

ARBITRATION IN SLOVENIA

By Lea Vatovec, CMS

Table of Contents

1.	Historical background and overview	803
2.	Scope of application and general provisions of the Slovenian Arbitration Act	803
2.1	Scope of application	803
2.2	Structure of the Slovenian Arbitration Act	804
2.3	General principles	804
3.	The arbitration agreement	804
3.1	Definition	804
3.2	Formal requirements	805
3.3	Special tests and requirements of the jurisdiction	805
3.4	Separability	805
3.5	Legal consequences of a binding arbitration agreement	806
4.	Composition of the arbitral tribunal	806
4.1	The constitution of the arbitral tribunal	806
4.2	The procedure for challenging and substituting arbitrators	807
4.3	Responsibility of the arbitrators	808
4.4	Arbitration fees	809
4.5	Arbitrator immunity	809
5.	Jurisdiction of the arbitral tribunal	809
5.1	Competence to rule on jurisdiction	809
5.2	Power to order interim measures	810
6.	Conduct of proceedings	810
6.1	Commencement of the arbitration	810
6.2	General procedural principles	810
6.3	Seat and language of the arbitration	811
6.4	Multi-party issues	811
6.5	Oral hearings and written proceedings	812
6.6	Default by one of the parties	812
6.7	Evidence generally	812
6.8	Appointment of experts	813
6.9	Confidentiality	813
6.10	Court assistance in taking evidence	813

7.	Making of the award and termination of proceedings	814
7.1	Choice of law	814
7.2	Timing, form, content and notification of the award	814
7.3	Settlement	814
7.4	Power to award interest and costs	814
7.5	Termination of the proceedings	815
7.6	Effect of the award	815
7.7	Correction, clarification and issue of a supplemental award	815
8.	Role of the courts	816
8.1	Jurisdiction of the courts	816
8.2	Stay of the court proceedings	816
8.3	Preliminary rulings on jurisdiction	816
8.4	Interim protective measures	817
9.	Challenging and appealing an award through courts	817
9.1	Jurisdiction of the courts	817
9.2	Appeals	817
9.3	Application to set aside an award	817
10.	Recognition and enforcement of awards	818
10.1	Domestic awards	818
10.2	Foreign awards	818
11.	Special provisions and considerations	819
11.1	Consumers	819
11.2	Employment law	819
12.	Contacts	820

1. Historical background and overview

- 1.1.1 After gaining independence on 25 June 1991 following the dissolution of the Socialist Federal Republic of Yugoslavia (**SFRY**), Slovenia acknowledged the continuity of the rights and obligations under the international treaties concluded by the SFRY before 25 June 1991.¹ Subsequently, Slovenia acceded to the New York Convention and the 1961 European Convention on 6 July 1992. On 7 March 1994 Slovenia ratified the Washington Convention.²
- 1.1.2 On 9 May 2008 Slovenia enacted and entered into force its arbitration act (**Slovenian Arbitration Act**).³ The Slovenian Arbitration Act incorporates the principal features of the Model Law (1985) and some aspects of the Model Law (2006).
- 1.1.3 Slovenia also promotes institutional arbitration through the Chamber of Commerce and Industry of Slovenia (**CCIS**). The CCIS hosts an autonomous and independent permanent court of arbitration (**CCIS Court**) which seeks to resolve both domestic and international commercial disputes. Arbitral proceedings in the CCIS Court are conducted pursuant to its rules of arbitration (**CCIS Rules**).⁴

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

2.1 Scope of application

- 2.1.1 The provisions of the Slovenian Arbitration Act apply to all arbitrable disputes. Arbitrable disputes include all pecuniary claims capable of resolution by way of arbitral proceedings.⁵ Non-pecuniary claims, however, may also be subject to an arbitration agreement if the matter is capable of settlement. For consumer-related or employment-related matters, special provisions set out in Chapters IX and X of the Slovenian Arbitration Act apply.⁶

¹ In a letter dated 1 July 1992 sent to the Secretary-General of the United Nations by the Government of the Republic of Slovenia.

² See Table of Ratifications, CMS Guide to Arbitration, vol II, appendix 1.3.

³ Law on Arbitration of Slovenia adopted by the National Assembly of the Republic of Slovenia on 25 April 2008 and published in the Official Gazette on 9 May 2008.

⁴ CCIS Rules were adopted by the CCIS on 20 April 2000 and published in the Official Gazette on 6 June 2000. On 22 April 2003, amendments referring to costs of arbitral proceedings were adopted and published in the Official Gazette on 7 July 2003.

⁵ Slovenian Arbitration Act, ch 1, art 4(1).

⁶ See section 11 below.

