

# ARBITRATION IN CROATIA

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# Table of Contents

<b>1.</b>	<b>Overview of arbitration in Croatia</b>	<b>241</b>
<b>2.</b>	<b>Scope of application and general provisions of the Croatian Arbitration Act</b>	<b>242</b>
2.1	Scope of application	242
2.2	The structure of the Croatian Arbitration Act	243
2.3	General principles	243
<b>3.</b>	<b>The arbitration agreement</b>	<b>244</b>
3.1	Definitions	244
3.2	Formal requirements	244
3.3	Special tests and requirements of the jurisdiction	245
3.4	Separability	245
3.5	Legal consequences of a binding arbitration agreement	246
<b>4.</b>	<b>Composition of the arbitral tribunal</b>	<b>246</b>
4.1	The constitution of the arbitral tribunal	246
4.2	Challenging the arbitrators	247
4.3	Procedure for challenge	247
4.4	Appointment of a substitute arbitrator	248
4.5	Responsibility of the arbitrators	248
4.6	Arbitration fees	248
<b>5.</b>	<b>Jurisdiction of the arbitral tribunal</b>	<b>249</b>
5.1	Competence to rule on jurisdiction	249
5.2	Power to order interim measures	249
<b>6.</b>	<b>Conduct of proceedings</b>	<b>249</b>
6.1	Commencement of arbitration	249
6.2	General procedural principles	250
6.3	Seat, place of hearings and language of arbitration	250
6.4	Oral hearings and written proceedings	250
6.5	Default by one of the parties	251
6.6	Evidence	251
6.7	Appointment of experts	252
6.8	Confidentiality	252

<b>7.</b>	<b>Making of the award and termination of proceedings</b>	<b>252</b>
7.1	Choice of law	252
7.2	Form, content and notification of award	252
7.3	Settlement	253
7.4	Power to award interest and costs	253
7.5	Termination of the proceedings	253
7.6	Effect of the award	254
7.7	Correction, clarification and issue of a supplemental award	254
<b>8.</b>	<b>Role of the courts</b>	<b>254</b>
8.1	Jurisdiction of the courts	254
8.2	Stay of court proceedings	254
8.3	Preliminary ruling on jurisdiction	255
8.4	Interim protective measures	255
8.5	Obtaining evidence and other court assistance	255
<b>9.</b>	<b>Challenging and appealing an award through the courts</b>	<b>256</b>
9.1	Jurisdiction of the courts	256
9.2	Applications to set aside an award	256
9.3	Causes of relative nullity	256
9.4	Causes of absolute nullity	256
<b>10.</b>	<b>Recognition and enforcement of awards</b>	<b>257</b>
10.1	Domestic awards	257
10.2	Foreign awards	258
<b>11.</b>	<b>Special provisions and considerations</b>	<b>259</b>
11.1	Consumers	259
11.2	Employment law	259
<b>12.</b>	<b>Conclusion</b>	<b>260</b>
<b>13.</b>	<b>Contacts</b>	<b>260</b>

## 1. Overview of arbitration in Croatia

- 1.1.1 The need for a new arbitration regime in Croatia emerged after the fall of communism. The unrestricted entrance of international capital and a new way of doing business in Croatia meant that drastic changes were required to the system that had been in place. This resulted in a new arbitration law.
- 1.1.2 The law on arbitration in Croatia is contained in the Croatia Arbitration Act NN 88/2001 dated 19 October 2001 (**Croatian Arbitration Act**). The new law has replaced parts of the Croatian Civil Procedure Act, the Conflicts of Law Act and the Obligations Act, which had previously regulated arbitration matters. Therefore, the new law not only amended, but also unified, provisions on arbitration into one single act. Organising the provisions on arbitration into one act created a more structured and identifiable environment for arbitration and promoted a better understanding of this area of legal practice.
- 1.1.3 The Croatian Arbitration Act came into force on 19 October 2001. The main purpose of the Croatian Arbitration Act was to create a modern arbitration law that incorporated the principal features of the Model Law (1985)<sup>1</sup> and the New York Convention.<sup>2</sup>
- 1.1.4 Before the enactment of the Croatian Arbitration Act, ad hoc arbitration was not permitted in domestic disputes. The main institutional arbitration forum, the Permanent Arbitration Court, was established in 1966 within the Croatian Chamber of Economy. Prior to the Croatian Arbitration Act it dealt with conciliation as well, but a separate conciliation centre was established in 2002.
- 1.1.5 After the enactment of the Croatian Arbitration Act, new Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy (**Zagreb Rules**) and Rules of Conciliation were adopted. They came into force in 2002 and are consistent with the Croatian Arbitration Act.

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<sup>1</sup> CMS Guide to Arbitration, vol II, appendix 2.1.

<sup>2</sup> CMS Guide to Arbitration, vol II, appendix 1.1.

