International Arbitration

in Central, Eastern & Southeastern Europe

Wolf Theiss

International Arbitration in Central, Eastern & Southeastern Europe

Foreword

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

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

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

Stefan Riegler
Partner, Head of the Disputes Practice Group

Venus Valentina Wong
Partner, Co-Head of the Arbitration Group

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

This Wolf Theiss Guide serves as a practical handbook on the general principles and features of the basic legislation and procedures in the countries included in the publication.

While every effort has been made to ensure that all information is accurate and up-to-date, it bears reminding that legal markets are rapidly changing, with laws and regulations frequently revised either by legislative amendments or by administrative interpretation. Therefore, this Guide should be used only for general reference purposes and should not be relied upon as definitive when planning or implementing irreversible legal decisions. The information contained in this Guide is not to be used as a substitute for specific legal advice.

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Albania

Arbitration

Arbitration proceedings in the Republic of Albania are governed by Part II, Title IV, Articles 400–439 of the Albanian Code of Civil Procedure (CPC) and Albanian Law no 52/2023 (Arbitration Law).

The Albanian Code of Civil Procedure contains provisions regulating domestic arbitration proceedings (i.e. when all parties have their residence or legal seat in Albania, and when the seat of arbitration is within this territory), but does not apply to international arbitration proceedings. On the other hand, the recently adopted Arbitration Law, which is based on the UNCITRAL Model Law, provides specific rules applicable to domestic and international arbitration proceedings when the seat of arbitration is in Albania.

Generally, arbitration agreements can be entered into 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 and paternity disputes, are not arbitrable. An arbitration clause is deemed valid if it is made in writing and if it forms part of the main agreement or a separate agreement referring to the main agreement. An arbitration agreement is also deemed to be made in writing if it is included in an act signed by the parties, or if an arbitration agreement is documented by the exchange of letters, faxes, telegrams, emails or other means of communication or data recording capable of providing evidence of the agreement, or if included in a document sent by one party to the other or sent by a third party to both parties without being contested by both or either of the parties within a reasonable time. Where an arbitration agreement clause is included within a contract or agreement, this clause constitutes a separate agreement that is independent of the other terms of the contract. Invalidity of the contract does not *ipso jure* invalidate the arbitration agreement.

Where one party is a consumer as defined in relevant consumer protection laws, the arbitration agreement must be signed personally by the parties and must be separate and independent from the main agreement.

The arbitration clause should specify that any disputes between the parties will be settled by arbitration. In addition, the arbitration clause should indicate the parties to the agreement, the scope of the agreement, and ideally, the arbitral institution or how the arbitral tribunal will be composed (in case of *ad hoc* arbitration).

The parties are free to decide on most aspects of the arbitration proceedings, including the seat, language, substantive law and procedural rules of arbitration. If the parties fail to reach an agreement on the seat of arbitration, this will be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties. If the parties fail to reach an agreement on the language to be used in the arbitral proceedings, the arbitral tribunal will determine the language or languages to be used, taking into consideration the seat of arbitration and the language used in the arbitration agreement. The parties are also free to decide on the number of arbitrators (this must be an uneven number) and how they will be appointed. Arbitrators are appointed by the court if the parties fail to do so.

The arbitral tribunal can rule on whether it has jurisdiction to resolve a dispute and on any objections regarding the existence or validity of the arbitration agreement by way of a ruling. The plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense.

A recourse can be filed against such ruling to the district court where the seat of arbitration is located, within 30 days of the date of notification of the ruling. The arbitral tribunal can continue the arbitral proceedings and make an award while the matter is pending before the district court.

Each party may ask the court, before the composition of the arbitral tribunal, to grant an interim measure of protection if the applicant proves that irreparable harm is likely to result if the court does not order such a measure. 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. Interim measures granted by arbitral tribunals must always be enforced by the State courts. Unless otherwise agreed by the parties, the arbitral tribunal may grant interim measures at the request of a party if the requesting party provides written evidence that grave and irreparable harm could be caused if the measure is not ordered. The arbitral tribunal may ask the party to provide appropriate security in connection with the measure.

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.

A claimant may also request interim measures to preserve its rights in arbitration before bringing a claim before the arbitral tribunal. In this case, the court will give the claimant a period of not more than fifteen days to submit its request for arbitration. If the claimant does not submit a timely request for arbitration in a claim for which a security measure has already been granted by the court, the security measure is considered revoked. If the arbitral tribunal rejects the claim or if the arbitration proceedings are stayed, the arbitral tribunal must decide whether to lift the measure, which will in any case take effect when the decision to reject the claim or to stay the proceedings becomes final and irrevocable.

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal is made by majority of its members, unless otherwise agreed by the parties.

Arbitral awards are enforceable in the same way as court decisions. The courts may set aside arbitral awards only on limited grounds, more specifically where:

- a party to the arbitration agreement was under incapacity to act;
- the arbitration agreement was invalid under the law to which the parties subjected it;
- the parties were not properly notified on the appointment of an arbitrator or of the commencement of the arbitral proceeding or were otherwise unable to present their defense;
- wrongly upheld the jurisdiction of arbitral tribunal or denied jurisdiction;
- the arbitral tribunal exceeded the scope of the arbitration agreement or did not decide on one or more claims submitted to it;
- the composition of the arbitral tribunal or the arbitration procedure was not in compliance with the Arbitration Law or the arbitration agreement;
- the equality of the parties and their right to be heard has not been respected;
- one or more of the arbitrators were not impartial and independent; or
- there was an infringement of Albanian public order.

A request for setting aside must be filed with the Court of Appeal no later than 90 days after the arbitral award is notified. When asked to set aside an award, the Court of Appeal may, where appropriate and where so requested by a party, suspend the enforcement of the arbitral award if it considers that there might be a risk of serious and irreparable damage to the requesting party.

Enforcement of foreign arbitral awards

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

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

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	2–3 years	
Approximate costs		
Procedural costs	The procedural costs depend on whether a sole arbitrator or a three-member arbitral tribunal is appointed, on the complexity of the case and and on the administrative charges.	• The costs of arbitration depend on the arbitration agreement and the amount in dispute, volume of documents, number of witnesses, and whether expert opinions are required. The costs of arbitration also include the arbitrators' fees and administrative charges. • The arbitrators have wide discretion regarding the award of costs. The award of legal fees is not usually determined with reference to a statutory tariff. • Currently, there are no arbitration courts in Albania.

Document production	Limited.	
Virtual hearing	Not provided for.	
Emergency arbitration	Not provided for.	
Enforcement of foreign arbitral awards		
Approximate duration	The enforcement of arbitral awards varies depending on a series of factors including the identification of the debtors' assets, financial means, the response of the debtor, and the perseverance of the enforcement authorities in the fulfilment of their duties.	• For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof, and the original of the arbitration agreement or a duly certified copy thereof.
Approximate costs		
Court fees	Court fees range from EUR 45 up to 0.5% of the contractual amount in dispute.	

Law at first sight.

Sokol Nako
Partner
E sokol.nako@wolftheiss.com
T +355 4 2274 521

Jonida Braja Melani
Associate
E jonida.braja@wolftheiss.com
T +355 4 2274 521

Wolf Theiss Murat Toptani Street, Eurocol Business Center, 1001 Tirana, Albania
T +355 4 2274 521 **E** tirana@wolftheiss.com

International Arbitration in Central, Eastern & Southeastern Europe

Austria

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 the CEE/SEE region. The recognition of Vienna as a centre for international arbitration in the CEE/SEE region is reflected in the establishment of the CIETAC European Arbitration Centre in 2018 and of a regional office of the Permanent Court of Arbitration (PCA) in 2022. The establishment of the PCA office is based on an agreement concluded between the Austrian Federal Government and the PCA and adds another international organisation in Austria.

The legal status of Austria as a well-developed and reliable place for both domestic and international arbitration is safeguarded by its legal framework. Originally enacted in 1895, arbitration law in Austria was modernised in 2006 and then again in 2013, thereby rendering Austria as a "Model Law jurisdiction" according to the Model Law on International Commercial Arbitration of UNCITRAL. Austria is also a party to international treaties in the fields of commercial arbitration and investment arbitration: the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), the 1961 European Convention on International Commercial Arbitration (European Convention), the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) and approximately 47 bilateral investment treaties (currently in force). As regards the permissibility of intra-EU investment arbitration, Austria – in light of the case-law established by the CJEU's Achmea judgment – has mutually terminated all of its intra-EU bilateral investment treaties, by agreement with those other EU Member States. By contrast, Austria, for now, has not terminated or announced its intention to terminate the Energy Charter Treaty.

Arbitration in Austria is governed by the Austrian Arbitration Act (Chapter 6, Part 4 of the Austrian Code of Civil Procedure (ACCP), effectively Sections 577 et seq. ACCP). These provisions essentially define the prerequisites for arbitration, including the validity of arbitration agreements and the minimum standards that must be observed for a fair trial.

The Austrian Arbitration Act applies to arbitration proceedings initiated on or after 1 July 2006 and to arbitration agreements concluded on or after that date. Since the last major revision in 2013, the Austrian Supreme Court is the first and final instance

for the proceedings to set aside an arbitral award (except for matters relating to consumer protection and employment law), with a specialised chamber consisting of five Supreme Court judges hearing such cases. Furthermore, the revised ACCP also assigns all matters relating to the constitution of the arbitral tribunal (including the challenging and replacement of arbitrators) to this specialised chamber of the Supreme Court.

Generally, an arbitration agreement may be entered into 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;
- criminal law matters;
- tenancy matters, including disputes over the termination of apartment leases;
- claims relating to the Non-Profit Housing Act; and
- collective labour matters and social security law matters.

In addition, arbitration agreements relating to employment contracts and arbitration agreements between an entrepreneur and a consumer have stricter requirements as to form and content.

Subject to these special requirements for consumers and employees, the standard prerequisites for the valid conclusion of a legally binding arbitration agreement 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 may be done by referring to the rules of a specific arbitral institution, such as the VIAC (Vienna Rules) or the International Court of Arbitration of the International Chamber of Commerce (ICC).

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 should be three, with each party appointing one arbitrator and the two party-appointed arbitrators appointing the third arbitrator, who will serve as the chair of the arbitral tribunal. If (one of) the parties fail to appoint an arbitrator

or if the two party-appointed arbitrators fail to appoint a chair, either party may file a request with the Supreme Court so that it may make the necessary appointment. Austrian law requires arbitrators to be impartial and independent. The only other restriction that parties must observe is that serving 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 the arbitral tribunal is competent to issue interim protective measures, unless the parties have agreed otherwise. Any interim measures must be issued in writing. However, the arbitral tribunal may ask the requesting party to provide appropriate security prior to ordering interim measures. The arbitral tribunal's competence to issue interim protective measures does not affect or limit a party's right to ask 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 enforces such measures at the request of a party. Where an order for an interim measure provides for a means of protection that is not provided for by under Austrian law, the district court may nonetheless enforce such order, upon request, by means of the legal instrument under Austrian law which comes closest to the measure ordered by the arbitral tribunal.

It should be emphasised that 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 not provided for by Austrian law and an appropriate means that is provided for by Austrian law was not requested.

Upon request of a party, the district court may revoke the enforcement if:

- the term of the measure set by the arbitral tribunal has expired;
- the arbitral tribunal has set aside or limited the scope of the measure;
- a change in circumstances has made the order unnecessary (including where 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 setting aside arbitral awards (Section 611 ACCP). These grounds include:

- invalidity of the arbitration agreement and 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 claim to set aside an arbitral award must be filed within three months of the notification of the award.

Overall, the approach adopted by Austrian courts is in line with international arbitration standards and practice. This is based on the principle, acknowledged both by legal doctrine and the jurisprudence that arbitration is a method for resolving legal disputes which is equivalent to litigation before the State courts. Consequently, Austrian businesses are generally willing to enter into an arbitration agreement, especially in the context of international business transactions outside the European Judicial Area.

On 1 July 2021, VIAC revised both its arbitration rules (Vienna Rules) and its mediation rules (Vienna Mediation Rules). This came as a consequence of, among other things, the new Vienna Rules on Investment Arbitration and Mediation (Vienna Investment

Rules). These Vienna Investment Rules also came into effect on 1 July 2021 and provide a stand-alone investment arbitration and mediation framework that applies to disputes arising under a contract, treaty, statute or other instrument and involving a State, State-controlled entities or intergovernmental organisations.

The recent revisions of the Vienna Rules adapted the existing rules to new needs and developments in international arbitration. The new version of the Vienna Rules provides that VIAC has the authority to administer investment proceedings, to act as the appointing authority for *ad hoc* proceedings and to administer proceedings based on unilaterally foreseen arbitration agreements. In addition, the new rules now provide a definition of and provisions on third-party funding to ensure that arbitrators are independent and impartial, by way of appropriate disclosure proceedings. Further, the Vienna Rules now explicitly permit oral hearings to be conducted in person or by other means (such as video conferencing technology, for which VIAC has enacted its Vienna Protocol – A Practical Checklist for Remote Hearing). In addition, the Vienna Rules contain a time limit for arbitrators to render their award, which can be done no later than three months after the last hearing concerning the matters to be decided in the award or after the filing of the last authorised submission concerning such matters, whichever occurs later. The VIAC Secretary General can extend this time period.

Enforcement of foreign arbitral awards

Regarding the enforcement of foreign arbitral awards, Austria is party to the New York Convention without the reservations stipulated under that Convention. Applications for recognition and enforcement are usually combined with an application for execution before the competent district court. If the award debtor resists recognition and enforcement, the matter may be appealed to the second instance court and to the Supreme Court as the third and final instance court. Austria is also party to the European Convention. As a consequence of this two-fold international obligation, the award debtor would have to successfully invoke grounds for refusal under both Conventions as Article IX of the European Convention needs to be observed 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 ICSID Convention.

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The usual duration of arbitration proceedings is between 1 year and 2 years.	
Approximate costs		
Procedural costs	The procedural costs depend on whether a sole arbitrator or a three-member arbitral tribunal is appointed, the complexity of the case (e.g. number of parties) and the administrative charges. The following two estimates are based on the procedural costs under the Vienna Rules.	• The overall costs of arbitration (including lawyers' fees) largely depend on the complexity of the case (i.e. the length of the proceedings, the amount in dispute, the volume of documents, the number of witnesses and whether expert opinions are required). The costs of arbitration also include the arbitrators' fees and administrative charges. • The arbitrators usually have a large discretion regarding the awarding of costs. However, in practice the decision 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 of EUR 1,500, administrative fees of EUR 13,000 and sole arbitrator's fees of between EUR 29,800 and EUR 41,720.	

Complex case	**<u>Assumption:</u> sole arbitrator and an amount in dispute of EUR 10,000,000.** Procedural costs: registration fee of EUR 1,500; administrative fees of EUR 30,500 and sole arbitrator's fees of between EUR 83,100 and EUR 116,340. In the case of an arbitral tribunal with three arbitrators, the arbitrators' fees may triple.
Document production	Limited. In practice, there is often a reference to the International Bar Association Rules on the Taking of Evidence to be used as guidance.
Virtual hearing	While the ACCP does not contain provisions on virtual hearings, the revised Vienna Rules permit oral hearings to be conducted by "other means", which includes virtual hearings. Furthermore, in a decision on challenging arbitrators, the Austrian Supreme Court addressed the issue of virtual hearings in international arbitration. It stated in an obiter dictum that the use of video-technology as such does not violate the right to be heard even if one party objects to it (Austrian Supreme Court 23 July 2020, 18 ONc 3/20s).
Emergency arbitration	Neither the ACCP nor the Vienna Rules contain provisions on emergency arbitration.

Enforcement of foreign arbitral awards

Approximate duration	1 to 2 months until a decision on recognition and enforcement is rendered in the first instance. 3 to 6 months if the decision is appealed.	• For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof, and only upon request of the court, the original of the arbitration agreement or a duly certified copy thereof.
Approximate costs		
Court fees	For a declaration of enforceability, no court fees have to be paid. For specific execution actions, court fees are determined based on the Court Fees Act.	

Law at first sight.

Stefan Riegler
Partner
E stefan.riegler@wolftheiss.com
T +43 1 51510 5470

Venus Valentina Wong
Partner
E valentina.wong@wolftheiss.com
T +43 1 51510 5755

Alexander Zollner
Counsel
E alexander.zollner@wolftheiss.com
T +43 1 51510 5471

Wolf Theiss Schubertring 6, 1010 Vienna, Austria
T +43 1 51510 E vienna@wolftheiss.com

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International Arbitration in Central, Eastern & Southeastern Europe

Bosnia & Herzegovina

Arbitration

Bosnia and Herzegovina (BiH) is a country consisting of two separate entities – the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS) – and an autonomous district under the direct sovereignty of the state – Brčko District of BiH (BDBiH). Different legal regimes apply in each of these areas, although certain matters are regulated by State laws which apply in all parts of the country.

The rules regulating arbitration are contained in the civil procedural laws of FBiH, RS and BDBiH, namely: Articles 434–453 of the FBiH Code of Civil Procedure; Articles 434–453 of the RS Code of Civil Procedure; and Articles 427–446 of the BDBiH Code of Civil Procedure. Each of these acts apply to both domestic and international arbitration proceedings. However, for arbitration proceedings to be qualified as international, a sufficient foreign element must exist. Since rules regulating arbitration under these acts are harmonised, the overview further provided below refers to FBiH, RS and BDBiH, unless otherwise indicated herein, while the reference to "BiH law" refers to laws in force in BiH either on a state or FBiH, RS and/or BDBiH level, as they may apply to the relevant matter in question.

There is only one major arbitration institution in BiH established at the State level, namely the Arbitration Court attached to the BiH Foreign Trade Chamber, which was established in 2003. This institution administers both domestic commercial disputes (i.e. disputes which involve parties that reside in BiH only) and commercial disputes between a BiH resident and a foreign party. Institutional arbitration is regulated by the Arbitration Rules of the Arbitration Court attached to the Foreign Trade Chamber of BiH (adopted in 2003, with amendments from 2023).

As a general rule, parties can submit to arbitration all disputes that do not fall within the exclusive competence of BiH courts (e.g. disputes relating to real estates located in BiH) and all disputes relating to rights of which a party may freely dispose. The latter excludes claims involving family law. Furthermore, claims in administrative proceedings that cannot be brought before the courts but rather are decided by State agencies are not arbitrable.

Arbitration can be initiated only on the basis of a written agreement signed by both parties. Any written proof of the parties' agreement, such as fax or postal correspondence is considered sufficient. Furthermore, an arbitration agreement is considered valid if the respondent in an arbitration does not contest the existence of such an agreement. An arbitration agreement may be part of a contract or contained in a separate document, such as in general terms and conditions which apply to the

legal relationship between the parties. There are no specific content requirements for arbitration agreements. However, the agreement should state the parties to the agreement and the subject matter of the agreement and should clearly indicate whether a single dispute or all disputes that may arise from or in connection with a certain contractual legal relationship will be subject to arbitration.

Parties are generally free to decide on the language of arbitration and on the procedural rules that will govern the proceedings. They may also decide on the number and method for selecting the arbitrators. There must be an odd number of arbitrators.

In general, the parties are also free to designate the seat of arbitration. However, in case of purely domestic arbitration (i.e. in which only parties seated in BiH are involved), the seat of arbitration must be in BiH.

Unless otherwise agreed by the parties, an arbitral tribunal may order interim measures against the other party to the arbitration agreement and such interim measures are generally enforced by the national courts. However, the law is silent on whether a party may request the issuance of interim measure from the competent national court (before or during the arbitration proceedings). Based on prevailing court practice, such motions for interim measures are generally rejected by the national courts upon objection of the opposing party on the grounds that the national court lacks jurisdiction to decide on the merits of the claim which would be secured by such interim measure.

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 where:

- the arbitration agreement is invalid or without effect, or no arbitration agreement exists;
- the composition of the arbitral tribunal or the rendering of the award was not in accordance with the agreement between the parties;
- the award does not contain a reasoning or is unsigned;
- the award was made in a dispute not falling within the terms of the statement of claim or contains decisions on matters beyond the scope of the statement of claim;

- the award is ambiguous or contradictory;
- the arbitral award contradicts the Constitution of BiH and one of the FBiH Constitution, RS Constitution or BDBiH Statute (depending on the territorial jurisdiction of the court competent to decide on a setting aside request); or
- there are grounds for retrial in accordance with the applicable Code of Civil Procedure.

Enforcement of foreign arbitral awards

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: (i) will be applied to the recognition and enforcement of only those awards made in the territory of another contracting State, (ii) will be applied only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under national law and (iii) will be applied only relating to those arbitral awards that have been 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, which regulate the reciprocal relationships of BiH and the respective country in relation to the provision of legal aid, civil and criminal proceedings and other matters including the recognition and enforcement of arbitral awards. A foreign arbitral award must be recognised by the competent BiH courts before it can be enforced in BiH. In line with BiH law, the following conditions for recognition must be met:

- the subject matter of the foreign arbitral award must not be exempt from arbitration according to BiH law;
- the subject matter of the foreign arbitral award must not be under the exclusive jurisdiction of the BiH courts or other authorities;
- the foreign arbitral award must not contradict the principles set forth in the BiH Constitution and/or in the FBiH Constitution or RS Constitution or BDBiH Statutes (depending on the territorial jurisdiction of the court competent to decide on the request for the recognition of the relevant foreign arbitral award) and/or of public order;

- reciprocity of recognition must exist between BiH and the country of origin of the foreign arbitral award;
- the relevant parties must have concluded a written arbitration agreement, which must be valid and binding;
- the party against which the arbitral award has been rendered must have been duly informed of the appointment of the arbitral tribunal and of the arbitration proceedings and that party must not have been hindered from participating in the arbitration proceedings;
- the composition of the arbitral tribunal and the arbitration proceedings must have been in accordance with the provisions of the arbitration agreement and the arbitration rules;
- the arbitral tribunal must not have exceeded its authority determined by the arbitration agreement;
- the foreign arbitral award must be final and enforceable; and
- the foreign arbitral award must not be ambiguous or contradictory.

