ARBITRATION IN BULGARIA

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1. Historical background and overview

1.1.1 For a considerable period of time (1952–1988), arbitration in Bulgaria was largely unregulated and domestic arbitration was forbidden.

1.1.2 The Bulgarian International Commercial Arbitration Act 1988 ***(Bulgarian Arbitration Act)*** (as amended),[1] which adopted in large part, the provisions of the Model Law (1985),[2] now regulates in detail international arbitration in Bulgaria. In 1989, the Bulgarian State Council issued Decree No 56 on Economic Activity allowing, for the first time since 1952, the arbitration of domestic disputes, although only between commercial entities. In the period 1992–1993, arbitration became an option for almost all civil disputes and the rules applicable to domestic arbitration were amended to bring them closer in line with the rules applicable to international arbitration.

1.1.3 Thus, despite its official title, the Bulgarian Arbitration Act now allows and regulates both international and domestic arbitration.

1.1.4 Other relevant national legal instruments relating to arbitration include the Bulgarian Civil Procedural Code 2007 ***(Bulgarian CPC)*** and the Private International Law Code 2005 ***(Bulgarian PILC)***.

1.1.5 These national legal instruments are complemented, *inter alia*, by two important international conventions: the New York Convention,[3] ratified by Bulgaria in 1961; and the 1961 European Convention, ratified by Bulgaria in 1964.

1.1.6 Currently, the most important and well established arbitral institutions in Bulgaria are the Arbitration Court of the Bulgarian Chamber of Commerce and Industry ***(BCCI)*** and the Arbitration Court of the Bulgarian Industrial Association ***(BIA)***, both of which have jurisdiction to hear a wide range of arbitration disputes.

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[1] Law on International Commercial Arbitration (Published in State Gazette No 60 of 5 August 1988), as amended by the Law amending the Law on International Commercial Arbitration (Published in State Gazette No 93 of 2 November 1993).

[2] See CMS Guide to Arbitration, vol II, appendix 2.1.

[3] See CMS Guide to Arbitration, vol II, appendix 1.1.

2. Scope of application and general provisions of the Bulgarian Arbitration Act

2.1 Subject matter

2.1.1 The Bulgarian Arbitration Act is a general legal instrument applicable to all types of commercial arbitration where the seat of the arbitration is in Bulgaria, including:

- institutional and ad hoc arbitration;
- international and domestic arbitration (the Bulgarian Arbitration Act defines domestic arbitration as arbitration between parties both of whom have their place of residence or registration in Bulgaria, unless, in some cases, one party is predominantly owned by a foreign person or entity);[4] and
- arbitration at law and arbitration *ex aequo et bono* (i.e. in accordance with what is fair and equitable), although the Bulgarian Arbitration Act only permits the latter in the context of contractual disputes where there is no express contractual provision dealing with the issue in dispute or where there is a need to adjust the terms of a contract to take into account new facts that have arisen since signature.[5]

2.1.2 The Bulgarian Arbitration Act does not apply to disputes that solely concern proving the existence or non-existence of certain facts (e.g. disputes about the quality of goods, completion of construction works, existence and causation of damage, etc, which are qualified as non-legal disputes by legal doctrine).[6]

2.1.3 The Bulgarian Arbitration Act expressly provides that a state, state institution or state agency may be party to international commercial arbitral proceedings.[7]

2.1.4 In contrast to the law governing national court proceedings (contained in the Bulgarian CPC), the Bulgarian Arbitration Act contains predominantly non-mandatory provisions from which the parties are free to derogate by agreement. The arbitral institutions adopt a similar approach, allowing the parties to derogate from their rules of procedure. The arbitral institutions are also entitled to deviate from the non-mandatory provisions in the Bulgarian Arbitration Act when creating their rules of procedure.

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4 Bulgarian Arbitration Act, Transitional and Final Provisions ***(TFP)***, para 3.

5 Bulgarian Arbitration Act, s 1(2).

6 Z Stalev, A Mingova, V Popova, R Ivanova, *Bulgarian Civil Procedural Law* (8th Edition 2004), p 668.

7 Bulgarian Arbitration Act, s 3.

2.1.5 The Bulgarian Arbitration Act does not provide for the automatic application of the Bulgarian CPC in the event of gaps in the Bulgarian Arbitration Act. However, in practice, where there is no provision of certain procedural matters by the parties' arbitration agreement, the rules of procedure of the relevant arbitral institution or arbitrators tend to apply the rules of the Bulgarian CPC.

2.2 Structure of the law

2.2.1 The Bulgarian Arbitration Act contains seven chapters, which are structured as follows:

(i) general provisions;
(ii) arbitration agreement;
(iii) composition of the arbitral tribunal;
(iv) jurisdiction of the arbitral tribunal;
(v) conduct of the arbitral proceedings;
(vi) making of the award and termination of the arbitral proceedings; and
(vii) setting aside, recognition and enforcement of the award.

2.3 General principles

2.3.1 The Bulgarian Arbitration Act does not expressly list the principles governing the regulation and organisation of arbitral proceedings. However, the following general principles can be inferred from legal sources and day-to-day practice.[8]

Equality and due process

2.3.2 The principles of equality between the parties and due process are the cornerstones of arbitration practice in Bulgaria. Pursuant to these principles, the parties must be given an opportunity to participate in the proceedings and be granted an equal opportunity to present their case.[9] These two principles are mandatory in nature and cannot be derogated from by agreement of the parties. Any agreement violating these principles is invalid and constitutes a ground for setting aside the award.[10]

Party autonomy

2.3.3 The principle of party autonomy is embodied in many provisions of the Bulgarian Arbitration Act. For example:

— the parties' right to determine the constitution and composition of the arbitral tribunal;[11]

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8 Z Stalev, A Mingova, V Popova, R Ivanova, *Bulgarian Civil Procedural Law* (8th Edition 2004), pp 688–689.

