

ARBITRATION IN SERBIA

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1. Overview of arbitration in Serbia

- 1.1.1 In Serbia, the law on arbitration is contained in the Serbian Arbitration Act 2006 (**Serbian Arbitration Act**). It was adopted through a process of legal reform to promote arbitration as the common way of settling commercial disputes in Serbia. The Serbian Arbitration Act summarises the provisions relating to arbitral proceedings that were previously contained in the Law on Civil Procedure 1996 and the Serbian Act on Conflict of Laws 1982 (as amended in 1996 and 2006). It is based on the Model Law (1985).
- 1.1.2 The first arbitral institution in Serbia was the Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce (**FCA**), which was established in 1947. It is an international arbitral institution that acts independently of the Serbian Chamber of Commerce.
- 1.1.3 The current rules of the FCA (**FCA Rules**)¹ provide for both arbitration and conciliation as means of settling disputes before the FCA. The modern solutions contained in the FCA Rules are recommended by international arbitration experts and practitioners in Serbia.

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

2.1 Subject matter

- 2.1.1 The provisions of the Serbian Arbitration Act apply to both domestic and international arbitration, provided that the seat of arbitration is in the territory of the Republic of Serbia. However, parties to an international arbitration are free to agree otherwise if they wish.
- 2.1.2 International arbitration is defined in the Serbian Arbitration Act as being an arbitration relating to a dispute arising out of international business relations. In particular, the arbitration will be considered to be international if:
- the parties have, at the time of conclusion of the arbitration agreement, their places of business in different states; or

¹ Official Gazette of the Republic of Serbia 52/07, 8 June 2007.

- the seat of arbitration, the place where a substantial part of the obligations of the business relationship are to be performed or the place with which the subject matter of the dispute is most closely connected, is situated outside the state in which the parties have their places of business.²

2.1.3 Furthermore, arbitration is deemed to be international if the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one state.³

2.2 Structure of the Serbian Arbitration Act

2.2.1 The Serbian Arbitration Act is based on the Model Law (1985). The first chapter of the Serbian Arbitration Act contains general provisions, such as the scope of application of the act and provision for which disputes are eligible for arbitration or international arbitration. The second chapter deals with the arbitration agreement itself and the third chapter addresses the procedure for setting up the arbitral tribunal. The fourth chapter contains provisions about arbitrators and the fifth chapter concerns jurisdiction. The sixth and seventh chapters set out the provisions relating to the conduct of arbitral proceedings and the rendering of the award and the eighth chapter deals with setting aside an award. Finally, the ninth chapter deals with the recognition and enforcement of foreign awards.

2.3 General principles

2.3.1 The underlying principles of the Serbian Arbitration Act are:

- equality, meaning that all parties must be treated fairly and equally;⁴
- party autonomy, meaning that the parties can decide upon the procedure of the arbitration in many respects, although the mandatory provisions of the Serbian Arbitration Act must be observed;⁵ and
- due process, meaning that all parties must have the opportunity to present their case, evidence and position with respect to acts and proposals of the opposing party.⁶

² Serbian Arbitration Act, art 3 following the definition in the Model Law (1985), art 1(3) (see CMS Guide to Arbitration, vol II, appendix 2.1).

³ Serbian Arbitration Act, art 3.

⁴ *Ibid*, art 33.

⁵ *Ibid*, art 2.

⁶ *Ibid*, art 33.

3. The arbitration agreement

3.1 Definitions

3.1.1 The Serbian Arbitration Act does not contain a definition of an arbitration clause as set out, for example, in Article 7(1) of the Model Law (1985).⁷ However, it provides that an agreement to arbitrate may be contained in a contractual clause or in a separate contract.⁸ An arbitration agreement may be concluded after a dispute has arisen.⁹

3.1.2 It is an accepted principle that the arbitration agreement binds only the parties to the agreement. However, an arbitration agreement will remain in force in the event of an assignment or subrogation.

3.2 Formal requirements

3.2.1 An arbitration agreement should be in writing and comply with the formal requirements under the Serbian Arbitration Act.¹⁰ The arbitration agreement must either be contained in a document signed by the parties, or concluded by an exchange of messages through a means of communication that provides a written record of the parties' agreement, regardless of whether the messages were signed by the parties or not.

3.2.2 Furthermore, an arbitration agreement shall be deemed to exist when the claimant initiates arbitral proceedings in writing and the respondent either expressly accepts the arbitration in writing or by a statement which is recorded in the minutes of the arbitral proceedings, or fails to challenge the existence of the arbitration agreement or the jurisdiction of the arbitral tribunal before submissions on the subject matter of the dispute are submitted.¹¹

3.3 Arbitrability

3.3.1 The Serbian Arbitration Act defines arbitrable disputes as being pecuniary disputes concerning rights that the parties can freely dispose of and excluding disputes that are reserved to the exclusive jurisdiction of the Serbian courts.¹² Furthermore, the Serbian Arbitration Act designates that any natural or legal person (including the

⁷ For the text of the Model Law (1985), see CMS Guide to Arbitration, vol II, appendix 2.1.

