investigation or court proceedings (e.g. transportation, accommodation costs, daily allowances and earnings lost) incurred by a suspect/accused or their defence attorney is borne by the suspect/accused. Such costs incurred by legal representatives of other participants in the criminal proceeding are borne by the persons whom they represent; and
- costs related to the involvement of witnesses, experts, translators and specialists are generally borne by the party that requested their involvement in the criminal case. In certain cases such cost may be borne by the state, in particular when an expert examination was undertaken at the order of the investigative judge or of the court.

In the case of a conviction verdict, the court charges the convicted person for all the procedural expenses incurred by the victim.

4. INSOLVENCY

Insolvency proceedings in Ukraine are mainly regulated by the Law "On Restoring a Debtor's Solvency or Declaring It Bankrupt" No. 2343-XII dated 14 May 1992, as amended (the "Insolvency Law").

Under the Insolvency Law, bankruptcy is defined as a court-recognized failure of a debtor to restore its solvency by means of financial rehabilitation or by way of conclusion of a settlement agreement and to satisfy creditors' claims through means other than the liquidation of a debtor.

Insolvency matters involving debtors incorporated in Ukraine are handled by commercial courts, which consider filings solely against corporate entities and individuals who are registered as private entrepreneurs. In order to initiate a procedure, a creditor or a debtor must submit an application with a set of supporting documents to the commercial court that has territorial jurisdiction over the debtor.

A court must open an insolvency proceeding once the total amount of undisputed claims against the debtor is equal to or exceeds 300 minimal salaries (i.e., around EUR 31,000) and these claims are at least 3 (three) months overdue.

The Insolvency Law provides for the following types of procedures which may be initiated by a court against a debtor: asset management proceedings; conclusion of an amicable settlement agreement; financial rehabilitation (sanitation) proceedings, and bankruptcy (liquidation).

A court must consider an insolvency application and pass a ruling in which such application is accepted or reject the application and return it to the applicant. Such a ruling must be made not later than 5 (five) days from the date of receipt of an application by the court.

In case of acceptance of an application, the court must determine the date for the preparatory hearing (which should be held not later than 14 (fourteen) days after the date of the acceptance of the insolvency application). At the preparatory hearing the court examines whether there are indeed sufficient grounds for an insolvency proceeding, and, if the court is satisfied with the sufficiency of the grounds, opens the insolvency procedure. If a court comes to the conclusion that there are insufficient grounds for the opening of the insolvency proceeding, it rejects the application.

At the preparatory hearing a court can also take a decision on introducing asset management over the debtor, moratorium on settlement of other creditors› claims, appointment of an insolvency administrator, etc. The court should also make the necessary arrangements to make an announcement on the initiation of the insolvency proceeding.

During the asset management procedure, the troubled company and its activities are first scrutinised and thereafter a likelihood of its salvaging is evaluated. It is an important phase of an insolvency procedure since, depending on its results, the debtor is further subject to either rehabilitation or liquidation procedures. If rehabilitation is unsuccessful, the debtor will face insolvency liquidation resulting in the seizure of the debtor-company and the collection of all its assets in order to satisfy the claims of as many creditors as possible.

The Insolvency Law requires that during the asset management procedure an asset manager examines the submitted creditors' claims and recognizes or rejects them. Further, all claims submitted by creditors, including those which are rejected by the debtor or other creditors, are considered by the court in the preliminary hearing. A preliminary hearing should be held within 2 (two) months and 10 (ten) days (or 3 (three) months in exceptional cases) of the preparatory hearing. Those creditors› claims that are approved by the court are included into the creditors› claims register. The register will serve as the basis for the calculation of the votes at the creditors' meeting/committee as well as for claims settlement (restructuring) in the insolvency procedure.

The asset management procedure may last no longer than 115 (one hundred and fifteen) days with the possibility for a court to grant one extension for up to 2 (two) months. Upon the expiration of this term, a court, depending on the particular case, can make one of the following decisions: (i) a decision on opening rehabilitation proceedings (which may last no longer than 6 (six) months with a possibility for the court to extend such period in exceptional circumstances for another 12 (twelve) months); (ii) a decision on opening liquidation proceedings (which may last no longer than 12 (twelve) months with no possibility for the court to extend such period); or (iii) a decision on termination of the insolvency proceedings. Additionally, during the insolvency proceedings the parties may negotiate the terms of the amicable settlement of the insolvency related claims (at any stage of the insolvency proceedings).