2.2 Structure of the Slovenian Arbitration Act

2.2.1 The structure of the Slovenian Arbitration Act follows the Model Law (1985). Chapter I of the Slovenian Arbitration Act contains general provisions on the scope of application of the law and the service of proceedings. Chapter II deals with the arbitration agreement itself. The composition of the arbitral tribunal and the challenge of arbitrators are set out in Chapter III. Jurisdiction of the arbitral tribunal is dealt with in Chapter IV. Chapters V and VI set out the provisions on the organisation and conduct of arbitral proceedings and the rendering of the award. Chapter VII deals with possible methods of recourse against an award. Chapter VIII deals with the recognition and enforcement of foreign awards. Chapters IX and X contain special provisions on consumer-related and employment-related issues.

2.3 General principles

2.3.1 The general principles underlying the Slovenian Arbitration Act are:

- equality and objectivity (i.e. all parties must be treated fairly);
- due process (i.e. all parties must have the opportunity to present their case);
- good faith and conscientiousness; and
- party autonomy.

3. The arbitration agreement

3.1 Definition

3.1.1 The definition of an arbitration agreement is set out in the Slovenian Arbitration Act and closely follows the Model Law (2006).⁷ The arbitration agreement is an agreement by the parties to submit to arbitration all or specific disputes which have arisen or which may arise between the parties, whether contractual or not.⁸

3.1.2 An arbitration agreement may either be concluded by way of a separate agreement or included as an arbitration clause in a contract. In either case, it needs to express clearly the intention of both parties to submit the dispute in question to arbitral proceedings.⁹

⁷ The definition corresponds with the Model Law (2006), ch 2, art 7 (see CMS Guide to Arbitration, vol II, appendix 2.1).

⁸ Slovenian Arbitration Act, ch 2, art 10(1).

⁹ *Ibid.*

3.2 Formal requirements

- 3.2.1 The Slovenian Arbitration Act provides the formal requirements of an arbitration agreement.¹⁰ An arbitration agreement must be in writing.¹¹ If the arbitration agreement is contained in correspondence between the contracting parties and the information contained therein is accessible so as to be useable for subsequent reference (i.e. letters, facsimiles, emails or other means of communication), it is deemed that the arbitration agreement is in writing.¹²
- 3.2.2 A reference in a contract to any other document containing an arbitration clause constitutes a valid arbitration agreement, provided that the reference is sufficient to make that clause part of the contract.¹³
- 3.2.3 An arbitration agreement may also be deemed to exist if the claimant submits a request for arbitration and the respondent fails to object to the competence of the arbitral tribunal in its statement of defence (or earlier).¹⁴

3.3 Special tests and requirements of the jurisdiction

- 3.3.1 Generally, all pecuniary claims are arbitrable. However, disputes relating to non-pecuniary claims may also be arbitrable if the parties are able to conclude a settlement regarding the non-pecuniary dispute. As specified in Article 1053 of the Code of Obligations,¹⁵ disputes concerning the status of relations of natural and legal persons (e.g. questions regarding marriage, motherhood, fatherhood, adoption, paternal rights, etc) cannot be arbitrated.

3.4 Separability

- 3.4.1 The Slovenian Arbitration Act follows the provisions on the doctrine of separability set out in the Model Law (1985).¹⁶ An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A nullification of a contract containing an arbitration clause will not affect the validity of the arbitration clause.¹⁷

¹⁰ The requirements correspond with the Model Law (2006), ch 2, art 7 (see CMS Guide to Arbitration, vol II, appendix 2.1).

¹¹ Slovenian Arbitration Act, ch 2, art 10(2).

¹² *Ibid.*

¹³ *Ibid.*, ch 2, art 10(4).

¹⁴ *Ibid.*, ch 2, art 10(6), reflected in CCIS Rules, ch 1, art 5(4).

¹⁵ Obligations Code, which was adopted by the National Assembly of the Republic of Slovenia at its session of 3 October 2001 (**Code of Obligations**).

¹⁶ Model Law (1985), ch 4, art 16(1) (see CMS Guide to Arbitration, vol II, appendix 2.1).

¹⁷ Slovenian Arbitration Act, ch 4, art 19(1).

3.5 Legal consequences of a binding arbitration agreement

- 3.5.1 A claim brought before the courts will be dismissed on the grounds of lack of jurisdiction if it is subject to an arbitration agreement and a respondent objects to the court's jurisdiction no later than when submitting its statement of defence. The court will only dismiss a claim if the respondent chooses to object and will not undertake this action *ex officio*. The courts may hear the claim if it is found that the arbitration agreement does not exist, is null and void, is inoperative or is incapable of being performed.¹⁸