⁸ Serbian Arbitration Act, art 9.

⁹ *Ibid*, art 11.

¹⁰ *Ibid*, art 12 based on the Model Law (1985), art 7(2) (see CMS Guide to Arbitration, vol II, appendix 2.1).

¹¹ Serbian Arbitration Act, art 12.

¹² *Ibid*, art 5.

Serbian State), who has capacity to be a party in civil proceedings may be a party to an arbitration agreement. Under Serbian law, every natural and legal person may be a party to civil proceedings.¹³

- 3.3.2 Certain pecuniary disputes are not arbitrable if they fall under the exclusive jurisdiction of the Serbian courts. For example, real estate matters relating to properties situated in Serbia, hereditary disputes (including cases where a foreign decedent owned real estate in Serbia) and disputes arising from family law relations are reserved to the Serbian courts.¹⁴

3.4 Separability

- 3.4.1 The Serbian Arbitration Act accepts the doctrine of separability. An agreement to arbitrate concluded in the form of an arbitration clause within a larger agreement is considered to be independent and separable from the other terms of the contract.¹⁵

3.5 Legal consequences of a binding arbitration agreement

- 3.5.1 The Serbian Arbitration Act, following the Model Law (1985), stipulates that a Serbian court, upon the motion of a party submitted prior to any submissions on the subject matter of the dispute, will dismiss an action for lack of jurisdiction if an action is brought in relation to a dispute that is the subject of an arbitration agreement.¹⁶ This is the position unless the court finds that the arbitration agreement is manifestly null and void, inoperative or incapable of being performed.

4. Composition of the arbitral tribunal

4.1 Constitution of the arbitral tribunal

- 4.1.1 The parties are free to determine the number of arbitrators to conduct the arbitral proceedings, albeit that the number of arbitrators must be an odd number.¹⁷ An arbitral tribunal can be composed of one arbitrator (sole arbitrator), three arbitrators or any uneven number of arbitrators.¹⁸

¹³ Civil Procedure Act 2004 (as amended in 2009), art 73.

¹⁴ See Serbian Act on Conflict of Laws 1982 (as amended in 1996 and 2006).

¹⁵ Serbian Arbitration Act, art 28.

¹⁶ *Ibid*, art 14.

¹⁷ *Ibid*, art 16.

¹⁸ *Ibid*.

- 4.1.2 If the parties fail to determine the number of arbitrators, their number shall be determined by a person or arbitral institution designated by the parties' agreement. If no appointing authority is designated by the parties or the appointing authority fails to act, the number of arbitrators shall be determined by the competent Serbian court.¹⁹
- 4.1.3 If the dispute is to be resolved by a sole arbitrator, the parties shall agree on the appointment within 30 days of the date on which one party requests the other to jointly appoint the arbitrator. Should the parties fail to reach an agreement, the appointment shall be made by the appointing authority. If there is no appointing authority, or the appointing authority fails to act, the appointment shall be made by the competent Serbian court.²⁰
- 4.1.4 If the dispute is to be resolved by three arbitrators, each party shall appoint one arbitrator within 30 days of the date on which the other party requests it to do so.²¹ If the requested party fails to do so, the arbitrator shall be appointed by the appointing authority designated by the parties. If there is no appointing authority, or the appointing authority fails to act, the appointment shall be made by the competent Serbian court.²²
- 4.1.5 The third arbitrator, who presides over the arbitral tribunal and is referred to as the "President", shall be elected by the two previously appointed arbitrators within 30 days of the date of their appointment.²³ Should they fail to elect the President, the appointment shall be made by the appointing authority. If there is no appointing authority or the appointing authority fails to act, the appointment shall be made by the competent Serbian court.²⁴ The decision of the Serbian court on the appointment of an arbitrator is not subject to appeal.²⁵

4.2 Procedure for challenging and substituting arbitrators

Grounds for challenge

- 4.2.1 The grounds for challenging arbitrators stipulated in the Serbian Arbitration Act correspond to those in the Model Law (1985).²⁶ An arbitrator may be challenged

¹⁹ *Ibid.*

²⁰ *Ibid.*, art 17.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Serbian Arbitration Act, art 23 and the Model Law (1985), ch 3, art 12 (see CMS Guide to Arbitration, vol II, appendix 2.1).

only if circumstances exist that justifiably raise doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess the qualities agreed upon by the parties.²⁷

- 4.2.2 An arbitrator may be challenged only if grounds for challenge have arisen – or if the challenging party became aware of such grounds – after the arbitrator was appointed.²⁸

