



Arbitration Guide  
IBA Arbitration Committee

# **BULGARIA**

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## I. Background

**(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

Arbitration has been increasingly becoming a more common method of dispute resolution in Bulgaria. The Arbitration Court at the Bulgarian Chamber of Commerce and Industry ('**BCCI**') is the oldest arbitration institution in Bulgaria. Since the beginning of the changes in 1989 other arbitration courts have been created and are functioning such as the Arbitration Court at the Bulgarian Industrial Association ('**BIA**') and the KRIB Court of Arbitration at the Confederation of Employers and Industrialists in Bulgaria.

The main advantages of arbitration as seen by the businesses are usually confidentiality and parties' bigger control on selection of arbitrators and the conduct of arbitration proceedings. As to the perceived disadvantages, these generally relate to deficiency of information on arbitration practice.

**(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?**

Based on our experience, institutional arbitration is more common in Bulgaria than *ad-hoc* arbitration. Domestic arbitration is still prevailing, and for the time being Bulgaria cannot be said to be an international arbitration hub. In many instances parties agree to arbitrate pursuant to the rules of the ICC and the London Court of International Arbitration with a place of arbitration in London, Paris, Vienna or other foreign cities, mainly in Europe.

The most popular arbitration institution in Bulgaria is the Arbitration Court at the BCCI. The Arbitration Court at the BIA is also active.

**(iii) What types of disputes are typically arbitrated?**

Typically parties refer to arbitration monetary disputes arising from their commercial relations. Civil disputes, as well as disputes for amendment of contract terms or performance of specific actions are not so common.

**(iv) How long do arbitral proceedings usually last in your country?**

The initial stages - composition of arbitration tribunal and exchange of submissions up to scheduling a hearing - may take between 6 months and a year or more, particularly in complex disputes.

The duration of the next stage, namely collection of evidence, depends on the procedural rules agreed by the parties or determined by the arbitral tribunal. In international arbitration it is common that the tribunal will hear experts and fact



witnesses several days in a row. In domestic arbitration, a tribunal will typically hear experts and witnesses in one or more hearings. In complex cases collection of evidence may extend to a year or more.

The final stage - delivery of the arbitral award - would typically take from 3 to 6 months.

**(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

Foreign nationals cannot sit as arbitrators in domestic arbitration. Apart from this there are no other restrictions on foreign nationals to act as counsels in both domestic and international arbitration or as arbitrators in international arbitrations with a seat in Bulgaria.

## **II. Arbitration Laws**

**(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

Both international arbitration (where at least one of the parties has its place of business outside Bulgaria) and domestic arbitration are governed by the International Commercial Arbitration Act ('ICAA'). The ICAA is based on the UNICITRAL Model Law.

**(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

The Bulgarian law distinguishes between international and domestic arbitration. The ICCA applies to international arbitrations seated in Bulgaria, considering as such those aimed at settling civil property disputes arising from foreign economic relations, as well as disputes concerning the deficiencies in contracts or its adaptation to newly arisen circumstances when the residence or domicile of at least one of the parties is not within the territory of the Republic of Bulgaria. The rules governing international arbitration also apply to domestic arbitration with few exceptions. First, foreign citizens are not allowed to sit as arbitrators in domestic arbitration, unless one of the parties is a company "with a majority foreign participation". Second, domestic arbitration is only in Bulgarian, and the parties are not free to elect a different language. Third, in domestic arbitration, the formation and validity of arbitration agreement will be assessed on the basis of the Bulgarian law even where the parties agreed upon a foreign governing law.



- (iii) **What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Bulgaria is a party to the Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), the European Convention on International Commercial Arbitration (the Geneva Convention) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Washington Convention).

- (iv) **Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

As a rule, the arbitral tribunal is to apply the governing law agreed by the parties. Unless otherwise agreed, the choice of law refers to substantive law and excludes its conflict of law provisions. In case of a domestic dispute (e.g. where the parties are domiciled in Bulgaria), foreign law may only be applied if the legal relationship has an international private law element such that, in compliance with Bulgarian international private law, a foreign law would apply.

If no choice of law agreement is made, the tribunal will determine the governing law pursuant to conflict of laws rules that it deems applicable. In any case, the tribunal shall apply the contract terms and take into account any established commercial practices.