4. Composition of the arbitral tribunal

4.1 The constitution of the arbitral tribunal

- 4.1.1 There is no requirement that an arbitrator is qualified as a lawyer or is a registered member of the bar. Furthermore, nationality is not a reasonable ground for precluding someone from acting as an arbitrator, unless otherwise agreed by the parties.¹⁹ However, in arbitrations before the CCIS Court and under the CCIS Rules, an arbitrator should have special knowledge of and experience in law, economics or any other relevant field.²⁰
- 4.1.2 The parties are free to agree on the number of arbitrators. However, under the Slovenian Arbitration Act the default number of arbitrators is three.²¹ The parties are also free to agree on the procedure for appointing the arbitrator(s).²² The mandatory provisions of the Slovenian Arbitration Act will apply, however, in the following instances:
- if the parties fail to agree on a sole arbitrator, either party may request the court to make the appointment;
 - where there are three arbitrators, each party appoints one arbitrator and the two party-appointed arbitrators shall appoint the third arbitrator to act as chair; and
 - if the party-appointed arbitrators fail to agree on the identity of the chair within 30 days of receipt of a request to do so from the other party or within 30 days of their appointment, a party may request the court to make this appointment.²³

¹⁸ *Ibid*, ch 2, art 11(1), following the Model Law (2006), ch 2, art 8 (see CMS Guide to Arbitration, vol II, appendix 2.1).

¹⁹ Slovenian Arbitration Act, ch 3, art 14(1).

²⁰ CCIS Rules, ch 2, art 14(1).

²¹ Slovenian Arbitration Act, ch 3, art 13.

²² *Ibid*, ch 3, art 14(2).

²³ *Ibid*, ch 3, art 14(3).

- 4.1.3 The above mandatory provisions also apply if the parties agree on the appointment procedure but:
- a party fails to act as required under such procedure;
 - the parties, or the party-appointed arbitrators, are unable to reach an agreement as envisaged under such procedure; or
 - a third party, including an arbitral institution, fails to perform a function entrusted to it under such procedure.²⁴
- 4.1.4 Any party may request the court to take necessary measures to appoint an arbitrator, unless the appointment procedure provides other means for securing the appointment(s).²⁵ The court's decision as to the appointment of an arbitrator is not subject to appeal.²⁶

4.2 The procedure for challenging and substituting arbitrators

Challenge of arbitrators

- 4.2.1 The Slovenian Arbitration Act provides limited grounds for challenging an arbitrator.²⁷ Arbitrators may be challenged only where circumstances give rise to justifiable doubts as to their impartiality or independence or if the arbitrator does not possess qualifications agreed to by the parties. Moreover, a party may challenge an arbitrator that it has appointed (or in whose appointment it has participated), only for reasons it becomes aware of subsequent to the appointment.²⁸

Procedure for challenging an arbitrator

- 4.2.2 The procedure for challenging an arbitrator under the Slovenian Arbitration Act follows the Model Law (1985).²⁹ Under the Slovenian Arbitration Act, the parties are free to agree on the procedure for challenging an arbitrator. If a specific procedure is not agreed upon, a party who intends to challenge an arbitrator should submit a written statement to the arbitral tribunal setting out the reasons for its challenge. Such a statement must be sent within 15 days of the party becoming aware of either the constitution of the arbitral tribunal or the circumstances set out in Article 15 of the Slovenian Arbitration Act.³⁰ Unless the challenged arbitrator withdraws from his or her office or the other party agrees to

²⁴ *Ibid.*, ch 3, art 14(4).

²⁵ *Ibid.*

²⁶ *Ibid.*, ch 3, art 14(5).

²⁷ *Ibid.*, ch 3, art 15.

²⁸ *Ibid.*, ch 3, art 15(2).

²⁹ As set out in Model Law (2006), ch 3, art 13 (see CMS Guide to Arbitration, vol II, appendix 2.1).

³⁰ See above at paragraph 4.2.1.

the challenge, the challenge shall be decided by the full arbitral tribunal including the challenged arbitrator. If such a challenge is not successful, the challenging party may file a request to the court to decide on the challenge. A request of this nature must be made within 30 days of receiving notice of the arbitral tribunal's decision rejecting the challenge.³¹ The court's decision cannot be appealed. While a request is pending, the full arbitral tribunal may continue the proceedings and render an award.³²

- 4.2.3 In institutional arbitral proceedings concluded under the CCIS Rules, the President of the CCIS Court (**CCIS President**) has the authority to decide on any challenge to an arbitrator. The decision of the CCIS President is final.³³
- 4.2.4 Should an arbitrator become unable to perform the duties of an arbitrator then the arbitrator's mandate shall terminate if the parties so agree or if the arbitrator withdraws from the office. If no agreement is reached, or the arbitrator does not voluntarily withdraw, any party may request the court to rule on the issue. The court's decision cannot be appealed.³⁴

Substitution of arbitrator(s)

- 4.2.5 Where the mandate of an arbitrator terminates, a substitute arbitrator must be appointed according to the rules applicable to the appointment of the arbitrator being replaced.³⁵

4.3 Responsibility of the arbitrators

- 4.3.1 There are no specific statutory provisions relating to the responsibility of arbitrators. However, pursuant to the Code of Ethics for Arbitrators (**Code of Ethics**)³⁶ the arbitrators are obliged to:
- act impartially;³⁷
 - safeguard and keep all data acquired during the arbitral proceedings confidential;³⁸

³¹ Slovenian Arbitration Act, ch 3, art 16 (3).