9 Bulgarian Arbitration Act, s 22 and 24.

10 *Ibid*, s 47, items 3 and 5.

11 *Ibid*, s 12.

— the right to the challenge and substitution of arbitrators;[12]
— the right to determine the number of arbitrators;[13] and
— the right to determine the procedure to be followed during the arbitration.[14]

The arbitral tribunal must not exceed its authority

2.3.4 This principle derives from and is a precondition to the effective application of the principle of party autonomy. In essence, the principle that the arbitral tribunal must not exceed its authority dictates that an arbitral tribunal must only rule on the issues submitted to it by the parties and shall not decide on issues beyond the scope of the submission to arbitration or beyond the scope of the arbitration agreement. A related principle is that the arbitral tribunal shall ensure that it rules on all issues submitted to arbitration by the parties.

2.3.5 To allow the arbitral tribunal to go beyond the matters agreed by the parties would be to undermine the principle of "consensus", which lies at the heart of the arbitral process. The violation of this principle can lead to the setting aside of the award.[15]

Right of defence

2.3.6 The right of defence is a basic principle of Bulgarian procedural law. The parties must be given an opportunity to participate in the arbitral proceedings and to present and prove their case by advancing facts and arguments to defend their substantive rights and interests. If a party has not been given an opportunity to participate in the proceedings, the award may be set aside.[16]

The right to an oral hearing

2.3.7 Whilst commonly respected in practice, the right to an oral hearing is not absolute in arbitral proceedings in Bulgaria. The arbitral tribunal may, with the agreement of the parties, determine a dispute solely on the basis of written evidence and without convening an oral hearing. If the parties have not determined the procedure to be followed, the arbitral tribunal shall determine whether or not it considers an oral hearing to be necessary,[17] provided that the right of defence of the parties is not breached or impeded. Nevertheless, oral hearings are held in most arbitral proceedings.

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[12] *Ibid*, s 15.

[13] *Ibid*, s 11(1).

[14] *Ibid*, s 24–26, 30 and 33(1).

[15] *Ibid*, s 47, item 3.

[16] *Ibid*, s 47, item 4.

[17] *Ibid*, s 30.

The parties' unrestricted right to choose a representative

2.3.8 In national court proceedings, parties must be represented by a lawyer. Conversely, in arbitral proceedings the parties can be represented by any natural person. Representatives may, therefore, include economists, technical or IT specialists and other professionals. In addition, a party may be represented by a non-Bulgarian lawyer in arbitral proceedings.

3. The arbitration agreement

3.1 Definitions

3.1.1 The Bulgarian Arbitration Act defines the term "arbitration agreement" as: "… the parties' agreement to submit to arbitration all, or some, of the parties' disputes that may arise, or have arisen, in respect of a particular contractual or non-contractual legal relationship between them".[18]

3.1.2 This definition sets out the minimum requirements for an arbitration agreement to be valid. The parties may not stipulate that all of their potential future disputes arising out of any undetermined relationship shall be settled through arbitration. The arbitration agreement must specify the dispute, or at least the legal relationship out of which a dispute may arise. Subject to certain restrictions imposed by mandatory provisions of Bulgarian legislation or the chosen arbitral institution's procedural rules, the arbitration agreement may also include provisions relating to:

- the composition of the arbitral tribunal;
- the appointment, challenge and replacement of arbitrators;
- the time and seat of the arbitral proceedings;
- the procedural norms to be followed by the arbitral tribunal (including a possible preliminary recourse to conciliation);
- the allocation of costs between the parties;
- the form and content of the award; and
- the language of the arbitration.

3.1.3 An arbitration agreement may take the form of a discrete contract or be included as a clause in a larger contract that has been entered into between the parties. It may be entered into either in the form of a submission agreement (i.e. in relation

[18] *Арбитражно споразумение е съгласието на страните да възложат на арбитраж да реши всички или някои спорове, които могат да възникнат или са възникнали между тях относно определено договорно или извъндоговорно правоотношение*, free translation, Bulgarian Arbitration Act, s 7(1).

to a specific dispute that has already arisen) or an arbitration clause in a larger agreement (i.e. in relation to future disputes arising out of a defined relationship).

3.2 Formal requirements

3.2.1 The arbitration agreement must be signed and be in writing.[19] This requirement is deemed to have been satisfied if the arbitration agreement is contained in a document that has been signed by the parties (e.g. a letter, telex, telegram or any other means of communication).[20] The parties must have full legal capacity in order for the arbitration agreement to be binding.

3.2.2 There is also a valid arbitration agreement if the respondent consents to the dispute being settled by arbitration after the commencement of the arbitral proceedings or if the respondent participates in the arbitral proceedings without contesting the jurisdiction of the arbitral tribunal. The declaration of consent should be made in writing or pronounced before the arbitral tribunal and evidenced in the minutes of the hearing.[21]

3.2.3 Bulgarian law permits parties to an international arbitration agreement to select the applicable law governing the arbitration agreement, which would apply for example, in the event of a dispute as to the validity or scope of the arbitration agreement. If the parties have not explicitly chosen a law to apply to the arbitration agreement, the *lex loci* will apply. In respect of domestic arbitration, the parties may not choose another law to govern the arbitration agreement which will automatically be governed by the Bulgarian Arbitration Act.[22]

3.3 Special tests and requirements of the jurisdiction

3.3.1 Only civil "property disputes"[23] may be the subject of arbitral proceedings. Therefore, no public law disputes may be referred to arbitral tribunals under the Bulgarian Arbitration Act, even if they concern civil persons. The term "property dispute" is defined as any dispute relating to a material interest capable of valuation in monetary terms.[24] Such dispute may not be a non-legal type of dispute.[25]

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19 Bulgarian Arbitration Act, s 7(2).

20 *Ibid*.

21 *Ibid*, s 7(3).