## 2. Scope of application and general provisions of the Croatian Arbitration Act

### 2.1 Scope of application

- 2.1.1 The provisions of Croatian Arbitration Act apply to domestic arbitration, the recognition and enforcement of awards and the competence and operation of the courts in regard to arbitration.
- 2.1.2 It is important to emphasise that domestic arbitration is defined as any arbitration located in the Republic of Croatia.<sup>3</sup> This does not mean that such arbitration cannot be international (so-called “arbitration with international element”), as it is possible for one of the parties to the arbitral proceedings to be a person residing abroad or a legal entity incorporated under foreign law. Provided that the seat of the arbitration is the Republic of Croatia, the arbitration is considered to be domestic. Arbitrations under the Croatian Arbitration Act can therefore be in two forms: with or without an international element (depending on the parties).
- 2.1.3 International arbitration is understood as arbitration with a foreign seat and it falls outside the scope of the Croatian Arbitration Act. The Croatian Arbitration Act allows for such arbitration in disputes with an international element, unless there is a Croatian *lex specialis* provision which provides that the dispute can be resolved only before a Croatian court.<sup>4</sup>
- 2.1.4 If the dispute is without an international element (i.e. between physical persons residing in Croatia or legal entities incorporated under Croatian law), only domestic arbitration can be agreed (i.e. with the seat of arbitration in Croatia). Therefore, an arbitration agreement between two Croatian companies can only provide for domestic arbitration (notwithstanding the fact that the ownership structure of those companies might be foreign).
- 2.1.5 As far as the ability to stipulate domestic arbitration for a certain dispute is concerned, the arbitrability of a dispute, the Croatian Arbitration Act considers any dispute in which parties can freely dispose of their rights to be arbitrable.<sup>5</sup>

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<sup>3</sup> Croatian Arbitration Act, art 2(1)(2).

<sup>4</sup> *Ibid*, art 3(2).

<sup>5</sup> *Ibid*, art 3(1).

## 2.2 The structure of the Croatian Arbitration Act

- 2.2.1 The structure of the Croatian Arbitration Act follows the Model Law (1985).<sup>6</sup> There are five parts, which in turn are divided into chapters as follows:
- the first part contains general provisions on the scope of application and definitions;
  - the second part is divided into six chapters:
    - (i) the first chapter contains general provisions on arbitrability;
    - (ii) the second chapter regulates the arbitration agreement;
    - (iii) the third chapter deals with the formation of the arbitral tribunal, challenging of arbitrators and jurisdiction;
    - (iv) the fourth chapter contains provisions relating to the conduct of proceedings;
    - (v) the fifth chapter deals with the rendering of the award; and
    - (vi) the sixth chapter deals with the setting aside of an award;
  - the third part sets out the rules relating to the enforcement of domestic awards and the recognition and enforcement of foreign awards;
  - the fourth part regulates court proceedings relating to arbitration, with general provisions being set out in the first chapter and provisions relating to proceedings concerning the recognition and enforcement of awards set out in the second chapter; and
  - the fifth part contains rules on interim and final provisions.

## 2.3 General principles

- 2.3.1 The Croatian Arbitration Act is based on several principles, among which are the following: party autonomy, non-intervention by the court and equality of the parties.

### *Party autonomy*

- 2.3.2 Due to the fact that many provisions in the Croatian Arbitration Act give priority to the arbitration agreement and to what has been agreed by the parties therein (e.g. rules on the constitution of the arbitral tribunal and choice of law as described below), party autonomy may be considered as the fundamental principle of arbitration in Croatia. Placing such importance on the agreement of the parties is consistent with the general characteristics of arbitration.

### *Non-intervention by the court*

- 2.3.3 With respect to court intervention in arbitral proceedings, the Croatian Arbitration Act provides that the courts shall not intervene except in specifically prescribed circumstances.<sup>7</sup>

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<sup>6</sup> CMS Guide to Arbitration, vol II, appendix 2.1.

<sup>7</sup> Croatian Arbitration Act, art 41(1).

- 2.3.4 When intervening in arbitral proceedings, the court must act in accordance with the limitations set out in the Croatian Arbitration Act and in accordance with the rules of procedure.
- 2.3.5 Proceedings regarding requests to set aside an award are governed by the Croatian Arbitration Act. All other court proceedings are governed by the rules on non-litigious proceedings (e.g. summarised proceedings with more investigatory powers of a judge such as proceedings for the deprivation of legal capacity).<sup>8</sup>

*Equality of the parties*

- 2.3.6 The principle of “equality of the parties” is explicitly stated in Article 17 of the Croatian Arbitration Act. Pursuant to that principle, parties should be able to respond to the allegations and requests of the opposing parties.
- 2.3.7 In order to make provisions on equality effective, arbitrators shall endeavour to give the parties adequate explanations and discuss together with the parties all relevant issues in dispute.<sup>9</sup>

## 3. The arbitration agreement

### 3.1 Definitions

- 3.1.1 An arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes that have arisen or may arise in the future between them in respect of a defined legal relationship of a contractual or non-contractual nature.<sup>10</sup> An arbitration agreement must be set out in writing. It may be concluded by separate agreement or be included as an arbitration clause within a contract.
- 3.1.2 There must be a legal relationship as the basis for such an agreement. An arbitration agreement that purports to refer disputes arising from non-legal relationships to arbitration is null and void.

### 3.2 Formal requirements

- 3.2.1 The arbitration agreement can either be contained in a document that is signed by the parties to the agreement or set out in correspondence between the parties that provides a record of their agreement (i.e. letters, telex, fax, telegrams or any other means of telecommunication that provides a record of the agreement, whether signed by the parties or not).

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<sup>8</sup> *Ibid*, art 41(2).