³² *Ibid.*

³³ CCIS Rules, ch 2, art 21(5).

³⁴ Slovenian Arbitration Act, ch 3, art 17(1).

³⁵ *Ibid.*, ch 3, art 17(2).

³⁶ The Code of Ethics for Arbitrators is published by the CCIS and can be found at the Chamber of Commerce and Industry of Slovenia's website [<http://www.sloarbitration.org/english/rules/rules-arbitration-00.html>] (accessed 3 December 2011).

³⁷ *Ibid.*, art 2.

³⁸ *Ibid.*, art 4.

- conduct the arbitral proceedings pursuant to the CCIS Rules;³⁹ and
- timely perform individual acts within the scope of the arbitral proceedings.⁴⁰

4.4 Arbitration fees

- 4.4.1 Unless otherwise agreed by the parties, the arbitral tribunal decides, at the request of the parties to the arbitral proceedings the extent to which either party shall be liable for the costs of the proceedings, including costs of representation and the arbitrators' fees and expenses. The arbitral tribunal has discretion in making its decision and can take into account individual circumstances and the outcome of the proceedings.⁴¹
- 4.4.2 In CCIS arbitral proceedings, when a claim is filed, the claimant must pay a registration fee amounting to EUR 250 in domestic disputes and EUR 500 in international disputes.
- 4.4.3 The arbitrator's fee depends on the amount of the dispute,⁴² the number of arbitrators,⁴³ the complexity of the case and whether the dispute is domestic or international.

4.5 Arbitrator immunity

- 4.5.1 There are no special provisions in relation to the immunity of arbitrators.

5. Jurisdiction of the arbitral tribunal

5.1 Competence to rule on jurisdiction

- 5.1.1 The arbitral tribunal has the power to rule on its own jurisdiction (the principle of *competence-competence*), which includes any objections with respect to the existence or validity of the arbitration agreement.⁴⁴
- 5.1.2 An arbitration clause forming part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void does not automatically invalidate the arbitration clause.⁴⁵

³⁹ *Ibid.*, art 3.

⁴⁰ *Ibid.*, art 7.

⁴¹ Slovenian Arbitration Act, ch 6, art 39(1).

⁴² CCIS Rules, ch 6, art 46 (setting out the table of fees for a sole arbitrator).

⁴³ *Ibid.*, ch 6, art 46(4) (providing that the fees of a whole panel of arbitrators are double the fees of a sole arbitrator).

⁴⁴ Slovenian Arbitration Act, ch 4, art 19(1), following the Model Law (2006), ch 4, art 16(1) (see CMS Guide to Arbitration, vol II, appendix 2.1).

⁴⁵ *Ibid.*

5.2 Power to order interim measures

- 5.2.1 Upon hearing the submissions of both parties, the arbitral tribunal is entitled to order any interim measures it considers necessary to protect the subject matter of the proceedings. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security.⁴⁶ Exceptionally, the arbitral tribunal may, if it considers it necessary, independently order interim measures absent a request by either party.⁴⁷
- 5.2.2 The arbitral tribunal may modify, suspend and/or terminate an interim measure upon the application of any party or, in exceptional circumstances, by its own motion without the application of either party.⁴⁸ While an arbitral tribunal has the power to order an interim measure, only the court has the power to enforce interim measures in the event of a party's non-compliance.⁴⁹

6. Conduct of proceedings

6.1 Commencement of the arbitration

- 6.1.1 Unless otherwise agreed by the parties, the Slovenian Arbitration Act provides that the arbitral proceedings in respect of a particular dispute commence on the date the request for arbitration is received by the respondent.⁵⁰ However, under the CCIS Rules the arbitral proceedings commence on the day the statement of claim is received by the CCIS Court.⁵¹

6.2 General procedural principles

- 6.2.1 The parties are free either to agree on the procedure to be followed in conducting the arbitral proceedings or to refer to the rules of an arbitral institution. If the parties do not agree upon a procedure to be followed or refer to institutional rules, then the arbitral tribunal shall conduct the arbitration in the manner it considers appropriate.⁵²

⁴⁶ Slovenian Arbitration Act, ch 4, art 20(1).

⁴⁷ *Ibid.*, ch 4, art 20(2).

⁴⁸ *Ibid.*, ch 4, art 20(3).

⁴⁹ *Ibid.*, ch 4, art 20(4).

⁵⁰ *Ibid.*, ch 5, art 25.

