

ARBITRATION IN BOSNIA AND HERZEGOVINA

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Table of Contents

1.	Legislative framework	133
2.	Scope of application and general provisions of the Federation CPA	134
2.1	Subject matter	134
2.2	Structure of the law	134
2.3	General principles	134
3.	The arbitration agreement	134
3.1	Definitions	134
3.2	Formal requirements	135
3.3	Special tests and requirements of the jurisdiction	135
3.4	Separability	136
3.5	Legal consequences of a binding arbitration agreement	136
4.	Composition of the arbitral tribunal	136
4.1	Constitution of the arbitral tribunal	136
4.2	Challenging the arbitrators	137
4.3	Responsibility of the arbitrators	138
4.4	Arbitrator immunity	138
5.	Jurisdiction of the arbitral tribunal	139
5.1	Competence to rule on jurisdiction	139
5.2	Power to order interim measures	139
6.	Conduct of proceedings	139
6.1	Commencement of arbitration	139
6.2	Seat, place of hearings and language of arbitration	139
6.3	Multi-party issues	140
6.4	Oral hearings and written proceedings	140
6.5	Default by one of the parties	140
6.6	Evidence generally	140
6.7	Appointment of experts	140
6.8	Confidentiality	141

7.	Making of the award and termination of proceedings	141
7.1	Choice of law	141
7.2	Timing, form, content and notification of award	141
7.3	Settlement	141
7.4	Power to award interest and costs	141
7.5	Termination of the proceedings	142
7.6	Effect of the award	142
7.7	Correction, clarification and issue of a supplemental award	142
8.	Role of the courts	142
8.1	Involvement of the courts	142
8.2	Stay of court proceedings	143
8.3	Preliminary rulings on jurisdiction	143
8.4	Obtaining evidence and other court assistance	143
9.	Challenging an award before the courts	143
9.1	Jurisdiction of the courts	143
9.2	Applications to set aside an award	144
9.3	Appeals	145
10.	Recognition and enforcement of awards	145
10.1	Domestic awards	145
10.2	Foreign awards	146
11.	Concluding thoughts and themes	147
12.	Contacts	148

1. Legislative framework

- 1.1.1 Following the Dayton Agreement of 1995, Bosnia and Herzegovina consists of two entities, each presiding over one half of the territory of the Federation of Bosnia and Herzegovina and the Republic of Srpska. Together with the Brčko District, a self-governing administrative unit under the sovereignty of Bosnia and Herzegovina, all three entities have authority to legislate on matters of civil procedure. As a result, there are three separate acts governing the area of civil procedure. The law on arbitration is contained within the Civil Procedure Act of the Federation of Bosnia and Herzegovina 2003 (**Federation CPA**),¹ the Civil Procedure Act of the Republic of Srpska 2003 (**Republic CPA**),² and the Civil Procedure Act of the Brčko District 2003 (**District CPA**).³ As the provisions governing arbitration in each of these Acts are exactly the same, this Chapter will use the Federation CPA to analyse the issues concerning arbitration. The provisions on arbitral proceedings and the procedure for setting aside an award can be found in Chapter V of the Federation CPA. Additionally, the procedure for the recognition and enforcement of foreign awards can be found in Chapter IV of the Conflict of Laws Act (**CLA**).⁴
- 1.1.2 In the same year as the new civil procedure acts were enacted, the Arbitration Court with the Foreign Trade Chamber of Bosnia and Herzegovina (**Bosnia and Herzegovina Arbitration Court**) adopted its Rulebook on Arbitration (**Rulebook**). The rules of arbitration for the Bosnia and Herzegovina Arbitration Court are set out in this Rulebook. The Rulebook covers issues regarding the organisation of the Bosnia and Herzegovina Arbitration Court, the language of arbitration, the jurisdiction of an arbitral tribunal, the commencement of arbitral proceedings, the appointment of an arbitral tribunal and arbitrators, the arbitral proceedings, the award and the costs of arbitration.⁵ However, it is only applicable where parties have contractually agreed that the matter in dispute shall be settled before the Bosnia and Herzegovina Arbitration Court.