<sup>9</sup> *Ibid*, art 17(3).

<sup>10</sup> *Ibid*, art 6.

- 3.2.2 There are a number of situations where the agreement is deemed to be concluded in writing. For example, an offer against which no timely objection was raised, written communication with reference to an arbitration agreement that has been concluded orally or the issuance of a bill of lading with an explicit reference to an arbitration clause in a charter party “*Brodarski ugovor*” will all create binding arbitration agreements.<sup>11</sup>
- 3.2.3 A reference in a contract to another document containing the arbitration clause amounts to a valid arbitration agreement if the clause is a part of the contract and provided that the general requirements of a contractual reference to a separate document are satisfied.
- 3.2.4 A formal defect in the arbitration agreement is cured if the respondent does not contest the jurisdiction of the arbitral tribunal prior to filing its statement of defence.
- 3.2.5 There are stricter rules on the formation of a valid arbitration agreement for consumer contract disputes. Such agreements must be contained in a separate document that has been signed by both parties. No other agreements may be contained in such a document, except if the document has been drawn up by a notary public.<sup>12</sup>

### 3.3 Special tests and requirements of the jurisdiction

- 3.3.1 Parties may agree on domestic arbitration for disputes involving rights of which they can freely dispose. In disputes with an international element, parties may agree on a seat of arbitration outside the Republic of Croatia, unless special laws provide that such disputes are to be settled exclusively by a Croatian court. It is possible to submit a dispute covered by the Croatian Arbitration Act to arbitration irrespective of whether or not it is administered by an arbitral institution.<sup>13</sup>

### 3.4 Separability

- 3.4.1 If the arbitration agreement is included in the main contract and the main contract is invalid, the arbitration agreement is severable. Therefore, the arbitration clause will survive the termination of the contract. The principle of separability between the contract and the arbitration clause in Croatia is in line with the provisions of the Model Law (1985).<sup>14</sup>

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<sup>11</sup> *Ibid*, art 6.

<sup>12</sup> *Ibid*, art 6(6).

<sup>13</sup> *Ibid*, art 3.

<sup>14</sup> CMS Guide to Arbitration, vol II, appendix 2.1.

### 3.5 Legal consequences of a binding arbitration agreement

- 3.5.1 The parties may agree the law that applies to the validity of an arbitration agreement. If the parties have failed to agree on this point, the applicable law shall be the law applicable to the main contract or Croatian law (as *lex fori* – the law of the country where the award is rendered). In other words, the arbitration agreement shall be deemed valid if it is valid under one of those laws (i.e. law applicable to the main contract or the *lex fori*). Consequently, the possibility that the arbitration agreement will be found to be valid is high.<sup>15</sup>
- 3.5.2 If a valid arbitration agreement exists and if the parties and matter in dispute are the same then the courts must declare that they lack jurisdiction, dismiss the law suit and refer the dispute to an arbitral tribunal.<sup>16</sup> However, this situation only arises where a valid objection is raised by the respondent.

## 4. Composition of the arbitral tribunal

### 4.1 The constitution of the arbitral tribunal

- 4.1.1 An arbitrator can be any natural person with full legal capacity (i.e. their ability to make binding amendments to their rights, duties and obligations is not limited in any way). The Croatian Arbitration Act explicitly states that citizenship may not be an obstacle for the performance of the arbitrator's duty, although the Act does permit the parties to agree on or impose citizenship restrictions. Although the Croatian Arbitration Act explicitly mentions only citizenship, it can be concluded that other qualifications (e.g. that the arbitrator has to be qualified as a lawyer or a registered member of the bar) are not required, unless the parties agree otherwise. An active Croatian judge can be appointed only as chair of the arbitral tribunal or as a sole arbitrator.<sup>17</sup>
- 4.1.2 The parties may, in the arbitration agreement, determine the number and names of the arbitrators or they may simply determine the manner of appointment. If the manner of appointment is not agreed, each party will appoint one arbitrator and the two party-appointed arbitrators will then choose a third arbitrator to act as chair.
- 4.1.3 If a party fails to appoint one arbitrator within 30 days from the date of notice that the other party has appointed its arbitrator, or if the two arbitrators fail to appoint

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<sup>15</sup> Croatian Arbitration Act, art 6(7).

<sup>16</sup> *Ibid*, art 42(1).

<sup>17</sup> *Ibid*, art 10(1–3).

the third arbitrator within 30 days from the appointment of the second arbitrator, the arbitrator shall be appointed by the national court at the request of one party. The same happens in arbitrations with a sole arbitrator – if the parties fail to agree on the arbitrator, the arbitrator is appointed by the national court at the request of one party.<sup>18</sup>

- 4.1.4 The parties are free to determine the number of arbitrators, and can agree an even number. However, given the potential problems of having an even number of arbitrators, it is not likely that the parties will agree this very often. If the number of arbitrators cannot be agreed, three arbitrators shall be appointed.<sup>19</sup>

## 4.2 Challenging the arbitrators

- 4.2.1 The arbitrators have a duty to disclose any reasons that might put in doubt their independence or impartiality.<sup>20</sup> This obligation applies both prior to their appointment and throughout the arbitral proceedings.