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	Arbitration proceedings are seldom used in BiH and the practice is very limited. Therefore, it is very difficult to give any estimates as to the duration, costs and other matters relevant for arbitration proceedings.	• Institutional arbitration is regulated by the Arbitration Rules of the Arbitration Court attached to the Foreign Trade Chamber of BiH (adopted in 2003). • To date, only a very limited number of arbitration proceedings have been initiated and conducted 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 Arbitration Court 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: BAM 10,080 (approx. EUR 5,040); Sole arbitrator's fee: BAM 16,800 (approx. EUR 8,400). Total: BAM 26,880 (approx. EUR 13,440).
Complex case	**Assumption: sole arbitrator appointed and an amount in dispute of EUR 10,000,000:** Administrative costs: BAM 14,400 (EUR 7,200); Sole arbitrator's fee: BAM 24,000 (approx. EUR 12,000). Total: BAM 38,400 (approx. EUR 19,200). In case of an arbitral tribunal, the arbitrators' costs will be multiplied by the number of arbitrators, minus 20%.
Document production	Unless agreed otherwise by the parties, the laws regulating civil proceedings apply. These provide for limited document production. However, rules on collection of evidence provided by the RS, FBiH and BDBiH apply
Virtual hearing	The laws regulating civil proceedings and the Arbitration Rules of the Arbitration Court attached to the Foreign Trade Chamber of BiH do not include provisions for virtual hearings.
Emergency arbitration	The laws regulating civil proceedings and the Arbitration Rules of the Arbitration Court attached to the Foreign Trade Chamber of BiH do not include provisions for emergency arbitration.

Enforcement of foreign arbitral awards		
Approximate duration	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. Up to one year. Longer if appealed.	Under the BiH Law on Conflict of Law Rules, the following must be submitted along with the motion for recognition/ execution of a foreign arbitral award: • original or certified copy of the foreign arbitral award for which recognition is sought, including certification from the competent authority that the award has become legally valid and binding under the law of the country where the award was rendered; • official translation of the foreign arbitral award; and • proof that the court fee has been paid.
Approximate costs		
Court fees	**Canton Sarajevo:** BAM 100 (approx. EUR 50) for motions for recognition; BAM 200 (approx. EUR 100) for filing an appeal; fees for court decisions depend on the amount in dispute and are calculated in the same way as in civil proceedings. **RS:** fees for motions for recognition and court fees for appeals depend on the amount in dispute and are calculated in the same way as in civil proceedings.	

Law at first sight.

Content provided by our Bosnian office

Zmaja od Bosne 7, 71000 Sarajevo, Bosnia and Herzegovina
T +387 33 953 444 **E** sarajevo@wolftheiss.com

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International Arbitration
in Central, Eastern &
Southeastern Europe

Bulgaria

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). The ICAA is largely based on the UNCITRAL Model law (1985) and it applies to all commercial disputes with the exception of disputes for property rights and possession over real estate, rights under an employment agreement or maintenance obligations (alimony), which all fall within the jurisdiction of the Bulgarian State Courts, and disputes where consumers are party to the dispute (i.e. where disputes are not arbitrable). Despite its name, and with the exception of certain provisions, the ICAA also applies to domestic arbitration (i.e. 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 deals with commercial disputes, irrespective of whether the seat or domicile of one or both parties is in Bulgaria or abroad. It has its own Rules of Arbitration, which are available in Bulgarian, English, French, Russian and German, and maintains two lists of arbitrators (one for domestic arbitrations and one for international arbitrations). The last amendments to the Rules of Arbitration were enacted on 1 February 2022.

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 by written communication between the parties. The arbitration agreement may be included as a provision in a contract between the parties, in which case it is to 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 either in or before its reply to the statement of claim.

Arbitral tribunals composed under the BCCI Rules of Arbitration 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 to secure the rights of the requesting party. When ordering such measures, the arbitral tribunal may order the claimant to deposit a security. However, if a party refuses to cooperate, the interim measures granted by an arbitral tribunal are not directly enforceable and assistance from State courts must be requested.

Arbitral tribunals may not order any interlocutory relief or provisional measures against 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 directly enforceable. Only Bulgarian courts have the competence to order such interim measures in the territory of Bulgaria.

Arbitral decisions and awards are binding and enforceable. Arbitral awards rendered in arbitrations seated in Bulgaria can be challenged before the Supreme Court of Cassation (setting aside procedure) only on the limited grounds explicitly and limitatively listed in the ICAA. Relevant violations include where:

- a party to the arbitration agreement had no legal capacity to act at the time of signing;
- the arbitration agreement was not validly entered into or was deemed to be null and void pursuant to the applicable law chosen by the parties;
- a party was not given proper notice 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 was not in accordance with the agreement between the parties; 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.

Enforcement of foreign arbitral awards

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

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The usual duration of arbitration proceedings is between 6 and 18 months.	
Approximate costs		
	Costs include the arbitration court fee, costs of experts and attorneys' fees.	
Procedural costs	The procedural costs depend on the arbitration court and its fee schedule, the parties' agreement, and the complexity and interests of the case. The arbitration institutions distinguish between domestic and international arbitration cases.	
Document production	Limited.	
Virtual hearing	Yes (under the BCCI Rules), No explicit provision under the ICAA.	
Emergency arbitration	No (neither under the ICAA nor under the BCCI Rules).	

Enforcement of foreign arbitral awards		
Approximate duration	1 to 3 months until a decision on recognition and enforcement is rendered in the first instance; 3 to 9 months if the decision is appealed.	• The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.
Approximate costs		
Court fees	Application for recognition/ enforcement: BGN 50 (approx. EUR 25).	• 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.

Law at first sight.

Anna Rizova
Partner
E anna.rizova@wolftheiss.com
T +359 2 8613 700

Radoslav Mikov
Partner
E radoslav.mikov@wolftheiss.com
T +359 2 8613719

Oleg Temnikov
Counsel
E oleg.temnikov@wolftheiss.com
T +359 2 8613 700

Wolf Theiss Office Park Expo 2000, Phase IV, floor 1, 55 Nikola Vaptsarov Blvd, 1407 Sofia, Bulgaria
T +359 2 8613 700 E sofia@wolftheiss.com

International Arbitration
in Central, Eastern &
Southeastern Europe

Croatia

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 and international arbitration, depending upon the seat of arbitration. The parties may choose international arbitration (i.e. arbitration proceedings having its seat outside Croatia) only in disputes which are classified as international disputes. 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 a legal entity established under foreign law.

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 Arbitration (Zagreb Rules), governing both domestic and international arbitration.

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 arbitration proceedings having their seat outside Croatia – in addition to the requirement concerning the type of disputed rights – the parties may not submit disputes that fall within the exclusive competence of the Croatian courts, such as disputes revolving around the rights related to 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 (save for consumer disputes, where a separate written instrument is required), 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 that provide a written record of the agreement. Most importantly, there is no requirement for the written instrument to contain the parties' signatures. In addition, the law provides that the written form requirement of the arbitration agreement is satisfied if (i) an offer to enter into an arbitration agreement is made in writing and the other party does not object to such written offer or (ii) a written

confirmation of an orally made arbitration agreement is sent to the other party and the other party does not object to such written confirmation. 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 an explicit reference in a bill of lading to an arbitration clause contained in a shipping contract. 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. In contrast, in domestic arbitration proceedings (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) 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 the arbitration proceedings, for an interim measure of protection.

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

Under Croatian laws, there are only limited grounds for setting aside an arbitral award, in cases where:

- no arbitration agreement has been concluded, or the arbitration agreement is invalid;
- a party to the arbitration agreement was not legally capable to enter into the arbitration agreement and to be a party to the arbitration proceedings, or a party was not adequately represented;

- a party was not given proper notice of the commencement of the arbitration proceedings, or was otherwise unable to present its case before the arbitral tribunal 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 (partial annulment possible);
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the law or the agreement of the parties, and such procedural error might have impacted the content of the arbitral award;
- the award does not adequately or appropriately state the reasoning (unless this has been waived by the parties or the award is rendered based on the parties' settlement), or the award is not properly 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.

The claim for challenging the award must be filed before the Commercial Court in Zagreb or the County Court in Zagreb, depending on the nature of the underlying dispute, within three months from the notification of the award.

Enforcement of foreign arbitral awards

Croatia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (by succession of ex-Yugoslavia, as of 8 October 1991), with the reservations that the Convention will only apply to (i) the recognition and enforcement of awards made in the territory of another contracting State, (ii) differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law, and (iii) 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, since 8 October 1991) and the Washington Convention of 1966 on the Settlement of Investment Disputes between States and Nationals of other States (in force from 22 October 1998).

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The usual duration of arbitration proceedings is between 1 and 3 years.	
Approximate costs		
Procedural costs	The following two estimates are based on the procedural costs of the Rules of Arbitration of the Permanent Arbitration Court of the Croatian Chamber of Commerce (Zagreb Rules) and do not include material costs of proceedings (e.g. expert witnesses, interpretation and translation costs and other expenditures). **Assumption: sole arbitrator appointed and an amount in dispute of EUR 1,000,000:** registration fee of EUR 1,000, administrative fees of approx. EUR 3,210 and sole arbitrator's fees of approx. EUR 10,000. **Assumption: sole arbitrator appointed and an amount in dispute of EUR 10,000,000:** Registration fee of EUR 1,500; administrative fees of approx. EUR 9,690 and sole arbitrator's fees of approx. EUR 30,300. In case of an arbitral tribunal with three arbitrators, the administrative fees and the arbitrators' fees may be double or even triple.	• The procedural costs depend on whether a sole arbitrator or a three-member arbitral tribunal is appointed, the complexity of the case and the administrative charges. • The costs of arbitration largely depend on the arbitration agreement and the amount in dispute, the number of parties, the volume of documents, the number of witnesses and whether expert opinions are required. The costs of arbitration also include arbitrators' fees and administrative charges. • The arbitrators usually have large discretion regarding the award of costs. In practice, however, the awarding of costs often depends on the outcome of the case. The awarding of legal fees is usually not determined by reference to a statutory tariff.

Document production	Limited. Usually, the International Bar Association Rules on the Taking of Evidence are applied which provide for a narrow document production.
Virtual hearing	Neither the Croatian Arbitration Act nor the Zagreb Rules contain provisions explicitly permitting virtual hearings. In general, the Permanent Arbitration Court of the Croatian Chamber of Commerce maintains the position that conducting virtual hearings satisfies the requirements of oral proceedings and is permissible when both parties mutually consent. The sole arbitrator or the tribunal (as the case may be), however, holds discretionary authority to decide how virtual hearings should be conducted, taking into consideration their alignment with the principle of equal treatment of parties and assessing whether this method provides the parties with the opportunity to articulate their claims and arguments and properly present their case before the arbitrator / the tribunal.
Emergency arbitration	The Zagreb Rules established a framework for emergency arbitration, allowing parties to seek interim measures before the constitution of an arbitral tribunal. In exceptionally urgent matters, such measures can be ordered even before the claim is filed with the Permanent Arbitration Court of the Croatian Chamber of Commerce. In such instances, the award on the interim measure includes a specified time limit for filing the statement of claim. Failure to meet this deadline results in the rescission of the interim measure. Emergency interim measures are ordered by the president of the Permanent Arbitration Court of the Croatian Chamber of Commerce, or by an arbitrator temporarily appointed by the president. These measures encompass various forms of relief that align with standard interim measures determined by an already-appointed arbitral tribunal. This includes specific actions to maintain or establish a certain status of the matter, prohibiting specific actions, seizing or entrusting items to safekeeping, temporarily regulating the relationship between the parties, ordering parties to make guarantee deposits and conducting the preservation of evidence. Typically, the measures are ordered after providing the other party with an opportunity to express their opinion, unless the applicant provides plausible reasons for an immediate order rendered in *ex parte* proceedings. If an interim measure is ordered without obtaining the opposing party's opinion or comments, the applicant must submit a statement acknowledging their liability for any harm resulting from non-disclosure of all information relevant to the decision they knew about or should have known about.

Enforcement of foreign arbitral awards		
Approximate duration	1 to 3 months until a decision on recognition (if applicable) and enforcement is rendered in the first instance; 3 to 5 months if the decision is appealed. The duration of enforcement proceedings depends mainly on whether the debtor has enforceable assets and whether enforcement measures are opposed by the debtor.	• For the enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
Approximate costs		
Court fees	A court fee of EUR 33 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 the claim.	

Law at first sight.

Luka Tadić-Čolić
Partner
E luka.tadic-colic@wolftheiss.com
T +385 1 4925 400

Borna Dejanović
Senior Associate
E borna.dejanovic@wolftheiss.com
T +385 1 4925 419

Wolf Theiss Ivana Lučića 2a/19th, 10 000 Zagreb, Croatia
T +385 1 4925 400 **E** zagreb@wolftheiss.com

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International Arbitration in Central, Eastern & Southeastern Europe

Czech Republic

Arbitration

Arbitration has a long-established presence in the Czech Republic and is one of the popular methods of dispute resolution. The first arbitral institution, the Arbitration Court attached to the Economic and Agricultural Chambers of the Czech Republic, dates back to 1949.

Arbitration in the Czech Republic is governed by the Czech Arbitration Act, which applies to domestic and international arbitration proceedings with their seat in the Czech Republic. Under the Arbitration Act, most proprietary disputes which may be resolved by settlement are arbitrable. However, disputes concerning consumer rights, certain insolvency claims, enforcement, personal or marital status, and family or administrative law matters, are not arbitrable.

The parties may agree to resolve their existing or future disputes in arbitration by either concluding a separate arbitration agreement (*compromis*) or incorporating an arbitration clause into their contract. To be valid and enforceable, an agreement to arbitrate between parties must be made in writing, including by means of electronic communication. The agreement does not need to be signed, but the document must make clear the identity of the parties and their intent to agree on arbitration.

In their arbitration agreement, the parties may specify the number of arbitrators, how they will be appointed, the seat of arbitration, the language of proceedings and the arbitral institution that will administer the arbitration. The parties may also specify the procedural and substantive law applicable to the arbitration and to their dispute.

The Arbitration Act does not impose stringent requirements on who may serve as arbitrator and the parties are free to select anyone who satisfies the basic requirements of age of majority, full legal capacity and no criminal record. The arbitrators are bound by a duty of impartiality and independence. Upon accepting their appointment, they must inform the parties about all relevant circumstances that might affect their function. The parties can generally challenge an arbitrator's appointment, albeit not later than the first oral hearing. Thereafter, they can only challenge an appointment if they prove there are grounds which deserve special consideration.

Arbitral tribunals do not have the authority to order interim protection measures or to grant injunctions in support of the enforcement of arbitral awards. Under Article 22 of the Arbitration Act, the courts can grant these measures or injunctions

upon the application of either party if circumstances arise, either before or during the commencement of arbitration proceedings, which are likely to jeopardise the enforcement of the arbitral award.

Generally, arbitral awards are enforceable by the court or by private (self-employed) bailiffs. If enforcement through a court bailiff is sought, the awards are enforceable in the same manner as court judgments. Pursuant to recent case-law, however, any application for enforcement by a private bailiff must be preceded by separate court proceedings for recognition of an award.

Arbitral awards can only rarely be successfully challenged before the courts. The grounds for setting aside an arbitral award include the following:

- the award was made in a case where no valid arbitration agreement had 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 in the arbitration proceedings was not appointed in accordance with the arbitration agreement or any other agreement between the parties, or the arbitrator appointed did not have the legal capacity to act as arbitrator;
- the award was not passed by a majority of the arbitrators;
- a party was not given the opportunity to plead its case before the arbitral tribunal;
- the award imposed an obligation on a party that had not been requested by the other party or is not permitted under domestic law; or
- there are justified reasons to reopen the case.

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

Currently, there are three permanent arbitral institutions which have been founded under the Arbitration Act: the Arbitration Court attached to the Economic and Agricultural Chambers of the Czech Republic (Czech Arbitration Court), the Prague Stock Exchange Arbitration Court (PSEAC) and the Arbitration Court of the Czech Moravian Commodity Exchange Kladno (PRIAC).

All three arbitral institutions can administer both domestic and international disputes and have adopted their own arbitration rules, which are published and available on their websites. To date, only the Czech Arbitration Court can administer and settle general commercial disputes, whereas the PSEAC and PRIAC can settle disputes arising out of the specific activities enumerated in the Capital Market Undertakings Act and in the Commodity Exchanges Act, respectively.

Enforcement of foreign arbitral awards

The Czech Republic 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. 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 and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

Where no specific international treaty is applicable, arbitral awards rendered abroad are, under the Czech Arbitration Act, recognised and enforced by the Czech courts where reciprocity is guaranteed. Recognition of a foreign arbitral award does not require a special decision if an enforcement is sought through a court bailiff. The courts may only decline to recognise and enforce a foreign arbitral award under limited conditions.

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The usual duration of arbitration proceedings is between 6 months and 2 years.	• The duration of arbitration proceedings can also be influenced by an agreement to have the arbitral award reviewed by a new arbitral tribunal.
Approximate costs		
	The procedural costs depend on whether a sole arbitrator or a three-member arbitral tribunal is appointed, the complexity of the case, and the administrative charges.	• The overall costs of arbitration (including lawyers' fees) are determined also by other factors, such as the length of the dispute, the volume of evidence, and the number of witnesses or experts (if required).
Procedural costs	The following estimates are based on the Schedule of Fees with all 3 Czech arbitral institutions, including administrative fees where applicable:	• 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 cannot be tried until the fees are paid.

Simple case	**<u>Assumption:</u> sole arbitrator appointed and an amount in dispute of EUR 1,000,000 (approx. CZK 25.5 million):** Czech Arbitration Court: domestic disputes: arbitration fee EUR 40,500; international disputes: EUR 52,000; PSEAC: EUR 22,000 (including the registration fee of CZK 25,000); PRIAC: domestic disputes: EUR 39,300; international disputes: EUR 30,600.
Complex case	**<u>Assumption:</u> sole arbitrator appointed and an amount in dispute of EUR 10,000,000 (approx. CZK 255 million):** Czech Arbitration Court: domestic disputes: EUR 205,600; international disputes: EUR 163,700; PSEAC: EUR 209,700 (including the registration fee of CZK 25,000); PRIAC: domestic disputes: EUR 40,400; international disputes: EUR 80,800.
Document production	Limited. The parties can agree to apply the IBA Rules on the Taking of Evidence, which stipulate narrow document production.
Virtual hearing	The Rules of Arbitration of the Czech Arbitration Court (Section 28a) and of the PRIAC (Section 37(8)) contain specific provisions on a remote hearing. The PSEAC's rules are silent on this issue.
Emergency arbitration	There are no emergency arbitration provisions in any rules of the Czech arbitral institutions.

Enforcement of foreign arbitral awards

Approximate duration	6 to 12 months until a decision on recognition and enforcement is rendered in the first instance. 5 to 10 months if the decision is appealed. The duration of enforcement proceedings depends mainly on whether the debtor has enforceable assets and whether enforcement measures are opposed by the debtor.	• For enforcement of awards under the New York Convention, a party requesting enforcement of an award must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.

Approximate costs	
Court fees	The court fees are determined based on the Court Fees Act. In case of monetary relief, 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 of CZK 2,000,000; • above CZK 40,000,000, the court fee is CZK 2,000,000 plus 1% of the value in excess of CZK 40,000,000. Any value in excess of CZK 250,000,000 is not taken into account. Court fees in cases of non-monetary relief: CZK 2,000.

Law at first sight.

Robert Pelikán
Partner
E robert.pelikan@wolftheiss.com
T +420 234 765 111

Marie Talašová
Counsel
E marie.talasova@wolftheiss.com
T +420 234 765 228

Anna Bilanová
Associate
E anna.bilanova@wolftheiss.com
T +420 234 765 240

Wolf Theiss Pobřežní 12, 186 00 Prague 8, Czech Republic
T +385 1 4925 400 **E** praha@wolftheiss.com

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International Arbitration in Central, Eastern & Southeastern Europe

Hungary

Arbitration

Arbitration has taken on growing significance over the past three decades. An increasing number of contracting parties have submitted their disputes to arbitration in recognition of the advantages of these procedures. One of the most important aspects that attracts parties to arbitration proceedings is their trustworthy nature, including the freedom they provide to appoint arbitrators with specific professional knowledge, expertise and appropriate language skills. Other readily cited advantages of arbitration include confidentiality, the efficient conduct of proceedings and the fact that an arbitral award issued at the end of a single-instance procedure has the same effect as a final and binding court judgment. In many cases, however, the final and binding nature of arbitral awards is also cited as a key disadvantage, as the right of appeal simply does not exist in arbitration contexts, but rather the only recourse that can be brought against arbitral awards, albeit on limited grounds, is setting aside proceedings. The relatively high costs of arbitration are also often considered a disadvantage, although it bears considering that the increase in costs is significantly influenced by more instances of proceedings, which in the case of arbitration is usually only one.