¹ Federation CPA, art 434–453.

² Republic CPA, art 434–453.

³ District CPA, art 380–399.

⁴ CLA, ch IV, art 97–101.

⁵ Rulebook, art 1–59.

2. Scope of application and general provisions of the Federation CPA

2.1 Subject matter

2.1.1 Articles 434–453 of the Federation CPA apply to a procedure in which the parties agree to resolve their dispute through arbitration. Such agreement must be in accordance with the mandatory provisions of the relevant law. For example, disputes are arbitrable only if they fall outside the exclusive jurisdiction of the state courts.

2.2 Structure of the law

2.2.1 As noted above, the laws governing arbitration are contained in three civil procedure acts: the Federation CPA, the Republic CPA and the District CPA. The provisions are exactly the same in each act. The acts cover issues relating to the parties and the arbitration agreement, the appointment of an arbitral tribunal and its members, general rules regarding the arbitral proceedings and the involvement of the state courts.

2.3 General principles

2.3.1 While there is no express statement of the principles governing arbitral proceedings in Bosnia and Herzegovina, some general principles can be taken from the Federation CPA. For example, Article 443 of the Federation CPA establishes party autonomy to agree upon the rules of arbitration.⁶ Bearing in mind that the law on arbitration is contained in the Federation CPA, it can be assumed that the general principles of civil procedure listed in Chapter I of the Federation CPA, such as due process, will apply to arbitral proceedings so long as they are not waived by the contractual agreement of the parties.

3. The arbitration agreement

3.1 Definitions

3.1.1 An arbitration agreement may be concluded in respect of any present or future dispute that may arise out of a legal relationship established between the parties.⁷ Furthermore, an arbitration agreement is deemed to exist when the claimant asserts that such an agreement exists and the respondent does not challenge this assertion in its defence. Additionally, an arbitration agreement exists when it is

⁶ Federation CPA, art 443.

⁷ *Ibid*, art 435, para 1.

contained in the general terms and conditions that apply to the legal relationship existing between the parties.⁸

3.2 Formal requirements

- 3.2.1 An arbitration agreement must be in writing and signed by all parties to the agreement, as Bosnia and Herzegovina laws require that the existence of an arbitration agreement be evidenced by written documents.⁹ This formal requirement can also be fulfilled if an arbitration agreement is either contained in a larger document signed by the parties or concluded by an exchange of messages via a means of communication that provides a written record of the parties' agreement.¹⁰
- 3.2.2 If an action is brought before the court where the matter in dispute is the subject of an arbitration agreement, the respondent may apply to the court to dismiss the action for lack of jurisdiction. This application must be submitted, at the latest, as part of the respondent's answer to the claim.¹¹
- 3.2.3 Either party may file a request with the court to terminate the arbitration agreement in the following cases:
- where the parties fail to agree on the arbitrator, in cases where the arbitrator is to be appointed jointly by the parties;
 - where a person who should be an arbitrator according to the arbitration agreement cannot or does not want to perform that duty;
 - where the parties do not wish to exercise their right to request the court to appoint the arbitrator or the presiding arbitrator; or
 - when the arbitrators cannot render an award by majority vote and the parties have not agreed on how to resolve the dispute.¹²

3.3 Special tests and requirements of the jurisdiction

- 3.3.1 In order for a matter to be arbitrable, the claim must be disposable by the parties, i.e. the claims must not contravene mandatory regulations.¹³ Furthermore, disputes are arbitrable only if they do not fall under the exclusive jurisdiction of the state courts. The state courts in Bosnia and Herzegovina have established jurisdiction over disputes relating to real estate located in Bosnia and Herzegovina, disputes

⁸ *Ibid*, art 436.

⁹ *Ibid*, art 435, para 1 and 4.

¹⁰ *Ibid*, art 435, para 2.

¹¹ *Ibid*, art 438.

¹² *Ibid*, art 440, 441 and 446.