Procedure for challenge

- 4.2.3 A party can submit a request in writing challenging an arbitrator within 15 days of becoming aware of the arbitrator's appointment, or of the grounds for the challenge, unless otherwise agreed by the parties.²⁹ Where the parties have entrusted the administration of the arbitral proceedings to an arbitral institution, the parties shall be deemed to have agreed that any challenge be resolved in accordance with that arbitral institution's rules.³⁰

- 4.2.4 Unless otherwise agreed by the parties, the competent Serbian court shall decide on the challenge of an arbitrator.³¹ However, the arbitral tribunal may continue the arbitral proceedings and make an award while the challenge procedure is pending.³²

Appointment of substitute arbitrators

- 4.2.5 If the mandate of an arbitrator is terminated, a substitute arbitrator shall be appointed in accordance with the appointment provisions of the Serbian Arbitration Act.³³

4.3 Responsibilities of arbitrators

- 4.3.1 The Serbian Arbitration Act does not contain a chapter specifically dedicated to the responsibilities of arbitrators. However, it prescribes that an arbitrator must have the qualities agreed upon by the parties and be impartial and independent in relation to the parties and the subject matter of the dispute.³⁴ Furthermore, the proposed arbitrator has a duty to disclose any circumstances that may justifiably

²⁷ Serbian Arbitration Act, art 23.

²⁸ *Ibid*, art 24(2).

²⁹ *Ibid*, art 24.

³⁰ *Ibid*.

³¹ *Ibid*.

³² *Ibid*.

³³ *Ibid*, art 26.

³⁴ *Ibid*, art 19.

raise doubts as to their impartiality or independence before accepting the appointment.³⁵ If such circumstances occur after the appointment, the arbitrator shall without delay disclose the circumstances to the parties.³⁶ The Serbian Arbitration Act also provides that an arbitrator shall perform all duties conscientiously and efficiently.³⁷

- 4.3.2 Additionally, there are various other legislative acts in Serbia setting out principles and responsibilities that should be followed by arbitrators in the same way as state court judges.
- 4.3.3 According to the Constitution of the Republic of Serbia, there is an obligation for judges, and arbitrators, to perform their duties in accordance with the Constitution and Laws of Serbia, and where stipulated, in accordance with generally accepted rules of international law and ratified international treaties.³⁸
- 4.3.4 Finally, the FCA Rules contain provisions regulating the conduct of the proceedings and the rulings that arbitrators can make in relation to procedural matters, such as deciding on whether a party should be required to deposit an advance to cover the costs of experts and witnesses, securing evidence, time limits, joining cases, and other rulings that are deemed to be necessary.³⁹ Under the FCA Rules, arbitrators owe this duty of care regardless of how the dispute falls within the jurisdiction of the Court of Arbitration. The duty of care is owed throughout the proceedings.⁴⁰

4.4 Arbitration fees

Costs of arbitration

- 4.4.1 Pursuant to the Serbian Arbitration Act, the parties are to bear the costs of arbitration. The amount of, and responsibility for, costs shall be determined by the arbitral tribunal.⁴¹ The arbitral tribunal may request the parties to pay the costs in advance.⁴² Furthermore, the permanent arbitral institution shall independently establish the costs of arbitration and the scale of such costs.⁴³

³⁵ *Ibid.*, art 21.

³⁶ *Ibid.*

³⁷ *Ibid.*, art 22.

³⁸ Constitution of the Republic of Serbia, art 142.

³⁹ FCA Rules, art 41.

⁴⁰ *Ibid.*, art 18.

⁴¹ Serbian Arbitration Act, art 18.

⁴² *Ibid.*

⁴³ *Ibid.*

Arbitrator's fees

- 4.4.2 The FCA Rules provide that the fees of the arbitrators, as well as the fees of the Chair, Vice-Chairmen and members of the Board of the Court of Arbitration, shall be determined by a decision of the Managing Board of the Serbian Chamber of Commerce at the proposal of the Extended Board.⁴⁴ After the award is made, or a settlement is reached or proceedings are terminated, the Chair of the Court of Arbitration shall fix the arbitrators' fees, in accordance with the above mentioned decision.⁴⁵ Additionally, the FCA Rules provide that foreign arbitrators are entitled to their fees in foreign currency.⁴⁶

4.5 Arbitrator immunity

- 4.5.1 The Serbian Constitution and the Serbian Arbitration Act do not contain any provisions regarding arbitrator immunity.

5. Jurisdiction of the arbitral tribunal

5.1 Competence to rule on jurisdiction

- 5.1.1 The Serbian Arbitration Act provides that the arbitral tribunal is competent to decide on its own jurisdiction (the principle of *competence-competence*).⁴⁷ A decision by an arbitral tribunal that the contract containing an arbitration clause is null and void will not invalidate the effect of the arbitration clause.