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. In certain exceptional procedural cases, the Arbitration Act must also be applied with an extraterritorial scope. The rules for these exceptional cases are set out in law in such a way that they apply to the proceedings of the permanent arbitration court with a seat in Hungary even if the place of arbitration is abroad, where the Arbitration Act would not habitually apply. These rules essentially cover the scope of legal assistance broadly provided by State courts to arbitral tribunals.

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

- Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, with general jurisdiction in Hungary as the main institution dealing with arbitration;

- Sports Arbitration Court under the provisions of the Sport Act, which is competent for the matters defined in that act; and
- Arbitration Court for agricultural disputes attached to the Hungarian Chamber of Agriculture.

The above arbitration courts deal with domestic and international (commercial) disputes and have adopted their own procedural rules, which are in accordance with the standards of the UNCITRAL Model Law and UNCITRAL Arbitration Rules.

Under the system introduced by the Arbitration Act, *ad hoc* and international arbitration proceedings can also be conducted in Hungary.

Arbitration agreements must be in writing and must contain the undertaking of the parties to submit disputes arising from their legal relationship 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 (clause) is legally equivalent to and independent of the commercial contract, even if it is formally one of its clauses. It means that, whatever the form of the arbitration agreement between the parties, this will constitute a separate agreement according to the doctrine of separability. Therefore, the arbitration agreement will not necessarily follow the same fate as the main civil law contract between the parties. A valid arbitration agreement may determine the jurisdiction of the arbitral tribunal even if the main civil law contract to which it relates is otherwise found by the arbitrators to be void or invalid.

To prevent the mandatory (written) form requirement from being excessively binding in character, the Arbitration Act seeks to define as broadly as possible what is to be considered a written expression of the unanimous will of the contracting parties and, therefore, what constitutes a formally valid arbitration agreement between the parties.

In this sense, an agreement made by electronic communication (e.g. e-mail, fax, telex), even if it does not contain an electronic signature, is considered an arbitration agreement made in writing if the information contained in the electronic communication is accessible to the other party and can be suitably referenced at a later date.

Arbitration agreements are also considered to be made in writing if such agreement is contained in a document separate from the contract between the parties, provided that the contract between the parties incorporates such arbitration agreement by expressly referencing that separate document – furthermore, the contract between the parties must expressly stipulate that the arbitration agreement in the separate document should be deemed part of that contract. According to the Hungarian judicial practice, an arbitration clause in general terms of business (GTB) is a "surprise clause" that only becomes part of the contract if it has been notified to and expressly accepted by the other contracting party. Another issue also applies to the GTB: If two different arbitration clauses in two different GTB of the contracting parties apply, they will cancel each other out. In this case, the jurisdiction of a particular arbitral tribunal can only be established if the parties have agreed on this issue – in their additional correspondence or directly at the beginning of the arbitration proceedings – jointly referring the resolution of their dispute to their newly selected arbitration platform.

Arbitration agreements are also deemed to have been made in writing if a claimant alleges – in its request for arbitration or in its statement of claim to refer the dispute to arbitration – that an arbitration agreement exists and this claim is not disputed by the other party. This rule applies if the respondent enters a defence on the merits only. However, if, in addition to entering a defence on the merits, the respondent also invokes a lack of jurisdiction of the arbitral tribunal, a formally valid arbitration agreement cannot be considered to have been made between the parties.

There are a number of disputes that cannot be submitted to arbitration: those arising from consumer contracts, administrative disputes regulated by the Hungarian Code of Administrative Procedure and the particular types of proceedings regulated by the Hungarian Code of Civil Procedure (CCP) – *i.e.* disputes arising from civil status (marriage, personal or family status, capacity, custody, etc.), labour relations, false or defamatory press statements, enforcement procedures and disputes connected to a notary's decision adopted in actions *in rem*.

In previous years, severe statutory restrictions were in effect in respect of disputes arising from contracts that related to "national assets". However, these legislative restrictions have completely ceased to exist.

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). Arbitral tribunals adopt interim measures in the form of orders (*i.e.* not awards). An order will only be granted following the constitution of the tribunal (the emergency arbitrator has not been introduced into the rules of the major arbitration institutions in Hungary). When requesting interim measures, a party may also request preliminary measures. Preliminary measures can prevent the other party from frustrating the purpose of the interim measure. The main difference between interim measures and preliminary measures is that, where requesting a preliminary measure, the arbitral tribunal may order such a measure without notifying the other party so as to ensure that the preliminary measure is not rendered impossible by that party after notification. Preliminary measures expire 20 days after the order has been issued.

The Arbitration Act stipulates that orders for interim measures should be enforced in accordance with the rules of judicial enforcement (*i.e.* the same way as regular court orders). Orders for preliminary measures should bind the parties but may not be the subject of judicial enforcement.

The Arbitration Act reflects the UNCITRAL Model Law by providing that it is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, an interim measure of protection from a regular court 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.

In other words, although the legislator does not provide for an emergency arbitrator for the period prior to the constitution of the arbitral tribunal, an application for interim measures can be submitted to the State courts in accordance with the rules of the CCP even before arbitration proceedings are initiated. In its decision ordering provisional measures, the State court must set a deadline for bringing action in the arbitration court not later than 45 days after the date of delivery of the decision. The State court must then be notified that arbitration proceedings have been initiated not later than 8 days after that deadline has expired. If the claimant fails to commence proceedings or to provide proof thereof, the interim measures will lapse on the day following the expiry of the deadline for initiating arbitration proceedings.

In addition, a protective measure may also be ordered to secure a claim for which an action has been filed before a Hungarian arbitral tribunal. To do so, the party requesting the measure must attach certification from the arbitral tribunal stating that the arbitration procedure has commenced and must provide evidence of the inception, volume and expiration of its claim by means of an authentic document or a private document with full probative force.

The parties, therefore, have a wide range of possibilities to request measures from the court or the arbitral tribunal after the constitution of the arbitral tribunal and from the court before the constitution of the arbitral tribunal in order to secure their claim or any circumstances or evidence, among other things, which are relevant to the proceedings, during or even before the arbitration proceedings. It should be noted, however, that in practice these measures are only ordered if strict conditions are met.

The Rules of Proceedings of the Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (Rules of Proceedings) expressly allow the arbitral tribunal to conduct both the case management conference and – in justified cases – the hearing held on the merits of the case by means of telecommunication (virtual hearings). This helps proceedings to be conducted efficiently in terms of both cost and time.

The Arbitration Act provides that awards must be in writing and must be signed by the members of the tribunal. If one of the parties so requests, the award should also contain provisions on the amount and allocation of procedural costs and expenses. The award must describe the reasons and grounds for the decision and must provide proper justification for 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 and partial awards, where these satisfy the validity criteria set out for awards in the Arbitration Act, are also enforceable.

Arbitral awards cannot be appealed, but a request to set aside an arbitral award can be filed with the State courts on grounds specifically listed in the Arbitration Act. These grounds are mostly identical to 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;
- the composition of the arbitral tribunal was incorrect or the proceedings were not in accordance with the parties' agreement;
- the subject matter of the dispute is not arbitrable under Hungarian law;
- the award is in conflict with the rules of Hungarian public order; or
- the arbitral tribunal did not evaluate the contents of the expert report made by the Expert Body for Performance Certification, attached by any of the parties in its award on the merits, *i.e.* it did not give reasons why it accepted it as the basis for its award or why it excluded it from the evidence.

Setting aside proceedings before the State courts are usually completed at a single court hearing. It is exceptional that a second hearing is scheduled to further discuss complicated legal issues. Therefore, setting aside proceedings usually end within 3 to 6 (three to six) months.

If an arbitral award is challenged with a request for setting aside, 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.

In setting aside proceedings, it is of particular importance whether the arbitration was conducted in accordance with the procedural rules. If the procedural rules have been seriously violated by the arbitral tribunal, this constitute grounds for setting aside the award. However, the Curia (*i.e.* Supreme Court of Hungary) has ruled in several decisions that a breach of substantive law, or the incorrect or erroneous application of substantive law, cannot in itself lead to the setting aside of an award, as this does not result in a breach of public policy. It should be noted that the number of cases in which an arbitral award has been set aside in the last – almost – 30 years in Hungary is extremely low.

Proceedings for the setting aside of arbitral awards fall within the exclusive jurisdiction of the Budapest-Capital Regional Court. A request for judicial review may be submitted to the Curia against the decision of the Budapest-Capital Regional Court issued in the proceedings for setting aside.

The Arbitration Act allows for a retrial of arbitration matters within one year following receipt of the award. The retrial must be based on facts or evidence which were not taken into account during the original arbitration procedure for reasons not attributable to the party relying on them and which, had they been taken into account, could have resulted in a more favourable decision for this party. If the parties want to exclude the possibility of a retrial, they must make a unanimous statement to that effect, otherwise the statutory retrial provisions will apply.

Enforcement of foreign arbitral awards

Hungary is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservation that the Convention will only apply to: disputes arising out of legal relationships, contractual or otherwise, that are considered commercial under Hungarian law; and awards which were made in another contracting State. It means that foreign arbitral awards can be enforced in Hungary based on the New York Convention in line with the provisions of the Hungarian Act on Judicial Enforcement and the Arbitration Act. Hungary is also a party to the 1961 European Convention on International Commercial Arbitration. Domestic arbitral awards can be enforced in the same way as ordinary court judgments, in accordance with the provisions of the Hungarian Act on Judicial Enforcement and the Arbitration Act.

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

Enforcement may be rejected 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.

Arbitral awards are enforced by the courts having competence and jurisdiction in accordance with the Hungarian rules of enforcement.

The party opposing enforcement may request that the court stay 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.

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The average duration of arbitration proceedings is between 5 months and 2 years.	• The Rules of Proceedings explicitly state that the arbitral tribunal should, to the extent possible, conclude the proceedings within 6 months of its constitution. • It is not common, but is possible, for the parties to specify the time limit within which the tribunal must conduct the proceedings. The tribunal must comply if a reasonable time limit has been set.
Approximate costs		
	The costs of **institutional proceedings** are determined by the procedural rules of the relevant institutions. The Rules of Proceedings determine the costs of arbitration as follows.	• Detailed rules are established by the Rules of Proceedings in connection with institutional arbitration.

The costs of arbitration comprise the **registration fee** and the **arbitration fee**. The registration fee is HUF 25.000.The arbitration fee consists of the administrative fee, the arbitrators' fee, the reserve fund and the taxes and duties.

- The administrative fee is calculated on the basis of the amount in dispute.
- The arbitrators' fee is calculated on the basis of the amount in dispute. The fee of the presiding arbitrator and the sole arbitrator is the sum of the arbitrators' fee plus 30%. In case of retrial of arbitral proceedings, the administrative fee and the arbitrators' fee is 50% of the sum calculated in application of the relevant provisions of the Rules of Proceedings.
- The reserve fund is 2% of the arbitrators' fee.
- The taxes and duties (public charges) are paid through the arbitration institution and not directly to the State. Therefore, the arbitration fee also includes the payable taxes and duties.
  - The parties must, therefore, pay the procedural duty of the arbitration, which equals 1% of the amount in dispute, but a minimum of HUF 5,000 and a maximum of HUF 250,000.

	– The parties must also pay the healthcare contribution, which is 13% of the arbitrators' fee. In case of ***ad hoc* arbitration** taxes and duties shall also be paid. The rate of the procedural duty is the same as described above (by the institutional arbitration), but it is paid directly by the parties to the State because there is no institution. The arbitrators' fee to be paid is based on an agreement between the parties and the arbitrator(s). An action to set aside an arbitral award is heard by the State court in civil litigation as declared by the Arbitration Act, and therefore the procedural duty is payable accordingly. In general, the duty base shall be the amount in dispute determined in the arbitral award and the rate of the duty is 6 % or not less than HUF 15,000 and not more than HUF 1,500,000.	
Procedural costs	The arbitration fee does not include other costs incurred during the arbitration proceedings (e.g. experts', witnesses' and interpreters' fees or the costs of document production, the attorneys' fees, etc.).	• If the opposing party does not contest it and the amount claimed is not grossly exaggerated (for example, in relation to the complexity of the case or the value of the subject matter), the tribunal will in most cases award the amount of costs requested by the successful party without requiring the party to provide detailed evidence of the costs.

Document production	The procedural rules of Hungarian arbitration institutions do not contain detailed rules on document production. However, the Rules of Proceedings explicitly state that the arbitral tribunal is not bound by the parties' motions for the taking of evidence and may order the parties to produce documents. The tribunal and the parties may agree the scope and the order of document production, either by setting up specific rules or by reference to, e.g., the IBA Rules on the Taking of Evidence in International Arbitration. These rules and guidelines can also be applied without special reference to them, as the Rules of Proceedings state that the arbitral tribunal may take into account any domestic and international arbitration principles, practices and recommendations.	• In domestic arbitration, there is no well-established practice of document production procedures. The procedural overview is based on the assumption that the party's obligation to support the proceedings extends only in so far as they do not have to disclose facts that are disadvantageous to itself. For this reason, it is extremely rare in domestic proceedings for parties to expressly wish to apply a document production procedure, but this is more likely to arise in international arbitration proceedings. In such case, the application of the Redfern or Armesto Schedule may be an option.
Virtual hearing	Not provided for.	
Emergency arbitration	Not provided for.	

Enforcement of foreign arbitral awards		
Approximate duration	The duration depends on the complexity of the case but may range from 2 months to more than a year.	• Enforcement proceedings are temporarily stayed if the debtor has no assets to be seized or the sale of seized assets was unsuccessful. • The court declares the debtor insolvent and orders the liquidation of the debtor if the enforcement procedure against the debtor was unsuccessful. This could prolong the recovery of the claim for several years. In the case of liquidation, the recovery rate is extremely low; the creditors can only seek satisfaction in the order laid down by law.
Approximate costs		
Court fees	Procedural duty is payable for initiating enforcement proceedings. In this case, the basis is the amount to be enforced and the rate of the fee is 1%, but not less than HUF 5,000 and not more than HUF 350,000. As a general rule, the bailiff is entitled to reimbursement of costs, travel expenses, cash expenses, fees for services and, in the event of the debtor's performance, a recovery commission. Bailiffs' fees are set out in a statutory rule of law. The fee is subject to the enforceable value and is determined by a declining percentage scale, starting from 3% for values of between HUF 100,000 and HUF 1 million, to 0.5% for values exceeding HUF 10 million. In addition, the bailiff is entitled to reimbursement of costs based on itemised costs plus a lump sum (50% of the fees set out above).	

Law at first sight.

Zoltán Faludi
Partner
E zoltan.faludi@wolftheiss.com
T +36 1 4848 800

Tímea Csajági
Associate
E timea.csajagi@wolftheiss.com
T +36 1 4848 800

Wolf Theiss Kálvin tér 12-13, 1085 Budapest
T +36 1 4848 800 **E** budapest@wolftheiss.com

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International Arbitration in Central, Eastern & Southeastern Europe

Kosovo

Arbitration

Arbitration is a recognised mechanism for the alternative resolution of domestic and international disputes.

According to Law No. 02/L-75 on "Arbitration" (Law on Arbitration), all disputes relating to civil and economic matters are arbitrable provided that there is a valid arbitration agreement between the parties indicating their consent to resolve their disputes by arbitration. The Law on Arbitration provides that an arbitration agreement must be made in writing. This requirement is deemed to have been satisfied if the arbitration agreement is recorded in letters or other means of telecommunications or electronic communication. Furthermore, a written arbitration agreement is deemed to have been validly concluded if a party has invoked arbitration in its statement of claim and the other party has not objected to it. Having said this, in cases of consumer arbitration, the agreement containing the arbitration clause should be personally signed by all parties; this requirement is deemed satisfied if the agreement is signed electronically pursuant to the applicable law on electronic signatures. Nevertheless, failure to fulfil the aforementioned formalities cannot serve as basis for challenging the conclusion of a valid arbitration agreement if the parties initiate the arbitration proceedings.

The parties are free to decide whether a sole arbitrator or a panel of arbitrators will adjudicate their disputes. Panels of arbitrators must be composed of an odd number of arbitrators. If the parties fail to specify the number of arbitrators in their arbitration agreement, the number of arbitrators will be three, with each party appointing one arbitrator and the two party-appointed arbitrators selecting the third arbitrator to serve as the chair of the arbitral tribunal. If a party fails to appoint an arbitrator within thirty days of receiving a request to do so or if the two party-appointed arbitrators fail to appoint the chair of the arbitral tribunal within thirty days of their appointment, the respective arbitrator or chair will be appointed by the Commercial Court upon the request of either party.

An arbitrator may be challenged by either party if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not have the qualifications agreed by the parties. Any challenge is decided by the arbitral tribunal or in accordance with the procedure agreed by the parties, unless the challenged arbitrator withdraws or the other party agrees to the challenge. If the challenge is rejected, the challenging party may petition the Commercial Court to issue a final decision on the challenge.

The Law on Arbitration grants the parties the right to choose the place of arbitration, the governing law, the language of the arbitration proceedings, the arbitration rules and the arbitral institution that will administer the respective arbitration matter. Unless the parties have agreed otherwise, the arbitral tribunal has the authority to decide on these issues. In cases involving disputes with an international element, if the parties have not chosen the governing law, the arbitral tribunal determines the governing law according to the rules of private international law. In all other cases, the arbitral tribunal applies Kosovan law.

Upon the objection of a party to a dispute, a court is required to dismiss a claim as inadmissible and declare itself incompetent if the claim that has been filed before it relates to an issue that is subject to an arbitration agreement. Such an objection must be articulated in the response to the claim. Having said this, a court may assert jurisdiction – in spite of the objection – if it finds that the arbitration agreement is not valid. Notwithstanding the arbitration agreement or the commencement of arbitration proceedings or the possibility to request injunctive relief from an arbitral tribunal, the Commercial Court may grant injunctive relief at the request of a party to arbitration proceedings if the latter establishes that it will suffer immediate or irreparable damage or loss in absence of the requested injunctive relief.

The arbitral tribunal terminates the proceedings if the claimant fails to submit its statement of claim and the accompanying evidence on which it is based within the period of time agreed by the parties or within the deadline set by the arbitral tribunal. However, if the respondent fails to submit its statement of defence, the arbitral tribunal does not consider it an admission of the claimant's allegations and will continue the arbitration proceedings. Each party has the burden of proof to establish the facts upon which it relies. The arbitral tribunal is authorised to assess the admissibility, relevance, materiality and probative value of evidence. Also, the arbitral tribunal may ask the parties to produce documents. Otherwise, the arbitral tribunal – or either party with the approval of the arbitral tribunal – may request the assistance of the court for the purpose of collecting evidence or performing other judicial acts which the arbitral tribunal is not authorised to carry out. In this respect, unless the court finds the request to be inadmissible, it must handle the request as a matter of priority and execute it according to the applicable procedural rules.

If the parties agree to settle before an arbitral award is rendered, the arbitral tribunal terminates the proceedings or – if requested by the parties – records the settlement in the form of an arbitral award, unless the settlement represents a violation of the *ordre public*. A settlement recorded in the form of an arbitral award has the same effect as an arbitral award.

In arbitration proceedings with more than one arbitrator, an arbitral award is reached by a majority of all its members, unless otherwise agreed by the parties. The chair may be authorised by the parties or by all members of the arbitral tribunal to decide procedural matters on his/her own.

An arbitral award is made in writing and is binding on the parties. The arbitral tribunal decides *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so. The arbitral award has the same effect between the parties as a final and binding court decision. An arbitral award is required to contain a reasoning, unless the parties have agreed that no reasoning should be provided. The arbitral award may be made public only with the consent of all parties.

Unless otherwise agreed by the parties, either party may request the arbitral tribunal to give an interpretation of the award, to correct any computational, clerical, typographical or similar errors in the award or to make an additional award as to claims presented in the arbitration proceedings but omitted from the award. Such a request should be filed within thirty days following the receipt of the arbitral award. The arbitral tribunal may also, within thirty days of the communication of the award, make such corrections on its own initiative.

A party may challenge an arbitral award before the Commercial Court. An arbitral award will only be set aside if the applicant establishes 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 arbitration proceedings or was otherwise unable to present his/her case;

- the arbitral 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 recognised and enforced; or
- the composition of the arbitral tribunal or the arbitration procedure was not in accordance with the provisions of the law or a valid arbitration agreement, on condition that such defect had an impact on the arbitral award.

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

- arbitration of the subject-matter of the arbitration proceedings is prohibited by law; or
- the enforcement of the award conflicts with the *ordre public* in Kosovo.

Unless the parties have agreed otherwise, a request for setting aside an arbitral award must be submitted to the Commercial Court not later than ninety days after the award was received by the respective party. An appeal may be filed against the court decision setting aside the arbitral award.

There are two domestic arbitration institutions in Kosovo: (i) the Permanent Tribunal of Arbitration at the Kosovo Economic Chamber (PTA), which operates under the Kosovo Arbitration Rules, dated 22 December 2022 (PTA Arbitration Rules), and (ii) the Arbitration Center at the American Chamber of Commerce in Kosovo (AmCham Arbitration Center), which operates under the Kosovo Arbitration Rules 2011, dated 19 April 2011.

Enforcement of foreign arbitral awards

Although Kosovo is not formally a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, the latter may be argued to be applicable in Kosovo on the basis of Article 145 of the Constitution, which provides for the continuity of international treaties that were in effect prior to the adoption of the Constitution, until such international treaties are either renegotiated, replaced or withdrawn from by Kosovo in accordance with their terms. In any case, the terms of

the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 are also enshrined in the Law on Arbitration.