¹³ *Ibid*, art 3, para 2.

relating to the ownership and other rights connected to airplanes and ships registered in Bosnia and Herzegovina, as well as disputes that have arisen in the course of enforcement or bankruptcy proceedings.¹⁴

3.4 Separability

- 3.4.1 An arbitration agreement can be concluded:
- after a dispute has arisen between the parties (i.e. in the form of a compromise);
 - or
 - before a dispute has arisen between the parties, usually at the moment of conclusion of the main agreement, where the arbitration agreement is mostly only a part (chapter, section, etc.) of the main agreement (i.e. in the form of a compromissory clause).
- 3.4.2 An arbitration agreement concluded in the form of a compromissory clause is an independent legal act in respect of the agreement in which this clause is contained. For this reason, the arbitral tribunal shall be competent to decide on disputes relating to the legal validity of the main agreement.¹⁵

3.5 Legal consequences of a binding arbitration agreement

- 3.5.1 The conclusion of an arbitration agreement binds the parties to undertake all necessary actions that will allow the arbitral tribunal to function.¹⁶ Furthermore, a compromissory clause – according to which the parties agreed that an arbitral tribunal shall decide on legal validity and enforceability of the main agreement – also authorises the arbitral tribunal to settle disputes on compensation for damages which have arisen from the non-fulfilment of contractual obligations provided in the main agreement.¹⁷

4. Composition of the arbitral tribunal

4.1 Constitution of the arbitral tribunal

- 4.1.1 The parties are free to determine the number of arbitrators to conduct the arbitral proceedings. However, there must be an odd number of arbitrators. If the number of arbitrators is not determined by agreement between the parties, then the

¹⁴ *Ibid*, art 42–45.

¹⁵ PSH, Pž-2202/93 dated 21 September 1993, Praxis 1/100, published in “Komentar ZPP FBiH”, Mihajlo D., Jozo Č., OSCE, 2000.

¹⁶ “KOMENTARI zakona o parničnom postupku u Federaciji Bosne i Hercegovine i Republici Srpskoj”, Zlatko Kulenović, et al., Sarajevo, Savjet/Vijeće Evrope – Evropska komisija, 2005, 675.

¹⁷ PSH, Pž-3317/93 dated 11 January 1994, Praxis 1/100, published in “Komentar ZPP FBiH”, Mihajlo D., Jozo Č., OSCE, 2000.

default position is that there will be three arbitrators.¹⁸ In that case, each party will appoint one arbitrator and the appointed arbitrators will then jointly choose the third and presiding arbitrator.¹⁹

- 4.1.2 Once a party has appointed its arbitrator and notified the other party, it may then request the other party to appoint its arbitrator within 15 days and provide notification of such appointment.²⁰ In the event that the other party does not appoint its arbitrator on time, the court will, upon the request of a party, decide on the appointment of that member of the arbitral tribunal.²¹ If the arbitrators fail to agree on the chair, any of the parties or any of the appointed arbitrators can individually request the court to nominate the chair.²²
- 4.1.3 If a party fails to appoint an arbitrator, as required under the arbitration agreement, it may be summoned by the other party to perform the appointment and notify the issuing party of its chosen arbitrator within 15 days. The summons is only valid if the issuing party has already notified the respondent party of the appointment of its own arbitrator.²³
- 4.1.4 Where a third independent party is obliged to perform the appointment of an arbitrator, each party may send the summons to that appointing party. This third party is bound to his or her appointment from the moment one of the parties has been notified of the appointment. If an arbitrator has not been appointed on time, and the arbitration agreement does not state otherwise, the arbitrator shall be appointed by the court upon proposal by any of the parties.²⁴ After the appointment of the arbitrators, the arbitral proceedings may begin if there are no other legal obstacles.

4.2 Challenging the arbitrators

- 4.2.1 An arbitrator's appointment can be challenged on the same grounds that prevent judges from performing their judicial function.²⁵ Accordingly, an arbitrator's appointment may be challenged if:

¹⁸ Federation CPA, art 437, para 1.

¹⁹ *Ibid*, art 437, para 2.

²⁰ *Ibid*, art 439.

²¹ *Ibid*, art 440, para 1.

²² *Ibid*, art 440, para 2.

²³ *Ibid*, art 439, para 1 and 2.