⁵¹ CCIS Rules, ch 3, art 27.

⁵² Slovenian Arbitration Act, ch 5, art 23.

6.2.2 The parties should be treated equally and be given a full opportunity to present their case.⁵³ The parties also have the right to be represented by a proxy, which may be any natural person with full capacity. A proxy is not required to be a Slovenian national. Furthermore, a foreign or national law firm may act as a proxy.⁵⁴

6.3 Seat and language of the arbitration

6.3.1 The parties are free to agree on the seat of arbitration and may also choose the language of the arbitral proceedings.⁵⁵ If the parties fail to reach an agreement on the seat of arbitration⁵⁶ or language of the arbitral proceedings, then the seat of jurisdiction or the language or languages to be used in the proceedings shall be determined by the arbitral tribunal.⁵⁷ Prior to the determination of the language of the arbitral proceedings, the statement of claim and other submissions can be made either in the language of the arbitration agreement or in Slovenian.⁵⁸

6.4 Multi-party issues

6.4.1 The Slovenian Arbitration Act does not contain any specific provisions addressing multi-party issues. Therefore, multi-party issues are subject to the provisions of the arbitration agreement.

6.4.2 Under the CCIS Rules, where there are multiple parties to a dispute and they cannot agree among themselves on a joint arbitrator, the joint arbitrator shall be appointed by the appointing authority (i.e. *pooblaščenec za imenovanje*).⁵⁹ The appointing authority is a person mutually appointed by the parties.

6.4.3 If multiple parties to an international dispute have not reached an agreement on the appointing authority within a reasonable time, or if the appointing authority refuses to accept this responsibility, then the CCIS President will act as the appointing authority.⁶⁰

⁵³ *Ibid*, ch 5, art 21.

⁵⁴ *Ibid*, ch 5, art 22.

⁵⁵ *Ibid*, ch 5, art 24.

⁵⁶ *Ibid*.

⁵⁷ Slovenian Arbitration Act, ch 5, art 26, based on the Model Law (2006), ch 5, art 22 (see CMS Guide to Arbitration, vol II, appendix 2.1).

⁵⁸ Slovenian Arbitration Act, ch 5, art 26(3).

⁵⁹ CCIS Rules, ch 2, art 19(2).

⁶⁰ *Ibid*, ch 2, art 19(1).

6.5 Oral hearings and written proceedings

- 6.5.1 The parties are free to agree on whether proceedings shall be conducted orally or in writing.⁶¹ In the absence of an agreement between the parties, the arbitral tribunal shall decide whether to hold an oral hearing or whether the proceedings shall be conducted based on written submissions only. However, the default position under the Slovenian Arbitration Act is that an oral hearing is required if one of the parties requests it.⁶²
- 6.5.2 The arbitral tribunal has the power to determine the admissibility, relevance, materiality and weight of any evidence.⁶³ The parties are entitled to receive sufficient, advance notice of any hearing scheduled by the arbitral tribunal for the purposes of inspecting the evidence. Furthermore, the parties are entitled to receive submissions, documents or communications supplied to the arbitral tribunal by the other party, including expert reports or other documents on which the arbitral tribunal may rely in making its decision.⁶⁴

6.6 Default by one of the parties

- 6.6.1 The arbitral tribunal may continue with the proceedings and render an award even if one of the parties does not participate. The arbitral proceedings may be continued in the absence of a party if:
- the respondent fails to communicate its statement of defence within the agreed or ordered time frame; or
 - any party fails to appear at a hearing or to produce documentary evidence.⁶⁵
- 6.6.2 If the claimant fails to file a statement of claim in accordance with the agreement of the parties or the provisions of the Slovenian Arbitration Act, the arbitral tribunal should terminate the proceedings.⁶⁶

6.7 Evidence generally

- 6.7.1 Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall present the facts supporting its claim and the respondent shall present its defence in respect of those particulars. The parties

⁶¹ Slovenian Arbitration Act, ch 5, art 23(1).

⁶² *Ibid.*, ch 5, art 28(1). Under the CCIS Rules, ch 3, art 26(2), the default position is that an oral hearing is required unless the parties have waived this requirement or the arbitral tribunal deems that a decision can be made without holding an oral hearing.

⁶³ Slovenian Arbitration Act, ch 5, art 23(2).

⁶⁴ *Ibid.*, ch 5, art 28.

⁶⁵ *Ibid.*, ch 5, art 29(2) and (3).