5.2 Power to order interim measures

- 5.2.1 Unless otherwise agreed by the parties, the arbitral tribunal may order interim measures upon the request of a party. The requesting party may be required to provide security in appropriate circumstances.⁴⁸

6. Conduct of arbitral proceedings

6.1 Commencement of arbitration

- 6.1.1 Unlike the Model Law (1985), the Serbian Arbitration Act distinguishes between institutional and ad hoc arbitral proceedings when providing for the date of commencement of arbitral proceedings.

⁴⁴ FCA Rules, art 62.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Serbian Arbitration Act, art 28 reflecting the wording in the Model Law (1985), art 16 (see CMS Guide to Arbitration, vol II, appendix 2.1).

⁴⁸ Serbian Arbitration Act, art 31.

6.1.2 In institutional arbitral proceedings, the arbitration shall commence on the day that the arbitral institution receives the request for arbitration or a statement of claim.⁴⁹ However, in ad hoc arbitral proceedings the arbitration shall commence on the day that the respondent receives the request for arbitration or a statement of claim together with a notification that the claimant has appointed an arbitrator and the invitation to the opposing party to appoint its arbitrator or, alternatively, has proposed a sole arbitrator and requested that the opposing party state whether it agrees to the proposed sole arbitrator.⁵⁰

6.2 General procedural principles

6.2.1 Parties to an arbitration agreement are free to agree on the procedural rules to be followed by the arbitral tribunal.⁵¹ If the arbitration is international, the parties may agree that foreign law shall be applied to the arbitral proceedings in accordance with the provisions of the Serbian Arbitration Act. If the parties fail to agree on what procedural rules are to apply, the arbitral tribunal may conduct the arbitral proceedings in such a manner as it considers appropriate in accordance with the provisions of the Serbian Arbitration Act.⁵²

6.2.2 The Serbian Arbitration Act provides that the fundamental principles of the arbitral proceedings are the equal treatment of the parties, party autonomy and due process (see section 2.3 above).

6.2.3 Under the Serbian Arbitration Act, a party waives its right to object to a derogation of any requirement stipulated in the arbitration agreement where it is aware of the derogation and yet continues to participate in the arbitral proceedings without raising an objection.⁵³

6.3 Seat, place of hearings and language of arbitration

6.3.1 Parties are free to agree on the seat of arbitration. If the parties have entrusted the administration of their arbitral proceedings to an arbitral institution, the seat of arbitration shall be determined in accordance with its rules.⁵⁴ If the parties fail to determine the seat of arbitration, the seat of arbitration should be determined by the arbitral tribunal.⁵⁵

⁴⁹ *Ibid.*, art 38.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, art 32.

⁵² *Ibid.*

⁵³ *Ibid.*, art 34.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

- 6.3.2 Unless otherwise agreed by the parties, the arbitral tribunal may meet at any place it considers appropriate, which need not be the seat of arbitration, for the deliberations of the arbitral tribunal, the hearing of witnesses, experts or the parties, as well as for the inspection of goods, other property or documents.⁵⁶
- 6.3.3 Pursuant to the Serbian Arbitration Act, the parties may agree on the language of the arbitral proceedings. If the parties fail to agree on the language of the arbitration, the arbitral tribunal shall determine the appropriate language, taking into account the seat of arbitration and the language used by the parties in their legal relationship.⁵⁷
- 6.3.4 Until the language of the arbitration is determined, the statement of claim, the statement of defence and any other written submissions may be submitted in the language of the contract, the language of the arbitration agreement or in the Serbian language.⁵⁸

6.4 Statements of case

- 6.4.1 Article 36 of the Serbian Arbitration Act sets out the definitions of the statement of claim and the statement of defence. The Serbian Arbitration Act provides that, unless otherwise agreed by the parties, the claimant shall state in its statement of claim the facts supporting its claim, the issues in dispute and the relief or remedy sought.
- 6.4.2 The respondent shall, unless otherwise agreed by the parties and within the time limit agreed upon by the parties or as determined by the arbitral tribunal, state its defence to the claims, statements and evidence contained in the statement of claim.
- 6.4.3 The parties may, during the course of the arbitral proceedings, amend or supplement their statement of claim or statement of defence, unless they agree otherwise or unless the arbitral tribunal decides that to allow such amendments would jeopardise the efficiency of the arbitral proceedings.⁵⁹
- 6.4.4 Unlike the Model Law (1985), the Serbian Arbitration Act contains specific provisions on counterclaims. A counterclaim may be submitted by the respondent with the statement of defence, unless the parties agree otherwise.⁶⁰

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, art 35.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, art 36.

⁶⁰ *Ibid.*, art 37.