²⁴ *Ibid*, art 439, para 3 and 4.

²⁵ *Ibid*, art 357 and 442, para 1.

- the arbitrator is a party to the procedure, a legal representative or an attorney of a party, is in a co-attorney relationship with a party or is questioned as a witness or expert in the same case;
- any of the parties, their legal representatives or attorneys are the arbitrator's lineal relative to any degree, lateral relative to the fourth degree or the arbitrator's spouse or common-law spouse or in-law, regardless of whether the marriage has ended or not;
- the arbitrator is a guardian, adoptive parent or adopted child of a party to the procedure, their legal representative or attorney;
- the arbitrator participated in the handing down of a ruling of a lower instance court or other authority in the same case; or
- existing circumstances raise doubts regarding the arbitrator's impartiality.²⁶

4.2.2 An arbitrator may be challenged only if grounds for the challenge have occurred, or the party making the challenge becomes aware of those grounds, after the arbitrator was appointed.²⁷ The Federation CPA expressly provides that these are mandatory provisions and cannot be waived by the agreement of the parties.²⁸

4.3 Responsibility of the arbitrators

4.3.1 Each arbitrator of an arbitral tribunal is obliged to exempt himself/herself from the duty of the arbitrator when the reasons for challenging an arbitrator stipulated in Article 357 of the Federation CPA exist. Once the arbitrator learns that a request for his/her exemption has been put forward or learns that there is a reason for challenging an arbitrator under Article 357, then that arbitrator shall immediately notify the court that would have had jurisdiction over the dispute in the absence of an arbitration agreement. This court will make a determination regarding the challenge of the particular arbitrator, provided that the parties have not agreed otherwise.²⁹

4.4 Arbitrator immunity

4.4.1 According to Article 451 in connection with Article 255 of the Federation CPA, the existence of a criminal judgment against an arbitrator is prescribed as one of the reasons the parties may request the setting aside of an award. Therefore, it may be concluded that there is no absolute arbitrator immunity. However, the domestic laws and regulations do not provide explicit terms on the issue of arbitrator immunity.

²⁶ *Ibid.*

²⁷ *Ibid.*, art 442, para 2.

²⁸ *Ibid.*, art 453.

²⁹ *Ibid.*, art 360 and 442.

5. Jurisdiction of the arbitral tribunal

5.1 Competence to rule on jurisdiction

5.1.1 Bosnia and Herzegovina legislation does not contain any provisions regarding the jurisdiction of the arbitral tribunal or its competence to rule on its own jurisdiction. For this reason, parties should set out the arbitral tribunal's competence to rule on its own jurisdiction in the arbitration agreement.

5.2 Power to order interim measures

5.2.1 Bosnia and Herzegovina legislation does not contain any provisions regarding the power of the arbitral tribunal to order interim measures. However, the parties may agree that the arbitral tribunal should have the right to impose interim measures, provided that they are in accordance with the mandatory provisions of Bosnia and Herzegovina laws.

6. Conduct of proceedings

6.1 Commencement of arbitration

6.1.1 Bosnia and Herzegovina legislation does not contain any provisions regarding the commencement of arbitration. For this reason, the manner of initiation of arbitral proceedings depends on the arbitral rules which have been agreed by the parties or, in case there is no such agreement, the arbitral rules that have been determined by the arbitrators.

6.1.2 In the event that one party initiates a court action, where there is a relevant arbitration clause in place, the respondent party may object to the court. Provided that the claim concerns a dispute between the same parties that is within the scope of the arbitration clause, the court will, upon the respondent's objection, proclaim itself to lack jurisdiction and dismiss the complaint.³⁰

6.2 Seat, place of hearings and language of arbitration

6.2.1 There are no provisions in Bosnia and Herzegovina legislation regarding the seat and language of arbitration. The parties are free to choose both. Accordingly, the parties are also free to choose whether any part of arbitral proceedings shall take place at another place other than the seat of arbitration, e.g. inspection of property. However, if the parties have not agreed on the seat and language of arbitration, the arbitral tribunal will have the power to decide these matters.³¹

³⁰ *Ibid*, art 438.