22 *Ibid*, s 47, item 2; TFP, para 3; and Z Stalev, A Mingova, V Popova, R Ivanova, *Bulgarian Civil Procedural Law* (8th Edition 2004), p 671.

23 *Имуществени спорове,* free translation, Bulgarian Arbitration Act, s 1(2); and Bulgarian CPC s 19(1).

24 Z Stalev, A Mingova, V Popova, R Ivanova, *Bulgarian Civil Procedural Law* (8th Edition 2004), p 674.

25 See paragraph 2.1.2 above.

3.3.2 However, under the Bulgarian CPC some civil property disputes are non-arbitrable. Such disputes concern interests in and rights to possession of real estate property, maintenance obligations and employment relationships.[26]

3.4 Separability

3.4.1 The arbitration clause in a contract is considered to be "separate" from the main contract of which it forms a part and, as such, survives the termination of that contract. This is known as the principle of separability. This principle also dictates that any assignment of rights under the main contract does not automatically assign the rights under the arbitration clause.[27] However, the parties may agree that any assignment of rights under the main contract shall also apply to the arbitration agreement. If there is any ambiguity as to whether the arbitration clause has been assigned or not, the court or arbitral tribunal shall look at the parties' actual intentions and the general rules of interpretation of contracts apply. The validity of an arbitration agreement shall be determined by the law governing that arbitration agreement.

3.5 Legal consequences of a binding arbitration agreement

3.5.1 The most obvious consequence of a binding arbitration agreement will be to allow the parties to resolve their dispute by way of arbitration, rather than through litigation before a national court.

3.5.2 Secondly, as the arbitration agreement is contractual in nature and therefore only binding on the parties to that contract, in principle no third party may join the arbitral proceedings without the consent of the parties.

3.5.3 Finally, the arbitration agreement has contractual force between the parties and, therefore, obliges the parties to adhere to its terms and conditions. In the event of any breach of the arbitration agreement, the party in breach may be liable in damages to the other party in accordance with normal contract law principles.

4. Composition of the arbitral tribunal

4.1 Constitution of the arbitral tribunal

4.1.1 The parties may determine the number of arbitrators and may appoint an even number of arbitrators if they wish. If the parties do not agree upon the number of arbitrators, the number of arbitrators shall be three.[28]

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[26] Bulgarian CPC, s 19(1).

[27] Bulgarian Arbitration Act, s 19(2).

[28] *Ibid*, s 11(1).

4.1.2 The parties may stipulate a procedure for appointing the arbitrators.[29] If they fail to do so, each party shall appoint an arbitrator and these arbitrators shall appoint the third arbitrator.[30] If a party fails to appoint an arbitrator within 30 days from the receipt of the other party's request to do so, or the two arbitrators appointed by the parties fail to appoint a third arbitrator within 30 days from the date of their appointment, the president of the BCCI, upon the request of either party, shall appoint the final arbitrator(s). The decision of the president is final.[31] This rule applies to institutional arbitral proceedings as well as to ad hoc arbitral proceedings, unless the rules of the particular arbitral institution provide otherwise.

4.1.3 If a dispute is to be determined by a sole arbitrator and the parties cannot agree upon his/her identity, such arbitrator shall be appointed in the same manner as for the final arbitrator(s) forming an arbitral tribunal.[32]

4.1.4 The parties may appoint a non-Bulgarian arbitrator in international arbitral proceedings.[33] However, in domestic arbitral proceedings, the parties may not appoint a non-Bulgarian arbitrator.

4.1.5 There are no formal requirements in respect of who may be an arbitrator. However, minors are not able to be arbitrators because they do not have full legal capacity.

4.2 Procedure for challenging and substituting arbitrators

4.2.1 The general principles of independence and impartiality apply in the context of arbitral proceedings and arbitrators can be challenged if they fail to respect these principles. Arbitrators must disclose any facts which may raise reasonable doubts as to their independence or impartiality.[34] This obligation applies from the time of the arbitrator's appointment and continues to apply throughout the duration of the arbitration.[35]

4.2.2 Arbitrators can only be challenged if there are reasonable doubts as to their independence or impartiality, or if they fail to meet the qualification requirements stipulated in the arbitration agreement.[36] A party who has participated in the

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29 *Ibid*, s 12(1).

30 *Ibid*, s 12(2).

31 *Ibid*, s 12(4).

32 See paragraph 4.1.2 above.

33 Bulgarian Arbitration Act, s 11(2).

34 *Ibid*, s 13.

35 *Ibid*.

36 Bulgarian Arbitration Act, s 14(1).

appointment of an arbitrator may only challenge that appointment on grounds that have come to its knowledge after the date of such appointment.[37]

4.2.3 The procedure for challenging arbitrators may be stipulated in the arbitration agreement. If such procedure has not been agreed by the parties, a party may challenge an arbitrator no later than 15 days from the date of the constitution of the arbitral tribunal or from the date on which the party becomes aware of the facts justifying the challenge. Any challenge should be reasoned and in writing. The challenge should be submitted to the arbitral tribunal. The arbitral tribunal must rule on the challenge, unless the challenged arbitrator withdraws voluntarily or all of the parties consent to the challenge.[38]

4.2.4 If the arbitral tribunal dismisses the challenge, the challenging party may, within seven days from the notification of the arbitral tribunal's ruling, submit an appeal against that ruling to the City Court of Sofia.[39] The proceedings before the City Court of Sofia are governed by the Bulgarian CPC and the City Court of Sofia's decision is final. The challenge and the appeal to the City Court of Sofia do not have the effect of staying the arbitral proceedings and the arbitral tribunal may issue a final award despite the existence of the challenge and an appeal.

4.2.5 If arbitrators are not able to perform or unreasonably omit to perform their duties, their powers may be terminated.[40] If arbitrators do not withdraw voluntarily or the parties do not reach an agreement on the termination of their powers, each party may refer to the City Court of Sofia to rule on this matter. The City Court of Sofia's decision is final.[41]

4.2.6 If an arbitrator's powers have been terminated, the appointment of a new arbitrator must be made in accordance with the same procedure as is used to appoint the original arbitrator,[42] unless the parties have stipulated a different procedure or have agreed the names of possible replacement arbitrators in advance.