⁶⁶ *Ibid.*, ch 5, art 29(1).

may agree as to the required elements of such statements. The parties may submit with their submissions all the documents that they consider to be relevant or may add a reference to the documents or other evidence they intend to submit.⁶⁷ Any statement of case can be amended or supplemented by the parties unless it is agreed otherwise or the arbitral tribunal deems such amendment inappropriate, on the basis that it may cause delay.⁶⁸

6.8 Appointment of experts

6.8.1 Unless the parties have agreed otherwise, the arbitral tribunal has the authority to appoint experts to produce a report on specific issues that are to be determined through the arbitral proceedings. Furthermore, the arbitral tribunal may require a party to give a tribunal-appointed expert any relevant information or to produce or provide access to any relevant documents, goods or other property for inspection.⁶⁹

6.8.2 Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, in addition to written or oral report(s), a tribunal-appointed expert shall participate in the hearing where the parties have the opportunity to put questions to the tribunal-appointed expert and to present expert witnesses in order to testify on the points at issue.⁷⁰

6.9 Confidentiality

6.9.1 There are no special provisions either in the Slovenian Arbitration Act or in the CCIS Rules in relation to confidentiality. Accordingly, the parties should bear this in mind when drafting their arbitration agreement.

6.10 Court assistance in taking evidence

6.10.1 The arbitral tribunal or a party (with the arbitral tribunal's permission) may request court assistance in the taking of evidence or performance of any other acts for which the arbitral tribunal does not have authority. The court executes the request within its competence, jurisdiction and according to the relevant procedural rules. The arbitrators are entitled to participate in the taking of evidence before the court.⁷¹

⁶⁷ *Ibid.*, ch 5, art 27(1).

⁶⁸ *Ibid.*, ch 5, art 27(2), reflected in CCIS Rules, ch 3, art 32.

⁶⁹ Slovenian Arbitration Act, ch 5, art 30(1).

⁷⁰ *Ibid.*, ch 5, art 30(2).

⁷¹ *Ibid.*, ch 5, art 31(1).

7. Making of the award and termination of proceedings

7.1 Choice of law

7.1.1 The arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties. Any designation of the law or legal system of a given state shall be interpreted as directly referring to the substantive law of that state rather than its conflict of laws rules.⁷² Failing any designation by the parties, the arbitral tribunal shall apply the rules of law which it considers appropriate.⁷³

7.1.2 The arbitral tribunal may also decide *ex aequo et bono* if the parties have expressly authorised it to do so.⁷⁴ In all cases, the arbitral tribunal shall make its decision in accordance with the terms of the contract and the relevant trade customs.⁷⁵

7.2 Timing, form, content and notification of the award

7.2.1 The award shall be made in writing and shall be signed by the arbitrator(s). If there is more than one arbitrator, the signatures of the majority of the arbitral tribunal will suffice, provided that the reason for any omitted signature is stated. The award must provide reasons upon which it is based, the date of issue and the seat of arbitration. Each party has a right to receive a copy of the signed award.⁷⁶

7.3 Settlement

7.3.1 The parties may settle at any time during the arbitral proceedings. If the parties so request and the terms of a settlement are in accordance with Slovenian public policy,⁷⁷ the settlement may be recorded in the form of an award.⁷⁸ Such an award will have the same status and effect as an award on the merits of the case.⁷⁹

7.4 Power to award interest and costs

7.4.1 Unless otherwise agreed by the parties, the arbitral tribunal may decide, at its own discretion but upon the request of one of the parties, which party is obliged to reimburse:

⁷² *Ibid*, ch 6, art 32(1).

⁷³ *Ibid*, ch 6, art 32(2).

⁷⁴ *Ibid*, ch 6, art 32(3).

⁷⁵ *Ibid*, ch 6, art 32(4).

⁷⁶ *Ibid*, ch 6, art 35.

⁷⁷ Slovenian public policy is an indefinite legal concept, which is defined by scientific literature, a number of decisions of foreign courts and arbitrations and the practice of Slovenian courts.

⁷⁸ Slovenian Arbitration Act, ch 6, art 34.

⁷⁹ *Ibid*, ch 6, art 34.

- the costs of the arbitral proceedings;
- the costs of arbitrator fees;
- the fees of any arbitral institution; and
- each party's lawyers' fees.

7.4.2 The arbitral tribunal's decision on the amount and the allocation of costs between the parties can be recorded in either the award or in a separate order.⁸⁰

7.5 Termination of the proceedings

7.5.1 Arbitral proceedings usually terminate as a result of settlement or the rendering of a final award on the merits.⁸¹ The proceedings can also terminate as a result of the rendering of an order for the termination of the arbitral proceedings if:

- the claimant withdraws its claim, unless the respondent objects and the arbitral tribunal recognises a legitimate interest on the respondent's part in obtaining a final award;
- the parties agree on the termination of the arbitral proceedings; or
- it is impossible or unnecessary for the arbitral proceedings to continue.⁸²

7.5.2 The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.⁸³

7.6 Effect of the award

7.6.1 The award has the same effect as a final judgment between the parties.⁸⁴

7.7 Correction, clarification and issue of a supplemental award

7.7.1 The Slovenian Arbitration Act follows the Model Law (2006) in relation to correction, clarification and supplemental awards.⁸⁵ Accordingly, the arbitral tribunal may correct any errors in computation, any clerical or typographical errors or any errors of a similar nature within 30 days of receipt of the award by the parties. The arbitral tribunal may do so either at the request of one of the parties or on its own initiative.⁸⁶

⁸⁰ *Ibid.*, ch 6, art 39.