³¹ *Ibid*, art 443.

6.3 Multi-party issues

6.3.1 Although Bosnia and Herzegovina legislation does not contain any provisions regarding multi-party issues, these issues can be regulated by the parties in the arbitration agreement.

6.4 Oral hearings and written proceedings

6.4.1 The use of oral hearings or written proceedings is subject to the parties' agreement. If the parties have not made such an agreement then the arbitral tribunal shall determine the procedure and whether the oral hearing is necessary.³²

6.5 Default by one of the parties

6.5.1 Bosnia and Herzegovina legislation does not contain any provisions in regard to the default of one of the parties. It is for the parties themselves to assess the arbitral tribunal's authority if this occurs (i.e. to address it in the arbitration agreement). However, the courts have the ability to appoint an arbitrator if a party fails to do so (see paragraph 4.1.4 above).³³

6.5.2 The Federation CPA does address circumstances where a party fails to acknowledge the existence of an arbitration agreement (i.e. defaults on the obligation to arbitrate a particular claim). It stipulates that where a matter that is the subject of an arbitration agreement is brought before a court, the court shall, upon the application of the respondent, dismiss the action for lack of jurisdiction. This application must be submitted, at the latest, as part of the respondent's answer to the claim.³⁴

6.6 Evidence generally

6.6.1 There are no explicit provisions that regulate evidence in arbitral proceedings. However, the Federation CPA provides for court assistance in arbitral proceedings.³⁵ The arbitral tribunal may, for example, request court assistance in the taking of evidence.

6.7 Appointment of experts

6.7.1 The appointment of experts by the arbitral tribunal is not regulated by Bosnia and Herzegovina legislation. However, the arbitral tribunal may appoint experts where such a possibility is provided for in the arbitration agreement or in the arbitral rules that have been selected by the parties.

³² *Ibid.*

³³ *Ibid.*, art 439 and 440.

³⁴ *Ibid.*, art 438.

³⁵ *Ibid.*, art 444.

6.8 Confidentiality

- 6.8.1 In most cases, parties are at least partially motivated to arbitrate their dispute for reasons related to confidentiality of the proceedings. However, confidentiality of arbitral proceedings is not provided by Bosnia and Herzegovina legislation. Accordingly, it is for the parties to agree to incorporate confidentiality clauses into their arbitration agreement.

7. Making of the award and termination of proceedings

7.1 Choice of law

- 7.1.1 The parties are free to choose the law to govern the dispute. The arbitral tribunal can also decide *ex aequo et bono* if expressly agreed to by the parties.³⁶

7.2 Timing, form, content and notification of award

- 7.2.1 The award must be reasoned unless the parties have agreed otherwise. Typically, all arbitrators sign the original award, as well as all transcripts of the award. The award is deemed to be valid even if an arbitrator refuses to sign it, provided that it has been signed by the majority of the arbitrators and it is indicated on the award itself that the signature is missing.³⁷ In accordance with the provisions of Bosnia and Herzegovina law, copies of the award are served on the parties through the court.³⁸

7.3 Settlement

- 7.3.1 Bosnia and Herzegovina legislation contains no provisions on settlement before an arbitral tribunal. However, if the parties agree that their dispute can also be resolved by settlement, the arbitral tribunal will accept the settlement and issue a consent award. The Enforcement Procedure Act of the Federation of Bosnia and Herzegovina 2003 (**Federation EPA**), whose provisions are very similar to those in the Republic of Srpska and the Brčko District, provides that the enforceability of a settlement before the arbitral tribunal will be treated as equal to settlements before the courts.³⁹

7.4 Power to award interest and costs

- 7.4.1 There are no explicit provisions relating to the arbitral tribunal's power to award interest and costs, but the parties can agree that the arbitral tribunal shall consider this issue in the award.

³⁶ *Ibid*, art 445.

³⁷ *Ibid*, art 447, para 1 and 2.

³⁸ *Ibid*, art 447, para 3; see paragraph 8.5.2 below.

³⁹ Federation EPA, art 24.