- 4.2.2 A party may challenge the arbitrator if they can show a justifiable doubt as to the arbitrator's independence and impartiality, if the arbitrator does not possess the qualifications agreed upon by the parties or if the arbitrator fails to fulfil his/her duties as prescribed by law.<sup>21</sup>

## 4.3 Procedure for challenge

- 4.3.1 The parties are free to decide on the procedure for challenging the arbitrators. However, they cannot exclude the application of Article 12(7) of the Croatian Arbitration Act. This paragraph stipulates the procedure to be followed in the event a challenge is rejected. The party challenging the appointment of the arbitrator may, within 30 days from (i) the date the challenge is rejected; or (ii) the expiry of the 30 day period during which the arbitral tribunal failed to decide upon the challenge, request the national court to decide on the challenge. A pending request with the court does not prevent continuance of the arbitral proceedings and the rendering of the award.

- 4.3.2 If there is no agreement on the procedural rules for challenge, the statutory provisions apply. The party that intends to challenge the appointment of an arbitrator must send a written statement to the arbitral tribunal explaining the reasons for the challenge, within 15 days (i) of becoming aware of the appointment of a biased

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<sup>18</sup> *Ibid*, art 10(4).

<sup>19</sup> *Ibid*, art 9.

<sup>20</sup> *Ibid*, art 12(1).

<sup>21</sup> *Ibid*, art 11.

arbitrator; or (ii) of becoming aware of circumstances that make the arbitrator biased.<sup>22</sup> The arbitral tribunal should promptly decide on the challenge. The arbitrator who is being challenged is not excluded from the decision making process.<sup>23</sup>

#### **4.4 Appointment of a substitute arbitrator**

4.4.1 Early termination of an arbitrator's mandate is possible if the parties so agree or if the arbitrator withdraws from office.<sup>24</sup>

4.4.2 If the mandate of an arbitrator is terminated for any reason whatsoever, a substitute arbitrator must be appointed in accordance with the applicable rules.<sup>25</sup>

#### **4.5 Responsibility of the arbitrators**

4.5.1 An arbitrator cannot be appointed without his/her consent. The signature of the arbitration agreement by the arbitrator would satisfy this requirement.<sup>26</sup> The Croatian Arbitration Act does not specify the consequences of the lack of written form (i.e. if the arbitrator accepts the appointment orally), but legal theory suggests that this cannot be a reason for setting aside the award. However, this might have an impact on the composition of an arbitral tribunal, i.e. according to the theory, the parties might challenge an arbitrator on those grounds.

4.5.2 An arbitrator must conduct the proceedings in a timely fashion in order to avoid any unnecessary delays. Unless otherwise agreed, parties can agree to replace any arbitrators who do not fulfil their duties and responsibilities.<sup>27</sup>

#### **4.6 Arbitration fees**

4.6.1 An arbitrator is entitled to compensation for the work performed including expenses. Parties are jointly and severally responsible for the payment of the arbitrator's fees and expenses.<sup>28</sup>

4.6.2 Parties may challenge the amount of fees and expenses claimed by an arbitrator. In the event of a challenge, presidents of the County Court in Zagreb or of the Commercial Court in Zagreb, depending on the jurisdiction, shall decide on the fees and expenses.<sup>29</sup>

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<sup>22</sup> *Ibid*, art 12(5).

<sup>23</sup> *Ibid*, art 12(6).

<sup>24</sup> *Ibid*, art 13(1).

<sup>25</sup> *Ibid*, art 14.

<sup>26</sup> *Ibid*, art 11(1).

<sup>27</sup> *Ibid*, art 11(2)–(3).

<sup>28</sup> *Ibid*, art 11(4).

<sup>29</sup> *Ibid*, art 11(5).

## 5. Jurisdiction of the arbitral tribunal

### 5.1 Competence to rule on jurisdiction

5.1.1 The arbitral tribunal decides on the issue of its own jurisdiction (*competence-competence*).<sup>30</sup> A respondent's objection that the arbitral tribunal does not have jurisdiction must be filed before or simultaneously with entering into discussion on the merits of the case. The fact that a party has already appointed an arbitrator does not prevent it from filing such an objection.

5.1.2 The arbitral tribunal may decide on the objection as a preliminary question or as part of the final award. If the arbitral tribunal decides on the matter as a preliminary question, each party may request a ruling of the national court (in an emergency procedure) within 30 days from the delivery of the arbitral tribunal's decision. The Croatian Arbitration Act does not explicitly say on what basis a decision of the arbitral tribunal may be overturned by the national court, but it may be presumed that the national court reviews the same issues as the arbitral tribunal when it decides on its own jurisdiction (e.g. whether the arbitration agreement exists, whether it is valid and whether the respective dispute is arbitrable).

### 5.2 Power to order interim measures

5.2.1 Unless otherwise agreed by the parties, an arbitral tribunal is entitled, upon request by one party, to order interim or protective measures that the arbitral tribunal considers necessary in respect of the subject matter of the proceedings. The party that has requested such measures may apply to the competent national court for the enforcement of such measures.<sup>31</sup>

## 6. Conduct of proceedings

### 6.1 Commencement of arbitration

6.1.1 If not agreed differently by the parties, arbitral proceedings commence:

- (i) where they are administered by an arbitral institution, from the day the institution receives the claim; and
- (ii) in other cases (ad hoc arbitration), from the day the respondent receives a notice from the claimant appointing or suggesting an arbitrator and asking for a response on the arbitrators and the claim.<sup>32</sup>

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<sup>30</sup> *Ibid*, art 15(1).