Foreign arbitral awards can be recognised and become enforceable in Kosovo. A request for recognition and declaration as enforceable of a foreign arbitral award must be submitted before the Commercial Court and should be accompanied by the following documents:

- 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.

The recognition and enforcement of the award may be rejected, at the request of the party against which it is invoked, if that party establishes that:

- a party to the arbitration agreement, under the law applicable to this 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 which the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration 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 so 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 arbitration procedure was not done in accordance with the applicable law; and
- 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.

Furthermore, the court rejects the recognition and enforcement of a foreign arbitral award if it finds that:

- arbitration of the subject-matter is prohibited by law in Kosovo; or
- the recognition or enforcement of the award would be contrary to Kosovo's *ordre public*.

In accordance with the Law on Arbitration, no appeal may be filed against a decision concerning the recognition and declaration as enforceable of a foreign arbitral award. In spite of this, courts often entertain such appeals and decide them on their merits.

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The PTA Arbitration Rules allow the option of expedited procedures for disputes not exceeding **EUR 100,000**. The expedited procedure entails an automatic referral to a single arbitrator unless otherwise agreed by the parties, shorter deadlines for the appointment of the arbitrator(s) and a limited number of hearings. The PTA Arbitration Rules provide that an arbitral award for an expedited case should be rendered within 6 months from the day the PTA provides the arbitral tribunal with the required case documents. The PTA may extend this deadline only in exceptional cases. For disputes exceeding **EUR 100,000,** no estimates can be provided in the absence of any specific rules or a consistent practice.	
Approximate costs		
Procedural costs	The total procedural costs for a case depend on the amount of the dispute, the number of arbitrators appointed, the complexity of the case and the number of witnesses and experts involved. By way of example, in proceedings before the PTA with a sole arbitrator, the costs are as follows:	

Dispute Amount	Registration Fee	Sole Arbitrator's Fee	Administrative Fee
EUR 1,000,000	EUR 1,000	EUR 10,543	EUR 2,108.6
EUR 10,000,000	EUR 1,500	EUR 32,854	EUR 6,570.8

In proceedings at the PTA with three arbitrators, the costs are as follows:

Dispute Amount	Registration Fee	Arbitrators' Fee	Administrative Fee
EUR 1,000,000	EUR 1,000	EUR 23,717	EUR 3,557.5
EUR 10,000,000	EUR 1,500	EUR 85,558	EUR 12,833.69

If more than two parties participate in the procedure, the arbitrators' fees increase by 10% for each party. In complex cases, the President of the PTA may increase the arbitrators' fees by 30%.

If the arbitration proceedings are terminated upon the request of a party before the issuance of an arbitral award, the President of the PTA must reduce/refund the prepaid costs by (i) 40% if the proceedings are terminated before the constitution of the arbitral tribunal; and (ii) 20% if the proceedings are terminated before the hearing. If the claim is withdrawn, the arbitrators are paid 50% of the aforementioned fees.

Unless otherwise agreed by the parties, the cost of arbitration is borne by the unsuccessful party. However, the arbitral tribunal also has discretion to apportion the costs between the parties according to the circumstances of the case. A copy of the signed arbitral award must be delivered to each party, subject to prior receipt of any outstanding fees

With respect to arbitration proceedings at the AmCham. Arbitration Center, the registration fee for claims/counterclaims with a dispute amount less than EUR 100,000 is EUR 250, whereas for cases with a dispute amount equal to or above EUR 100,000 the registration fee is EUR 500. If more than two parties participate in the procedure, the registration fee increases by 10% for each party.

The AmCham Arbitration Center's website provides a calculator for arbitrators' fees and administrative costs based on the dispute amount. By way of example, in a case with a dispute amount of EUR 100,000, the total costs (arbitrators' fees and the administrative costs) are EUR 5,580 if there is a sole arbitrator, and EUR 12,787.5 if there is a panel of three arbitrators.

	Finally, similarly to the PTA, the AmCham Arbitration Center also provides that, if more than two parties participate in the procedure, the arbitrators' fees increase by 10% for each party. In complex cases, the AmCham Arbitration Center may increase the arbitrators' fees by up to three times.
Document production	An arbitral tribunal has the authority to request the parties to produce documents, exhibits or other evidence at any time during the proceedings and to determine the admissibility, relevance, accuracy and probative weight of the evidence provided.
Virtual hearing	While the Law on Arbitration is silent on this matter, the PTA Arbitration Rules allow virtual hearings to be held only for witnesses, including expert witnesses.
Emergency arbitration	Not provided for in the Law on Arbitration or the PTA Arbitration Rules.

Enforcement of foreign arbitral awards

Approximate duration	**6 to 9** months for the issuance of a decision for the recognition and declaration as enforceable of a foreign arbitral award. **18 to 24** months for the enforcement of the recognised foreign arbitral award.	• For enforcement of foreign arbitral awards, the creditor must provide the court with the arbitral award and the arbitration agreement in original or in certified copies and a duly translated copy of the two, if they are not rendered in an official language of Kosovo.
Approximate costs		
Court fees	The court fee for filing an application for recognition and enforcement of a foreign arbitral award is **EUR 20**. The enforcement of a foreign arbitral award by the Private Enforcement Agent is subject to – among other things – an efficiency fee and a case administration fee. By way of example, in disputes over EUR 200,000.00, the efficiency fee (exclusive of VAT) is 0.5% - 1% of the enforced amount, and the administrative fee (exclusive of VAT) is EUR 305 + 0.1% of the value of the main claim when it exceeds EUR 200,000.00.	

Law at first sight.

This chapter was written in cooperation with Dastid Pallaska and Afrore Shaipi of Pallaska & Associates L.L.C.

Pallaska&Associates L.L.C.
Ali Pashë Tepelena Street
Ivy Residence No. 12
10000 Prishtina, Kosovo
T + 383 38 244 888
E info@pallaska-associates.org
W www.pallaska-associates.org

Christian Mikosch
Partner
E christian.mikosch@wolftheiss.com
T +43 1 51510 5310

Wolf Theiss Schubertring 6, 1010 Vienna, Austria
T +43 1 51510 **E** vienna@wolftheiss.com

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International Arbitration
in Central, Eastern &
Southeastern Europe

Montenegro

Arbitration

The Arbitration Law of Montenegro came into force on 26 August 2015. The Law is harmonized with the Model Law on Arbitration developed by the United Nations Commission on International Trade Law (UNCITRAL). The expectations and goal of the Arbitration Law is to popularise arbitration as an alternative dispute resolution mechanism, especially for corporate entities, and to develop the practice of the Court of Arbitration attached to the Chamber of Commerce of Montenegro. The Arbitration Law applies to both domestic and international arbitration proceedings (*i.e.* where the parties are natural or legal persons with residency inside or outside of Montenegro). Arbitration is not possible for disputes classified as non-arbitrable under other Montenegrin regulations.

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

Notably, if a claimant initiates arbitration proceedings in the absence of any prior written arbitration agreement and if the respondent accepts the arbitration in writing or participates in the proceedings without objection before the merits of the dispute are heard, then it is considered that the written form requirement is met and that the parties have a valid arbitration agreement. On the other hand, if the parties have agreed to arbitration and yet a claimant initiates litigation proceedings, one of the parties must object to the proceedings in order for the court to declare itself incompetent and reject the claim. A party can, however, seek temporary protective measures before the court even if there is a valid arbitration agreement in place. If the arbitration agreement is not valid or enforceable or has ceased to be in effect, the court will not declare itself incompetent and reject the claim.

When it comes to the arbitration proceedings, the number of arbitrators is decided according to the agreement between the parties. However, this must be an odd number. If the parties have failed to determine the number of arbitrators, then an arbitral tribunal of three members will decide the dispute. The parties can agree which procedure will be used to appoint the arbitrators. However, if no stipulation has been made in the arbitration agreement or otherwise agreed between the parties, the arbitrators are appointed according to the procedure set forth in the Arbitration Law.

The Arbitration Law does not impose rigid requirements on who may serve as arbitrator. Indeed, anyone with legal capacity can serve as arbitrator, regardless of citizenship. Any arbitrator must, of course, be and remain independent and impartial throughout the proceedings and the Arbitration Law provides for the possibility for challenge and exempting arbitrators in this respect.

The rules of the proceedings are determined by the parties, otherwise the arbitral tribunal will have the authority to conduct the proceedings as it deems appropriate. Where a dispute is to be resolved before the Court of Arbitration (CoA), *i.e.* the permanent arbitration institution attached to the Chamber of Commerce of Montenegro, the parties may agree to apply to proceedings either the UNCITRAL Arbitration Rules or the Arbitration Rules of the CoA (the CoA Rules), the latest version of which was adopted in December 2023. During the proceedings, the equality of the parties is one of the key principles introduced by the Arbitration Law. Namely, the arbitral tribunal must ensure that each party has the opportunity to present its arguments and evidence, as well as to make statements on the actions and propositions of the opposing party. The arbitral tribunal can decide to conduct the proceedings on the basis of written submissions only, but will schedule an oral hearing if so requested by a party (unless oral hearings were explicitly excluded in the parties' agreement).

The Arbitration Law provides that the arbitral tribunal also has the competence to order interim measures at the request of a party. In addition, the Arbitration Law provides that an interim measure determined by an arbitration tribunal, regardless of the country in which the interim measure was determined, can be recognised and implemented by decision of the Commercial Court of Montenegro, except in the specific cases set out under the Arbitration Law.

Furthermore, the CoA Rules provide that a party which requires an urgent interim measure, and which cannot await the constitution of an arbitral tribunal, may request proceedings before an emergency arbitrator in accordance with Appendix III of the CoA Rules. The rules concerning emergency arbitrators do not apply if the parties have agreed to exclude the application of Appendix III of the CoA Rules.

The arbitral tribunal decides the dispute in accordance with the governing law and the rules chosen by the parties, excluding the conflict of law rules. If the governing law is not determined, the arbitral tribunal will apply adequate conflict of law rules. The tribunal will also consider the commercial practice for a given transaction when deciding on the matter, but will only decide *ex aequo et bono* if explicitly authorised by the parties.

Arbitration proceedings are generally finalised by a final arbitral award. In this respect, any arbitral award rendered by an arbitral tribunal within the territory of Montenegro has the legal effect of an enforceable title and can be enforced as a local award in accordance with enforcement regulations. A local award can only be challenged by filing an application for setting aside with the Commercial Court of Montenegro. The Arbitration Law (Article 48) contains an exhaustive list of grounds for making such a challenge, which include:

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

An application to set aside a final arbitral award must be filed within three months from the notification of the award. The parties cannot waive their right to this remedy.

Enforcement of foreign arbitral awards

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

The Commercial Court of Montenegro is competent to decide upon requests for the recognition and enforcement of a foreign arbitral award.

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	According to the CoA Rules, the CoA sets a time frame for the resolution of each dispute. As a rule, disputes are generally resolved within six months from the date of receipt of the relevant case file, subject to certain exceptions. In addition to the regular arbitration procedure, the CoA Rules provide for the implementation of an accelerated arbitration procedure upon agreement of the parties. By accelerated arbitration procedure, the CoA Rules impose more procedural effectiveness by the CoA, including shorter deadlines for taking actions in proceedings, limiting the number of submissions to just one written submission, the electronic delivery of written submissions and the possibility to implement the procedure without holding a hearing (on the basis of written submissions). The deadline for resolving cases is six months from the date the case file is received by the tribunal in comparison to the regular arbitration procedure. This deadline can be extended on justified grounds.	

Approximate costs	
Procedural costs	The costs of proceedings before the CoA include a registration fee (EUR 200), the arbitral tribunal's fees, administrative fees and any additional procedural costs incurred by the arbitral tribunal and the CoA. The amount of the arbitrators' fees and administrative fees are determined by the CoA Secretariat in accordance with the CoA Tariff, based on the value of the dispute.
Simple case	**Assumption: The amount in dispute is EUR 1,000,000:** CoA – registration fee of EUR 200, administrative fees of EUR 6,550, sole arbitrator's fees of EUR 13,600, fees for a panel of three arbitrators of EUR 34,000 (2½ times the amount for a sole arbitrator).
Complex case	**Assumption: The amount in dispute is EUR 10,000,000:** CoA – registration fee of EUR 200, administrative fees of EUR 11,300, sole arbitrator's fees of EUR 15,550, fees for a panel of three arbitrators of EUR 38,750 (2½ times the amount for the sole arbitrator).
Case before the emergency arbitrator	CoA – emergency arbitrator's fee of EUR 6,000, non-refundable administrative fees of EUR 2,000.
Document production	Besides the statement of claim and reply to the statement of claim, the arbitral tribunal, after consulting with the parties, may decide which other written submissions the parties should submit. Additionally, the arbitral tribunal is authorised to order a party to produce a document or any other evidence that it deems relevant for the resolution of the proceedings. If a party ignores the arbitral`s tribunal order for production of a certain document, the arbitral tribunal is entitled to issue its decision on the basis of the evidence already presented. However, the arbitral tribunal may freely evaluate the consequences of the omission by one party to produce the required document when issuing its final decision in proceedings.
Virtual hearing	To ensure effectiveness, the CoA Rules: (i) allow hearings to be held remotely *via* video conference, telephone or other appropriate means of communication as may be decided by the arbitral tribunal, taking into consideration all relevant circumstances of the case; and (ii) allow witnesses and experts to be heard *via* telecommunication means.

Emergency arbitration	Pursuant to the CoA Rules, parties should, as a rule, send their request for proceedings before an emergency arbitrator to the CoA by email. Any party requesting proceedings before an emergency arbitrator before filing a statement of claim, must file it within 10 days of the date the CoA Secretariat receives its request for proceedings before an emergency arbitrator. Otherwise, the CoA Secretariat will suspend the proceedings before the emergency arbitrator. The emergency arbitrator should decide on the interim measure within 15 days of the date of receiving the case from the CoA Secretariat. This deadline can be extended by the CoA Presidency on justified grounds either on the proposal of the emergency arbitrator or on its own initiative. The emergency arbitrator should conduct proceedings in the manner which he/she deems appropriate, taking into account the circumstances of the case and the urgency of the procedure. The emergency arbitrator must treat the parties equally and give each party a reasonable opportunity to present its case.
Enforcement of foreign arbitral awards	
Approximate duration	The duration of the enforcement of arbitral awards depends on a series of factors including the identification of the debtor's assets, financial means, the response of the debtor, and the perseverance of the enforcement authorities in the fulfilment of their duties.
Approximate costs	
Court fees	According to the Law on Court Fees, a fee of EUR 50 is payable for a court decision on recognition of a foreign arbitral award. Other fees concerning enforcement proceedings are payable depending on the value of the claim.
	• The procedure for recognition/ enforcement of arbitral awards is initiated by submitting a proposal to a State court, which must be accompanied by the following documentation: the original or a duly certified copy of the arbitral award, the original or a duly certified copy of the arbitration agreement or a document on accepting the arbitration, and a certified translation of the arbitral award and of the arbitration agreement in the Montenegrin language (or another official language before the court).

- For enforcement of arbitral awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof, and the original arbitration agreement or a duly certified copy thereof.

Law at first sight.

This chapter was written in cooperation with Radonjić Associates.

Radonjic Associates
Džordža Vašingtona 108/A36, 2nd Floor
The Capital Plaza
81000 Podgorica, Montenegro
T +382 20 620 312
F +382 20 620 313
E info@radonjic-associates.com
W www.radonjic-associates.com

Miroslav Stojanović
Partner
E miroslav.stojanovic@wolftheiss.com
T +381 11 3302 910

Aleksandar Ristić
Partner
E aleksandar.ristic@wolftheiss.com
T +381 11 3302 926

Wolf Theiss Bulevar Mihajla Pupina 6/18, 11000 Belgrade, Serbia
T +381 11 3302 900 **E** beograd@wolftheiss.com

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International Arbitration
in Central, Eastern &
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North Macedonia

Arbitration

Arbitration in the Republic of North Macedonia is governed by the following laws: the Litigation Procedure Act (*Закон за меѓународно приватно право*), which sets forth how legal Proceedings should be conducted before selected courts; the Private International Law Act (*Закон за меѓународно приватно право*), which regulates applicable law and the recognition of foreign arbitral awards; the International Commercial Arbitration Act of the Republic of North Macedonia (*Закон за меѓународна трговска арбитража на Република Северна Македонија*), which regulates international commercial arbitration when the seat of arbitration is in the Republic of North Macedonia; and the Enforcement Act *(Закон за извршување*), which regulates the enforcement of foreign arbitral awards.

In addition, the Arbitration Rules of the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia (Permanent Arbitration Court) regulate the organisation and proceedings of the Permanent Arbitration Court. The Permanent Arbitration Court has jurisdiction to settle legal disputes between parties, whether these do or do not contain an international element. Parties may agree for the Permanent Arbitration Court to be competent to settle disputes concerning rights which they freely enjoy and for which the courts are not exclusively competent.

Under Macedonian law, an arbitration agreement may be concluded both for a specific dispute and for future claims that may arise out of or in connection with a defined legal relationship. The arbitration agreement must be in writing and may be concluded in the form of an arbitration clause in a main contract or as a separate agreement.

Parties may agree to resolve disputes by arbitration if they concern rights which they freely enjoy and if the disputes do not fall within the exclusive jurisdiction of the Macedonian courts pursuant to law, as in the case of disputes concerning, but not limited to:

- establishment, termination and statutory changes of legal entities;
- registration in public registries;
- registration and legality of intellectual property rights;
- recognition of enforcement;
- property matters;
- labour relations;

- marital and family matters;
- criminal law matters;
- insolvency matters;
- consumer matters.

Disputes with and without an international element can be resolved by arbitration. A dispute is considered to have an international element if:

- at least one of the parties at the time the arbitration agreement was concluded is a natural person with permanent residence or domicile outside the territory of the Republic of North Macedonia or is a legal entity whose seat is not in the territory of the Republic of North Macedonia; or
- the place where a substantial part of the obligations of the commercial regulations is to be performed or the place to which the subject matter of the dispute is most closely connected is not in the territory of the Republic of North Macedonia.

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

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

The arbitration procedure is not public unless otherwise agreed between the parties.

The composition of the arbitral tribunal and the proceedings before the arbitral tribunal are strictly regulated. In accordance with the Skopje Arbitrage Rules the disputes with a value not exceeding EUR 30,000 are referred to a sole arbitrator, unless the parties agree to refer the dispute to an arbitral tribunal within 15 days of statement of claim being served on the respondent. Disputes with value in excess of EUR 30,000 are resolved by an arbitral tribunal, unless the parties agree to refer the dispute to a sole arbitrator within 15 days of statement of claim being served on the respondent.

As a general rule, if the dispute is to be resolved by a sole arbitrator, he/she must be appointed by both parties. If they do not appoint the sole arbitrator, he/she will be appointed by the President of the Permanent Arbitration Court.

Where the dispute is to be resolved by an arbitral tribunal, the claimant and the respondent each appoint one arbitrator. The chair of the tribunal is then appointed by the President of the Permanent Arbitration Court.

If several parties participate as claimant or respondent, they must agree on the mutually chosen arbitrator in advance, otherwise he/she will be appointed by the President of the Permanent Arbitration Court.

The arbitrators are appointed from a list of registered arbitrators. Foreign nationals are permitted to act as arbitrators.

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

The default rule is that Macedonian should be the language of proceedings, but the language of the proceedings may also be agreed between the parties.

The arbitral tribunal, after being constituted, must issue an order determining the time frame of the procedure, including the timescales for submitting any additional writs, the date/s of the sessions, the date for delivery of the arbitral award and other facts as relevant. The time limits determined by the arbitral tribunal for submitting writs cannot be longer than 30 days.

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

If the party requesting the urgent interim measure cannot wait for the arbitration tribunal to be constituted, he/she may submit a request to proceed before the sole arbitrator for urgent cases. However, the rules of the procedure for urgent cases shall not apply when the parties have excluded their implementation.

The arbitral tribunal decides the dispute according to the law determined by the parties. If the parties have not determined the applicable law, the arbitral tribunal applies the law of the State most closely related to the subject matter of the dispute. In disputes without an international element, the parties cannot determine the applicable law in the dispute.

The arbitral tribunal must deliver an arbitral award no later than nine months after it is constituted.

The arbitral award should be rendered in writing and should include proper reasoning, except where the parties have agreed that it is not to be explained or if they have reached an amicable settlement.

Under the Skopje Arbitrage Rules, the arbitral tribunal must deliver a draft of the arbitral award to the General Secretary of the Permanent Arbitration Court prior to its signing for review and approval. The arbitral award cannot be signed and delivered to the parties before the review and approval of the draft arbitral award is complete.

Arbitral awards are final and binding upon the parties, who are obliged to comply with it without delay. Arbitral awards have the effect of a final and binding judgment against the parties. No (ordinary) legal recourse is allowed against the arbitral award before a higher arbitration court.

The arbitral tribunal may issue an arbitral award on a fairness basis only if it has been granted the right to do so by the parties.

With the consent of both parties, the President of the Permanent Arbitration Court and the General Secretary of the Permanent Arbitration Court may publish anonymous summary or parts of the arbitral award in specialist newspapers or publications without naming the parties.