⁸¹ *Ibid.*, ch 6, art 36(1).

⁸² *Ibid.*, ch 6, art 36(2).

⁸³ *Ibid.*, ch 6, art 36(3).

⁸⁴ *Ibid.*, ch 6, art 38.

⁸⁵ *Ibid.*, ch 6, art 37, based on the Model Law (2006), ch 6, art 33 (see CMS Guide to Arbitration, vol II, appendix 2.1).

⁸⁶ *Ibid.*

7.7.2 Furthermore, the parties can request that the arbitral tribunal give an interpretation of a specific point or part of the award. The parties can request the issuance of an additional award on claims presented in the arbitral proceedings but omitted from the award. Any interpretation or corrections are considered to be part of the award.⁸⁷

8. Role of the courts

8.1 Jurisdiction of the courts

8.1.1 Under the Slovenian Arbitration Act the District Court in Ljubljana is the competent court for judicial tasks in relation to arbitration matters.

8.1.2 The District Court in Ljubljana decides on the:

- admissibility of arbitral proceedings;
- appointment, challenge and termination of an arbitrator's mandate;
- competence of arbitral tribunals;
- setting aside of an award; and
- recognition of domestic/foreign awards.⁸⁸

8.2 Stay of the court proceedings

8.2.1 Generally speaking, applications in relation to the jurisdiction of the arbitral tribunal, the setting aside of an award and the admissibility of arbitral proceedings are governed by general provisions of Slovenian civil procedure.⁸⁹ Other court proceedings in connection with arbitration (e.g. relating to the appointment, challenge and termination of the mandate of an arbitrator or the recognition of the award) are governed by the non-litigious rules of Slovenian civil procedure.⁹⁰ The public can be excluded from court proceedings regarding arbitration matters upon the legitimate request of a party to the dispute.⁹¹

8.3 Preliminary rulings on jurisdiction

8.3.1 There are no statutory provisions in relation to preliminary rulings on jurisdiction. The CCIS Rules provide that the jurisdiction of the CCIS Court will be established unless a court of law has exclusive jurisdiction over the dispute.⁹²

⁸⁷ *Ibid.*

⁸⁸ Slovenian Arbitration Act, ch 1, art 9.

⁸⁹ See the Civil Procedure Act, which was published on 15 April 1999 in the Official Gazette no 26/1999 *et al.*

⁹⁰ See the Non-Litigious Civil Procedure Act, which was published on 28 July 1986 in the Official Gazette no 30/1986.

⁹¹ Slovenian Arbitration Act, ch 1, art 9(2).

⁹² CCIS Rules, ch 1, art 3.

8.4 Interim protective measures

8.4.1 The court may issue, if so requested by the parties, an interim measure in relation to the subject of the arbitral proceedings prior to or during the arbitral proceedings, irrespective of the existence of the arbitration agreement.⁹³

9. Challenging and appealing an award through courts

9.1 Jurisdiction of the courts

9.1.1 As referenced above, the District Court in Ljubljana has jurisdiction over arbitration matters and decides on whether or not awards issued in Slovenia should be set aside.⁹⁴ A decision of the District Court may be appealed to the Supreme Court.⁹⁵

9.2 Appeals

9.2.1 The only judicial remedy against an award is an application to set aside the award.⁹⁶

9.3 Application to set aside an award

9.3.1 The award shall be set aside only if:

- (i) the party making the application furnishes proof that:
 - a party to the arbitration agreement was under some incapacity;
 - the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any contrary indication, under Slovenian law;
 - the party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case;
 - the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or contains a decision on matters beyond the scope of the submission to arbitration;
 - the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties; or
- (ii) the court finds that:
 - the subject matter is not capable of settlement by arbitration; or
 - the award itself violates public policy.⁹⁷

⁹³ Slovenian Arbitration Act, ch 2, art 12.

⁹⁴ *Ibid*, ch 1, art 9; see section 8.1 above.

⁹⁵ Slovenian Arbitration Act, ch 1, art 9(3).

⁹⁶ *Ibid*, ch 7, art 40(1).

⁹⁷ *Ibid*, ch 7, art 40(2).