7.5 Termination of the proceedings

- 7.5.1 Although there are no explicit legal provisions relating to termination of the proceedings, this issue can be regulated by the parties in the arbitration agreement.
- 7.5.2 Also, as described at paragraph 3.2.3 above, the entire arbitration agreement – and proceedings – may be terminated at the request of one of the parties in certain circumstances.

7.6 Effect of the award

- 7.6.1 Unless the possibility of contesting the award before a higher instance arbitral tribunal has been envisaged by the arbitration agreement, the award will be considered a final award.⁴⁰ At the request of any of the parties, the court will note on the award that it is enforceable as a final award and is not subject to appeal.⁴¹

7.7 Correction, clarification and issue of a supplemental award

- 7.7.1 There are no explicit legal provisions relating to the correction, clarification or issue of a supplemental award. However, the Federation CPA states that the award must be reasoned unless the parties have agreed otherwise.⁴² This requirement would also be applied to supplemental awards if they are permitted by mutual agreement of the parties.

8. Role of the courts

8.1 Involvement of the courts

- 8.1.1 While the laws of Bosnia and Herzegovina do not set out the involvement of the courts in detail, some matters are regulated. For example, the court can appoint an arbitrator if one has not been appointed in time and a party requests the assistance of the court in the appointment.⁴³ Further, if the arbitrators cannot agree on the election of the chair of the arbitral tribunal, and the agreement does not state otherwise, the chair can be appointed by the court upon the proposal of either arbitrator or a party.⁴⁴ The competent court to appoint an arbitrator or the chair of the arbitral tribunal is the court which would have been competent to hear the first instance proceedings if the arbitration agreement was not in existence.⁴⁵

⁴⁰ Federation CPA, art 449, para 1.

⁴¹ *Ibid.*

⁴² *Ibid.*, art 447.

⁴³ *Ibid.*, art 440, para 1.

⁴⁴ *Ibid.*, art 440, para 2.

⁴⁵ *Ibid.*, art 440, para 3.

8.2 Stay of court proceedings

8.2.1 The courts do not have the power or discretion to stay court proceedings in favour of arbitral proceedings. As indicated above at paragraph 6.5.2, the proper remedy is for the court to dismiss a claim that should be heard before an arbitral tribunal (although this must be requested by the opposing party prior to, or within, the answer to the claim).

8.3 Preliminary rulings on jurisdiction

8.3.1 The courts do not have the power or discretion to make preliminary rulings on the jurisdiction of the arbitral tribunal.

8.4 Obtaining evidence and other court assistance

8.4.1 Although the procedure of taking evidence before an arbitral tribunal is not regulated by the Bosnia and Herzegovina legislation, the arbitral tribunal may take evidence as agreed between the parties or provided for in the arbitral rules that have been agreed to by the parties. However, the arbitral tribunal cannot impose coercive measures, fines or penalties on witnesses, parties, experts or other participants in the arbitral proceedings in order to obtain evidence.⁴⁶ For this reason, the arbitral tribunal may request court assistance in the arbitral proceedings, using the court to collect evidence that cannot be adduced before the arbitral tribunal.⁴⁷ For example, the arbitral tribunal is entitled to request court assistance in the taking of evidence. In such case, the Federation CPA rules of the procedure of taking evidence before a court shall be applicable.⁴⁸

8.4.2 The Federation CPA provides that the court should deliver the award to the parties.⁴⁹ The relevant court is the one that would have had jurisdiction over the dispute in the absence of the arbitration agreement. The award and proof of its delivery is kept by that court.⁵⁰

9. Challenging an award before the courts

9.1 Jurisdiction of the courts

9.1.1 The court with jurisdiction to set aside an award is the court that would have had jurisdiction over the dispute in the absence of an arbitration agreement.⁵¹

⁴⁶ *Ibid*, art 444, para 1.

⁴⁷ *Ibid*, art 444, para 2.

⁴⁸ *Ibid*, art 444, para 3.

⁴⁹ *Ibid*, art 447.

⁵⁰ *Ibid*, art 448.

⁵¹ *Ibid*, art 450.