Claims for annulment (setting aside) of an arbitral award may be submitted in cases including, but not limited to, the following:

- no arbitration agreement or an invalid arbitration agreement;
- non-arbitrability of the subject matter;
- improper composition of the arbitration;
- lack of due process;
- *ultra petita*;
- lack of legal capacity of the party to enter in the arbitration agreement;
- violation of the Macedonian procedural *ordre public*;
- violation of the Macedonian substantive *ordre public*;
- violation of the Macedonian Constitution.

Parties can challenge the arbitral award within three months of the notification of the award.

Enforcement of foreign arbitral awards

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

The recognition and enforcement of foreign arbitral awards is resolved according to the provisions of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which the Republic of Macedonia acceded to with the following reservations: (i) the Republic of North Macedonia will apply the Convention with respect to the disputes arising from the legal relations, contractual and non-contractual, which, according to its national legislation are considered as commercial (ii) the Republic of North Macedonia will apply the Convention only to those arbitral awards which were adopted after the coming of the Convention into effect.

Macedonian courts recognise foreign arbitral awards when they fulfill the legal conditions. Once recognised, these receive equal legal status to the judgements of the Macedonian courts.

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	6-9 months.	
Approximate costs		
Procedural costs	The procedural costs of arbitration include the following: registration fee, arbitration fees for special proceedings, arbitration administrative fee, arbitrator's fee, representation fees, expenditures. These costs are to be covered by the party undertaking the legal action. The registration fee is EUR 100. The arbitrators' fee (for disputes with or without an international element) is: • for a sole arbitrator EUR 500; • for an arbitral tribunal: EUR 1000. 1% from the arbitrators' reward is to be paid for review and approval of the prepared decisions. When arbitration proceedings terminate without delivery of an arbitral award, the President of the Permanent Arbitration should resolve – upon written request of one of the parties – to reduce the advance of the fees as follows:	• The registration fee is non-refundable and is to be paid by the claimant upon submission of a claim and by the counter-claimant upon submission of a counterclaim. • The procedural costs are to be paid in the form of an up-front deposit by the claimant and counter-claimant. The amount to be deposited is determined by the President of the Arbitration Court once the claim has been filed and within 3 days after payment of the registration fee. • The fees for any special action (e.g. expertise, witnesses, on-site visits, translations) are to be covered by the party proposing the special action.

- reduce the arbitrators' fees by 40% if the proceedings terminate before the constitution of the arbitral tribunal;
- reduce the arbitrators' fees by 20% if the proceedings terminate before the hearing.

The rest of the amount should be returned to the payer.

The administrative fees for the arbitration proceedings are EUR 900.

The fees for proceedings before an arbitrator in urgent cases consist of:

a.) arbitrator's fee for proceedings in urgent cases: EUR 300;

b.) nonrefundable administrative fee: EUR 100.

- Final costs are determined in the final arbitral award, which will also award the procedural costs to the successful party in the arbitration proceedings unless the parties have agreed otherwise. If the claim has been partially accepted, the fees are paid by both parties according to their success in the dispute.
- On the request of a party, the arbitral tribunal determines in the arbitral award any amounts which either party must reimburse to the other by way of procedural costs, including representation fees and arbitrators' fees, unless otherwise determined in the arbitration agreement. The arbitral tribunal delivers this decision on the basis of fairness, considering all the circumstances, the complexity of the subject matter and the time spent on the dispute by the arbitrators.
- Payment of fees is mandatory and the proceedings cannot continue until the respective payments are made.
- The arbitral tribunal designates a translator to the party that does not know the language of the proceedings, at the expense of that party, irrespective of the outcome of the proceedings.

Document production	Limited.	
Virtual hearing	Art.33 para 3 of the Skopje Arbitration Rules provide the possibility that the meetings of the arbitration court may be maintained by video or telephone conference call or other communication means.	
Emergency arbitration	Art 48 of Skopje Arbitration Rules provides that if a party needs urgent temporary measure before the constitution of the arbitrage court it may submit the request for commencing the procedure in front of the Arbiter for emergency/urgent cases. This will not apply if the parties have excluded the Addendum II of the Skopje Arbitration Rules that regulates the procedure in front of the Arbiter for emergency/urgent cases.	
Enforcement of foreign arbitral awards		
Approximate duration	1-2 years	• The time period includes proceedings for recognition before the ordinary courts and any court of appeal in both simple and complex cases. • In addition, the period also includes the possibility of extending the enforcement depending on the disposed debtor's assets.
Approximate costs		
Court fees	Court fees are calculated according to the Court Fees Act and depend on the value of the dispute. These costs are to be covered by the party undertaking the legal action. Final costs are determined in the final court decision, which will also award the procedural costs to the successful party in the court proceedings. The proceedings also include translation and notarisation fees, which are calculated according to translator's and notary's tariffs.	

Law at first sight.

This chapter was written in cooperation with Law Office Minoska.

Ana Minoska
Attorney-at-Law
Ul."Borka Taleski" br.40/3
Municipality of Center
1000 Skopje, Republic of Macedonia
T +389 70 38 28 90
E minoski@t.mk

Anna Rizova
Partner
E anna.rizova@wolftheiss.com
T +359 2 8613 700

Radoslav Mikov
Partner
E radoslav.mikov@wolftheiss.com
T +359 2 8613719

Oleg Temnikov
Counsel
E oleg.temnikov@wolftheiss.com
T +359 2 8613 700

Wolf Theiss Expo 2000, Phase IV, Eurocol Business Center, 55 Nikola Vaptsarov Blvd., 1407 Sofia, Bulgaria
T +359 2 8613 700 **E** sofia@wolftheiss.com

International Arbitration
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Poland

Arbitration

Arbitration in Poland is governed by Part V of the Polish Civil Procedure Code (*Kodeks postępowania cywilnego*) 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).

Generally, any natural person, legal entity or partnership with full capacity to enter into a contract can conclude an arbitration agreement.

Polish law allows parties to submit pecuniary and non-pecuniary claims to arbitration if they are capable of being decided by the courts of law and if they are legally eligible for settlement, excluding claims for alimony. Disputes that would normally be decided by regulatory or supervisory authorities, claims relating to family law, personal status and bankruptcy, and disputes concerning entries in public registers cannot be submitted to arbitration.

An arbitration agreement may be concluded as a separate agreement or as a clause in a contract. Arbitration agreements must be executed in writing or electronically with qualified digital signatures; arbitration clauses, at the very least, must be recorded by means of remote electronic communication. Moreover, an arbitration agreement must contain at a minimum the names of the parties and a clear stipulation that the parties wish to submit to arbitration a particular dispute or any dispute arising out of a defined legal relationship to be valid. The arbitration agreement may contain provisions regarding the arbitral procedure or may refer to the rules of a particular arbitral institution. Arbitration agreements entered into with consumers and employees have stricter requirements – in principle, they may only be concluded after the dispute in question has already arisen.

Any natural person of any nationality of full age and capacity may serve as an arbitrator. However, a serving public judge cannot be an arbitrator. The parties are free to agree the number of members of an arbitral tribunal. If the parties fail to determine the number of arbitrators, the number of arbitrators will be three.

The parties are free to agree the procedure for the appointment of arbitrators. They may also make reference to an existing procedure that determines the appointment of arbitrators and/or agree a person/entity to serve as an appointing authority. Polish law provides a default procedure for appointing arbitrators in cases where the parties have not agreed a procedure.

Unless otherwise agreed between 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, provided that the party requesting the measure has substantiated its claim. The arbitral tribunal may require the requesting party to provide appropriate security. Interim measures are enforced by the State courts and by court enforcement officers after obtaining a writ of enforcement issued by a common court. 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, even if the dispute is already covered by an arbitration agreement or an arbitration case is pending. This method of applying for interim measures is usually faster, as it does not require the requesting party to obtain a separate enforcement order 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;
- award obtained by way of 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.

An application to set aside a final arbitral award must be filed within three months from the notification of the award. The parties cannot waive their right to this remedy.

In addition, individual consumers may challenge an arbitral award on the grounds that the award deprives them of rights granted to them by the provisions of binding law.

In principle, a setting aside claim must be filed within two months after the delivery of the award to a party. The setting aside claim should be lodged with the Court of Appeal competent according to the seat of the arbitration court that issued the challenged award. The decision of the Court of Appeal cannot be challenged by further appeal, but parties have the right to lodge an appeal in cassation with the Polish Supreme Court. The parties cannot waive their rights to challenge a future award. Challenging an award does not suspend the legal force of the award or its enforceability. Domestic enforcement can, however, be stayed on the basis of an award being challenged in setting asdie proceedings.

Enforcement of foreign arbitral awards

In regard to the enforcement of arbitral awards, Poland is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and to the 1961 European Convention on International Commercial Arbitration . Under the rules set forth in the Polish Civil Procedure Code, the Court of Appeals is competent to declare the enforceability of arbitral awards. The decision is issued after conduct of a hearing. The decision of the Court of Appeals is subject to cassation appeal to the Supreme Court.

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The usual duration of arbitration proceedings is between 8 months and 2 years.	• The costs of arbitration largely depend on the amount in dispute, the volume of documents, the number of witnesses, and whether expert opinions are required. • The arbitral tribunal has discretion regarding the awarding of costs. Usually, the losing party must reimburse the winning party. • Attorneys' fees are usually awarded based on the actual fees paid and are not determined by reference to statutory tariffs.
Approximate costs		
Procedural costs	The procedural costs depend on whether a sole arbitrator or a three-member arbitral tribunal 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	**Assumption: The amount in dispute is EUR 1,000,000:** Total costs: registration fee of EUR 570 and arbitration fee of EUR 13,200.	
Complex case	**Assumption: The amount in dispute is EUR 10,000,000:** Total costs: registration fee of EUR 570 and arbitration fee of EUR 49,000. In the case of a three-member arbitral tribunal, the arbitration fee doubles.	

Document production	Document production is limited. The parties can agree to apply the IBA Rules on the Taking of Evidence, which provide for narrow document production.	
Virtual hearing	Virtual hearings are common in Polish arbitration courts, although Polish law does not explicitly provide for such a possibility.	
Emergency arbitration	Emergency arbitration is available in Poland, although it is not particularly widespread.	• Polish law does not regulate emergency arbitration. • As at January 2024, the Court of Arbitration at Confederation Lewiatan remains the only permanent arbitration court providing for emergency arbitration. • Since the parties have flexibility to determine the rules of arbitration proceedings (unless these violate mandatory provisions of law), emergency arbitration before *ad hoc* arbitral tribunals is also an option.
Enforcement of foreign arbitral awards		
Approximate duration	2 to 6 months until a decision on recognition or enforcement is rendered in the first instance. 4 to 10 months if the decision is contested. The duration of enforcement proceedings depends mainly on whether the debtor has executable assets and whether the enforcement is opposed by the debtor.	• For the 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 an application for recognition or enforcement of a foreign/arbitral award is subject to payment of a court fee of EUR 70.	

Law at first sight.

Peter Daszkowski
Partner
E peter.daszkowski@wolftheiss.com
T +48 22 3788 918

Marcin Rudnik
Counsel
E marcin.rudnik@wolftheiss.com
T +48 22 378 8948

Dariusz Kiełb
Associate
E dariusz.kielb@wolftheiss.com
T +48 22 378 8987

Wolf Theiss ul. Marszałkowska 107, 00-110 Warsaw, Poland
T +48 22 378 8900 E warszawa@wolftheiss.com

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International Arbitration
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Romania

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 that has a foreign element.

The most used institution in Romania is the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CCIR). The 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 that they wish to be applicable to their dispute. Under Romanian law, the parties may agree that disputes arising from their contractual relationships will be settled by arbitration, indicating – on sanction of nullity – the method of appointing the arbitrators. In case of institutional arbitration, reference to the arbitration body or its rules of arbitration will suffice.

The arbitral agreement should be concluded either in the form of an arbitration clause, stipulated in the main contract (this clause is always made before any dispute arises) 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 arbitrated.

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 will be settled by a sole arbitrator or several arbitrators (the latter is generally applicable to *ad hoc* arbitration as, in the case of institutional arbitration, the rules of the institution apply). As a general rule, under the NCPC, if the parties have not specified the number of arbitrators, the dispute should be settled by three arbitrators: one appointed by each party and a third arbitrator, the chairperson, who

should 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 agreement, the arbitral tribunal has the authority to decide the procedural rules that will apply to the arbitration. However, if the parties are unable to reach agreement and the tribunal is also unable to decide, the general provisions stipulated in the NCPC apply.

Before or during the arbitration proceedings, any party can request that the courts of law 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 must be attached to the application for precautionary or provisional measures. If the court grants such measures, the party who applied for the measures must communicate a copy of the decision to the arbitral tribunal. During the arbitration proceedings, precautionary and provisional measures or measures required to ascertain factual circumstances relating to the dispute can also be approved by the arbitral tribunal. In case of resistance, the court will order the execution of these measures.

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

Arbitral awards are considered “national” awards where the seat of arbitration is in Romania. If the seat of arbitration is not located in Romania, the arbitral award is considered a foreign award and will be enforced only after it has been recognised by the Romanian courts under a specific procedure.

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

- 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 was not constituted in accordance with the arbitration agreement;

- a party was absent on the date of the hearing and the summoning procedure was not legally fulfilled;
- the arbitral award was rendered after the time for rendering the award had lapsed;
- the arbitral tribunal decided matters which had not been submitted to arbitration, or failed to decide upon a specific claim;
- the arbitral award failed to include the grounds for the award or the date and place where the award was rendered, or the award was not signed by the arbitrators;
- the arbitral award violates public order, morals or provisions of the law; or
- the Constitutional Court ruled, after the rendering of the arbitral award, that a law or ordinance, or a provision of such law or ordinance, applied in the dispute to which the arbitral award refers is unconstitutional.

Generally, the term for filing a setting aside petition is thirty days from the date the arbitral award is communicated.

Enforcement of foreign arbitral awards

Arbitral awards which do not qualify as national awards in Romania, but rather have been rendered in 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 voluntarily performed by those who are obligated to do so may be acknowledged and enforced in Romania if the subject matter of the arbitration is eligible to be settled through arbitration and if the award does not contain provisions contrary to Romanian public order.

Romania is a party to the New York Convention with the following reservations: (i) the New York Convention will apply only to awards resulting from disputes having a commercial nature under Romanian legislation; and (ii) the New York Convention will

apply to the recognition and enforcement of awards made in the territory of another contracting State – as regards awards made in the territory of non-contracting States, the Convention will apply only 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 of which contain provisions with regard to the recognition and the enforcement of arbitral awards in specific fields.

The enforcement of arbitral 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 New York Convention.

Applications for recognition and enforcement of an arbitral award must be lodged with tribunals (which are higher courts with exclusive jurisdiction to hear such applications). The competent tribunal is located in the county in which the domicile or the registered office of the opposing party is located. Where the competent tribunal cannot be identified, the Bucharest Tribunal always has jurisdiction. Applications for enforcement must be accompanied by the arbitral award and by the arbitration agreement, translated into Romanian.

The tribunal will refuse to recognize or enforce a foreign arbitral award if the opposing party proves one 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 rendered;
- the opposing party was not properly informed with regard to the election of the arbitrator(s) or the arbitral proceedings, 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 absence of such agreement, in accordance with the *lex loci*;

- the award concerns a dispute excluded by 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 yet become binding on the parties, or has been set-aside or suspended by a competent authority from the State of its issuance or in accordance with the law of the State of its issuance.

Decisions on applications for recognition and enforcement of a foreign arbitral award can be challenged only through an appeal. In recognition proceedings, the foreign arbitral award is recognised with regard to all factual circumstances which it contains.

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

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The usual duration of arbitration proceedings is between 6 months and 1 year.	
Approximate costs		
Procedural costs	The procedural costs depend on whether a sole arbitrator or a three-member arbitral tribunal is appointed, the complexity of the case and the administrative charges.	• The costs of arbitration largely depend on the amount in dispute, the volume of documents, the number of witnesses and whether expert opinions are required.

	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 of Romania.	• The arbitrators usually have large discretion regarding the awarding of costs. In practice, however, the awarding of costs often depends on the outcome of the case. The awarding of legal fees is usually not determined by reference to a statutory fee scale.
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 sole arbitrator's fees of EUR 17,157.	
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 sole arbitrator's fees of EUR 55,727. These fees are applicable only to 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 calculated based on the amount in RON. However, the fees in RON and EUR are similar.	
Document production	Limited.	
Virtual hearing	Provided for under Annex 4 g) CCIR Arbitration Rules.	• Frequent in practice.
Emergency arbitration	Provided for under art. 40(3) and Annex II CCIR Arbitration Rules.	

Enforcement of foreign arbitral awards		
Approximate duration	1 to 3 months until a decision on recognition (if applicable) and enforcement is rendered in the first instance; 3 to 5 months if the decision is appealed. The duration of enforcement proceedings depends mainly on whether the debtor has enforceable assets and whether enforcement measures or even the 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	For a declaration of enforceability, court fees are negligible (EUR 10 – EUR 20). The enforcement of an award by a bailiff carries specific costs, which are determined by the amount subject to recovery.	• 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.

Law at first sight.

Ligia Cecilia Popescu
Partner
E ligia.popescu@wolftheiss.com
T +40 21 308 81 00

Sorin Dumitru
Senior Associate
E sorin.dumitru@wolftheiss.com
T +40 21 308 81 00

Wolf Theiss 4 Vasile Alecsandri Street, The Landmark, Building A, 011062 Bucharest, Romania
T +40 21 308 81 00 **E** bucuresti@wolftheiss.com

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International Arbitration
in Central, Eastern &
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Serbia

Arbitration

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

In Serbia, there are two permanent arbitral institutions for general dispute settlement:

i. the Permanent Arbitration at the Serbian Chamber of Commerce (PA) is a permanent arbitration institution that was established in June 2016 by the transformation of two long-standing independent arbitration institutions that existed at the Chamber of Commerce (the Foreign Trade Court of Arbitration and the Permanent Court of Arbitration). The PA allows the settlement of both domestic and international commercial conflicts through arbitration or international mediation, provided that the parties have agreed to its jurisdiction. Since December 2016, it has been functioning under its PA Rules of arbitration, which are aligned with international standards governing procedures ranging from appointing arbitrators to conducting proceedings and issuing awards; and

ii. the Belgrade Arbitration Centre (BAC), established in 2013 as a permanent arbitral institution that administers domestic and foreign disputes in accordance with its BAC Rules, issued in December 2013. The BAC also assists in technical and administrative aspects of *ad hoc* arbitral proceedings under rules other than its own and, furthermore, organises and conducts mediation sessions.

Other chambers and organisations 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.

For an arbitration agreement to be valid and enforceable under Serbian law, it must be made in writing. An agreement is deemed to be in writing if it is contained in documents signed by the parties or in other forms of communication exchanged between the parties that provide written proof that a mutual agreement exists between the parties to settle the dispute through arbitration.

Arbitration may only be agreed for the resolution of proprietary disputes arising out of rights the parties freely enjoy. 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 arbitration proceedings. However, the Act does require the arbitrators to diligently and efficiently carry out their duties as arbitrators. On a related note, the PA Rules state that proceedings should last no longer than six months from the constitution of the arbitral tribunal or the selection of the sole arbitrator (the arbitral tribunal or sole arbitrator may extend the arbitration process beyond the six-month period if necessary for evidence gathering, where proposed by the parties or on justified grounds). Additionally, the PA Rules provide for expedited arbitration proceedings, which are applicable in lower-value disputes up to EUR 50,000, but the parties can also agree to apply them in disputes of a higher value.

The parties are free to agree on the substantive law, the procedural rules, the seat and the 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 must be an odd number of arbitrators. In addition, the parties may agree the procedure for appointing the arbitrators. However, if no arrangement 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 based on conflict of laws rules.

The Arbitration Act provides that, unless the parties to the arbitration agree otherwise, arbitral tribunals may 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 of the 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. In certain situations the PA Rules and the BAC Rules allow interim injunctions to be imposed without obtaining the response of the other party (i.e. where the urgency and immediate effect of the interim measure necessitate a swift course of action).

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 a challenge (Article 58 of the Arbitration Act). These 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 policy; and
- false testimony or a criminal act of an arbitrator or a party to the proceedings (if established by a final court judgment).

Enforcement of foreign arbitral awards

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

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: (i) the recognition and enforcement of awards made in the territory of another contracting State, (ii) differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law and (iii) those arbitral awards which were adopted after the entry into effect of the Convention in October 1981. Serbia is also a party to the 1961 European Convention on International Commercial Arbitration.

Serbian courts will refuse to recognise foreign arbitral awards, at the request of the party against whom enforcement is sought, on grounds essentially the same as those listed for challenging domestic arbitral awards. While the Serbian Courts cannot refuse to recognise a foreign award on the grounds of false testimony or criminal acts by an arbitrator or a party to the proceedings, recognition can be refused on one additional ground. Namely, if the foreign award has not yet become binding on the parties or has been set aside, or if its enforcement has been terminated by a court of the State in which the arbitration took place or under the law of which the award was rendered, the Serbian court will be entitled to refuse to recognise (and enforce) it. In practice, however, the Serbian courts have held that the grounds for refusing enforcement should be interpreted in a restrictive sense, thus narrowing and limiting the review of any award (for example, the term "public policy" should concern only the fundamental principles of justice on which the Serbian legal system is based).