- 9.3.2 The parties cannot waive their right to apply to set aside an award.⁹⁸ It should be noted that setting aside an award does not automatically invalidate the underlying arbitration agreement.⁹⁹
- 9.3.3 The court may, at its own discretion or if requested by a party to the dispute, suspend the proceedings to set aside the award for a period of time in order to provide the arbitral tribunal with an opportunity either to resume the arbitral proceedings or cure the grounds for setting the award aside.¹⁰⁰

10. Recognition and enforcement of awards

10.1 Domestic awards

- 10.1.1 A domestic award is executable when the District Court in Ljubljana declares it enforceable.¹⁰¹
- 10.1.2 The court may reject an application for the enforcement of a domestic award if the court finds that the subject matter is not capable of settlement by arbitration or the award violates public policy.¹⁰²

10.2 Foreign awards

- 10.2.1 Slovenia is a signatory state to the New York Convention.¹⁰³
- 10.2.2 Foreign awards shall have binding effect when the District Court in Ljubljana recognises them.¹⁰⁴ The party applying for enforcement of an award shall supply the original award or a copy of it. Additionally, a court may request that a party provide an original or a certified copy of the arbitration agreement.¹⁰⁵

⁹⁸ *Ibid*, ch 7, art 40(1).

⁹⁹ *Ibid*, ch 7, art 40(6).

¹⁰⁰ *Ibid*, ch 7, art 40(5).

¹⁰¹ *Ibid*, ch 8, art 41(1).

¹⁰² *Ibid*, ch 8, art 41(2).

¹⁰³ See paragraph 1.1.1 above.

¹⁰⁴ Slovenian Arbitration Act, ch 8, art 42(1).

¹⁰⁵ *Ibid*, ch 8, art 42(4).

- 10.2.3 The grounds for refusing the enforcement of an award set out in the Model Law (1985)¹⁰⁶ have not been specifically included in the provisions of the Slovenian Arbitration Act.

11. Special provisions and considerations

11.1 Consumers

- 11.1.1 Due to the nature of consumer relations, provisions governing consumer disputes are governed by a separate chapter of the Slovenian Arbitration Act.¹⁰⁷ Provisions regarding the arbitration agreement, language of the arbitration and recourse against an award are adjusted in order to ensure the protection of the party with less bargaining power (i.e. the consumer).
- 11.1.2 Pursuant to the Consumer Protection Act,¹⁰⁸ a consumer is a natural person who acquires or uses goods and services for purposes other than in the course of his or her business.
- 11.1.3 Unlike the Model Law (1985), the Slovenian Arbitration Act offers protection for consumers who are involved in arbitration. The arbitration agreement must be written in a separate document directly signed by the consumer (and not be contained in the commercial enterprise's general terms and conditions).¹⁰⁹ Therefore, an arbitration agreement between a commercial enterprise and a consumer can only be effectively concluded after the dispute has arisen.¹¹⁰
- 11.1.4 In addition to the general grounds for setting aside awards, the provisions relating to consumers include other grounds, such as violation of mandatory consumer protection provisions.¹¹¹

11.2 Employment law

- 11.2.1 Provisions of the Slovenian Arbitration Act governing matters related to employment law are not based on the Model Law (1985).

¹⁰⁶ Model Law (2006), ch 8, art 36 (see CMS Guide to Arbitration, vol II, appendix 2.1).

¹⁰⁷ Slovenian Arbitration Act, ch 9.

¹⁰⁸ *Zakon o varstvu potrošnikov*, Official Gazette of Republic of Slovenia Nos. 98/2004, 46/2006, 126/2007 and 86/2009, [<http://www.uradni-list.si/1/objava.jsp?urlid=200498&stevilka=4288>] (accessed 3 December 2011).

¹⁰⁹ Slovenian Arbitration Act, ch 9, art 45(2).

¹¹⁰ *Ibid*, ch 9, art 45(1).

¹¹¹ *Ibid*, ch 9, art 47.

11.2.2 If the subject of the arbitration is a labour dispute,¹¹² the Labour Court is the competent body to decide on the questions relating to the jurisdiction of the arbitral tribunal, the setting aside of an award, the admissibility of arbitral proceedings, appointment, challenge and termination of the mandate of an arbitrator or recognition of the award.¹¹³

12. Contacts

CMS Reich-Rohrwig Hainz

Bleiweisova 30
1000 Ljubljana
Slovenia

Aleš Lunder

Partner

T +386 1 62052 10

E ales.lunder@cms-rrh.com

Lea Vatovec

Associate

T +386 1 62052 10

E lea.vatovec@cms-rrh.com

¹¹² As defined by the Law on labour court proceedings. *Zakon o delovnih in socialnih sodiščih*, Official Gazette of Republic of Slovenia No. 2/2004, [<http://www.uradni-list.si/1/content?id=46630&part=&highlight=-.Zak on+o+delovnih+in+soci alnih+sodi%C5%A1%C4%8Dih>] (accessed 3 December 2011).

¹¹³ Slovenian Arbitration Act, ch 10, art 48.