4.3 Arbitration fees and expenses

4.3.1 The Bulgarian Arbitration Act does not provide any general rules regarding the fixing, quantum or payment of arbitrators' fees and expenses. These should be

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[37] *Ibid*, s 14(2).

[38] *Ibid*, s 15.

[39] *Ibid*, s 16.

[40] *Ibid*, s 17(1).

[41] *Ibid*, s 17(2).

[42] *Ibid*, s 18.

determined between the parties and the arbitrators prior to appointment, either on an ad hoc basis or in accordance with the procedural rules of any arbitral institution agreed by the parties.

4.3.2 The procedural rules of the arbitral institutions usually follow the principle that costs "follow the event", which means that the losing party shall pay the reasonable costs of the arbitration.

4.3.3 Some of the arbitral institutions differentiate their fees according to whether the arbitration is international or domestic (e.g. BCCI). The costs shall normally include:
- the arbitration fee, which is proportionate to the value of the claim and covers the remuneration of the arbitrators and the general expenses of the institution;
- other expenses (sometimes paid as a deposit), which cover, for example, the costs incurred for the delivery of documents and notifications, experts, translators, stenographers, issuance of certificates and collection of evidence; and
- the parties' legal costs and disbursements.

4.3.4 The arbitral tribunal may refuse to award a party all of the claimed arbitration costs if it decides that they are excessive in light of the circumstances of a particular case.

5. Jurisdiction of the arbitral tribunal

5.1 Competence to rule on jurisdiction

5.1.1 The arbitral tribunal may rule on its own jurisdiction, even if the challenge to its jurisdiction is based on the alleged absence or invalidity of the arbitration agreement.[43]

5.1.2 Any challenge to the arbitral tribunal's jurisdiction should, in principle, be raised no later than in the statement of defence.[44] A party who has participated in the appointment of the arbitrator(s) may also challenge the jurisdiction of the arbitral tribunal. A challenge to the arbitral tribunal's jurisdiction in respect of a particular issue must be made immediately after such issue becomes apparent during the proceedings.[45] Despite these rules, the arbitral tribunal may accept a later challenge if there are justifiable reasons for the delay.[46]

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[43] *Ibid*, s 19(1).

[44] *Ibid*, s 20(1).

[45] *Ibid*, s 20(2).

[46] *Ibid*, s 20(3).

5.1.3 The arbitral tribunal may rule on the challenge to its jurisdiction in a preliminary ruling or in the final award.[47] This ruling is not subject to appeal before a national court.

5.2 Power to order interim measures

5.2.1 Provided that the parties have not agreed otherwise, the arbitral tribunal may, upon a request by one of the parties, order preliminary measures against the other party in order to protect the requesting party's rights. The arbitral tribunal may require the requesting party to provide security in support of any such order.[48]

5.2.2 In addition, each of the parties to an arbitration agreement may seek a preliminary injunction or other interim measures from a national court during the course of the arbitral proceedings in order to preserve the claim or evidence.[49]

6. Conduct of proceedings

6.1 Commencing an arbitration

6.1.1 In respect of ad hoc arbitration, the arbitral proceedings begin on the day when the respondent receives the claimant's request for arbitration.[50] The procedural rules of the arbitral institutions usually provide that institutional arbitral proceedings commence on the date when the claim is filed at the offices of the relevant arbitral institution.

6.2 General procedural principles

6.2.1 The parties may agree on the procedure that the arbitral tribunal shall follow. Arbitral institutions normally allow the parties to deviate from their procedural rules by consent. Unless the parties agree otherwise, the arbitral tribunal shall proceed with the case expediently and in accordance with such procedural rules as it considers are applicable. In any event, the arbitral tribunal must grant each of the parties the opportunity to defend its rights, based on the principle of equality of the parties.[51]

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[47] *Ibid*, s 20(4).

[48] *Ibid*, s 21.

[49] *Ibid*, s 9.

[50] *Ibid*, s 23.

[51] *Ibid*, s 24.

6.3 Seat, place of hearings and language of arbitration

6.3.1 The seat of domestic arbitration may only be in Bulgaria. The parties to an international arbitration may choose its seat outside Bulgaria.[52] The Bulgarian Arbitration Act only applies if the seat of arbitration is in Bulgaria.[53]

6.3.2 The seat of the arbitral proceedings may be agreed between the parties. In the absence of agreement, the seat of the proceedings shall be determined by the arbitral tribunal, taking into consideration the circumstances of the case and convenience for the parties.[54] The procedural rules of the arbitral institutions usually allow the parties to choose a place of arbitration that is different from the city in which the arbitral institution is situated.

6.3.3 The parties to an international arbitration may agree on the language or languages that will be used in the arbitral proceedings. In the absence of agreement, the language or languages shall be determined by the arbitral tribunal or in any other manner provided for under any relevant procedural rules. The arbitral tribunal may require all written evidence to be accompanied by a translation into the language to be used in the arbitral proceedings.[55]

6.4 Multi-party issues

6.4.1 The Bulgarian Arbitration Act does not contain express provisions relating to multi-party arbitration. As a result, the general requirements for arbitrability, valid multi-party arbitration agreement(s) and the jurisdiction of the arbitral tribunal to consider all raised disputes shall apply. All of the parties to a multi-party arbitration must have agreed to participate in the arbitration.

6.4.2 In the event that multiple parties have agreed to participate in an arbitration but have not agreed on the procedures relating to joinder, intervention and consolidation, the arbitrators shall apply a procedure that they deem appropriate.[56] The arbitration practice in Bulgaria shows that it is very likely that arbitrators would apply the relevant provisions of the Bulgarian CPC. Although there is no express provision of the Bulgarian Arbitration Act that refers to an automatic application of the Bulgarian CPC in such case, arbitrators usually choose the procedure under the Bulgarian CPC as it is familiar to them and the parties' counsel, rather than

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[52] Bulgarian CPC, s 19(2).