<sup>31</sup> *Ibid*, art 16.

<sup>32</sup> *Ibid*, art 20.

## **6.2 General procedural principles**

- 6.2.1 Aside from the mandatory provisions of the Croatian Arbitration Act (comprising the rules for protection of Croatian procedural public policy),<sup>33</sup> the parties are free to agree on the procedure to be followed in the arbitral proceedings.<sup>34</sup> Therefore, the parties are free to refer to the rules of an arbitral institution. In the absence of such an agreement, the arbitrators are free to conduct the proceedings as they deem appropriate.
- 6.2.2 The parties shall be treated equally and shall have a right to respond to the statements and claims of their adversary.<sup>35</sup>

## **6.3 Seat, place of hearings and language of arbitration**

- 6.3.1 The parties are free to agree on the seat of the arbitration.<sup>36</sup> This provision does not refer to the actual place of oral hearings but to the legal seat of the arbitration. The Croatian Arbitration Act is only applicable if the seat of the arbitration is in Croatia, unless otherwise agreed between the parties.
- 6.3.2 The actual oral hearings may be conducted at any place the arbitral tribunal considers to be appropriate. If there is no agreement between the parties on the actual seat of arbitration, the arbitral tribunal shall determine the seat, having in mind the convenience of the seat of arbitration for the parties. If the seat is not determined, the seat stipulated in the award shall be deemed to be the seat of arbitration.
- 6.3.3 In accordance with Article 22 of the Model Law (1985),<sup>37</sup> the parties are free to choose the language of the arbitral proceedings. Failing such agreement, the language shall be determined by the arbitral tribunal.<sup>38</sup>

## **6.4 Oral hearings and written proceedings**

- 6.4.1 The parties may agree on whether proceedings shall be in writing only or whether there shall be an oral hearing. In the absence of an agreement to hold an oral hearing, the arbitral tribunal may order an oral hearing at an appropriate stage, if requested by a party. If no such request is submitted, the arbitral tribunal may at its own discretion hold an oral hearing or conduct proceedings in writing only,

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<sup>33</sup> See Articles 36 (1)(c), 12(4), 12(7), 30(7), 36, etc of the Croatian Arbitration Act.

<sup>34</sup> Croatian Arbitration Act, art 18(1).

<sup>35</sup> *Ibid*, art 17(1)(2).

<sup>36</sup> *Ibid*, art 19.

<sup>37</sup> CMS Guide to Arbitration, vol II, appendix 2.1.

<sup>38</sup> Croatian Arbitration Act, art 21.

whichever seems more appropriate. The proceedings will be conducted in private, unless the parties expressly request that the proceedings be public.<sup>39</sup>

- 6.4.2 The parties are to be given sufficient notice concerning hearings and meetings of the arbitral tribunal for the taking of evidence. Furthermore, the parties have the right to receive submissions, documents or communications supplied to the arbitral tribunal by the other party and expert reports or other evidence upon which the arbitral tribunal may rely.<sup>40</sup>

## 6.5 Default by one of the parties

- 6.5.1 Issues that may arise if there is a default of a party in the proceedings are also dealt with in the Croatian Arbitration Act. If the claimant fails to communicate a statement of claim, the proceedings shall be terminated by the arbitral tribunal. If the respondent fails to respond within the agreed or ordered time limit, this does not automatically mean that he shall be treated as admitting the claim. If this occurs, the arbitral tribunal may continue with the proceedings and decide on the basis of the evidence provided. The same applies if a party fails to attend or submit evidence at a hearing.<sup>41</sup>

## 6.6 Evidence

- 6.6.1 The claimant has the duty to submit its claim, identify the issues in dispute and state the facts on which the claim is based. The respondent responds to the claim and submits its defence. During the proceedings, both parties may amend or supplement their claim or positions, unless the arbitral tribunal considers that such amendments would lead to undue delay. Parties are invited to accompany their statements with documents they consider to be important and other relevant evidence.
- 6.6.2 Witnesses are heard at the hearing but not under oath. This omission has no significant legal ramifications and it is rather of symbolic value, distinguishing arbitral proceedings from the (more formal) court proceedings (although, even in court proceedings the oath is more a matter of custom). It should be noted that if this provision is breached, i.e. the witness is asked to testify under oath, this could not affect the validity of the award. Witnesses may be heard outside the hearing if so agreed by the parties, or the arbitral tribunal may request the witnesses to deliver written answers to questions.<sup>42</sup>

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<sup>39</sup> *Ibid*, art 23.

<sup>40</sup> *Ibid*, art 23(4).

<sup>41</sup> *Ibid*, art 24.

<sup>42</sup> *Ibid*, art 25.

## **6.7 Appointment of experts**

6.7.1 Unless otherwise agreed by the parties, the arbitral tribunal has the authority to appoint experts to provide reports on specific issues. Furthermore, the arbitral tribunal may require the parties to give the expert any relevant information or to produce and provide documents relevant to the proceedings.<sup>43</sup> Unless otherwise agreed, the expert is obliged to participate in the hearing after submission of his/her report.