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	According to the PA Rules, arbitration proceedings should be completed within 6 months from the date of constitution of the arbitral tribunal or the appointment of the sole arbitrator. Rules for expedited proceedings apply if the amount in dispute is less than EUR 50,000 or if the parties agree to apply them.	• In exceptional cases, the arbitral tribunal or the sole arbitrator may – with the consent of the President of the PA – decide to extend the arbitral proceedings if necessary for the purpose of obtaining evidence, if the parties make such a request or on other justified grounds.

Approximate costs	
Procedural costs	When the arbitration is conducted before the PA, the party submitting a request for arbitration, a claim, a counterclaim or a set-off claim deposits 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.
Document production	The Arbitration Act and the PA Rules do not provide for special rules regarding the presentation of documents.
Virtual hearing	The Arbitration Act stipulates that if the parties have agreed to entrust the organisation of arbitration to a permanent arbitration institution, the place of arbitration is determined in accordance with its rules. The BAC Rules explicitly allow oral hearings to be held by modern communication means such as by video and tele conference. Similarly, while not formally defined in the PA Rules, the PA has – in practice – also enabled the holding of oral hearings by video conferencing in practice (especially since the Covid-19 pandemic).
Emergency arbitration	Emergency arbitration is not explicitly regulated in the Arbitration Act, nor is it provided for in the PA Rules or the BAC Rules.
Enforcement of foreign arbitral awards	
Approximate duration	Varies.

Approximate costs		
Court fees	According to the Court Fees Act, for the purpose of issuing a recognition decision, the following amounts must 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.	• 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 arbitration agreement or a document demonstrating acceptance of arbitration in the original or a duly certified copy thereof, and certified translations of the abovementioned documents.

Law at first sight.

Miroslav Stojanović
Partner
E miroslav.stojanovic@wolftheiss.com
T +381 11 3302 910

Aleksandar Ristić
Partner
E aleksandar.ristic@wolftheiss.com
T +381 11 3302 926

Wolf Theiss Bulevar Mihajla Pupina 6/18, 11000 Belgrade, Serbia
T +381 11 3302 900 **E** beograd@wolftheiss.com

International Arbitration
in Central, Eastern &
Southeastern Europe

Slovak Republic

Arbitration

Pursuant to the Slovak Arbitration Act, parties may enter into an agreement that any or all disputes arising from their contractual relationship will be decided by one or more arbitrators or by a permanent court of arbitration. The Slovak Arbitration Act reflects the UNCITRAL Model Law to a certain extent and applies to both domestic and international arbitration proceedings where 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 a national and international nature. It has its own Rules of Procedure.

Arbitration agreements 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 have arisen after the original contract was concluded). Arbitration agreements must be in writing. They may be replaced by a statement by the parties in the minutes of an arbitral tribunal in which they submit to the jurisdiction of the arbitral tribunal. Such statements must be made no later than the commencement of the arbitration proceedings. For an arbitration agreement to be valid, the subject matter of the dispute between the parties must not be excluded from judicial settlement by law.

A dispute cannot be decided by arbitration where the dispute: (i) concerns the origin, change or expiration of rights relating to real estate; (ii) concerns personal status; (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 the language of arbitration. In addition, the parties are free to agree the number of arbitrators and how they will be appointed. However, there must always be an odd number of arbitrators.

Under 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 for the following grounds for challenging an award:

- a party to the arbitration agreement lacked capacity to enter into it;
- the arbitration agreement was not entered into in line with the respective governing law;
- a party was not duly notified of the appointment of an arbitrator, the arbitral proceedings or that such party was deprived of their right to participate in the arbitral proceedings;
- the arbitral award ruled on a dispute where no arbitration agreement was entered into or which was outside the scope of such an arbitration clause, or that the award goes beyond the agreement on arbitrator;
- the arbitral tribunal was not duly composed or that the arbitration proceedings were not handled in line with the arbitration clause;
- the subject matter of the dispute was not arbitrable or if the future enforcement would be in breach of public order.

Since 1 January 2015, arbitration proceedings in consumer protection matters are subject to further significant restrictions. In this regard, alternative dispute settlement is governed by the Alternative Settlement of Consumer Disputes Act.

Permanent courts of arbitration can be established either by a chamber established pursuant to law or by a legal entity under special legislation (Stock Exchange Act and Commodity Exchange Act), the Slovak Olympic Committee, or by other national sport federations.

Enforcement of foreign arbitral awards

Pursuant to the Arbitration Act, arbitral awards rendered abroad are to be recognised and enforced by the courts in the Slovak Republic. Recognition of a foreign arbitral award is not declared in a special decision, but rather foreign arbitral awards are recognised by the respective court in enforcement proceedings. In some instances, the courts may decline to recognise and enforce a foreign arbitral 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.

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The duration of arbitration proceedings may be between 1 month and 2 years.	
Approximate costs		
Procedural costs	Costs depend on several factors: whether a sole arbitrator or a three-member arbitration panel is appointed, the complexity of the case, the administrative costs and other expenses, 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, which is one of many arbitration courts in Slovak Republic. Costs can vary considerably among arbitration courts in the Slovak Republic.	• In cases with expedited decisions, the arbitration fee is increased by 75% and the administrative fee by 50% for decisions made within 2 months and the arbitration fee is increased by 50% and administrative fee by 40% for decisions made within 4 months. • In simple proceedings (without any hearings, evidence-based only) or if the dispute is decided by a sole arbitrator, the arbitration fee is decreased by 20% and the administrative fee by 10%. • The total decrease (in case of cumulation of reasons for arbitration fee reduction) may be up to 30%. Similarly, the administrative fee may be decreased by up to 15% in total. • Other expenses include: special costs (e.g. in connection with taking of evidence, payment of an expert, hearing outside the seat of the arbitration court, translations of documents, payment of an interpreter, travel and accommodation costs of foreign referees, etc.); attorney fees; fee for the review of arbitration award.
Simple case	**<u>Assumption:</u> Sole arbitrator and an amount in dispute of EUR 1,000,000:** Total costs: Arbitration fee of EUR 14,476; administrative fee of EUR 9,996 + other expenses.	
Complex case	**<u>Assumption:</u> Sole arbitrator and an amount in dispute of EUR 10,000,000:** Total costs: arbitration fee of EUR 70,840; administrative fee of EUR 18,864 + other expenses.	

Complex case	**Assumption: Arbitration panel and an amount in dispute of EUR 1,000,000:** Total costs: Arbitration fee of EUR 20,680; administrative fee of EUR 11,760 + other expenses.	
Document production	Limited.	• The arbitral tribunal only considers the evidence proposed by the parties. • In general, a party can ask the arbitral tribunal for its support in document production.
Virtual hearing	The applicable law does not regulate virtual hearings. However, the Arbitration Act does make general reference to the Code of Civil Procedure (Act No. 160/2015), which do allow virtual hearings (i.e. hearings by videoconference). Therefore, virtual hearings shall be allowed.	
Emergency arbitration	Emergency arbitration is not available.	
Enforcement of foreign arbitral awards		
Approximate duration	1 to 2 months (domestic arbitral awards) or up to 1 year (foreign arbitral awards) to render a first-instance decision on authorisation of enforcement and approximately another 6 months if the decision is appealed. The duration of enforcement proceedings depends mainly on the type of assets subject to enforcement and whether enforcement measures are opposed by the debtor. In 2021 (latest available statistics), the average duration of the entire enforcement proceedings was 10 months.	
Approximate costs		
Court fees	The court fee for decisions on authorisation of enforcement is EUR 16.50. Rewards and expenses of the bailiff are governed by the Regulation on Rewards and Expenses of the Court Bailiffs.	• 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.

Law at first sight.

Robert Pelikán
Partner
E robert.pelikan@wolftheiss.com
T +420 234 765 111

Katarína Matulníková
Partner
E katarina.matulnikova@wolftheiss.com
T +421 2 591 012 69

Wolf Theiss Aupark Tower, Einsteinova 24, 851 01 Bratislava, Slovak Republic
T +421 2 591 012 40 **E** bratislava@wolftheiss.com

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International Arbitration in Central, Eastern & Southeastern Europe

Slovenia

Arbitration

In 2008, Slovenia enacted a new 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 regulates various types of arbitral proceedings where the seat of arbitration is in Slovenia. Its provisions therefore apply to commercial and non-commercial disputes resolvable through arbitration, and to both domestic disputes and disputes involving international elements. The provisions of the Arbitration Act 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.

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

The Ljubljana Arbitration Centre is an autonomous and independent institution which acts as the central arbitral institution in Slovenia and administers disputes for both the domestic and international business communities through arbitration or other forms of ADR. New, modernised arbitration rules entered into force on 1 June 2023 (the Ljubljana Arbitration Rules), which brought the centre into line with other large regional and global institutions.

The Arbitration Act requires parties to enter into an arbitration agreement in writing. They can either conclude a stand-alone agreement or insert an arbitration clause into their contract. An arbitration agreement is deemed to be in writing if it is made between the parties by way of an exchange of letters, facsimiles or telexes or by such other means of telecommunication as to produce a permanent record of the agreement. It is also deemed to be in writing if it is sent from one party to the other or by a third person to both parties without any objection being raised in good time. Arbitration agreements are also valid where a bill of lading contains an express reference to an arbitration clause contained in a charterparty. It is also 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.

Furthermore, the Arbitration Act allows the parties to agree that all previous or future disputes arising out of the parties' contractual or non-contractual relationship will be settled through arbitration. Generally, all pecuniary claims are arbitrable, as are any other disputes in respect of which parties are allowed to settle. Disputes regarding personal status, such as 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 the substantive law, procedural rules, seat, language, number of arbitrators and how they will be appointed, 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 state 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 on the parties involved in the arbitration, and an arbitral award 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 outside the scope of the statement of claim;
- The arbitral tribunal was not composed correctly or the proceedings were not conducted 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.

Enforcement of foreign arbitral awards

Foreign arbitral awards are recognised and enforced in accordance with the applicable provisions of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Slovenia succeeded in 1992. In addition, Slovenia is 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.

Requests for the recognition of a foreign arbitral award should be filed with the District Court in Ljubljana. Any appeals against an order recognising a foreign arbitral award must be filed within a period of fifteen days after the order recognising the award is issued. Once the foreign arbitral award is recognized, the creditor can seek its enforcement through the territorially competent local court, under the same rules as applicable to judgments of national courts.

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The usual duration of arbitration proceedings is up to 2 or even 3 years. According to information received from the Ljubljana Arbitration Centre, the proceedings have become shorter in the last few years and it is not uncommon for proceedings to be completed within 9-12 months.	The Ljubljana Arbitration Centre 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 a three-member arbitral tribunal is appointed, the complexity of the case and the administrative charges. The following estimates are based on the procedural costs under the Rules of Arbitration of Ljubljana Arbitration Centre:	• The costs of arbitration depend on the arbitration agreement, the amount in dispute, the number of documents, the number of witnesses and whether expert opinions are required. • The costs of arbitration also include arbitrators' fees and administrative charges. • In the case of an arbitral tribunal with three arbitrators, the fees increase (almost double). • The arbitrators usually have large discretion regarding the award of costs. In practice, the award of 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 and an amount in dispute of EUR 1,000,000:** Procedural costs: registration fee of EUR 2,000; administrative fees of EUR 9,500 and sole arbitrator's fees of between EUR 20,400 and EUR 30,600.	
Complex case	**Assumption: international dispute, sole arbitrator and an amount in dispute of EUR 10,000,000:** Procedural costs: registration fee of EUR 2,000; administrative fees of EUR 18,000 and sole arbitrator's fees of between EUR 63,600 and EUR 95,400.	

Document production	Very limited. Document production is only allowed according to the applicable arbitration rules.
Virtual hearing	No specific provision in the Arbitration Act. No available court practice. Pursuant to Art. 32(3) of the Ljubljana Arbitration Rules, the arbitral tribunal may decide to conduct any hearing remotely by video conference, telephone or other appropriate means of communication.
Emergency arbitration	Pursuant to Art. 38 of the Ljubljana Arbitration Rules, a party that needs an urgent interim measure that cannot wait until the constitution of an arbitral tribunal can initiate emergency arbitrator proceedings in accordance with Appendix IV of the Ljubljana Arbitration Rules.

Enforcement of foreign arbitral awards

Approximate duration	It takes approximately 1 to 3 months until a recognition and enforcement decision is rendered in the first instance. The duration of enforcement proceedings depends mainly on whether the debtor has attachable assets and whether enforcement measures are opposed by the debtor.	• For the enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy. The Arbitration Act does not require the presentation of the original or a duly certified copy of the arbitration agreement. These documents should be produced only if specifically requested by the court.
Approximate costs		
Court fees	The fee for recognition decisions is EUR 16 – EUR 35, regardless of the amount in dispute. The fee for enforcement proceedings is EUR 44 or higher, depending on the manner of filing and number of additional means of enforcement.	

Law at first sight.

Markus Bruckmüller
Partner
E markus.bruckmueller@wolftheiss.com
T +386 1 438 0010

Žiga Dolhar
Counsel
E ziga.dolhar@wolftheiss.com
T +386 1 438 0013

Wolf Theiss Gosposvetska cesta 11, 1000 Ljubljana, Slovenia
T +386 1 438 00 00 **E** ljubljana@wolftheiss.com

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International Arbitration in Central, Eastern & Southeastern Europe

Ukraine

Arbitration

Ukrainian law provides for separate legal regimes with respect to domestic and foreign (or international) arbitration proceedings. The primary domestic arbitration law 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 (ICA Law) regulates international arbitration proceedings conducted in Ukraine. The ICA Law is based on the UNCITRAL Model Law on International Commercial Arbitration.

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

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

Under Ukrainian law, the parties to an arbitration agreement can submit any civil or commercial international dispute to arbitration, except the following disputes, which fall within the exclusive competence of Ukrainian courts: disputes on the validity of State acts and the acts of legal entities; disputes arising out of the conclusion, amendment, termination and performance of public procurement contracts; disputes regarding privatisation 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 any of its shareholders (except where 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) over compensation for damage caused to the legal entity; and other disputes over which the Ukrainian courts have been granted exclusive jurisdiction. However, there is no exhaustive list of disputes that fall within the exclusive competence of Ukrainian courts.

Historically, corporate disputes in Ukraine (specifically, those between shareholders or between a legal entity and any of its shareholders) were ineligible for arbitration until December 2017. This restriction influenced the structuring of investment ventures, prompting many joint projects to adopt non-Ukrainian holding entities for signing shareholders agreements, enabling the inclusion of arbitration clauses. Recent legislative changes have now permitted arbitration for corporate disputes where an agreement is in place between a legal entity and all its shareholders and, therefore, it is anticipated that more parties will now choose to resolve their disputes within Ukraine rather than offshore using foreign corporate structures.

A noteworthy development was introduced by the recently enacted Law of Ukraine "On Joint Stock Companies" No. 2465-IX dated 27 July 2022, which explicitly allows a company to be designated as an additional party to a shareholder agreement. This aligns with Article 22 of the Commercial Procedure Code of Ukraine, which expressly permits the referral of corporate disputes to arbitration, but only if the relevant arbitration agreement was concluded between a company and all its members (shareholders). This offers a significant opportunity for parties seeking a swift and business-focused resolution of a corporate dispute to refer such a matter to international commercial arbitration under the shareholder agreement.

Arbitration agreements must be made in writing and can take the form either of an arbitration clause in the contract between the parties or 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 a record of such 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 can be interpreted as making the arbitration clause an integral part of the contract.

An arbitration agreement must expressly indicate the disputes that the parties have agreed to submit to arbitration and, where institutional arbitration is intended, also the full name of the arbitral institution. If opting for *ad hoc* arbitration, it's recommended (though not required by law) to explicitly state the intention for *ad hoc* arbitration, as well as indicate the place of such *ad hoc* arbitration and number of arbitrators, among other things. However, any deficiencies in the wording of an arbitration agreement or 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.

The arbitral tribunal must resolve any 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 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 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 arbitral proceedings, including 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 difficult in practice.

Under the ICA Law, a party may file an application for assistance in the collection of evidence directly with the State court.

An arbitral award made under the ICA Law is final and binding on the parties. The ICA Law does not allow the possibility to appeal awards on their merits. An award may be challenged only by initiating proceedings to set aside the award before the State courts, only on the following grounds:

- the arbitration agreement was invalid due to the incapacity of one of the parties to conclude an arbitration agreement or on other grounds envisaged in the applicable law;
- proper notice was not given of the arbitration proceedings;
- the subject-matter of the dispute was not arbitrable under the arbitration agreement;
- the arbitral tribunal was not composed correctly or an incorrect arbitration procedure was followed;
- 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.

Martial Law considerations

It is crucial to highlight that, due to the imposition of martial law in Ukraine by the Decree of the President of Ukraine No. 64/2022 dated 24 February 2022, there are specific restrictions concerning payments in foreign currencies.

In accordance with Resolution of the National Bank of Ukraine No. 18 dated 24 February 2022, "On the operation of the banking system during martial law," all cross-border transfers of monetary values of convertible currency from Ukraine are prohibited, except for certain exemptions. These exemptions include:

Transactions related to the review of cases at the International Commercial Arbitration Court (ICAC) and the Maritime Arbitration Commission (MAC) at the Ukrainian Chamber of Commerce and Industry).

Transactions that involve payments by State enterprises for registration and arbitration fees, as well as advance payments to cover arbitration fees. These transactions are specifically related to the preparation, submission, and review of claims in international commercial and investment arbitrations.

As a result, Ukrainian private companies are not permitted to make payments, such as for registration, arbitration fees or advance payments to cover arbitration, to the bank accounts of foreign arbitration courts.

Additionally, due to the implementation of martial law, the ICAC has mandated that all incoming documents and materials must be submitted online. Crucial documents are required to be submitted in both electronic and paper formats. Furthermore, arbitration decisions will now be communicated in dual format. Additionally, the parties involved will be granted the opportunity and right to provide a statement to the ICAC regarding their participation in the hearing by video conference format. They will also be able to receive messages and documents from the ICAC in electronic format.

Enforcement of foreign arbitral awards

Foreign arbitral awards are recognised and enforced in Ukraine based on an international treaty between Ukraine and the relevant foreign State or under the reciprocity principle. Where there is no treaty providing for recognition and enforcement, foreign awards may be recognised and enforced under the reciprocity principle. Reciprocity will be presumed to exist unless proven otherwise.

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

In accordance with the Civil Procedure Code of Ukraine, applications for enforcement should generally be submitted within three years of an arbitral award being rendered.

To obtain recognition of and enforce an arbitral award, claimants must apply to the court of appeals with jurisdiction over the city of Kyiv. Applications 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, among other things.

As regards the enforcement of a foreign arbitral award, applications for recognition and enforcement should be supported by the following documents: (i) an original or certified copy of the arbitral award; (ii) an original or 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 a representative), and (v) a certified translation into Ukrainian of all documents listed above. Failure to observe the formal requirements for the documents that must be submitted to the court will result in the application for enforcement being returned to the applicant without the application's consideration.

In accordance with Article 478 of the Civil Procedure Code, State courts must reject an application for recognition and enforcement of an arbitral award if, among other things 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

Furthermore, recognition and enforcement will be refused 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 are the same as those for setting aside a domestic award.

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

Practice Overview

TYPE OF PROCEEDINGS	PROCEDURE AND ASSUMPTIONS	PRACTICE TIPS
Arbitration proceedings		
Approximate duration	The expected duration of arbitration proceedings before ICAC is 6 months.	• The duration may be longer or shorter depending on the case.
Approximate costs		
	Procedural costs before the ICAC primarily include the registration fee and the arbitration fee:	• Arbitration proceedings may also entail additional expenses.
Procedural costs	The registration fee is USD 600. The arbitration fee varies depending on the amount in dispute, the number of arbitrators involved, the complexity of the case and the administrative charges. For example, if the amount in dispute is:	

	• USD 200,001 to USD 500,000, the arbitration fee is USD 9,200 + 2% of the amount above USD 200,000; • USD 500,001 to USD 1,000,000, the arbitration fee is USD 15,200 + 1% of the amount above USD 500,000; • USD 5,000,001 to USD 10,000,000, the arbitration fee is USD 38,700 + 0.3% of the amount above USD 5,000,000; • above USD 50,000,000, the arbitration fee is USD 118,700 + 0.1% of the amount above USD 50,000,000, up to a limit of USD 350,000. If the case is heard by a sole arbitrator, the arbitration fees are reduced by 20%.	• The arbitration fee payable for non-monetary claims amounts is USD 1,800.
Document production	Limited. There is no formal discovery (document production) in Ukraine.	
Virtual hearing	The ICAC Rules provide that oral hearings by videoconference are possible at the parties' request.	
Emergency arbitration	Not provided for.	

Enforcement of foreign arbitral awards		
Approximate duration	Ukrainian law provides for the following stages of enforcement procedure: • submission of an application to recognise and enforce a foreign arbitral award with the local court; and • enforcement proceedings. The court proceedings should not last more than 2 months. However, it can often take longer to complete the proceedings as the judge has discretion to extend the time frame of the proceedings. The duration of enforcement proceedings mainly depends on whether the debtor has enforceable assets and whether the enforcement measures are opposed by the debtor.	• In order to recognise and enforce a foreign arbitral award, the applicant should submit the documents listed in the relevant provisions of an international treaty to which Ukraine is a party or under Article 476 of the Civil Procedure Code of Ukraine. • All documents must be translated into Ukrainian.
Approximate costs		
Court fees	The court fee for filing an application to recognise and enforce a foreign arbitral award is 0.5 times the monthly living wage: i.e. approximately EUR 40.	

Law at first sight.