### III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

Arbitration agreements must be in writing. The written form requirement is deemed satisfied if the consent is stated in a document, signed by the parties, or in correspondence exchanged between them, including e-mails. The written form requirement is also satisfied if the defendant expressly agrees to arbitration or takes part in the proceedings without questioning the jurisdiction of the arbitral tribunal.

An arbitration agreement must clearly manifest the parties' intent to refer all or certain disputes between them to arbitration and must define the scope of arbitral competence, i.e. disputes that might be referred to arbitration. If the will of the parties regarding the disputes that are referred to arbitration or the nominated body is ambiguous, the agreement will not be enforced.



Normally, arbitration bodies (such as the Arbitration Court at the BCCI) recommend model arbitration clauses.

- (ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

Courts are obliged to enforce an arbitration agreement and to terminate proceedings pending before them if the defendant objects to their jurisdiction and refers to the arbitration agreement within the procedural time limit, which is the submission of response to the statement of claim. Courts will not enforce an arbitration agreement if they find that the agreement is void, inoperative or cannot be performed. For example, an agreement to arbitrate a non-arbitrable dispute is void and would not be enforced by courts.

- (iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier dispute resolution clauses are still not very common in Bulgaria. Although contracts traditionally stipulate that parties will first try to solve a dispute between them through negotiations, these clauses are regarded as advisable rather than as a condition precedent to arbitration. Multi-tier provisions appear in some standard forms of construction contract (such as FIDIC forms) that are used in the jurisdiction.

Although multi-tier dispute resolution clauses are not expressly regulated by law they are generally considered enforceable as far as they are valid agreements concluded by the parties. If a dispute is referred to arbitration in disregard of a multi-tier clause the claim would only be considered inadmissible if lodged in advance of the completion of the respective procedure which is provided by the law as a condition for the initiation of arbitration (or court) proceedings. If, on the other hand, the preceding procedures are only based on the contract between the parties, the solutions have varied in practice: in some cases the arbitral tribunal stays the proceedings and requires the parties to fulfil the preceding steps agreed within the term agreed (or otherwise granted by the arbitral tribunal), after which, depending on the outcome, the arbitration proceedings will continue or will be terminated; in other cases the arbitral tribunal has considered not to be obliged to wait for the completion of preceding steps and proceeds directly with the arbitration assuming that the arbitration clause alone is sufficient to empower the tribunal to act regardless of other arrangements contemplated by the parties but not required by the law.



**(iv) What are the requirements for a valid multi-party arbitration agreement?**

The ICAA does not provide any special requirements for multi-party arbitration agreements. Consequently, they are subject to the general rules of contract formation and validity. Multi-party arbitration agreements should manifest the mutual consent of all parties to arbitrate and should specify disputes that might be referred to arbitration. In case of institutional arbitration, the clause should also identify the nominated institution, and in case of ad-hoc arbitration—the place of arbitration.

In view of procedural complications arising from multi-party arbitration it is advisable that the parties agree on the rules to be applied by the tribunal in joinder of parties and collection of evidence.

In this respect, the rules of procedure of institutionalized arbitration may provide for joinder and consolidation of parties in pending arbitration and filing of cross-claim(s). For example, such a provision exists in the Rules of the Arbitration Court at the BCCI.

**(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

Theoretically, agreements that give a right to initiate arbitration proceedings only to one of the parties are not prohibited under Bulgarian law. However, such agreements are not very common and, to the best of our knowledge, their validity and enforceability has not been tested before the courts of law.

**(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?**

The general rule is that arbitration agreements cannot bind non-signatory parties. However, in certain cases, such as transfer of contractual right or replacing a party to a contract, a non-signatory party may find itself bound by the arbitration clause associated with the respective contract due to the transfer of rights /obligations under that contract.

#### **IV. Arbitrability and Jurisdiction**

**(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

In Bulgaria, non-arbitrable are disputes over rights *in rem* or possession of immovable property, maintenance, employment and consumers' rights, as well as

administrative disputes. Arbitrability is relevant to jurisdiction of arbitrators to hear a dispute. An agreement to arbitrate a non-arbitrable dispute is considered void *ab initio*. The same applies to awards on such disputes.