6.5 Multi-party issues

- 6.5.1 In the event that the parties have submitted several statements of claim against each other arising out of different legal relationships, the Secretariat of the Court of Arbitration shall try to join the proceedings and have them decided by the same arbitral tribunal, for the purpose of economy of proceedings.⁶¹
- 6.5.2 A person that has a legal interest to participate in the arbitral proceedings may join one of the parties, but only with the consent of both parties.⁶²

6.6 Oral hearings and written proceedings

- 6.6.1 Parties may choose to have oral hearings or arbitrations based on written submissions only.⁶³ If the parties fail to agree, the arbitral tribunal shall decide whether to hold an oral hearing or whether to conduct the arbitral proceedings on the basis of documents and written materials only. If one of the parties requests a hearing, the arbitral tribunal shall hold such a hearing unless the parties have previously agreed otherwise.⁶⁴
- 6.6.2 The arbitral tribunal is required to notify the parties in a timely fashion of any hearings or meetings of the arbitral tribunal for the purposes of inspection of goods, other property or documents.⁶⁵ All statements, documents and other evidence (including any expert reports) that are supplied to the arbitral tribunal by one party shall be communicated to the other party.⁶⁶
- 6.6.3 A witness can be examined through oral testimony in arbitral proceedings,⁶⁷ at the request of a party or the tribunal.⁶⁸

6.7 Default by one of the parties

- 6.7.1 Article 42 of the Serbian Arbitration Act addresses issues that may arise if there is a default of a party with regard to the arbitral proceedings without a justified cause. If the claimant, after filing the request for arbitration, fails to communicate its statement of claim, the arbitral tribunal shall terminate the arbitral proceedings.⁶⁹

⁶¹ FCA Rules, art 33.

⁶² *Ibid*, art 42.

⁶³ *Ibid*, art 35.

⁶⁴ Serbian Arbitration Act, art 39.

⁶⁵ *Ibid*, art 40.

⁶⁶ *Ibid*.

⁶⁷ *Ibid*, art 44.

⁶⁸ FCA Rules, art 40.

⁶⁹ Serbian Arbitration Act, art 42.

- 6.7.2 If the respondent fails to communicate its statement of defence, the arbitral tribunal shall continue the arbitral proceedings, without treating such default as an admission by the respondent of the allegations and claims contained in the statement of claim.⁷⁰
- 6.7.3 If a party, although duly summonsed, fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the arbitral proceedings and render an award based on the evidence that was produced.⁷¹
- 6.7.4 The parties are free to agree on different consequences of a default.

6.8 Appointment of experts

- 6.8.1 Unless otherwise agreed by the parties, the arbitral tribunal may:
- appoint one or more experts to provide reports or opinions on the issues to be determined by the arbitral tribunal; or
 - require that the parties provide the expert(s) with any necessary information or documents, or allow them access to documents, goods or other property.⁷²
- 6.8.2 Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal so determines, the tribunal-appointed expert(s) shall, after delivery of their written or verbal report and opinion, participate in an oral hearing. At such hearing, the parties may put questions to them or present other experts to discuss the issues in dispute with the appointed expert.
- 6.8.3 The provisions of the Serbian Arbitration Act regarding the challenge of arbitrators are similarly applied to the challenge of experts.⁷³

6.9 Confidentiality

- 6.9.1 Under the FCA Rules, arbitral proceedings are held in private, unless the parties have agreed otherwise.⁷⁴
- 6.9.2 The full text of the award may be published only with the consent of the parties. However, the Chair of the Court of Arbitration is permitted to authorise the publication of the award in professional periodicals without disclosing the names of the parties or any information that may be damaging to the interests of the parties.⁷⁵

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*, art 45.

⁷³ *Ibid.*

⁷⁴ FCA Rules, art 37.

⁷⁵ *Ibid.*, art 51.

6.10 Court assistance in taking evidence

- 6.10.1 If the arbitral tribunal considers that it requires assistance in taking evidence, or upon a request of a party, it is entitled to request such assistance from the Serbian courts in taking evidence. If it does so, the arbitral tribunal will consider any evidence heard before the Serbian court as evidence heard by itself.⁷⁶

7. Making of the award and termination of proceedings

7.1 Choice of law

- 7.1.1 The parties are free to choose the law governing the dispute.⁷⁷ The Serbian Arbitration Act provides that the designation of the law of a given state shall be construed, unless otherwise expressly agreed by the parties, as a direct reference to the substantive law of that state and not to its conflict of law rules.⁷⁸ Should the parties fail to reach an agreement on the applicable law, the arbitral tribunal, in an international arbitration, shall determine the applicable law or body of rules on the basis of the conflict of law rules it deems appropriate.⁷⁹ If the parties expressly agree, the arbitral tribunal may decide the dispute *ex aequo et bono*.⁸⁰

7.2 Decision making by the arbitrators

- 7.2.1 The Serbian Arbitration Act provides that an award can be rendered as a final award, an interim award or a partial award.⁸¹ Unless otherwise agreed by the parties, an award shall be made after deliberations in which all the arbitrators must participate.
- 7.2.2 Unlike the Model Law (1985), which neither requires nor prohibits dissenting opinions, the Serbian Arbitration Act provides that an arbitrator who disagrees with the award may write a dissenting opinion, which shall be communicated to the parties along with the award if the dissenting arbitrator so requests.⁸²

7.3 Timing, form, content and notification of the award

- 7.3.1 In order to be valid, an award shall be made in writing and signed by the majority of the arbitral tribunal.⁸³ An award should comprise of an introduction, a decision

⁷⁶ Serbian Arbitration Act, art 46.