[53] Bulgarian Arbitration Act, s 1.

[54] *Ibid*, s 25.

[55] *Ibid*, s 26.

[56] *Ibid*, s 24.

inventing a new one. In such cases, the arbitrators communicate to the parties the applicable procedure.

6.5 Oral hearings and written proceedings

Hearings

6.5.1 The Bulgarian Arbitration Act allows the parties to agree that their dispute can be decided on a documents only basis, without the need for an oral hearing before the arbitral tribunal.[57] In practice, the customary procedure is to hold an oral hearing, unless otherwise agreed by the parties.

6.5.2 Despite the fact that the Bulgarian Arbitration Act does not expressly require oral hearings, the rules of procedure of the BCCI and the BIA require an oral hearing to be held unless the parties have agreed to the contrary. Even if the parties have agreed to conduct the arbitration on a documents only basis, pursuant to Section 30 of the Bulgarian Arbitration Act, an arbitral tribunal may schedule a hearing if it considers this necessary for the just and fair disposal of the case.

6.6 Submission of written statements

6.6.1 The arbitral institutions usually determine the form and content of the claim in their rules of procedure. In ad hoc arbitral proceedings, the claim must be made in writing and must state:

- the names and addresses of the parties;
- the facts on which the claim is based; and
- the essence of the claim.

6.6.2 The respondent's written response must set out its position with respect to the facts and claims submitted by the claimant.[58]

6.6.3 The claim and the response shall be submitted within a time period agreed by the parties or determined by the arbitral tribunal. Together with the claim and the response, the parties must also produce their written evidence and list any other evidence that they intend to submit.[59]

6.6.4 The respondent may submit a counterclaim with its response to the claim.[60] The arbitrability of the counterclaim(s) is determined according to the same principles as for the claim. The respondent may seek a set-off of sums due under an

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[57] *Ibid*, s 30.

[58] *Ibid*, s 27(1).

[59] *Ibid*, s 27(3).

[60] *Ibid*, s 28.

"objection for set-off"[61] against any sums ultimately found to be due to the claimant under the claim, provided that the rights raised in the objection are arbitrable, admitted by the claimant or settled by a court decision which has entered into force.

6.6.5 The claim and/or the defence may be amended or supplemented during the arbitral proceedings. The arbitral tribunal may only disregard the requested changes if it considers that the other party would be unduly prejudiced by such changes.[62]

6.7 Notice of hearings and inspections

6.7.1 The arbitral tribunal must notify the parties of any hearing and any scheduled inspection by the arbitral tribunal of documents, goods or other objects. The arbitral tribunal has the obligation to distribute to the parties copies of all evidence, statements and expert reports submitted for the purposes of the arbitral proceedings.[63]

6.7.2 If the seat, domicile, residence or address of any of the parties cannot be found after a thorough search, the notice will be considered as received if the arbitral tribunal sent it to the previous known seat, domicile, residence or address of the party by registered letter or by any other means that demonstrate an attempt to deliver the notice to the party. The same shall apply if the party does not, or refuses to accept delivery of documents (e.g. by refusing to go to the post office to receive the notice and the post office confirms this).[64]

6.8 Default by one of the parties

6.8.1 The arbitral tribunal must consider the case even if the respondent fails to submit a defence to the claim. The arbitral tribunal shall continue to hear the case and render an award on the basis of the evidence presented even if some or all of the summonsed parties have unreasonably failed to appear at the hearing. However, the award may be set aside if any of the parties have not been duly given an opportunity to participate in the proceedings, including any oral hearings.[65]

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[61] *Възражение за прихващане*, free translation; and Z Stalev, A Mingova, V Popova, R Ivanova, Bulgarian Civil Procedural Law (8th Edition 2004), p 691, last para.

[62] Bulgarian Arbitration Act, s 29.

[63] *Ibid*, s 31.

[64] *Ibid*, s 32.

[65] *Ibid*, s 34–35.

6.9 Taking of evidence

6.9.1 Any form of evidence can be admitted in arbitral proceedings. The Bulgarian Arbitration Act requires that, by the statement of claim or the response thereto, the parties shall submit their written evidence and point out the other evidence they will submit.[66] There are no further rules and restrictions in respect of the evidence collection. Therefore, the parties may determine the rules and deadlines regarding the collection and presentation of evidence. In the absence of such an agreement, the arbitral tribunal shall proceed as it deems appropriate when deciding whether to hear witnesses, experts and parties' representatives, request any written evidence or inspect documents or goods.

6.9.2 The Bulgarian Arbitration Act does not repeat the stringent rules of the Bulgarian CPC, which restrict the parties' ability to prove certain facts. In arbitration, electronic mail is generally accepted as evidence, which is less possible in national court proceedings. These rules reflect the flexibility of arbitration compared to national court litigation. However, the parties may stipulate restrictions on the types of evidence that can be adduced and the manner in which issues can be proven. In any event, the arbitrators shall be free to determine the weight to be given to the evidence in question.

6.10 Appointment of experts

6.10.1 The Bulgarian Arbitration Act deviates slightly from the principle that the arbitral tribunal shall not intervene in the parties' right to determine the arbitral procedure. The arbitral tribunal may, at its own discretion appoint one or more experts to clarify certain issues for which special expertise is necessary. For this purpose, the arbitral tribunal may order the parties to submit relevant evidence to the tribunal-appointed expert and/or to provide the tribunal-appointed expert with necessary access to examine documents, goods or other objects.[67] If further clarification is required after submission of the tribunal-appointed expert's assessment, the tribunal-appointed expert may be compelled to attend a hearing, either upon the parties' request or of the arbitral tribunal's own motion. Following a request from the parties, the arbitral tribunal may also appoint other experts to give their opinion on issues arising for consideration as part of the dispute.[68]

6.11 Confidentiality

6.11.1 There is no requirement for the arbitral proceedings to be held in public, as is the case for national court proceedings. The parties can, therefore, ensure that the

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[66] *Ibid*, s 27(3).