9.2 Applications to set aside an award

9.2.1 The application for setting aside an award must be filed within 30 days from the date on which the award was rendered to a party, or from the date when a party has become aware of any of the grounds for setting aside an award, but in any case not later than one year from the validity of the award.⁵²

9.2.2 The grounds for setting aside the award are:

- if no arbitration agreement was concluded or if the arbitration agreement was invalid or ineffective;
- if there was any violation of the rules concerning the composition of the arbitral tribunal, the conduct of the arbitral proceedings or the rendering of the award;
- if the award does not contain reasons or if the original award or its copies have not been signed in the prescribed manner;
- if the arbitral tribunal has exceeded its powers;
- if the statement of reasons in the award is inadequate or contradicts the arbitral tribunal's findings as set out in the award;
- if the award is contrary to the Constitution of Bosnia and Herzegovina or one of its entities; or
- if any of the reasons for re-hearing the dispute pursuant to Article 255 of the Federation CPA exist.⁵³

9.2.3 The reasons for re-hearing the dispute pursuant to Article 255 of the Federation CPA are:

- if a judge who had to be excluded in accordance with law was involved in the adoption of a decision;
- if a party did not have an opportunity to argue before the court due to an illegal action;
- if a person who cannot be a party to the proceedings took part in the proceedings as the claimant or respondent;
- if a party who is a legal entity was not represented by an authorised person, if a party incompetent for litigation was not represented by a legal representative, or if a legal representative or attorney of a party was not properly authorised to participate in the proceedings or as regards certain actions in the proceedings, unless their participation in the proceedings or certain actions was later approved;

⁵² *Ibid*, art 452.

⁵³ *Ibid*, art 451.

- if a decision of the court was founded on a false testimony of a witness or expert witness or if a decision of the court was based on a counterfeited document or document certifying false contents;
- if a decision of the court was made through a criminal offence of the judge, legal representative or attorney of either party or a third party; or
- if a party learns about new facts or finds or obtains the ability to use new evidence, which could have resulted in a more favourable decision for such party had it been used in the previous proceedings.

9.2.4 The provisions relating to the procedure for setting aside an award are mandatory and cannot be waived by agreement of the parties.⁵⁴

9.3 Appeals

9.3.1 In cases where the parties agree that an appeal to the award is allowed,⁵⁵ they must define the deadline for an appeal to be commenced, the composition of the appellate tribunal and the scope of review of the particular award.⁵⁶

10. Recognition and enforcement of awards

10.1 Domestic awards

10.1.1 An award has the effect of a final judgment, unless the parties have agreed that the award can be appealed. The court that would have had jurisdiction over the dispute if the parties had not agreed to arbitration can make a note on the award declaring it to be valid and enforceable, if so requested by any party.⁵⁷ In this regard, an enforcement procedure starts by filing a motion for enforcement before the competent court, which shall contain:

- a request for enforcement with an enforceable or authentic document that provides the basis for requesting the enforcement;
- the names of the judgment creditor and the judgment debtor;
- the claim whose satisfaction is requested;
- the means of the enforcement;
- the object of the enforcement if known; and
- other information necessary to execute the enforcement.⁵⁸

⁵⁴ *Ibid*, art 453.

⁵⁵ *Ibid*, art 449.

⁵⁶ “KOMENTARI zakona o parničnom postupku u Federaciji Bosne i Hercegovine i Republici Srpskoj”, Zlatko Kulenović, et al., Sarajevo, Savjet/Vijeće Evrope – Evropska komisija, 2005, 682.

⁵⁷ Federation CPA, art 449.

⁵⁸ Federation EPA, art 36.