Taras Dumych
Partner
E taras.dumych@wolftheiss.com
T +38 044 3 777 500

Sergii Zheka
Senior Associate
E sergii.zheka@wolftheiss.com
T +38 044 3 777 500

Wolf Theiss 5A/10 Ihorivska St., 04070 Kyiv, Ukraine
T +38 044 3 777 500 E kyiv@wolftheiss.com

International Arbitration
in Central, Eastern &
Southeastern Europe

Construction Arbitration

Construction Arbitration

In a globalised world, and particularly in the European common market and the CEE/SEE region, construction projects usually have an international dimension, involving various companies and stakeholders from different countries. Since arbitration can provide a flexible and efficient method of dispute resolution, allowing for awards to be recognised and enforced across jurisdictions (in particular, under the 1958 New York Convention for Recognition and Enforcement of Foreign Arbitral Awards) with limited grounds for judicial review, it is standard practice to include arbitration clauses in the contracts underlying such projects.

In construction and engineering disputes of an international nature, the following aspects are typical and require particular attention:

- **Multi-party constellations:** Construction and engineering projects often involve different parties at different levels of the project. The employer regularly hires a general contractor who, in turn, assigns different parts of the project to different sub-contractors. In addition to these actors, construction projects also substantially involve suppliers, designers and financial institutions, among others. The participation of several actors that can assert different rights – often under different contracts that are subject to different dispute resolution mechanisms and/or jurisdictions – generally turns construction disputes into "complex arbitrations". In such arbitrations, it is particularly important to coordinate the different proceedings and to consider how the different proceedings impact each other.
- **Multi-tier dispute resolution mechanism:** Construction contracts often include dispute resolution clauses which do not refer disputes directly to arbitration (or court litigation). Instead, these dispute resolution clauses provide for certain pre-arbitration steps (such as mediation, conciliation, expert adjudication, dispute boards, etc.) that need to be fulfilled before full-fledged arbitration is triggered under the contractual terms.

  The purpose of such multi-tier clauses (or escalation clauses) is to resolve issues (claims) at an early stage of any dispute either amicably (through mediation or conciliation) or through a decision and/or recommendation by an expert or dispute boards. The dispute boards focus on the practical and technical aspects of the issues underlying the claims with a view to the continued execution of the project (normally with technical experts such as engineers, surveyors or architects deciding on the claims) without the need

for an intensive legal assessment at that stage of the dispute. Dispute boards have proven to be effective for projects that are still ongoing.

- **Intervention, joinder, consolidation, and parallel proceedings:** Multi-party arbitration allows for the participation of third parties in arbitration proceedings (non-signatories of arbitration clauses). One of the main challenges where there are several contracts with different arbitration agreements is the issue of whether a dispute relating to various involved parties can be resolved in a single or consolidated arbitration or, at least, in parallel proceedings conducted in a coordinated manner. A single or consolidated arbitration (i.e. where at least two arbitrations are consolidated in one arbitration) requires that the different arbitration clauses contained in the various contracts must be compatible (in particular, the different arbitration clauses should provide for the same arbitral institution, the same number of arbitrators and the same place of arbitration).

  If parallel arbitration proceedings take place before different arbitral tribunals and/or under different arbitration rules, counsel has a particular duty to oversee and coordinate these proceedings. It is an even greater challenge if parallel proceedings take place both before arbitral tribunals and before State courts. In the scenario of parallel proceedings, the lack of international treaties governing general questions of parallel proceedings and *res iudicata* between arbitrations or between arbitral tribunals and State courts continues to be a challenge.

- **Emergency and expedited arbitrations:** As part of the measures aimed at promoting expediency and efficiency in arbitration, several international and regional arbitration institutions have incorporated mechanisms that can streamline arbitration proceedings:

  – Under the emergency arbitration provisions of the ICC Rules, a party can obtain, within 15 days, an order for urgent interim measures that cannot wait until the arbitral tribunal is constituted (e.g. interim measures in connection with guarantees). The orders issued by the emergency arbitrator are then subject to review by the arbitral tribunal.

  – The benefit of resorting to emergency arbitration provisions in CEE/SEE should be weighed against the expertise and celerity in connection with the granting of interim reliefs by local courts. In these regions, there are still concerns about the enforceability of an interim measure issued by an arbitral tribunal, even more so by an emergency arbitrator if they are not voluntarily complied with by the parties.

- The ICC and VIAC Rules – for example – provide for expedited procedures. Both sets of rules enable a streamlined procedure with lower fees and shorter deadlines. They both set out conditions under which these expedited rules may be applied, including with regard to when the arbitration was signed, the amount in dispute and the inability of parties to "opt out" of this mechanism.
- Unlike emergency arbitration proceedings, expedited proceedings result in an arbitral award and, therefore, do not suffer the enforceability risks as emergency orders in the CEE/SEE region.

With regard to construction and engineering disputes, emergency and expedited procedures allow disputes relating to ongoing projects to be decided more quickly. Statistics show that these mechanisms have indeed been used often in connection with construction disputes.

- **Selection of arbitrators:** One of the key decisions to be made at an early stage of arbitration is the selection of the panel of arbitrators in a construction dispute. Since these kinds of disputes are driven by a complex factual and legal matrix, the previous experience of potential arbitrators in such disputes is particularly important. This should not be underestimated, because once an arbitrator is appointed by an arbitral institution (generally after being nominated by each party or by the parties), it is – in principle – not possible to replace that arbitrator unless he/she breaches the principles of independence and impartiality or breaches his/her duties in a very serious way.

  The process of nominating arbitrators is particularly sensitive in multi-party proceedings (where there are multiple claimants and/or multiple respondents). The time frame for nominating party-appointed arbitrators can be short, bearing in mind that counsel must communicate with the various claimants or respondents, which may have different expectation and objectives. In particular, conflicts may also arise if several parties on the same side (whether they are claimants, respondents or a joining third party) have a duty to jointly nominate one arbitrator. In this scenario, to avoid delays and concerns about imbalances between the parties, institutional arbitration rules and national arbitration laws set out different solutions, such as that the arbitrators on the claimant's and/or on the respondent's side or, in certain instances, all arbitrators should be appointed by the arbitral institution.

- **Industry expertise:** Some legal disputes "only" involve legal questions – albeit highly complex ones – where the main legal question relates to the interpretation of a particular contractual clause or statutory provisions. However, construction and engineering disputes rarely revolve only around legal questions and, therefore, also require a thorough understanding of the industry itself and the technical aspects underlying the dispute. With this in mind, the previous industry knowledge and an understanding of the client's business, needs and expectations is of particular importance.

- **Experts in the proceedings:** Most construction and engineering arbitrations will require the involvement of experts who provide evidence on technical and quantum issues that help the arbitral tribunal to decide the matter. This can be done either by party-appointed experts (often preferred by the parties because they can present their own view of the matter) or by one or more tribunal-appointed experts (sometimes preferred by arbitral tribunals because it can essentially rely on the conclusions of the expert in order to decide the dispute). In case of tribunal-appointed experts, their involvement requires arbitrators to have a particular sense and knowledge of procedural standards in order to safeguard the parties' rights in a fair and transparent expert procedure. This aims to ensure that it is the arbitral tribunal, and not the tribunal-appointed expert, that takes particular decisions on the merits. In practice, the appointment of tribunal-appointed experts is the exception rather than the rule.

- **Standard forms:** In construction and engineering projects, parties often rely on standard forms and conditions in their contracts. This usually provides efficiency in the execution of contracts, legal certainty and the application of international standards. The most well-known standard forms are those of the FIDIC (Federation Internationale des Ingenieurs Conseils), which provides Conditions of Contract for, among other things, (i) construction works designed by the employer (the FIDIC "Red Book"), (ii) design-build contracts (the FIDIC "Yellow Book"), (iii) turnkey contracts (the FIDIC "Silver Book") and (iv) design, build and operate projects (the FIDIC "Gold Book"). The FIDIC Conditions have their origins in common law, and so the FIDIC Conditions place significant trust in the role of the (consulting) engineer and rely substantially on formal written notices and certificates (which have a number of legal and practical consequences which are relevant for project execution and claims management). Therefore, applying certain solutions

contained in the FIDIC Conditions in civil law jurisdictions (such as those in CEE/SEE region) is sometimes the subject of intense debate during the course of arbitration proceedings.

- **Claims management:** The importance of well-organised and project-accompanied claims management should never be underestimated. Activities relating to the monitoring of claim events on-site, the drafting and submission of claim notices and fully detailed claims (and replies to these) and record-keeping of the on-site situation are crucial for a successful presentation of claims and defences in an arbitration proceedings.

  Construction contracts usually state a specific time period for either party to inform the other party about events and/or circumstances that give them a contractual claim entitlement. For example, sub-clause 20.1 of the 1999 FIDIC Conditions and sub-clause 20.2.1 of the 2017 FIDIC Conditions provide that a contractor must submit a formal claim notice no later than 28 days after the contractor has become or should have become aware of such event or circumstance giving rise to a cost, loss, delay or claim for a time extension. Since these time-periods are usually designed as "cut-off-periods" with a preclusive effect under the contract (meaning that the other party will be discharged of all liability in connection with the claim should the claiming party fail to submit its claim notice within the stipulated time period), the management of such notifications is of particular importance throughout the projects and in advance of potential claims. In this regard, the interplay of contractual notification periods and statutory limitation periods is often a matter for discussion in construction arbitrations in the CEE/SEE region.

- **Public authorities and entities**: Large and complex construction and engineering projects are often commissioned by States, by State entities such as national ministries or local administrative authorities, or State-owned companies. Furthermore, such large projects are often financed by third parties (private or public) such as the European Commission and financial institutions including the European Bank for Reconstruction and Development (EBRD) and the European Investment Bank (EIB). The involvement of these entities (either as an actual party or as involved third party) requires a thorough understanding of – on the one hand – the procedural mechanisms and guarantees included in the contracts and – on the other hand – the interplay of the applicable substantive rules chosen by the parties and the mandatory rules.

Moreover, large infrastructure projects draw the attention of the general public (citizens, politicians and media), who might have a legitimate interest in the progress and the outcome of any dispute. Therefore, the issues of confidentiality and transparency (of the proceedings themselves as well as the award rendered by the arbitral tribunal) deserve particular and sensitive treatment.

In conclusion, from an arbitration perspective, international and large-scale construction and engineering projects require proper contract drafting (not least the dispute resolution mechanism), a diligent and effective project management and, in cases where disputes arise, competent legal advisors, arbitrators and experts to resolve the often factually and legally complex dispute.

Law at first sight.

Thomas Anderl
Partner
E thomas.anderl@wolftheiss.com
T +43 1 51510 5494

Venus Valentina Wong
Partner
E valentina.wong@wolftheiss.com
T +43 1 51510 5755

Emmanuel Kaufman
Counsel
E emmanuel.kaufman@wolftheiss.com
T +43 1 51510 5473

Wolf Theiss Schubertring 6, 1010 Vienna, Austria
T +43 1 51510 **E** vienna@wolftheiss.com

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International Arbitration
in Central, Eastern &
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Energy Arbitration

Energy Arbitration

Arbitration is a specialised form of dispute resolution that serves as a cornerstone of an intricate energy industry encompassing conventional oil & gas, LNG, electricity, renewables, mining and environmental sectors. The complexity of the energy industry – demanding significant capital investments, long-term commitments and the navigation of comprehensive (and evolving) regulatory frameworks – means that disputes are an inherent part of the sector.

Given this backdrop, arbitration plays a crucial role in the efficient resolution of disputes in the energy industry, responding to a multitude of cross-sectoral challenges. Energy arbitrations encompass i) contractual disputes among energy producers, suppliers and investors, ii) disputes regarding project development (including new technologies), iii) disputes relating to financing and the construction of the underlying infrastructure and iv) disputes arising from regulatory compliance (e.g. competition and environmental laws) and/or changes to the regulatory framework.

Energy is one of the sectors most affected by shifts in climate change policy and by the consequent transition of energy systems from fossil fuels towards cleaner alternatives (such as renewables). This transition has led to disputes surrounding the development, construction and commissioning of new energy infrastructure and the performance of this new energy production infrastructure. In this sense, changes to regulatory frameworks and clean energy promotion schemes have also sparked disputes between foreign investors and States.

Lastly, the energy sector has felt the effects of the crisis in Ukraine, which is still unfolding and has already prompted States to accelerate their evaluation and implementation of changes to their energy matrix by promoting a diversification of energy sources (e.g. promoting renewable energies, developing additional LNG infrastructure and a renewed interest in developing nuclear energy projects).

Commercial disputes in the energy sector

The paragraphs below give an overview of the disputes frequently submitted to arbitration in the CEE/SEE region:

- **Construction and rehabilitation of energy infrastructure:** Historically, the energy industry has always required heavy capital investment to build the infrastructure needed to produce, sell and distribute energy. In the past decade, there have been significant investments in developing and building greenfield energy projects (solar, wind and hydro) and to rehabilitate existing energy infrastructure. Additionally, countries in the CEE/SEE region have continued to better integrate energy transportation networks (by constructing gas pipelines and energy transportation infrastructure) and to build additional LNG processing plants so as to diversify the sourcing of natural gas (e.g. Croatia, Poland and Greece). Naturally, these investments have led to disputes associated with infrastructure construction, such as delays during construction, as well as disputes over the issuing of construction and environmental permits.

- **Transportation, sale and storage of natural gas:** The interconnected gas market in Europe, which relies on long-term gas supply contracts, has triggered disputes over price review mechanisms, the application of "*take and pay*" or "*take or pay*" contractual provisions, and the impact of force majeure on gas supply agreements. Similarly, disputes have also ensured from contractual agreements regarding priority rights to gas transported by specific gas pipelines or stored in gas storage facilities.

  The crisis in Ukraine has affected the number of disputes generated and has exacerbated the issues concerning the transportation, sale and storage of natural gas. In this respect, a rise in LNG purchases is also likely to increase the potential for disputes associated with LNG gas purchases and deliveries both under long-term contracts or in spot markets.

- **Renewable energy:** Over the past 15 years, States have made a widespread effort to promote investment in renewable energy sources (solar, wind and hydro). Once commissioned, these projects have generated disputes regarding their performance (such as their energy output) and risk allocation.

- Furthermore, the drive for alternative energy sources has led to investments in new energy production technologies (e.g. hydrogen infrastructure) and storage. The novel nature of certain technologies will likely impact disputes relating to their performance in the years to come.

- **Competition law:** The parties involved in energy projects also need to consider potential competition law implications, such as the existence of any anti-competitive practices or violations of competition law or State aid rules. This issue has been debated in energy arbitration cases dealing with price review clauses in gas supply contracts and disputes regarding renewable energy projects involving an EU party.

Investment arbitration and the energy sector

Given the flows of foreign investment, instances of international arbitration within the investor-State dispute settlement (ISDS) framework are very common in the energy sector. To attract a quantity of investments that would meet the growing global energy demand, it is crucial to provide legal confidence to investors. The promise of international arbitration under ISDS procedures, which offers the most effective way of resolving energy disputes, is perhaps the most important protection provided to investors. In recent years, a very common reason for initiating investment arbitrations against European states are the changes to the regulatory framework for renewables addressing the issue of protection of investors' legitimate expectations and the internal rate of return (IRR) on their investments. In these cases, the scheme of state aid approved by the European Commission plays a significant role in the assessment of the investors' claims.

ISDS procedures enable investors to initiate arbitration claims against States directly, often thus bypassing the need to pursue remedies in domestic courts. Current investor-State energy disputes concern matters ranging from the enforcement of arbitral awards to conflicts between public policy and investor rights.

In the last decade, investor-State claims in the energy sector have often been based upon the Energy Charter Treaty (ECT), which establishes the legal framework for promoting and protecting energy investment, trade, transit and dispute resolution. Some claims also arise from violations of bilateral investment protection treaties (BITs) between States, which also outline ISDS procedures. Certain claims may even arise under both the ECT and BITs simultaneously. This scenario occurs when the BIT offers a greater level of protection than the ECT.

A key matter of debate in the cases currently pending is the extent to which the ISDS procedures provided for in investment protection treaties are compatible with the European legal order. Subsequently, the debate has taken a new twist in the wake of two important judgments of the Court of Justice of the European Union (CJEU) – *Slovakia v. Achmea BV* and *Republic of Moldova v. Komstroy LLC* – rendered in 2018 and 2021, respectively. According to the CJEU, ISDS in connection with intra-EU investment disputes (arising out of intra-EU treaties, ECT or *ad-hoc* arbitration agreements), is invalid as it establishes a mechanism that cannot ensure that disputes over the application or interpretation of EU law will be decided by a court within the judicial system of the EU.

These rulings led to the termination of bilateral intra-EU treaties through the Agreement for the termination of Bilateral Investment Treaties between the EU Member States on 5 May 2020. Subsequently, the European Union and certain Member States also proceeded to withdraw from the ECT at the end of 2023. Nevertheless, the sunset clause contained in the ECT means that they remain bound by its provisions for a period of 20 years following withdrawal. These substantial shifts in the EU will likely prompt energy investors to consider whether they need to restructure their investments in Europe, particularly within EU Member States.

The impact of the Ukraine crisis on energy disputes

The Ukraine crisis has sparked numerous contract and investment disputes. These cases are rooted in Russia's insistence on applying new contractual conditions, including a requirement that companies affiliated with "unfriendly states" pay for Russian gas in roubles, as mandated by a new Russian law. Additionally, a string of disputes has emerged following failures to comply with minimum quantities for supply under gas supply agreements with European companies.

Against this backdrop, several European companies, including state-owned companies, have initiated arbitration proceedings to seek compensation from Russia or Russian state companies. Some are pursuing orders for the supplier to meet the additional costs they claim to have incurred in mitigating the consequences of the non-performance. The Russian supplier, in response, has cited force majeure as justification for failures to supply gas in accordance with its contractual obligations.

Furthermore, the Ukraine crisis has spawned disputes concerning the enforcement of the European sanctions regime. In adherence to these sanctions, some European companies have chosen to terminate their contracts with Russian counterparts, triggering disputes over the validity of such terminations.

The following aspects require particular attention:

- **Assessing investment protection measures:** Evaluate the investment protection measures available under different legal instruments (ECT, applicable bilateral investment treaty or investment contract) to determine the most effective protection of the investment;
- **Contractual claims analysis:** For cases involving contractual claims, consider whether these claims can be elevated to the level of investment treaty claims, especially under umbrella clauses outlined in the applicable investment protection treaties;
- **Procedural phase:** Handle claims notification and engage in good-faith negotiations to settle the dispute before arbitration proceedings – this is a crucial procedural phase that requires careful management;
- **Technical approaches:** Employ extensive technical approaches to identify the relevant arguments crucial for the case;
- **Expert language translation:** Ensure precise and accurate translation of the language used by experts in legal submissions to effectively plead your case and convince the tribunal;
- **Proactive strategy development:** Proactively develop strategies through technical, versatile discussions, leveraging industry knowledge for increased flexibility and dynamics in procedures; and
- **In-depth legal arguments:** Combine in-depth legal arguments with industry expertise to draft persuasive and strong pleadings.

Law at first sight.

Emmanuel Kaufman
Counsel
E emmanuel.kaufman@wolftheiss.com
T +43 1 51510 5473

Marie Talašová
Counsel
E marie.talasova@wolftheiss.com
T +420 234 765 228

Wolf Theiss Schubertring 6, 1010 Vienna, Austria
T +43 1 51510 **E** vienna@wolftheiss.com

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International Arbitration
in Central, Eastern &
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Investment Arbitration

Investment Arbitration

The investor-State dispute settlement mechanism (ISDS) is a preferred mechanism for resolving disputes between foreign investors and host States. It is a mechanism outlined and foreseen by bilateral and multilateral investment treaties concluded between States. The purpose of these treaties is to provide heightened protection to investors from one of the contracting States in relation to their investment in the territory of another contracting State, including recourse to a dispute resolution mechanism (e.g. institutional and/or *ad hoc* arbitration). Based on this mechanism, foreign investors can lodge claims against States without any direct contractual relationship if they consider the State to have breached one or several of the standards of protection included in the international investment treaty in question (which include protection against unlawful expropriation and the obligation of States to provide fair and equitable treatment to investors and to permit the transfer of investment-related funds without undue delay).

Statistics show that the number of investment disputes brought before tribunals formed under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) and the Permanent Court of Arbitration (PCA) has remained stable or may even have grown in recent years. There has been a significant increase in new cases in the energy and construction sectors over the last few years.

Despite the decision of EU Member States to terminate the intra-EU bilateral investment treaties (intra-EU BITs – mostly bilateral international investment agreements concluded between EU Member States for the protection of foreign investments made by foreign investors from one EU Member State in the territory of another EU Member State), ISDS is still negotiated and provided for in agreements between the EU and EU Member States and their non-EU trading partners. In addition, the new regulatory wave arising out of energy transition schemes and policies, as well as the roll-out of additional obligations for foreign investors arising out of environmental, social and governance policies, have led investment disputes to revolve around, among other things, the balance between the regulatory rights of States and the standards of protection in investment treaties. In this context, the ability of States to bring counterclaims against foreign investors may also become more relevant in the years to come.

The issue of intra-EU investment disputes and the future enlargement of the EU into the SEE region

The breakdown between the EU and the ISDS in connection with intra-EU investment disputes has become a reality. The decisions of the CJEU have, step by step, confirmed that ISDS is invalid in connection with intra-EU investment disputes arising out of bilateral investment treaties (*Slovakia v. Achmea BB* – C-284/16), multilateral investment treaties (*Republic of Moldova v. Komstroy LLC* – C-741/19) and *ad-hoc* arbitration agreements (*Poland v. PL Holdings* C-109/20).