An insolvency administrator is one of the central figures participating in the insolvency proceeding and may act in one of three capacities: as an asset manager (during the asset management procedure), as a rehabilitation manager (at the stage of the debtor's rehabilitation), or as a liquidator (at the stage of the debtor's liquidation). The insolvency administrator's key responsibilities are specified by the Insolvency Law and generally include supervising the actions of the management of the debtor and the debtor's assets during the insolvency proceedings.

In order to locate all creditors, an announcement about the insolvency proceeding should be made on the official website of the High Commercial Court of Ukraine. Careful monitoring of official announcements is of significant importance for the creditors whose claims matured before the opening of the insolvency procedure (i.e., so-called pre-insolvency creditors). Claims of such competitive creditors must be filed with a commercial court within 30 (thirty) days after the public announcement is made. Failure to timely file a claim will result in changing the ranking of the claim to the lowest priority claim. Such creditors will not be treated as competitive creditors and, therefore, will not be allowed to vote at the creditors› meetings and be elected to the creditors' committee.

Cross-border insolvency

Under the Insolvency Law, foreign creditors have the same rights as Ukrainian creditors and participate in Ukrainian insolvency proceedings based on the general rules and provisions of the Insolvency Law.

Subject to the existence of a relevant treaty between Ukraine and a particular country, foreign parties may apply to Ukrainian courts for freezing orders and for the recognition of foreign insolvency proceedings in Ukraine. Ukrainian courts are obliged to cooperate with foreign insolvency courts and provide relevant legal assistance in relation to any such foreign insolvency proceedings. However, for these rules to become fully operational, the further development of legislative framework will be required.

5. 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.

6. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

Foreign court judgments and 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 judgments and awards may be recognized and enforced based on the reciprocity principle, which is presumed (unless proven otherwise).

Ukraine has entered into a number of conventions, treaties, and agreements on legal assistance in civil matters (mainly with former members of the USSR or post-socialist countries) providing for recognition and enforcement of foreign court judgments. Further, Ukraine is a party to the Commonwealth of Independent States (CIS) 1992 Treaty “On Procedure of Settling Disputes with Regard to Carrying out of Commercial Activities” and the 1993 CIS Convention “On Legal Assistance and Legal Relations in Civil, Family and Criminal Matters”, providing for the procedure and assistance in the recognition and enforcement of judgments in CIS countries.

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 foreign judgment taking effect/adoption of the arbitral award.

In order to enforce a foreign judgment, a claimant has to apply to a Ukrainian court (having jurisdiction over the territory where a debtor is located, or if that debtor’s location is unknown or it is located outside of Ukraine, over the territory where the property is located) in order to obtain a relevant enforcement order. An application for

enforcement must contain details of the debtor and the person seeking enforcement, and reasons for seeking the enforcement.

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.

An application for enforcement of a foreign judgment must be accompanied by a duly certified power of attorney, the text of the foreign judgment, a document certifying that the judgment became effective, evidence of due notification of the debtor about the relevant court proceedings, and a document detailing the procedure and stages for enforcement of the judgment. Documents in a foreign language must be accompanied by a translation into Ukrainian.

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 468 of the Civil Procedure Code, a state court must reject the application for enforcement of a foreign judgment on the basis provided in the applicable international treaty ratified by Ukraine. If the applicable international treaty does not list such basis, the application is subject to rejection in the following cases:

- if the foreign judgment has not yet become binding;
- if a party against which the judgment is ruled was not duly notified of the case in consideration;
- the judgment was rendered in a case which falls within the exclusive competence of Ukrainian courts;
- if there is a judgment rendered by Ukrainian courts with respect to the same subject matter between the same parties or there is a similar court proceeding pending in Ukraine as of the time that proceedings were initiated in the foreign court;
- if the time period for enforcement of the foreign judgment provided for by an effective international treaty has expired;
- if the dispute may not be subject to court consideration;
- if the enforcement of the judgment may threaten the national interests of Ukraine;
- if the foreign judgement in the case between the same parties and concerning the same subject matter has already been recognized in Ukraine and its enforcement was authorized; or
- in other cases as provided by law.