[67] *Ibid*, s 36(1).

[68] *Ibid*, s 36(2).

arbitral proceedings are conducted in private. The arbitrators shall comply with the general legal requirements for privacy of the professional and personal information of the parties (i.e. under personal data protection legislation and criminal law). The arbitrators, when appointed, usually sign a declaration of confidentiality. Arbitral institutions typically do not disclose the materials under arbitration cases to third parties. The legal reports include only the *ratio decidendi* of the award. It is therefore seldom for parties in institutional arbitrations to put an express obligation for the arbitrators' confidentiality in the arbitration clause.

6.12 Court assistance in taking evidence

6.12.1 The arbitral tribunal or any of the parties (subject to the arbitral tribunal's approval) may request the competent national court to collect and/or secure in advance the collection of certain evidence necessary for the just disposal of the case. The regional court of the place in which the evidence is located is deemed to be the competent national court that is obliged to comply with such a request.[69]

7. Making of the award and termination of proceedings

7.1 Choice of law

7.1.1 The arbitral tribunal must settle the dispute according to the parties' choice of applicable law. Unless otherwise provided, the parties' choice of law relates to the substantive law and does not oblige the arbitral tribunal to apply the conflict of law rules of the country whose applicable law is chosen.[70] According to the Bulgarian Arbitration Act, foreign substantive law may only be applied to a domestic arbitration dispute if the legal relationship between the parties has an international element.[71]

7.1.2 If the parties have not stated their choice of applicable law, the arbitral tribunal shall apply the substantive law as indicated by the conflict of law rules that the arbitral tribunal deems to be applicable in the circumstances.[72] In any event, the arbitral tribunal shall honour the agreement of the parties as reflected in the terms of the arbitration agreement and take into account any relevant commercial customs.

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[69] *Ibid*, s 9 and 37.

[70] *Ibid*, s 38(1).

[71] TFP, para 3, item 3.

[72] Bulgarian Arbitration Act, s 38(2).

7.2 Timing, form, content and notification of an award

7.2.1 The Bulgarian Arbitration Act contains the minimal requirements for the making, form and content of the award.

Timing

7.2.2 There are no time limits for the arbitral tribunal to render the award under the Bulgarian Arbitration Act or in the procedural rules of the main arbitral institutions in Bulgaria. However, some institutions have internal rules specifying instructive terms for issuing a final award after the closing of a hearing.[73] Such rules take into consideration the complexity of the particular case.

Form, content and notification[74]

7.2.3 The award shall be in writing. If there is more than one arbitrator, the award must be taken and signed by a majority of the arbitrators unless the parties have agreed otherwise. The award must state the reason for which one or more arbitrators have not signed it.[75] If no majority exists, the presiding arbitrator shall approve the award.[76]

7.2.4 The award must be reasoned, unless the parties have agreed otherwise, or unless the award is drafted in accordance with the conditions of a settlement agreement.[77] The award must contain the date and the seat of arbitration. After the arbitrators have signed the award, it shall be sent to the parties. The award is final and terminates the dispute.[78] The award is considered to be declared upon delivery to either of the parties, at which time it becomes effective and enforceable against the parties.[79]

7.3 Settlement

7.3.1 If the parties reach a settlement of their dispute, the arbitral proceedings are terminated. The parties may request the arbitral tribunal to record such an agreement in the form of an award. Such award shall have the effect of an award on the merits of the case.

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[73] E.g. the Rules of Arbitration of the BCCI, s 40(2), although note that these rules are currently being updated.

[74] Bulgarian Arbitration Act, s 39–41.

[75] *Ibid*, s 41(2).

[76] *Ibid*, s 39.

[77] *Ibid*, s 41(1).

[78] *Ibid*, s 38(4).

[79] *Ibid*, s 41(3).

7.4 Power to award interest and costs

7.4.1 The Bulgarian Arbitration Act does not contain any express provisions relating to the arbitral tribunal's power to award interest or costs.

7.4.2 An arbitral tribunal has the power to award interest if it has been claimed by the claimant. The parties can agree in their arbitration agreement on the rules to be applied by the arbitral tribunal concerning costs. The procedural rules of the arbitral institutions normally provide that the arbitrators shall have the power to award costs and expenses.[80]

7.5 Termination of the proceedings

7.5.1 The arbitral proceedings shall be terminated if the parties reach an agreement to settle the dispute.[81]

7.5.2 The Bulgarian Arbitration Act sets out three additional grounds upon which the arbitral tribunal may decide to bring the proceedings to an end, namely if:

(i) the claimant withdraws its claim (except when the respondent objects to the withdrawal and the arbitral tribunal finds that the respondent has a lawful interest in obtaining a final award);

(ii) the parties agree that the arbitral proceedings shall be brought to an end; or

(iii) the arbitral tribunal finds that there is another obstacle to considering the dispute on its merits. Examples of such an obstacle would be: the absence or invalidity of the arbitration agreement; when the claimant does not have the capacity or standing to bring the claim; or if there is an earlier court or arbitral decision on the same dispute between the same parties.[82]

7.5.3 Furthermore, the arbitral tribunal may terminate the arbitral proceedings if it finds that it does not have the jurisdiction to decide the dispute.

7.6 Effect of an award

7.6.1 The award has the same force and effect as a court judgment.[83] As a result, the same dispute (i.e. arising out of the same facts and between the same parties) may not be re-tried before a national court. If the claim seeks to change the legal relationship between the parties (e.g. by annulling or terminating a contract), a favourable award will have the effect of changing that legal relationship.

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[80] See section 4.3 above, which discusses the allocation of costs between the parties.