⁷⁷ *Ibid*, art 50.

⁷⁸ *Ibid*.

⁷⁹ *Ibid*.

⁸⁰ *Ibid*, art 49.

⁸¹ *Ibid*, art 48.

⁸² *Ibid*, art 52.

⁸³ *Ibid*, art 51.

on the subject matter of the dispute and on the costs of arbitration and a statement of reasons, unless the parties have agreed to exclude reasons. The award must state the date and place of its rendering.⁸⁴

- 7.3.2 The final award shall be made within 60 days of the date of the last hearing or the date on which the last meeting of the arbitral tribunal was held.⁸⁵
- 7.3.3 The arbitral institution that administers the arbitration shall notify the award to the parties in accordance with its rules. In ad hoc arbitration, the award shall be notified to the parties by the arbitral tribunal. In either case, the award may, on the joint request of the parties, be deposited with the court at the seat of arbitration.⁸⁶
- 7.3.4 At the request of a party, submitted no later than 30 days after the date of receipt of the award, the arbitral tribunal shall correct any language or technical errors in the award, provide specific interpretations of points contained in the award or make a supplementary award on any claims raised in the arbitral proceedings that were not decided in the award.⁸⁷

7.4 Settlement

- 7.4.1 If the parties settle the dispute during the arbitral proceedings, the arbitral tribunal shall, at the request of the parties, render the award on agreed terms, unless the effects of the settlement are contrary to public policy.⁸⁸ An award on agreed terms has the same legal effect as any other award, except that it need not contain a statement of reasons.⁸⁹

7.5 Power to award interest and costs

- 7.5.1 The parties shall bear the costs of the arbitration in the amounts determined by the arbitral tribunal. If the arbitral tribunal so requests, the parties shall pay the costs in advance. When the arbitral proceedings are conducted by an arbitral institution, it shall independently establish the costs of the arbitration and the scale of such costs.⁹⁰

⁸⁴ *Ibid*, art 53.

⁸⁵ FCA Rules, art 49.

⁸⁶ Serbian Arbitration Act, art 55.

⁸⁷ *Ibid*, art 54.

⁸⁸ *Ibid*.

⁸⁹ *Ibid*.

⁹⁰ *Ibid*, art 18.

7.5.2 Provisions relating to the award of interest can be found in the law applicable to the subject matter of the dispute. For example, according to the Law on Contracts and Torts, a debtor who is late in performing a pecuniary obligation shall owe default interest, in addition to the principal sum.⁹¹ Furthermore, a creditor is entitled to default interest regardless of whether he has sustained loss due to the debtor's delay. In the event that the loss sustained by the creditor due to the debtor's delay is higher than the amount payable by way of default interest, the creditor is entitled to the additional amount.⁹²

7.6 Termination of the proceedings

7.6.1 The arbitral proceedings shall be terminated by the rendering of the final award. The arbitral proceedings may also be terminated if:

- the claimant withdraws its claim, unless the respondent objects and the arbitral tribunal finds that the respondent has a legitimate interest in obtaining a final award;
- the parties agree on the termination of the arbitral proceedings;
- the arbitral tribunal finds that the continuation of the arbitral proceedings has become impossible; or
- the arbitral proceedings have been suspended in accordance with the Serbian Arbitration Act.⁹³

7.7 Effect of the award

7.7.1 A domestic award has the same effect between the parties as a final judgment of the domestic court.⁹⁴

7.7.2 A foreign award has the same effect between the parties as a final judgment of the domestic court after being recognised by the competent Serbian court.⁹⁵

7.7.3 A foreign award is an award either made by an arbitral tribunal, the place of which is outside the Republic of Serbia, or an award made by an arbitral tribunal in the Republic of Serbia where a foreign law was applied to the arbitral proceedings.⁹⁶

⁹¹ Law on Contracts and Torts, 1 October 1978 (as amended), art 277.

⁹² *Ibid*, art 278.

⁹³ Serbian Arbitration Act, art 47.

⁹⁴ *Ibid*, art 64.

⁹⁵ *Ibid*.

⁹⁶ *Ibid*.