## **6.8 Confidentiality**

6.8.1 Although the Croatian Arbitration Act is silent on this matter, confidentiality is one of the main advantages of arbitration when compared to court proceedings. For example, under the Zagreb Rules, hearings before the arbitral tribunal shall be closed to the public, unless otherwise agreed between the parties. Therefore, it may be presumed that, absent an agreement otherwise or through the incorporation of institutional rules, there is no obligation of confidentiality on the parties.

# **7. Making of the award and termination of proceedings**

## **7.1 Choice of law**

7.1.1 The arbitrators shall make their decision based on the applicable law as agreed by the parties. The parties are free to decide on the applicable law. Unless agreed otherwise, the relevant conflict of laws rules will not apply.

7.1.2 Failing any designation by the parties, the arbitral tribunal shall apply the law which has the closest connection with the dispute. The parties may also expressly authorise the arbitral tribunal to render a decision based on principles of equity. In any case, the arbitrators shall make their decision in accordance with provisions of the arbitration agreement and shall take applicable customs into consideration.<sup>44</sup>

## **7.2 Form, content and notification of award**

7.2.1 The award shall be made in writing and signed by all of the arbitrators. In cases where there is more than one arbitrator, and one arbitrator fails to sign the award, the majority of arbitrators (including the chair) shall sign the award and note the reason for the missing signature(s) on the award.<sup>45</sup> Each party has the right to receive a copy of the award signed by the arbitrators.<sup>46</sup>

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<sup>43</sup> *Ibid*, art 26(1).

<sup>44</sup> *Ibid*, art 27.

<sup>45</sup> *Ibid*, art 30(5).

<sup>46</sup> *Ibid*, art 30(6).

7.2.2 The award shall state the reasons on which it is based, unless the parties have agreed that reasons are not required or if the award is given on the basis of a settlement.<sup>47</sup> It should also contain the date of award and the seat of the arbitration.<sup>48</sup>

### 7.3 Settlement

7.3.1 The parties may conclude a settlement during the arbitral proceedings and may choose between two options: they may request that the arbitral tribunal terminate the proceedings or render an award on agreed terms (which has the same effect as an award on the merits of the case). In the latter case, the arbitral tribunal must verify that the content of the settlement is in accordance with Croatian public policy.<sup>49</sup>

### 7.4 Power to award interest and costs

7.4.1 The arbitrators may decide at their discretion upon the amount of costs to be paid and the allocation of the obligation to pay such costs between the parties. However, it is common practice that the losing party pays the total amount of the arbitrators' fees and the costs of the arbitral proceedings, including the other party's reasonable costs of legal representation. The decision on the obligation for reimbursement of costs and the determination of the amount of costs shall be made in the award or in a separate award.<sup>50</sup>

### 7.5 Termination of the proceedings

7.5.1 Pursuant to the Croatian Arbitration Act, arbitral proceedings may be terminated either as a result of a final award on the merits or by an order of the arbitral tribunal in cases where:

- the claimant withdraws its claim, unless the respondent objects thereto and the arbitral tribunal recognises the respondent's legitimate interest in obtaining a final award;
- the parties agree on the termination; or
- the proceeding's continuation is unnecessary or impossible.<sup>51</sup>

7.5.2 With the exception of some specific situations (e.g. the power to render an additional award) the termination of the arbitral proceedings terminates the mandate of the arbitral tribunal.<sup>52</sup>

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<sup>47</sup> *Ibid*, art 30(3).

<sup>48</sup> *Ibid*, art 30(4).

<sup>49</sup> *Ibid*, art 29.

<sup>50</sup> *Ibid*, art 35.

<sup>51</sup> *Ibid*, art 32(1).

<sup>52</sup> *Ibid*, art 32(2).

## **7.6 Effect of the award**

7.6.1 The award has the effect of a legally binding and final judgment unless the parties have agreed that the award may be contested before an arbitral tribunal of higher instance.<sup>53</sup> In general, the finality and enforceability of an award does not differ from that of a binding judgment of a Croatian court.

## **7.7 Correction, clarification and issue of a supplemental award**

7.7.1 The arbitrators may correct clerical mistakes, computational, typographical or similar errors, either on their own initiative or at the request of any of the parties within 30 days of receipt of the award (unless otherwise agreed by the parties). The interpretation or corrections are considered to be part of the award itself.<sup>54</sup>

7.7.2 Furthermore, if they so agree, each party can request an interpretation of the award (or specific parts of it) by the arbitrators within 30 days of receipt of the award. On the other hand, if the parties do not agree otherwise, each of them can request the issuance of an additional award within 30 days of receipt of the award, concerning asserted claims not yet decided by the award.<sup>55</sup> In both cases, the second party must be notified of any such request by the first party.

# **8. Role of the courts**

## **8.1 Jurisdiction of the courts**

8.1.1 Generally, the competent court for judicial tasks in relation to arbitration matters is the Zagreb County Court. When the subject matter of the arbitral proceedings is within the jurisdiction of the commercial courts, the competent court is the Zagreb Commercial Court.<sup>56</sup>

## **8.2 Stay of court proceedings**

8.2.1 If the parties have agreed to resolve their dispute through arbitration, a court must dismiss any claim regarding a subject-matter that falls under an arbitration agreement. However, the court shall do so only upon the objection of the respondent, which must be raised before arguing on the merits of the case. However, the court shall not dismiss the claim in case of such an objection, if the arbitration agreement is found to be:

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<sup>53</sup> *Ibid*, art 31.