The principle of competence-competence applies in Bulgaria. Arbitrators in the first place decide on their competence. However, since awards on non-arbitrable matters are void, the tribunal's decision on jurisdiction is subject to review by state courts within the proceedings for annulment of the award.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If court proceedings are initiated in disregard of an arbitration agreement, the defendant may challenge the jurisdiction of state courts within the time limit for submission of a response to the statement of claim and may request termination of the court proceedings. The court terminates proceedings before it unless it finds that the arbitration agreement is void, or inoperative, or cannot be performed.

Defendant's participation in court proceedings without raising objection referring to the arbitration agreement within the above time limit is considered a waiver of their right to arbitrate.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

The principle of competence-competence applies and arbitrators are to determine their own jurisdiction. Arbitrators' decision on jurisdiction is not in itself amenable to judicial review. State courts may review the jurisdiction decision within proceedings for setting aside of the arbitral award or its enforcement (in case of a foreign arbitral award).

## V. Selection of Arbitrators

- (i) **How are arbitrators selected? Do courts play a role?**

The rule is that the parties are free to agree on the procedure for selection and appointment of arbitrators. In the absence of such agreement the default rules are:

- If the tribunal consists of three arbitrators, each party nominates an arbitrator, and the two arbitrators will appoint the presiding arbitrator;





- If a party fails to nominate an arbitrator within 30 days, the arbitrator is selected by the President of the Bulgarian Chamber of Commerce and Industry. The appointing institution in non-commercial disputes is the Sofia City Court;
- If the tribunal consists of a sole arbitrator and the parties fail to agree on his/her appointment, the arbitrator is appointed by the President of the Bulgarian Chamber of Commerce and Industry.

**(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?**

The ICAA requires arbitrators, when approached with an invitation to hear a dispute, to disclose ‘all circumstances which may raise any well-grounded doubts as to his or her impartiality or independence’. Inevitably, that duty includes disclosure of conflicts of interests. Such duty remains in place for the duration of the proceedings.

The basic rule is that the parties are free to agree on the procedure for challenging an arbitrator. In the absence of an agreement, an arbitrator may be challenged before the arbitral tribunal within 15 days after the party becomes aware of the appointment of the arbitral tribunal. The tribunal’s decision on the challenge is subject to appeal before the Sofia City Court, the decision of which is final.

**(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?**

The ICAA provides that any legally competent citizen of legal age who has not been convicted of a premeditated crime of a general nature, has a university degree, at least 8 years of professional experience and has high integrity, can be an arbitrator.

According to the Articles of Association of the Arbitration Court at the BCCI, all arbitrators are to have legal training and more than 10 years of practical legal experience.

Some arbitration institutions have their ethical requirements and rules applicable to arbitrators. For example, the Arbitration Court at the BCCI has approved ethical rules for professional standards and personal behaviour of arbitrators whereby arbitrators are required to disclose conflicts of interests, to act independently and impartially and to possess the necessary expertise to rule on the dispute before them.



- (iv) **Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?**

Arbitrators are required to reveal all circumstances that may or are likely to lead to a conflict of interest. The existence of a conflict of interest is a ground for challenging an arbitrator.

We are not aware whether the IBA Guidelines on Conflict of Interest are expressly referred to in arbitration, but the standards established by the Guidelines are generally applied in Bulgaria.

## VI. Interim Measures

- (i) **Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Unless otherwise agreed by the parties, arbitrators can order “appropriate” interim measures to preserve the interests of the requesting party. The ICAA does not provide for specific rules regarding the enforcement of tribunal-ordered interim measure. Such measures however are binding only vis-à-vis the parties to the arbitral proceedings (as stemming from the arbitration agreement they have signed) and are not enforceable against third parties. Hence, if not complied with by a third party interim measures are not enforceable in courts.

Arbitrators rule on interim measures by issuing an order. Awards are issued only on the merits of the dispute.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

Bulgarian courts can issue injunction measures to support an arbitration claim. Injunction measures can be issued prior to, as well as after the constitution of the arbitral tribunal. They remain in force until the final resolution of a dispute or until they are repelled by the higher court.



- (iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

State courts may provide assistance and collect evidence if they are so requested by the arbitral tribunal or by a party to the arbitration proceeding. In the latter case the tribunal's approval is required. Evidence is collected pursuant to the rules of the Civil Procedure Code ('CPC'). If the parties have agreed on specific rules for collection of evidence that are not provided for in the CPC, these rules cannot be applied by state courts.