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 (depending on the subject matter of the case) enforcement service for compulsory enforcement. The debtor may file a complaint with the relevant court against officers of the enforcement service responsible for enforcement of the foreign judgment / arbitral award.

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
STANDARD CIVIL PROCEEDINGS[1]		
APPROXIMATE DURATION	**Standard Civil and Commercial Proceedings**: *first instance*: 3 months; *second and third instances*: 2 months if a final decision is appealed, and 30 days if an interim court ruling on procedural issues is appealed.	▪ As a matter of practice, litigation, especially civil proceedings, may last much longer than the statutory designated terms. ▪ Courts must justify extensions of procedural terms.
APPROXIMATE COSTS **COURT FEES**	**Standard Civil Proceedings Court Fees** constitute 1.5% of the amount in dispute (for monetary claims of companies), but not less than 1 living wage (approx. EUR 50) and not more than 350 living wages (approx. EUR 18,000). **Commercial Proceedings Court Fees** constitute 1.5% of the amount in dispute (for monetary claims) but not less than 1 living wage (approx. EUR 50) and not more than 350 living wages (approx. EUR 18,000).	Both Standard Civil Proceedings Court Fees and Commercial Proceedings Court Fees are based on the Law of Ukraine "On Court Duty".

1 The subject matter of Commercial Proceedings is settlement of disputes involving commercial entities/ individual entrepreneurs.

ATTORNEYS' FEES (NET)	**Attorneys' Fees**: *first instance*: preparation of a lawsuit, four court hearings, preparation for the hearings, preparation of procedural documents (e.g., position papers), correspondence with the client: In total EUR 10,000 to EUR 25,000; *second instance*: preparation of the appeal and procedural documents, participation in up to 2 court hearings: EUR 10,000 to EUR 20,000; *third instance*: preparation of the appeal and procedural documents, participation in up to 2 court hearings: EUR 8,000 to EUR 20,000.	
JURY TRIALS	A trial by jury is available for the accused (upon his/her request) facing a potential life sentence.	The practice of jury trials is still developing as the jury trial option was introduced into the Criminal Procedure Code of Ukraine only in late 2012.
CLASS ACTIONS	Limited.	▪ The Ukrainian Civil and Commercial Procedure Codes do not provide for a special proceeding for collective redress. ▪ Traditional tools of multiparty practice as consolidation of proceedings are applied. ▪ Parties may also opt for filing a collective lawsuit with several plaintiffs.
DOCUMENT PRODUCTION	Limited.	There is no formal discovery in Ukraine.
MANDATORY REPRESENTATION BY COUNSEL	Limited.	▪ A party may participate in proceedings either personally or via its representative. ▪ In criminal proceedings representation by counsel is mandatory in a number of cases.
PRO BONO SYSTEM	Yes. There is legal aid for people who cannot afford the costs of legal proceedings.	
BUSINESS CRIME		
APPROXIMATE DURATION	General rules of criminal proceedings apply to business crimes and include the pre-trial stage and the stage of judicial proceedings	Criminal proceedings for a business crime may be initiated either by reporting the criminal offence to investigators of competent authorities or by a prosecutor, or by the discovery of a crime by an investigator or a prosecutor, depending on whether the crime is subject to public, private or public-private accusation.