<sup>54</sup> *Ibid*, art 34.

<sup>55</sup> *Ibid*, art 33.

<sup>56</sup> *Ibid*, art 43(1).

- null and void;
- inoperative; or
- incapable of being performed.<sup>57</sup>

8.2.2 Even if the claim has been filed in the court, an arbitral proceeding may be initiated or continued and an award may even be rendered while the court proceedings are pending.<sup>58</sup>

### **8.3 Preliminary ruling on jurisdiction**

8.3.1 The court may be requested to rule on the jurisdiction of the arbitral tribunal if the tribunal decides on that matter as a preliminary question. Each party may request such ruling of the court within 30 days from the delivery of the arbitral tribunal's decision. The court is supposed to decide such question in the expedited proceedings, i.e. by avoiding any unnecessary delays.

### **8.4 Interim protective measures**

8.4.1 Croatian courts have jurisdiction to grant interim or protective measures even if a valid arbitration agreement exists.<sup>59</sup> The request for interim measures of protection to a state court does not constitute an infringement or waiver of the arbitration agreement.

### **8.5 Obtaining evidence and other court assistance**

8.5.1 The court may be requested to provide legal assistance in obtaining evidence which cannot be obtained by the arbitral tribunal itself. Such a request may be filed either by the arbitral tribunal or by each party with the arbitral tribunal's approval.<sup>60</sup> Arbitrators are authorised to participate in such proceedings before the court and to question persons that are being heard before the court.<sup>61</sup>

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<sup>57</sup> *Ibid*, art 42(1–2).

<sup>58</sup> *Ibid*, art 42(3).

<sup>59</sup> *Ibid*, art 44.

<sup>60</sup> *Ibid*, art 45(1).

<sup>61</sup> *Ibid*, art 31.

## 9. Challenging and appealing an award through the courts

### 9.1 Jurisdiction of the courts

9.1.1 An award cannot be appealed through the courts.<sup>62</sup> However, it can be the subject of an application to set aside an award.<sup>63</sup> Regarding the competent court see paragraph 8.1.1 above.

### 9.2 Applications to set aside an award

9.2.1 An application to set aside an award is the only legal remedy against the award provided under the Croatian Arbitration Act. Regarding the reasons for setting aside an award, the Croatian Arbitration Act distinguishes causes of relative nullity which must be proven by the party that files the application and causes of absolute nullity which the court has to take into consideration even if a party has not raised these grounds.<sup>64</sup>

### 9.3 Causes of relative nullity

9.3.1 The award shall be set aside if a party proves that:

- the arbitration agreement did not exist, or was invalid;
- it was unable to conclude the arbitration agreement because of lack of capacity, or that it was not duly represented;
- it was not given proper notice of the commencement of the proceedings or was otherwise illegally prevented from presenting its case;
- the arbitral tribunal dealt with a dispute not covered by the arbitration agreement or, that the award contains decisions concerning matters beyond the scope of the arbitration agreement (note that only the part of the award going beyond the scope of the arbitration agreement shall be set aside);
- the arbitral tribunal was not constituted or composed in accordance with the contractual or statutory provisions; or
- the award does not contain reasons or it is not signed in accordance with law.

### 9.4 Causes of absolute nullity

9.4.1 Even if a party has not raised these grounds, the court shall set aside the award:

- if the proceedings were conducted in a way that violates Croatian public policy; or
- if the matter in dispute is not arbitrable under Croatian law.

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<sup>62</sup> *Ibid*, art 31.

<sup>63</sup> *Ibid*, art 45(3).

<sup>64</sup> *Ibid*, art 36(2).

- 9.4.2 Provided that this possibility is expressly agreed between the parties, i.e. prescribed by the arbitration agreement, an application to set aside an award may be filed in a case where either party finds out new facts or new evidence which would have resulted in a more favourable award for that party if those facts or evidence had been known and used before. However, this ground may be raised only if it was not the fault of the applying party that it could not use those facts or evidence in the arbitral proceeding.<sup>65</sup>
- 9.4.3 The application to set aside the award shall be filed within three months of receipt of the award or a subsequent additional award.<sup>66</sup>
- 9.4.4 The court may also, if appropriate or upon the request of a party, withhold the decision on setting aside the award, in order to give the arbitral tribunal time to rectify the fault that otherwise would lead to the setting aside of the award.<sup>67</sup>
- 9.4.5 However, the setting aside of the award does not automatically invalidate the underlying arbitration agreement. A valid agreement presents grounds for a new arbitration. The court may, if appropriate and upon the request of a party, return the case to the original arbitral tribunal so that it can remedy the difficulty and render a new award.<sup>68</sup>

## 10. Recognition and enforcement of awards

### 10.1 Domestic awards

- 10.1.1 Unless the court finds that one of the causes of absolute nullity prescribed in the Croatian Arbitration Act for setting aside the award is applicable, a domestic award shall be executed. In making this evaluation, the court shall not take into consideration the reasons which were finally rejected in respect of the application to set aside an award.<sup>69</sup> It should be noted that the court will never assess the causes of relative nullity at this stage. Due to the fact that the Croatian Arbitration Act clearly distinguishes the enforcement of the award from the procedure of setting aside an award, the parties may not raise the relative grounds within the enforcement procedure even if the deadline for filing the application to set aside an award has not expired yet.