10.1.2 Under the Federation EPA, an enforceable document is, amongst others, an enforceable court ruling or an enforceable court settlement.⁵⁹ The Federation EPA subsequently specifies that a court ruling denotes a judgment, decision or other ruling issued in proceedings before a court or an arbitral tribunal, and a court settlement denotes a settlement reached during proceedings before a court or an arbitral tribunal.⁶⁰ If all legal requirements have been fulfilled, the court will issue a decision on enforcement which must contain references to the information listed in paragraph 10.1.1 above. A decision on enforcement need not contain an explanation and it may be issued by affixing a seal to the motion for enforcement.⁶¹

10.2 Foreign awards

10.2.1 Bosnia and Herzegovina is a signatory to the New York Convention.⁶² However, when ratifying the New York Convention, Bosnia and Herzegovina expressly declared that:

- the local courts will only recognise and enforce awards rendered in other states that are party to the New York Convention; and
- the local courts will only recognise and enforce awards relating to disputes that qualify as “commercial” under local law.⁶³

10.2.2 The procedure for recognition and enforcement of foreign awards is regulated by Articles 97–101 of the CLA. According to these provisions, a foreign award is defined as an award rendered abroad, as well as an award rendered in arbitral proceedings held in Bosnia and Herzegovina with a foreign governing law.⁶⁴ When requesting recognition and enforcement of a foreign award, a party must submit the original or a certified copy of the award and the arbitration agreement (as well as a certified translation of them, if required).⁶⁵

10.2.3 The recognition and enforcement of a foreign award may be refused at the request of the party against whom it is invoked, if that party supplies evidence proving that:⁶⁶

⁵⁹ *Ibid*, art 23.

⁶⁰ *Ibid*, art 24.

⁶¹ *Ibid*, art 39.

⁶² The New York Convention entered into force on 6 March 1992 by means of Bosnia and Herzegovina being one of the successors of the Socialistic Federative Republic of Yugoslavia that was initially the party to the convention (see Table of Ratifications at CMS Guide to Arbitration, vol II, appendix 1.3).

⁶³ Under local law, commercial disputes are disputes which arise from commercial contracts concluded between business entities within the scope of their registered business activities.

⁶⁴ CLA, art 97.

⁶⁵ *Ibid*, art 98.

⁶⁶ *Ibid*, art 99.

- the subject matter of the dispute is not arbitrable;
- the Bosnia and Herzegovina courts have exclusive jurisdiction over the subject matter of the dispute;
- the recognition and enforcement of the award would be contrary to public policy;
- the local courts in the country in which the award was rendered do not reciprocally enforce awards rendered in the territory of Bosnia and Herzegovina;
- the arbitration agreement does not fulfil the formal requirements provided under Article 435 of the Federation CPA, Article 435 of the Republic CPA and Article 380 of the District CPA;
- the arbitration agreement is not legally valid;
- the party against whom the award was rendered 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 arbitral tribunal was not appointed or the arbitration proceedings were not conducted in accordance with the arbitration agreement;
- the award deals with a dispute not falling within the terms of the arbitration agreement or contains decisions on matters beyond the scope of that agreement (any part of the award that exceeds the scope of the arbitration agreement may be severed from the remaining part of the award);
- the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- the award is unclear or contradictory.

10.2.4 The court with territorial jurisdiction to hear applications for the recognition and enforcement of foreign awards is the court in the territory in which enforcement of the award is sought. An appeal against a court decision on the enforcement of a foreign award can be filed within 15 days from the date of delivery of the court's decision.⁶⁷

11. Concluding thoughts and themes

11.1.1 There is no complete law which governs issues regarding arbitration in Bosnia and Herzegovina. There is no national arbitration act, but there are instead Civil Procedure Acts, which contain certain provisions on arbitration. These provisions are not always sufficient to fill in the gap on certain issues where the parties have not agreed on that issue in their arbitration agreement. Since the Bosnia and

⁶⁷ *Ibid.*, art 101.

Herzegovina legislation does not provide a complete code on arbitration, all matters not regulated by the arbitration agreement will remain unresolved, except in cases where the arbitral tribunal is authorised to regulate the matters which have not been regulated by the parties.

- 11.1.2 Considering the legal position of Bosnia and Herzegovina in relation to arbitration, it is common for parties to provide for a foreign law as the governing law for their arbitration. It is also common for parties to provide that the arbitral proceedings will take place before an arbitral tribunal outside of Bosnia and Herzegovina, meaning that, in most cases, parties agree that their disputes shall be settled before, for example, the ICC Arbitration Court or the Arbitration Court of the Austrian Chamber of Commerce.

12. Contacts

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