[81] See paragraph 7.3.1 above.

[82] Bulgarian Arbitration Act, s 42.

[83] *Ibid*, s 38(4) and 41(3).

7.7 Correction, clarification and issuance of a supplemental award

7.7.1 The arbitral tribunal may, upon the request of any of the parties or of its own motion, introduce corrections to rectify any clerical, computational, typographical or other obvious error in the award. The other party shall be notified of any request for correction.[84] A party may likewise request the interpretation of the award, provided that it notifies the other party first.[85]

7.7.2 A request for the correction or interpretation of an award must be made within 60 days after the parties received the award, unless the parties have agreed on a different timeframe. The same 60 day period for correction of the award must be observed when the arbitral tribunal acts of its own motion. The arbitral tribunal must hear the parties' questions regarding the correction and interpretation of the award or allow them to file written submissions within a timeframe to be determined by the arbitral tribunal. The arbitral tribunal must rule on the requested correction or interpretation within 30 days of the submission of the request. A ruling on these issues shall be rendered on the basis of the general rules for making an award. A ruling on the correction and/or interpretation of the award becomes an integral part of the award.[86]

7.7.3 The arbitral tribunal may also, upon the request of either party, render a supplemental award for claims which the arbitral tribunal failed to address in its award. The requesting party must notify the other party of such a request within 30 days of receiving the award. If the request is well grounded, the arbitral tribunal shall render the supplemental award within 60 days of receipt of the request.[87]

7.7.4 The arbitral tribunal may extend the time limits within which a party can apply for a supplemental award or for the correction or interpretation of an award.[88] The powers of the arbitral tribunal cease at the end of the arbitral proceedings, except in circumstances where correction, interpretation or a supplemental award is sought.[89] The award is final and is not subject to appeal before the national courts or any other body unless the parties have agreed otherwise.

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[84] *Ibid*, s 43(1).

[85] *Ibid*, s 43(2).

[86] *Ibid*, s 43(4).

[87] *Ibid*, s 44.

[88] *Ibid*, s 45.

[89] *Ibid*, s 46.

8. Role of the courts

8.1 Jurisdiction of the courts

8.1.1 The national courts in Bulgaria have exclusive jurisdiction to hear cases concerning rights in and possession of real estate property, maintenance obligations and employment relationships.[90]

8.1.2 National courts shall also have non-exclusive jurisdiction to hear cases which fall within the jurisdiction of arbitration courts. If there is an arbitration clause, the respondent cannot object to the court's jurisdiction once the period for submitting the written response to the claim to a national court (which is two weeks for commercial cases) has expired.[91]

8.2 Termination of court proceedings and preliminary rulings on jurisdiction

8.2.1 If the respondent objects to the national court's jurisdiction within the permitted timeframe for doing so,[92] the court is obliged to terminate the court proceedings. However, the national court has the right to decide on its own jurisdiction including deciding not terminate the court proceedings, if it considers that the arbitration clause is invalid, unenforceable or inoperative.[93]

8.3 Interim protective measures, obtaining evidence and other court assistance

8.3.1 The national courts in Bulgaria perform various functions in assisting the arbitral proceedings by, for example, granting interim measures and collecting or ensuring the collection of evidence.[94]

9. Challenging and appealing an award through the courts

9.1.1 The judgment of a national court in Bulgaria can be appealed to a court of appeal and subsequently to the Supreme Court of Cassation. Conversely, an award is final and cannot be appealed unless otherwise agreed by the parties in their arbitration

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[90] See paragraph 3.3.2 above.

[91] Bulgarian CPC, s 119(3).

[92] See paragraph 8.1.2 above.

[93] Bulgarian Arbitration Act, s 8(1).

[94] *Ibid*, s 9–10 and 37. See also section 5.2 above.

agreement. The avoidance of a lengthy appeal process is one of the key advantages of arbitration over national court litigation. There are, nevertheless, certain limited bases upon which the Supreme Court of Cassation may set aside the award.[95] In particular, the Supreme Court of Cassation may set aside an award if the party filing the application to set aside can prove that:

(i) the parties lacked the legal capacity to conclude the arbitration agreement;
(ii) no arbitration agreement was concluded or the arbitration agreement is void pursuant to the applicable law chosen by the parties or, if the parties had not made such a choice, pursuant to the Bulgarian Arbitration Act;
(iii) the subject matter of the dispute is not capable of settlement by arbitration or the award is contrary to Bulgarian public policy;
(iv) the party was not given proper notice of the appointment of an arbitrator or the arbitral proceedings or the party was unable to participate in the proceedings due to reasons beyond its control;
(v) the award settles a dispute that was not contemplated by – or not falling within – the arbitration agreement or contains decisions on issues beyond the scope of the submission to arbitration; or
(vi) the constitution of the arbitral tribunal or the arbitral procedure did not conform to the parties' agreement, provided that such agreement does not contradict the mandatory provisions of the Bulgarian Arbitration Act or, in the absence of provisions setting out the arbitral procedure in the arbitration agreement, did not conform to the provisions of the Bulgarian Arbitration Act.[96]

9.1.2 An application to set aside an award must be submitted within three months from the date on which the party received the award. Where a request for correction or interpretation of an award, or for a supplemental award has been made, the time period starts to run from the date on which the arbitral tribunal ruled on that request.[97] These time limits cannot be extended or curtailed by agreement between the parties.

9.1.3 The existence of an application to set aside an award does not automatically suspend enforcement proceedings. The Supreme Court of Cassation may allow the suspension of enforcement proceedings in the exercise of its discretion but the applicant should first provide a guarantee equal to the amount of its liability under the award, should the application to set aside ultimately fail.

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[95] Bulgarian Arbitration Act, s 47.

[96] *Ibid*.

[97] Bulgarian Arbitration Act, s 48(1).