APPROXIMATE COSTS	There are no fees for reporting criminal offenses or initiating criminal proceedings. The following procedural expenses are recognized as related to criminal proceedings: ▪ legal services costs; ▪ costs related to transportation to the place of pre-trial investigation or court proceedings; ▪ costs related to the involvement of witnesses, experts, translators and specialists; and ▪ costs related to the delivery and storage of various objects and documents necessary for criminal proceedings. The services of a defense attorney provided to the suspect by the state in cases prescribed by law are free of charge. The fees for a defense attorney in other cases may vary significantly depending on a lot of things. A rough estimate for a simple case would be from EUR 2,000 to EUR 10,000 for representation at pretrial investigation and from EUR 5,000 to EUR 20,000 for representation at court hearings in the first instance court. In the case of a conviction verdict, the court will charge the accused for all of the procedural expenses incurred by the victim.	
JURY TRIALS	A trial by jury was introduced by the new Criminal Procedure Code of Ukraine and is now available for the accused (upon his/her request) facing a potential life sentence.	▪ If the accused opts for a jury trial, he or she must file a motion during the preliminary court hearing requiring a trial by jury. ▪ Although a life sentence is generally not envisaged for business crimes, it may apply in certain cases if a business crime is committed simultaneously with a more serious crime, such as murder.
CLASS ACTIONS	Criminal proceedings may be initiated with respect to several suspects. There can also be several victims of the crime. However, if several victims seek to bring civil claims, each victim needs to bring his/her own separate civil claim.	Investigation case files with respect to several persons suspected of committing the same crime as well as investigation case files on several crimes suspected of being committed by one person can be united into one case either at the pre-trial stage or at the judicial proceedings stage.
DOCUMENT PRODUCTION	Limited.	The investigator must undertake investigation measures that he/she deems appropriate as well as measures requested by the defence side.
MANDATORY REPRESENTATION BY COUNSEL	Legal representation of the suspect and by a defence attorney is obligatory in specific cases envisaged by the Criminal Procedure Code of Ukraine or if requested by the investigator, prosecutor or investigative judge.	▪ If the state prosecutor declines to prosecute, the victim may assume prosecution. ▪ The plaintiff's side is represented by the state prosecutor.
PRO BONO SYSTEM	Yes. A defence attorney must be provided to the suspect free of charge when, e.g., the participation of a defence attorney is obligatory or is requested by the investigator, prosecutor or investigative judge and the suspect failed to involve one, or when the suspect cannot afford a defence attorney. It should be noted that unlike the previous code, the new Criminal Procedure Code requires that only a certified attorney (advocate) should act as defence counsel in criminal proceedings.	

PRELIMINARY INJUNCTION PROCEEDINGS		
APPROXIMATE DURATION	A preliminary injunction may be requested in civil and in commercial proceedings. The Civil and Commercial Procedure Codes of Ukraine provide that a preliminary injunction may be requested by the applicant in order to secure the provision of evidence to the court during the proceedings and enforcement of the final decision in the case. The court must consider the request within 2 days after the submission of the relevant application. Such preliminary injunction may be obtained either before commencement or at any stage of the court proceedings.	▪ Together with a request for a preliminary injunction, the applicant must provide evidence that the preliminary injunction is necessary and prove that non-application of the preliminary injunction may result in the violation of the claimant's rights and interests and may complicate enforcement of the decision in the relevant court case or make it impossible. ▪ The court may request additional explanations or documents.
APPROXIMATE COSTS **COURT FEES** **ATTORNEYS' FEES (NET)**	In order to request a preliminary injunction, the applicant must pay a court duty amounting to 0.5 of the minimum wage, i.e., approx. EUR 25. **Assumption**: The request for a preliminary injunction is filed and the court renders its decision *ex parte* (which, as a matter of practice, often happens): EUR 2,500 to EUR 6,000.	The court may require the applicant to provide a pledge as security of the relevant request (counter-injunction) which should be commensurate to the injunctive relief awarded. Such counter-injunctive measures are usually implemented through the claimant depositing a certain amount of funds (bank guarantee, surety, etc.) with the court.
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;	▪ The arbitration fee payable for non-monetary claims amounts to USD 1,800. ▪ Arbitration proceedings may also involve additional expenses.

ATTORNEYS' FEES (NET)	▪ 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.	
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 post-hearing 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 JUDGMENTS AND ARBITRAL AWARDS		
APPROXIMATE DURATION	Ukrainian law provides for the following stages of enforcement procedure: ▪ submission of application on recognition and enforcement of a foreign judgment 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.	▪ In order to recognize and enforce a foreign judgment or 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.