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<sup>65</sup> *Ibid*, art 36(5).

<sup>66</sup> *Ibid*, art 36(3).

<sup>67</sup> *Ibid*, art 36(4).

<sup>68</sup> *Ibid*, art 37.

<sup>69</sup> *Ibid*, art 39(1) and 39(2).

10.1.2 The court may be requested to issue a decision stating that causes of absolute nullity for setting aside the award do not exist for any party having a legal interest in filing such a request.<sup>70</sup>

## 10.2 Foreign awards

10.2.1 Croatia is a party to the New York Convention.<sup>71</sup> It should be noted, however, that when ratifying the New York Convention<sup>72</sup>, the Croatian Government expressly declared that:

- (a) Croatian courts will only recognise and enforce awards rendered in other States that are party to the New York Convention<sup>73</sup>; and
- (b) Croatian courts will only recognise and enforce awards relating to disputes that qualify as “commercial” under Croatian law. Pursuant to the Croatian Arbitration Act, the court may deny recognition and enforcement of foreign awards either at the request of the party or of its volition.

### *Court acting at the request of either party*

10.2.2 The Croatian courts shall recognise and enforce a foreign award, unless:

- the opposing party is able to prove reasons prescribed in the Croatian Arbitration Act for setting aside the award;
- the award is still not binding on the parties; or
- the court at the seat of the arbitration has set aside the award or suspended the effectiveness of the award.<sup>74</sup>

10.2.3 However, in order for the court to deny recognition and enforcement of a foreign award in these cases, the appropriate party must make an adequate request.

10.2.4 On its own volition, recognition and enforcement of foreign awards shall also be refused if the court finds that:

- the proceedings were conducted in a way that violates Croatian public policy;
- or
- the matter in dispute is not arbitrable under domestic law.<sup>75</sup>

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<sup>70</sup> *Ibid.*, art 39(4).

<sup>71</sup> CMS Guide to Arbitration, vol II, appendix 1.1.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> Croatian Arbitration Act, art 40(1).

<sup>75</sup> *Ibid.*, art 40(2).

## 11. Special provisions and considerations

### 11.1 Consumers

- 11.1.1 If the dispute arises or can arise from a consumer contract, the arbitration agreement must be concluded in a form of separate deed and signed by both contracting parties. Save when the agreement is drawn up by a notary public, it may not include any other provisions except those connected to the arbitral proceedings.<sup>76</sup>

### 11.2 Employment law

- 11.2.1 Pursuant to Croatian Labour Act NN 149/09, 61/11 (**CLA**), arbitration may be agreed with regard to individual and collective labour disputes, as well as in specific situations prescribed by the CLA.

#### *Individual labour disputes*

- 11.2.2 Contractual parties may agree to settle their labour dispute through arbitration and they may be represented in front of the arbitral tribunal by the trade union or association of which they are members.<sup>77</sup> Composition of the arbitral tribunal, proceeding and other relevant arbitral issues may be prescribed by the collective agreement.<sup>78</sup>

#### *Collective labour disputes*

- 11.2.3 If a collective labour dispute is submitted to arbitration, the composition of the arbitral tribunal and other procedural issues may be prescribed by the collective agreement or by the agreement concluded between the parties after the dispute has arisen.<sup>79</sup> An issue that is to be submitted to arbitration has to be specified in the arbitration agreement and the arbitral tribunal is authorised to decide only on that specific issue.<sup>80</sup>
- 11.2.4 If a collective labour dispute concerns the interpretation or application of an act, regulation or collective agreement, the arbitral tribunal shall base its decision on such law, regulation or collective agreement. If, on the other hand, the dispute is related to the execution, modification or renewal of a collective agreement, then the award shall be based on principles of equity. In the latter case the award has an effect of the collective agreement.<sup>81</sup>

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<sup>76</sup> *Ibid*, art 6(6).

<sup>77</sup> CLA, art 230.

<sup>78</sup> *Ibid*, art 132

<sup>79</sup> *Ibid*, art 274.

<sup>80</sup> *Ibid*, art 275.

<sup>81</sup> *Ibid*, art 276.

*Arbitration in specific situations*

- 11.2.5 Certain provisions of the CLA provide for the possibility of arbitration for specific labour disputes (e.g. disputes between the employers and trade unions regarding work that cannot be ceased during strike action).<sup>82</sup> In such a case, a dispute may be submitted to arbitration under the CLA itself (and an arbitration agreement is not necessary).

## 12. Conclusion

- 12.1.1 Although arbitration has many advantages (such as confidentiality, speed, neutrality and costs), compared to court proceedings, arbitration is still not very frequently used in Croatia. Nevertheless, Croatia has adopted the Croatian Arbitration Act which is relatively modern and follows the main principles of the Model Law (1985).<sup>83</sup> In addition, a lot of effort has been put into promoting the use of mediation and arbitral proceedings. This highlights Croatia's attempts to ensure that in future methods of alternative dispute resolution will be more frequently used.

## 13. Contacts

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<sup>82</sup> *Ibid*, art 278.

<sup>83</sup> CMS Guide to Arbitration, vol II, appendix 2.1.