## **VII. Disclosure/Discovery**

- (i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

The Bulgarian law does not stipulate any specific rules regarding disclosure/discovery in arbitration. Based on our experience, full discovery/disclosure in domestic arbitration is highly unlikely, and most probably the parties will be required to indicate the specific documents the other party should be ordered to present.

Full disclosure/discovery is more probable in international arbitration, especially where the parties and/or arbitrators are of common law background and are familiar with such a procedure.

- (ii) What, if any, limits are there on the permissible scope of disclosure or discovery?**

It depends on the procedural rules agreed by the parties, and, in the absence of agreement, on the rules that arbitrators find appropriate. If the arbitrators have Bulgarian background and when the case is domestic it is highly likely that the procedural rules of the Bulgarian Civil Procedure Code will apply in absence of agreement between the parties, which means that full disclosure will not apply and each party may request only specific and clearly identified documents to be presented by the opposing party describing the relevance of such documents for the dispute.

- (iii) Are there special rules for handling electronically stored information?**

A recently adopted provision in the ICAA reads that each party to an arbitration shall be provided with an opportunity to examine the case remotely, including via the website of the arbitration court. However no detailed rules exist on handling electronically stored documents. Based on our experience, it is still the case that



arbitral tribunals require most, if not all electronically stored information and evidence, to be submitted in paper, together with copies for the opposing parties.

### **VIII. Confidentiality**

**(i) Are arbitrations confidential? What are the rules regarding confidentiality?**

Although the ICAA does not state it in express terms, confidentiality represents a main feature of arbitration proceedings in Bulgaria. Typically, rules of arbitration courts in Bulgaria provide for confidentiality of arbitration proceedings. It is advisable that the parties agree on specific rules for confidentiality in their arbitration agreement.

**(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

The ICAA does not provide for specific rules for protection of trade secrets and confidential information. These are generally covered by the concept of confidentiality of arbitration.

**(iii) Are there any provisions in your arbitration law as to rules of privilege?**

Privilege is respected in relation to any form of communication between a client and an attorney and is grounded on the Bar Act, not on special provision of the ICAA.

### **IX. Evidence and Hearings**

**(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

Application of IBA Rules on the Taking of Evidence is not unusual in international arbitration in Bulgaria. If agreed between the parties that the IBA Rules are to be applied they will be fully applicable. However the agreement itself may include certain departures from the Rules and could give room for discretion of the tribunal to apply other rules.

**(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?**

The parties are free to agree on applicable procedural rules. In the absence of an agreement, the tribunal is free to determine the applicable rules of procedure. In any case, it must provide the parties with equal opportunity to participate in the proceedings and present their case.

- (iii) **How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

Typically, witnesses give their testimony orally in front of the arbitral tribunal and in the presence of the parties as is the procedure under the Bulgarian Civil Procedure Code. In contrast to litigation however, affidavits are also admissible and they are more common in international arbitration proceedings.

Arbitrators can ask questions and cross examine the witnesses on their own motion or upon request by the parties.

Pursuant to the Rules of the Arbitration Court at BCCI, the tribunal will hear a witness, if the latter is brought to the hearing by the party who requested the examination. The tribunal does not have the power to summon witnesses and oblige them to appear before it.

- (iv) **Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

There is a general restriction that children and youths below certain age cannot be examined as witnesses. No other limitations on who can appear as a witness in arbitration exist.

Witnesses in arbitration are not required by law to swear an oath or provide any other affirmation on the truthfulness of the testimony.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?**

Connections of a witness to one of the parties to the arbitration is presumed to affect the witness's impartiality, and, consequently, the reliability of the witness testimony. Therefore, it is very unlikely that legal representatives of the parties will testify in arbitration as witnesses.

In contrast, in civil litigation in Bulgaria a party's representative cannot appear as a witness before the court. The representative may only provide explanations to the court that might constitute proof of admission of detrimental facts. Testimonies of other related witnesses, such as party's employees, are evaluated by the court considering all other information on the case and taking into consideration the possible bias of the witnesses.



- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Typically, expert testimony is presented in writing within a certain period of time prior to the arbitration hearing, so as to allow the parties to read the opinion and prepare for the arbitration hearing in which the expert will be heard. The expert is required to attend the hearing and answer questions of the parties and the tribunal.

Experts must be independent and impartial and must reveal all circumstances that may or are likely to raise justified doubts regarding their independence and impartiality. The appointment of an expert can be challenged on the same grounds as the appointment of an arbitrator, namely if there is a well-founded doubt that the expert might have a conflict of interest and, therefore, be interested in the outcome of the case.

- (vii) **Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

The ICAA does not provide for special rules in this regard. From a practical perspective, it is common for arbitral tribunals to appoint experts beside the party-appointed experts. This would be the case where the arbitrators have Bulgarian legal background, and they are thus influenced by the Bulgarian rules of civil procedure, although the latter are not mandatory in arbitration. It is noteworthy in this regards that an opinion of a party-appointed expert is not considered admissible evidence in civil litigation in Bulgaria, and only opinions of court-appointed expert are admitted.

- (viii) **Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

Witness conferencing where witnesses can be questioned at the same time and in confrontation with each other is admissible but not very common. As a method of gathering witness testimonies it may be agreed by the parties, or suggested or mandated by the arbitral tribunal.

- (ix) **Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

The ICAA does not contain rules regarding use of arbitral secretaries. In case of institutional arbitration or ad-hoc arbitration administered by an arbitral institution, secretaries are employees of the arbitral institution and are subject to the same requirements for confidentiality as arbitrators.

## X. Awards

**(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

First, the dispute must be arbitrable. In this regard the ICAA has been changed recently and according to the new provision of Article 47 (2) ICAA, awards on non-arbitrable disputes are void.

Second, arbitral awards must be in writing and signed by the arbitrator/s. In arbitrations with more than one arbitrator, signatures of the majority of arbitrators is sufficient unless the parties have agreed otherwise. Under the ICAA if no majority is constituted, the award is to be rendered by the presiding arbitrator.

The law does not provide for specific types of permissible relief and there are no limitations on the type of relief sought and awarded other than the relief to be enforceable, and since the decision on enforceability is to be taken by the respective state court that means that any relief awarded should be allowed by law.

**(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

Punitive or exemplary damages are not expressly forbidden by Bulgarian law but are very rarely sought and awarded in arbitration. The same refers to compound interest which under Bulgarian law is allowed only in relation to financial institutions and companies. Arbitrators can award interest.

The general rule is that an arbitral tribunal's power to order punitive and exemplary damage, interest and compound interest is governed by the substantive law applicable to the merits of the dispute. In this regard, the rule stipulated by the ICCA is that the Arbitration Court applies the substantive law chosen by the parties except for the conflict of law provisions. If the parties have not agreed on the applicable substantive law, the tribunal determines the governing law pursuant to conflict of laws rules it deems applicable. In all cases it must apply the contract between the parties and relevant commercial practices.

**(iii) Are interim or partial awards enforceable?**

Enforceability of interim and partial awards is not confirmed by the Bulgarian courts' practice. Pursuant to the ICAA, in order to be enforceable the arbitration award is to be final. Therefore, if an interim or partial award meets the finality requirement, it should be enforced.



- (iv) **Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

An arbitrator who disagrees with the decision of the majority can issue a dissenting opinion. The rules for validity and content of the award apply accordingly to the dissenting opinion. Thus, the dissenting opinion must be in writing and must state the reasoning and findings of the dissenting arbitrator.

- (v) **Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

If the parties have reached an agreement on the dispute they may request the tribunal to state the agreed terms in an award that will have the effect of a final award on the merits of the dispute.

Arbitration proceedings can also be terminated by a ruling where: 1/ the plaintiff withdraws its petition unless the defendant presents his/her objections and the tribunal finds that the defendant has a lawful interest in the adjudication of an award; 2/ the parties mutually agree on the termination of the proceedings; 3/ the tribunal finds that there is another obstacle to the consideration of the case on its merits.

- (vi) **What powers, if any, do arbitrators have to correct or interpret an award?**

Arbitrators' power to correct an award is limited to what is usually defined as 'obvious factual mistake' or OFM. OFM is a mistake that concerns calculations or spelling errors in the award, but it must not affect the tribunal's conclusions on facts and law. The arbitrators may correct OFM on their own motion or upon request by a party after hearing the statements of all parties in the arbitration.