9.1.4 If the Supreme Court of Cassation sets aside an award on any of the grounds under items (i)–(iii) of paragraph 9.1.1 above in a decision which has entered into force, a party may file a claim before a competent national court seeking a re-hearing of the same dispute. If the award is set aside on any of the grounds under items (iv)–(vi) of paragraph 9.1.1 above, the Supreme Court of Cassation must return the case to the arbitral tribunal for reconsideration. Any of the parties may request that the case be heard by arbitrators different from the arbitrators that first heard the dispute.

10. Recognition and enforcement of awards

10.1 Domestic awards

10.1.1 Following a request from the relevant party, the City Court of Sofia will issue a writ of execution of an award that has entered into force. The award, together with proof that it has been delivered to the debtor, shall be enclosed with the request for enforcement.[98] The City Court of Sofia shall consider whether the award is formally in order and that it awards an enforceable right. The City Court of Sofia has seven days in which to consider the application and decide whether to issue the writ of execution.

10.2 Foreign awards

10.2.1 The recognition and enforcement of foreign awards is regulated by the international agreements to which Bulgaria is party, principally the New York Convention.[99] However, Bulgaria entered certain reservations when signing the New York Convention, with the consequence that the Bulgarian courts are only obliged to recognise and enforce foreign awards that have been rendered in states that are also party to the New York Convention. Where an award has been rendered in a state that is not party to the New York Convention, the Bulgarian courts will only apply the provisions of the New York Convention to the extent that the other state grants reciprocal treatment.

10.2.2 In circumstances in which the New York Convention does not apply, or if the enforcing party considers that Bulgarian law offers a more favourable recognition and enforcement regime than that provided under the New York Convention[100] the enforcing party may invoke the provisions of the Bulgarian PILC.[101] Under these

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98 *Ibid*, s 51.

99 See CMS Guide to Arbitration, vol II, 1.1.

100 See New York Convention, art VII(1).

101 Bulgarian PILC, s 118–120.

provisions, the court can only refuse enforcement of a foreign or domestic award if one of the following conditions has been satisfied:

— the foreign arbitral tribunal did not have jurisdiction to hear the dispute;
— the respondent did not receive a copy of the claim, the parties were not duly summoned and the basic principles of Bulgarian law in respect of the right of defence have not been respected;
— the same dispute between the same parties has been determined by a judgment of a Bulgarian court which has entered into force;
— the same dispute between the same parties is the subject of pending proceedings before a Bulgarian court which commenced before the initiation of the arbitral proceedings; or
— the recognition or the enforcement of the award is contrary to Bulgarian public policy.

10.2.3 Unless otherwise provided in an international agreement, the application for recognition and enforcement of foreign awards and of any settlement agreement recorded in a foreign award should be brought before the City Court of Sofia. Unlike the enforcement of domestic awards, the procedure for recognition and enforcement of foreign awards follows the general procedure under the Bulgarian CPC (subject to the special provisions of the Bulgarian PILC concerning, for example, the conduct of hearings and collection of evidence).[102]

11. Special provisions and considerations

11.1 Consumers

11.1.1 The Consumers Protection Act 2005 ***(Bulgarian Consumers Act)*** provides only for a conciliation procedure in respect of consumers' disputes. Pursuant to the Bulgarian Consumers Act, the Minster of Economy, Energy and Tourism has created regional conciliatory commissions to assist in the settlement of disputes between consumers and traders through mediation. The mediators are approved by a decision of the Minister of Economy, Energy and Tourism and are employees of the conciliatory commissions. The conciliation procedure begins when an application is made by a consumer. The purpose of the procedure is for an agreement to be reached by the consumer and the trader, thereby settling the dispute.

11.1.2 The conciliation procedure is not a necessary precondition to be fulfilled before court proceedings can commence.

[102] Bulgarian Arbitration Act, s 51(3); and Bulgarian PILC, s 118–122.

11.2 Employment law

11.2.1 Bulgarian "employment law"[103] is codified by the Labour Code 1986 ***(Bulgarian Labour Code)***, which is supplemented by various legislative acts. Generally, Bulgarian employment law does not provide for arbitral proceedings concerning "individual labour contracts"[104] (i.e. bilateral contracts between an employer and an employee). However, the Bulgarian Labour Code and the Settlement of Collective Labour Disputes Act 1990 stipulate that collective disputes between employers and employees can be settled through arbitration by professional organisations, syndicates or the National Institute for Conciliation and Arbitration. All "collective labour contracts"[105] shall be registered at the National Institute for Conciliation and Arbitration.

11.2.2 Arbitral proceedings are only started upon the mutual agreement of the parties. The dispute shall be heard at no more than two open hearings, to be held within a period of no more than seven days, unless otherwise agreed by the parties. Any evidence is allowed, including evidence given by expert witnesses.

12. Concluding thoughts and themes

12.1.1 Arbitration is the most successful and popular ADR procedure in Bulgaria. It is generally considered to be quicker and more cost-effective for the parties than litigation before local courts. The parties also benefit from the privacy of the arbitral process, the less formal rules of procedure and the ability to agree between themselves on the constitution of the arbitral tribunal, the procedural rules and the timetable for the arbitration.

12.1.2 The arbitral institutions publish lists of recommended arbitrators which include highly reputable and experienced practitioners and professors. They are qualified in the sphere of commercial law and possess good industry knowledge. As a result, arbitral tribunals tend to be focused and accurate in their approach to the issues that they are asked to determine. Currently there are no foreign citizens listed by the BCCI or BIA. However, the parties may nominate any arbitrator, even if not included in the lists of arbitrators, who will have to comply with certain requirements of the institutional arbitration court in order to be appointed. Thus pursuing arbitral proceedings according to the procedural rules of the Bulgarian arbitral institutions is considered to be a good option for resolving commercial disputes.

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[103] *Трудово право*, free translation.

[104] *Индивидуални трудови договори*, free translation.

[105] *Колективните трудови договори*, free translation.

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