7.8 Correction, interpretation and issue of a supplemental award

- 7.8.1 At the request of any party, submitted no later than 30 days from the date of receipt of the award, the arbitral tribunal shall:
- correct the language and any technical errors in the award or provide specific interpretations of the award; or
 - render a supplementary award as to claims presented in the arbitral proceedings but not decided in the award.⁹⁷

8. Role of the courts

8.1 Jurisdiction of the courts

8.1.1 A state court only has jurisdiction over arbitration in matters expressly specified in the Serbian Arbitration Act.⁹⁸ For example, each party may, before or during arbitral proceedings, request that the court grants interim measures.⁹⁹

8.1.2 The court also has a role in the appointment of arbitrators. If the parties fail to determine the number of arbitrators where there is no appointing authority, or the appointing authority also fails to make a determination, the number of arbitrators shall be determined by the competent court.¹⁰⁰ Additionally, where the dispute is to be resolved by a sole arbitrator, and the parties fail to agree on the appointment within 30 days of the date that one party requests the other to jointly appoint the arbitrator and there is no appointing authority, or the appointing authority also fails to appoint the sole arbitrator, the appointment shall be made by the competent court.¹⁰¹

8.1.3 In ad hoc arbitration, if a party considers that an arbitrator has become unable to perform the arbitrator's functions or has failed to act without undue delay, that party may request the competent court to terminate the arbitrator's mandate. The decision of the court on this subject matter is not subject to appeal.¹⁰²

⁹⁷ *Ibid*, art 56.

⁹⁸ *Ibid*, art 7.

⁹⁹ *Ibid*, art 15.

¹⁰⁰ *Ibid*, art 16.

¹⁰¹ *Ibid*, art 17.

¹⁰² *Ibid*, art 25.

- 8.1.4 If the arbitral tribunal rules on pleas with regards to its own jurisdiction, including any objection to the existence or validity of the arbitration agreement, any party may request, within 30 days after receiving the ruling, the competent court to decide on the matter.¹⁰³
- 8.1.5 The arbitral tribunal may also request the court's assistance in taking evidence. If it does so, the arbitral tribunal shall assess the evidence taken before the court as evidence taken by the arbitral tribunal itself.¹⁰⁴
- 8.1.6 In making an application for setting aside an arbitral award, the court at the seat of arbitration has the territorial jurisdiction to decide upon the application.¹⁰⁵ When considering the recognition and enforcement of a foreign award, the court determined by the statute shall make this decision. Territorial jurisdiction will belong to the court in whose territory the award should be enforced.¹⁰⁶

8.2 Stay of court proceedings

- 8.2.1 Under the Serbian Arbitration Act, a Serbian court, upon the motion of a party submitted prior to submissions on the subject matter of the dispute, will dismiss an action for lack of jurisdiction if the dispute is subject to an arbitration agreement.¹⁰⁷ This is the position unless the court finds that the arbitration agreement is manifestly null and void, inoperative or incapable of being performed.

8.3 Preliminary rulings on jurisdiction

- 8.3.1 The Serbian Arbitration Act provides the courts with no powers to make preliminary rulings on the jurisdiction of an arbitral tribunal.

8.4 Interim protective measures

- 8.4.1 The Serbian Arbitration Act provides that each party is entitled, before or during arbitral proceedings, to request interim measures from the Serbian courts.¹⁰⁸ This provision also applies when the seat of the arbitration is in another state.

¹⁰³ *Ibid*, art 30.

¹⁰⁴ *Ibid*, art 46.

¹⁰⁵ *Ibid*, art 57.

¹⁰⁶ *Ibid*, art 65.

¹⁰⁷ *Ibid*, art 14.

¹⁰⁸ *Ibid*, art 15.

9. Challenging and appealing an award through the courts

9.1 Jurisdiction of the courts

9.1.1 An application to set aside an award may only be made in relation to a domestic award. A domestic award is defined as an award made in the Republic of Serbia in either domestic or international arbitration. The Serbian court at the seat of arbitration is the competent court to decide on the procedure for setting aside an award. The parties cannot waive the right to apply to set aside an award.¹⁰⁹

9.2 Applications to set aside an award

9.2.1 The deadline for making an application to set aside an award is three months after the award was received by the party making the application, or three months from the date on which the decision on the request for a correction, interpretation or supplemental award was communicated to the parties.

9.2.2 An award can only be set aside if the applicant proves that:

- the arbitration agreement is invalid under the law determined by the parties' agreement or under Serbian law;
- the party against whom the award was made was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case;
- the award deals with a dispute not falling under the arbitration agreement or contains decisions on matters beyond the scope of that agreement (although, if it is found that the part of the award going beyond the scope of the arbitration agreement can be severed from the remaining part of the award, only the former part of the award will be set aside);
- the composition of the arbitral tribunal or the conduct of the arbitral proceedings was not in accordance with the arbitration agreement or the rules of the arbitral institution that was entrusted with administration of the arbitration, or if such agreement was in conflict with a mandatory provision of the Serbian Arbitration Act;
- no agreement regarding the composition of the arbitral tribunal was made, the composition of the arbitral tribunal or the conduct of the arbitral proceedings was not in accordance with the provisions of the Serbian Arbitration Act; or

¹⁰⁹ *Ibid*, art 62.