While a number of investment tribunals have continued to consider such claims and have rejected the impact of the decisions of the CJEU, several courts in EU countries (e.g. the Federal Supreme Court of Germany and the Paris Court of Appeal) have declared a number of investment claims inadmissible or set aside awards rendered by tribunals in intra-EU investment disputes. In this regard, in a recent decision of 2023 concerning three ICSID energy arbitration cases, the Federal Supreme Court of Germany also decided that intra-EU investment disputes heard before the ICSID (in cases arising out of a number of Energy Charter Treaty (ECT) related arbitrations) can be declared inadmissible under the German Code of Civil Procedure.

To deal with possible uncertainties regarding the invalidity of ISDS in relation to intra-EU investment disputes, a large majority of the EU Member States entered into an Agreement for the Termination of Bilateral Investment Treaties between the EU Member States in May 2020 (which entered into force in August 2020). EU Member States not only agreed to terminate intra-EU BITs, but also agreed to limit the effects of the sunset clauses within intra-EU BITs (these are meant to protect the rights of investors after the termination of the bilateral investment treaties). The agreement also provides for solutions relating to concluded, pending and future investment disputes, in the latter case even providing for the withdrawal of consent to arbitration. Other EU Member States (Austria, Finland, Sweden and Ireland) have terminated their intra-EU BITs through a separate agreement with the relevant EU Member State.

While legal perspectives within the EU have become predictable in the context of intra-EU investment disputes, the possibility of having arbitral awards in relation to intra-EU investment disputes enforced outside the EU is still open. Furthermore, in a recent decision, the Federal Court of Justice of Germany permitted the partial enforcement of an arbitral award issued in connection with an investment dispute arising out of the bilateral investment treaty between Germany – India, rejecting

the proposition that the rationale behind the CJEU decisions relating to intra-EU investment disputes should be extended to extra-EU investment disputes.

In the future, legal discussion about the status of intra-EU investment disputes will likely be revived should the EU expand into the SEE region, with Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia and Serbia all currently aspiring to join the EU. All of these countries have investment treaties with current EU Member States. As things stand, these treaties are extra-EU investment treaties, but if any of these countries were to accede to the EU, that country's investment treaties with other EU Member States would become intra-EU investment treaties.

In this scenario, the impact of the CJEU's current spate of decisions on ongoing cases or potential new cases will very likely be tested and it appears plausible that we will see a sequel of the decisions rendered in *Slovakia v. Achmea*, *Republic of Moldova v. Komstroy* and *Poland v. PL Holdings*. It could be inevitable that questions will arise about the protection of investors should the EU expand into the SEE region. While the timeline for accession of these countries is not clear, some countries (such as Bosnia and Herzegovina) have already laid down principles for negotiating investment treaties in view of their possible future accession to the EU (e.g. decision of the Council of Ministers of Bosnia and Herzegovina on "*Principles and standards of investment protection in the agreements on the promotion and protection of investments which Bosnia and Herzegovina concludes*").

In light of this complex political and legal background and the manner in which each country and the EU might tackle these situations, foreign investors from EU countries might wish to evaluate alternatives in their investment planning and their timing of notifying potential claims.

Investment arbitration outside the sphere of intra-EU investment disputes

In recent years, the CEE/SEE region has not been immune to the increasing number of disputes that have arisen from changes to the regulatory framework in connection with renewable energy promotion and infrastructure projects associated with the transition to renewable energy (e.g. solar and wind energy projects and hydropower plants in Romania, the Czech Republic and Bosnia and Herzegovina).

The regulatory impetus in these areas – resulting from the environmental targets undertaken by countries – and the complex economic situation have already had an impact on the number of cases in the region. In this context, given the increasing obligations on investors as a result of ESG policies, it cannot be discounted that States could resort to counterclaims alleging that foreign investors have breached their environmental and/or human rights obligations.

In this context, the discussions surrounding the modernisation of the ECT, a process launched by the ECT members in 2017, aimed to encourage the transition from fossil fuels to renewables and, in particular, to manage the impact of the ECT on the implementation of green policies. It also reaffirmed the interest of States in strengthening their rights to regulate in relation to environmental policies and in limiting the scope of application of standards of protections (e.g. fair and equitable treatment) and the types of investments falling under the scope of the ECT. In general, the ECT modernization had ample acceptance in the CEE/SEE region.

However, the success and future of the ECT's modernisation is currently on hold and uncertain, partly due to the EU Commission's recommendation for a coordinated withdrawal from the ECT by EU Member States in July 2023, which has been approved (in principle) by the EU Council (and is now subject to a vote in the EU Parliament). This recommendation came after the decision by some EU Member States to withdraw from the ECT (Poland, Germany, France and Luxemburg) or announcements of their intent to leave the ECT in the future (Slovenia, Netherlands, Portugal, Spain and Denmark) out of concerns that the ECT may be an obstacle for the implementation of green policies and/or the compatibility of the ECT with EU law In this regard, to avoid jeopardising the modernization process (given that the negotiated modifications align with modern standards of investment protection and the EU's position), the EU Commission recently submitted two proposals to the EU Council. These proposals call on EU Member States (which are contracting parties to the ECT) not to hinder the approval and entry into force (and provisional application) of the modernised and modified ECT and its related annexes, understandings, declarations and decisions. The EU Commission's proposals to the EU Council also emphasise that EU Member States should not (unless authorised by the EU) remain contracting parties to the ECT once the EU withdraws from the treaty.

In any event, it is to be noted that the ECT contains a sunset clause providing that investments made before the withdrawal of the ECT are protected for a period of 20 years following withdrawal. Against this background, several countries – including certain EU Member States within the CEE region – still consider that a successful modernisation of the ECT is a better approach than a full withdrawal.

Protection of investments in the case of armed conflicts

The consequences of Russia's invasion of Crimea in 2014 and the rest of Ukraine in 2022 have led Ukraine and Ukrainian companies to resort to different legal avenues to obtain redress for the consequences of Russia's actions (e.g. International Court of Justice, European Court of Human Rights and investment arbitration tribunals).

As for Ukrainian companies that have suffered the consequences of the Russian invasion or annexation, a number of cases have been initiated under the 1998 bilateral investment treaty between Ukraine and the Russian Federation. A number of cases have been decided under this bilateral investment treaty in the past year. In this regard, the establishment of the Registry of Damages Caused by the Aggression of the Russian Federation against Ukraine is another step towards finding alternatives for individuals and companies to obtain compensation for damage caused by the invasion of Ukraine. However, it is yet to be seen how individuals and companies will be able to obtain compensation in light of the continuing restrictions on frozen Russian assets outside of Ukraine (e.g. sovereign immunity). Whether countries take steps to make frozen Russian assets available and/or the proceeds of frozen Russian assets to compensate individuals and companies that have suffered the consequences of the invasion and/or to finance the rebuilding of Ukraine could impact on the number of cases submitted against the Russian Federation.

As a consequence of the sanctions imposed against the Russian Federation by the USA and the EU, among others, following the invasion of Ukraine, Russia has in turn imposed countersanctions against foreign investors from "unfriendly" countries (e.g. the USA, the UK and EU Member States). These measures restrict or interfere with their investments in Russia, including by way of a) requesting "voluntary" contributions to the Russian Federation; 2) limiting the payment of dividends; 3) one-off windfall taxes to Russian companies; and 4) rules limiting the sale of investments in Russia. In this respect, Russia has also established the legal framework to place assets of foreign investors under third-party control (in some cases Russia has already taken actions in connection with certain foreign investments).

All these measures may lead to investment disputes arising out of Russia's network of more than 60 bilateral investment treaties in place with countries other than Ukraine. These bilateral investment treaties may offer an alternative for foreign investors to obtain redress under investment treaties. Even the ECT, in case of investments made before 19 October 2009, may be an alternative available to foreign investors. In particular, investors may test the legality of the countersanctions that Russia has

imposed on investors from “unfriendly” States, which may violate the standards of protection in the different bilateral investment treaties that Russia is a party to (e.g. breach of fair and equitable treatment and the obligation to permit the transfer of investment-related funds without undue delay).

The following aspects require particular attention for the submission of investment claims:

- In-depth preliminary assessment and compliance of jurisdictional requirements to avoid a lengthy jurisdictional phase, which – in case of bifurcation – may lead to a substantial delay in the proceedings.
- Identification and evaluation of different alternatives to pursue claims (where different treaties apply) so as to identify the most beneficial treaty (a treaty that provides for a broader scope of protection of investments and/or foresees more flexible jurisdictional requirements).
- Investment arbitration is characterised by a detailed presentation and evaluation of damages. The early involvement and selection of an experienced damages expert (as well early assessment of damages before the filing of the request for arbitration) is recommended.
- In-depth due diligence of candidates for the role of co-arbitrator and chairperson of the tribunal in view of the publicly available case law and publications.
- Early collection of evidence (as well as evaluation of measures to protect available evidence) is recommended since access to certain evidence (including witnesses) may be more challenging after submitting an investment claim given the participation of States in the proceedings.
- Transparency requirements may require the publication of information about the status of and issues discussed in proceedings.

Law at first sight.

Stefan Riegler
Partner
E stefan.riegler@wolftheiss.com
T +43 1 51510 5470

Venus Valentina Wong
Partner
E valentina.wong@wolftheiss.com
T +43 1 51510 5755

Emmanuel Kaufman
Counsel
E emmanuel.kaufman@wolftheiss.com
T +43 1 51510 5473

Marie Talašová
Counsel
E marie.talasova@wolftheiss.com
T +420 234 765 228

Anna Bilanová
Associate
E anna.bilanova@wolftheiss.com
T +420 234 765 240

Wolf Theiss Schubertring 6, 1010 Vienna, Austria
T +43 1 51510 E vienna@wolftheiss.com

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International Arbitration
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M&A Arbitration

M&A Arbitration

In today's globalised world, including in the CEE and SEE region, a majority of M&A transactions carry an international element. This, combined with other factors, means that such transactions often involve a plethora of complex factual and legal issues. These include issues of corporate finance, accounting, regulatory (including competition), tax and environmental issues. Indeed, while the parties to a successful transaction – having completed lengthy rounds of negotiation – may revel in the immediate aftermath of a deal, this initial euphoria is often followed by disillusionment as legal issues come to the surface. The agreed price may not reflect the true value of the target or the purchaser may find that it has not received what it thought it had bought. So it is not surprising that the increasingly complex nature of M&A transactions has led to a wide range of potential disputes.

Arbitration is the preferred method of resolving M&A disputes, and it is estimated that more than 75% of M&A agreements contain arbitration clauses. In general, most M&A disputes can – following the timeline of M&A transactions – be categorised as (i) pre-signing disputes, (ii) pre-closing disputes, (iii) closing disputes, and (iv) post-closing disputes. However, disputes arising from M&A transactions can include a wide variety of different types of disputes, with post-closing disputes being the most common (commonly referred to as post M&A-arbitration). The following types of M&A related disputes are some of the most frequent:

- **Closing disputes:** Closing conditions in M&A agreements seek to ensure that legal and other conditions have been satisfied, often relating to – for instance – regulatory and finance matters, warranties and/or the non-occurrence of a material adverse change (MAC). Disputes may arise if compliance with these conditions is disputed or if the purchaser claims that a MAC has occurred.
- **Price adjustment disputes:** This type of dispute usually arises when one party is alleged to have exceeded its discretion in the application of statutory or contractually agreed accounting principles in connection with a closing balance sheet, or as a result of differing interpretations of contractual provisions. In general, this type of dispute often relates to the final adjustment of the preliminary purchase price on the basis of the closing accounts.
- **Earn-out disputes:** A subcategory of price adjustment disputes, this type of dispute can arise in relation to earn-out clauses. Earn-out clauses allow the positive development of the business in the medium term to be taken into account in favour of the seller, effectively leading to an increase in the purchase price payable to the seller. The calculation of the (variable) purchase

price is usually linked to financial indicators such as turnover, EBIT, EBITDA and operative cash flow, particularly in the post-closing period. Naturally, the purchaser might tend to underestimate the additional purchase price to be paid, while the seller might estimate a higher amount, which in turn may lead to disputes as to the interpretation and definition of the parameters for calculating the earn out, the information rights of the seller or the conduct of the sold business post-closing.

- **Breach of representations and warranties:** Once the purchaser is fully in charge of the target, it receives a better view of the conduct and the dealings of the target(s). This may lead to the discovery of a variety of issues previously not known to the purchaser. In this context, the purchaser might often allege and attempt to prove that the seller is in breach of specific representations and warranties regarding the target, has breached pre-contractual disclosure obligations or has even made deliberate misrepresentations. Conversely, the seller might seek to reaffirm its representations and warranties by alleging that the purchaser learned or became aware of a particular fact during the course of the transaction. In this regard, knowledge-sharing qualifiers in M&A agreements are usually of particular importance.

There are a variety of legal and/or practical issues common to M&A arbitration.

Frequently arising **practical issues** include:

- **Choosing legal counsel:** As M&A arbitrations are driven by a complex factual and legal matrix, particularly as regards the interpretation of contractual provisions and the relationship with accounting standards, the specific experience of counsel should be a crucial consideration for companies when choosing the legal representative in any M&A arbitration.
- **Selection of arbitrators:** In M&A arbitrations, as with any other arbitration, the selection of the arbitrator(s) is a key decision at a very early stage of the arbitration. To ensure efficient and expeditious proceedings, to reduce costs and expenses, and to ensure that each party's legal arguments are properly heard and considered, it might – depending on the focus of the respective dispute – be advisable to appoint (an) arbitrator(s) with sufficient experience in M&A arbitrations.
- **Involvement of experts:** M&A arbitrations often require the involvement of (primarily economic) experts. The variety of complex issues that could potentially arise in such disputes means that a variety of disciplines, skills and

experience may be required. Frequently, (quantum) experts in the following three disciplines are involved: accounting, investigation and valuation. While in some M&A arbitrations, one discipline may be sufficient – such as in the case of financial statement disputes, which often solely revolve around how financial statements are prepared from an accounting perspective – in many other situations a combination of disciplines will be required. There is rarely one expert who is able to cover everything, so it is important to identify the key areas early on in order to choose the right expert(s) for each dispute.

- **Taking of evidence:** Documentary evidence may – depending on the applicable substantive law – play a central role in M&A arbitrations. This particularly relates to documentation exchanged prior to the signing of the M&A agreement (be it drafts of contracts, answers to Q&As or the contents of the data room). In general, parties should consider keeping records of such documentation, for instance by preserving the data room in order to retain access to the information provided prior to the signing of the M&A agreement. In addition – and depending on the relative bargaining power of the parties – sellers may attempt to contractually "secure" access to evidence post-closing. However, there are often situations where a party cannot rely on such clauses and does not have access to the evidence necessary to present and prove its case. In such cases, documents held by the opposing party or by the target may be of particular importance and a request for document production might be vital to gain access to such documents held by the other party.

In addition, **legal issues** which frequently arise and are common among M&A arbitrations include:

- **Expert determination:** M&A agreements frequently provide for expert determination. Parties agreeing on expert determination usually seek to resolve disagreements that are primarily related to the application of international or contractually specified accounting standards and the "calculation" of the purchase price or other financial parameters. The interaction between an expert determination and arbitration is important, but often complex, as challenges can arise when parties choose to use both procedures in a multi-tiered clause or even without a clear legal order.

  Although both mechanisms are based on contractual agreement, they are very different in scope and procedure. Expert determination involves the appointment of an expert, mostly a financial expert or even an accounting firm, to deal with accounting and/or valuation issues, whereas arbitration has

a broader jurisdiction. While an arbitration agreement aims to fully resolve a dispute by deciding what is "right" in the form of an (enforceable) arbitral award, the expert determination in the "simple" form of a binding decision should primarily establish facts or elements of facts or to supplement the will of the parties.

Peculiarities of national laws may have to be considered regarding expert determination, depending on the law applicable. For instance, an expert determination report that goes beyond the scope of the expert's mandate may be subject to challenge and annulment by the competent forum (State court or arbitral tribunal), so it is essential to define the scope of the expert's mandate. It may therefore be preferable to proceed directly to arbitration where the resolution of a dispute requires extensive legal analysis and contractual interpretation.

- **Notice requirements:** Compliance with notice requirements set out in M&A agreements is critical. Notice requirements defining time limits and requirements as to the content of a notice are usually included in M&A agreements, and failure to comply with such notice requirements will rarely be dismissed as a mere technicality. For instance, if an M&A agreement requires certain information to be included in a notice, a failure to do so could be regarded as an invalid notice (and it might not help the notifying party to argue that the other party already knows the information). Parties are therefore advised to take particular care to ensure that notices are drafted in accordance with the notice requirements of the M&A agreement.
- **M&A arbitrations involving multiple parties or contracts:**
  - **Multiple transaction documents:** Complex M&A transactions almost always involve several transaction documents. For example, the parties may enter into one or more share purchase agreements in addition to the shareholders' agreement. In such cases, conduct must be assessed in the context of the obligations contained in the agreements in order to determine which agreement has been breached; certain conduct might even constitute a breach of, or trigger obligations under, multiple agreements.
  - **Joint venture disputes:** In joint venture transactions where the parties acquire interests in a joint venture and exercise control over the joint venture, a shareholders' agreement is often signed to govern the parties' obligations regarding the joint venture. In addition to the shareholders'

agreement, the parties' conduct as shareholders will also be governed by the provisions of the corporate documents of the joint venture. Disputes in this context frequently involve allegations of breach of both contracts by different entities and individuals.

- **Multiple sellers in an M&A transaction:** Many M&A transactions involve multiple sellers of a target company selling that company to one or more purchasers. Such an M&A transaction may be conducted as a single, multi-party transaction under a single M&A agreement, or possibly with multiple M&A agreements. In disputes involving multiple parties or contracts, it would normally be more efficient and less burdensome for the parties to resolve their dispute in a single arbitration before one arbitral tribunal.

In all such cases, compatible arbitration agreements in the transaction agreements can be helpful to avoid procedural complexities. Counsel should therefore attempt to ensure that the arbitration agreements contained in different transaction documents are consistent with each other. It is also important to note that the procedural tools of joinder and consolidation can be useful tools for the efficient resolution of such multi-party disputes.

- **Particularities of national laws:** Parties should also be aware of the peculiarities of the (procedural) law at the seat of the arbitration when choosing the "place" or "seat of arbitration", as this may have consequences for the arbitration clause.

Stefan Riegler
Partner
E stefan.riegler@wolftheiss.com
T +43 1 51510 5470

Alexander Zollner
Counsel
E alexander.zollner@wolftheiss.com
T +43 1 51510 5471

Philipp Theiler
Associate
E philipp.theiler@wolftheiss.com
T +43 1 51510 5474

Our Offices

Albania
Murat Toptani Street
Eurocol Business Center
1001 Tirana
T +355 4 2274 521
E tirana@wolftheiss.com

Austria
Schubertring 6
1010 Vienna
T + 43 1 51510
E wien@wolftheiss.com

Bosnia and Herzegovina
Zmaja od Bosne 7
71000 Sarajevo
T +387 33 953 444
E sarajevo@wolftheiss.com

Bulgaria
Office Park Expo 2000, Phase IV, floor 1
55 Nikola Vaptsarov Blvd,
1407 Sofia, Bulgaria
T +359 2 8613 700
E sofia@wolftheiss.com

Croatia
Ivana Lučića 2a/19th
10 000 Zagreb
T +385 1 4925 400
E zagreb@wolftheiss.com

Czech Republic
Pobřežní 12
186 00 Prague 8
T +420 234 765 111
E praha@wolftheiss.com

Hungary
Kálvin tér 12–13
1085 Budapest
T +36 1 484 8800
E budapest@wolftheiss.com

Poland
ul. Marszałkowska 107
00 - 110 Warsaw, Poland
T +48 22 378 8900
E warszawa@wolftheiss.com

Romania
4 Vasile Alecsandri Street
The Landmark, Building A
011062 Bucharest
T +40 21 308 81 00
E bucuresti@wolftheiss.com

Serbia
Bulevar Mihajla Pupina 6/18
11000 Belgrade
T +381 11 3302 900
E beograd@wolftheiss.com

Slovak Republic
Aupark Tower, Einsteinova 24
851 01 Bratislava
T +421 2 591 012 40
E bratislava@wolftheiss.com

Slovenia
Gosposvetska cesta 11
1000 Ljubljana
T +386 1 438 00 00
E ljubljana@wolftheiss.com

Ukraine
5A/10 Ihorivska St.
04070 Kyiv
T +38 044 3 777 500
E kiev@wolftheiss.com

Cooperating Law Firms

Pallaska&Associates L.L.C.
Ali Pashë Tepelena Street
Ivy Residence No. 12
10000 Prishtina, Kosovo
T + 383 38 244 888
E info@pallaska-associates.org
W www.pallaska-associates.org

Radonjic Associates
Džordža Vašingtona 108/A36, 2nd Floor
The Capital Plaza
81000 Podgorica, Montenegro
T +382 20 620 312
F +382 20 620 313
E info@radonjic-associates.com
W www.radonjic-associates.com

Ana Minoska
Attorney-at-Law
Ul."Borka Taleski" br.40/3
Municipality of Center
1000 Skopje, Republic of Macedonia
T +389 70 38 28 90
E minoski@t.mk

WT

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