	The duration of enforcement proceedings depends mainly on whether the debtor has enforceable assets and whether the enforcement measures are opposed by the debtor.	
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.	
INSOLVENCY PROCEEDINGS		
FILING OF INSOLVENCY CLAIMS BY CREDITORS	A court must open an insolvency proceeding once the total amount of undisputed claims against the debtor is equal to or exceeds 300 minimal salaries (i.e., approx. EUR 30,000) and these claims are overdue for at least a three-month term.	In order to locate all creditors, an announcement must be placed on the official web page of the High Commercial Court of Ukraine.
APPROXIMATE DURATION	The approximate duration of the insolvency proceedings is from one to several years. Particular time limits with respect to each procedural stage of insolvency proceedings are provided for by the Insolvency Law.	
APPROXIMATE COSTS		Ukrainian law also establishes a court duty for other procedural actions/applications submitted within the insolvency proceedings. The amounts of such duties are relatively small.
COURT FEES	The court duty for the submission of the application regarding the initiation of insolvency proceedings to the local commercial court amounts to 10 living wages (approx. EUR 500).	
ATTORNEYS' FEES (NET)	The attorneys' fees for filing an insolvency claim and representation in court may range from EUR 12,000 to EUR 30,000.	

This chapter was written by Taras Dumych and Sergii Zheka.

TARAS DUMYCH
Partner

Wolf Theiss, Ukraine

T. +380 44 3777 517
taras.dumych@wolftheiss.com

SERGII ZHEKA
Senior Associate

Wolf Theiss, Ukraine

T. +380 44 3777 517
sergii.zheka@wolftheiss.com

CONTACT INFORMATION

For further information about Wolf Theiss or *The Wolf Theiss Guide to: Dispute Resolution In Central, Eastern & Southeastern Europe*, please contact:

CLEMENS TRAUTTENBERG
Partner, Head of the Disputes Practice Group, Wolf Theiss

WOLF THEISS

Schubertring 6
A - 1010 Vienna

T. +43 1 51510 5750
clemens.trauttenberg@wolftheiss.com

STEFAN RIEGLER
Partner, Head of Arbitration, Wolf Theiss

WOLF THEISS

Schubertring 6
A - 1010 Vienna

T. +43 1 51510 5470
stefan.riegler@wolftheiss.com

OUR OFFICES

ALBANIA
Murat Toptani Street
AL - 1001 Tirana
T. +355 4 2274 521
E. **tirana@wolftheiss.com**

AUSTRIA
Schubertring 6
A - 1010 Vienna
T. +43 1 515 10
E. **wien@wolftheiss.com**

BOSNIA AND HERZEGOVINA
Zmaja od Bosne 7
BiH - 71 000 Sarajevo
T. + 387 33 953 444
E. **sarajevo@wolftheiss.com**

BULGARIA
29 Atanas Dukov Street
BG - Sofia 1407
T. +359 2 8613 700
E. **sofia@wolftheiss.com**

CROATIA
Ivana Lučića 2a/19
HR - 10 000 Zagreb
T. +385 1 4925 400
E. **zagreb@wolftheiss.com**

CZECH REPUBLIC
Pobřežni 12
CZ - 186 00 Praha 8
T. +420 234 765 111
E. **praha@wolftheiss.com**

HUNGARY
Kálvin tér 12-13
H - 1085 Budapest
T. +36 1 4848 800
E. **budapest@wolftheiss.com**

POLAND
ul. Mokotowska 49
PL - 00-542 Warszawa
T. +48 22 378 8900
E. **warszawa@wolftheiss.com**

ROMANIA
4 Vasile Alecsandri, The Landmark, Building A
RO – 010639 Bucharest
T. +40 21 308 8100
E. **bucuresti@wolftheiss.com**

SERBIA
Bulevar Mihajla Pupina 6/18
SRB - 11000 Novi Beograd
T. +381 11 330 2900
E. **beograd@wolftheiss.com**

SLOVAK REPUBLIC
Aupark Tower, Einsteinova 24
SK - 851 01 Bratislava
T. +421 2 591 012 40
E. **bratislava@wolftheiss.com**

SLOVENIA
Bleiweisova cesta 30
SI - 1000 Ljubljana
T. +386 1 438 00 00
E. **ljubljana@wolftheiss.com**

UKRAINE
9, Khoryva Str.
UA - 04071 Kyiv
T. +38 044 377 75 00
E. **kiev@wolftheiss.com**

COOPERATING OFFICE

KOSOVO
Pallaska & Associates L.L.C.
Bulevardi Nëna Terezë No. 47/5
XKX - 10000 Prishtina
T. +381 38 244888
E. info@pallaska-associates.org
W. www. pallaska-associates.org

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