- the award was based on the false testimony of a witness or expert or a forged document, or the award results from the criminal act of an arbitrator or a party, if these grounds are proven by a final judgment.¹¹⁰

9.2.3 The Serbian court shall also set aside the award if it finds that:

- the subject matter of the dispute is not eligible for settlement by arbitration under Serbian law; or
- the award is contrary to Serbian public policy.

9.2.4 The Serbian Arbitration Act, like the Model Law (1985), leaves it to the Serbian court before which the application to set aside was filed to decide whether or not to suspend the arbitral proceedings in order to provide the arbitral tribunal with an opportunity to take such actions which, in the arbitral tribunal's opinion, will eliminate the grounds for setting aside.¹¹¹

9.2.5 If the Serbian court sets aside the award on grounds not relating to the existence and/or validity of the arbitration agreement, that agreement shall continue to bind the parties and the dispute shall be re-submitted to arbitration, unless the parties agree otherwise.¹¹²

9.3 Appeals

9.3.1 The Serbian Arbitration Act does not contain provisions regulating appeals against an award. The only way to challenge the final award is to submit an application for setting aside the award.

10. Recognition and enforcement of awards

General provisions

10.1.1 The Serbian Arbitration Act regulates the issue of recognition and enforcement of foreign awards.¹¹³ The provisions are based on the New York Convention, to which Serbia is a signatory,¹¹⁴ and the Model Law (1985). However, it should be noted that when ratifying the New York Convention, the Serbian Government expressly declared that:

¹¹⁰ *Ibid*, art 58.

¹¹¹ *Ibid*, art 60.

¹¹² *Ibid*, art 63.

¹¹³ *Ibid*, art 64–68.

¹¹⁴ For the text of the New York Convention, see CMS Guide to Arbitration, vol II, appendix 1.1.

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

10.1.2 The Serbian court may decide on the recognition of a foreign award as a preliminary matter in the enforcement proceedings.

Grounds for refusing recognition and enforcement

10.1.3 Recognition and enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, if that party proves that:

- the arbitration agreement is invalid under the law determined by the parties’ agreement or under the law of the country where the award was rendered;
- the party against whom the award had been rendered was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present their case;
- the award deals with a dispute not falling under the arbitration agreement or contains decisions on matters beyond the scope of that agreement (although, if it is found that the part of the award going beyond the scope of arbitration agreement can be severed from the remaining part of the award, partial refusal of the recognition and enforcement of that award will be possible);
- the composition of the arbitral tribunal or the conduct of the arbitral proceedings were not in accordance with the arbitration agreement or, in the absence of such an agreement, were not in accordance with the law of the country where the arbitration took place; or
- the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.¹¹⁵

10.1.4 The competent Serbian court will also refuse recognition and enforcement of the award if it finds that:

- the subject matter of the dispute is not eligible for settlement by arbitration under Serbian law; or
- the award is contrary to Serbian public policy.

¹¹⁵ Serbian Arbitration Act, art 65 which reflects the grounds set out in the Model Law (1985), art 36(1) (see CMS Guide to Arbitration, vol II, appendix 2.1).

Jurisdiction of the Serbian courts in the recognition and declaration of enforceability of a foreign award

- 10.1.5 The Serbian court with territorial jurisdiction to hear applications for the recognition and enforcement of foreign awards is the Serbian court in the territory in which enforcement of the award is sought.¹¹⁶
- 10.1.6 The Law on Organisation of Courts designates the Serbian higher and commercial courts as the competent courts to decide on the recognition and enforcement of foreign awards.¹¹⁷

Effects of an application in another country to set aside an award

- 10.1.7 The Serbian Arbitration Act includes provisions on the effects of an application to set aside an award, where the application has been initiated abroad. The Serbian court before which recognition and enforcement of a foreign award is sought may, if it considers it necessary, adjourn its decision if proceedings for setting aside an award or suspending enforcement of an award have been initiated in the state in which, or under the laws of which, the award was rendered.¹¹⁸ The same provisions apply regardless of whether the country in which the application to set aside is being made is a signatory to the New York Convention.
- 10.1.8 The Serbian court before which recognition and enforcement of a foreign award is sought may, at the request of a party, require that its decision regarding the recognition and enforcement proceedings be conditional upon provision of the appropriate security by the party opposing enforcement.

¹¹⁶ Serbian Arbitration Act, art 65.

¹¹⁷ Law on Organisation of Courts, 27 December 2008, art 23 and 25.

¹¹⁸ Serbian Arbitration Act, art 67.

11. Contacts

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