Arbitral tribunals can interpret the award upon request by a party after hearing all parties.

The tribunal's ruling on correction of OFM or interpretation becomes part of the award, i.e. it is final and binding on all parties and can be challenged before the court only on the grounds foreseen in Article 47 ICAA (see question XII (i) below).

## **XI. Costs**

- (i) **Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

The allocation of costs of arbitration primarily depends on the parties' agreement. In this regard, the parties may agree that each of them will bear their own costs regardless of the outcome of the case.





In the absence of agreement, the matter will be decided by the tribunal. Typically, an arbitral tribunal with a seat in Bulgaria will allocate costs according to the following basic rules (as under the Bulgarian Civil Procedure Code):

- The tribunal will rule on the allocation of costs only if it so requested by the parties;
- The costs will be allocated pursuant to the ‘loser pays’ rule;
- The tribunal may reduce the amount of attorney fees awarded to the winning party if the losing party raises an objection for excessiveness of the claimed amount.
- The amount of the awarded attorney fees, whether reduced or not, should correspond to the factual and legal complexity of the case.

**(ii) What are the elements of costs that are typically awarded?**

The costs that are typically awarded in arbitration can be divided into (1) costs and expenses of proceedings which include arbitration fees, fees for arbitration-appointed experts and use of translators, fees associated with the collection of evidence; and (2) attorney fees.

**(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

The tribunal decides on its own costs and typically, arbitration institutions (such as the Arbitration Court at the BCCI) have publicly available tariffs that stipulate how such costs are to be calculated for the arbitrators and expenses that are due for arbitration proceeding before such institution. Such costs and expenses depend on the amount in the claims.

**(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

The allocation of arbitration costs primarily depends on the parties’ agreement. In the absence of agreement, the matter will be decided by the tribunal. Typically, an arbitral tribunal with a seat in Bulgaria will apportion costs according to the following basic rules:

- The tribunal rules on the allocation of costs only if so requested by the parties;
- The costs are allocated pursuant to the ‘loser pays’ rule;

- The tribunal may reduce the amount of attorney fees awarded to the winning party if the losing party raises an objection for excessiveness of the claimed amount;
- The amount of the awarded attorney fees, whether reduced or not, should correspond to the factual and legal complexity of the case.

**(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

Tribunal's decision on costs is not subject to independent judicial review. The decision can be revoked as a consequence of setting aside or annulment of the award.

## **XII. Challenges to Awards**

**(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

A party to arbitration with a seat in Bulgaria may request setting aside of the award pursuant to Article 47 (1) of the ICAA on the grounds that:

- the party lacked capacity at the time of conclusion of the arbitration agreement;
- the arbitration agreement had not been concluded or was deemed void pursuant the applicable law chosen by the parties and in case of absence of such a choice - pursuant to this law;
- the party had not been duly notified of the appointment of an arbitrator or of the arbitration proceedings or for reasons beyond its control it was not in a position to participate in the proceedings;
- the award settled a dispute outside the scope of the arbitration agreement or solves issues beyond the subject of the dispute;
- the constitution of the arbitration tribunal or of the arbitration procedure were not in conformity with the parties' agreement or—in the absence of an agreement—the ICAA was not applied or the mandatory rules of the ICAA (e.g. the requirement that the parties should be given equal opportunities to present their case) were not complied with.

The application for setting aside is to be filed with the Supreme Court of Cassation within 3 months from the receipt of the arbitral award. The court decision is final. The proceedings normally take between 3 to 6 months.

Pursuant to Article 47 (2) the ICAA, an award can be challenged as void due to non-arbitrability of a dispute. Arbitrability of a dispute is also reviewed by courts *ex officio* in the court proceedings for issuance of a writ of execution. The competent court is the district court at the place of registration of the party against which the annulment is invoked or the Sofia City Court if the party is a foreign entity.

The challenge of an arbitration award does not automatically stay enforcement. The Supreme Court of Cassation may order suspension of enforcement proceedings upon request by the party and subject to payment of security in the amount granted by the award. Typically, the debtor is required to transfer a sum equal to the awarded amount to a special bank account of the Supreme Court of Cassation.

If the award is challenged as void in separate (not enforcement) proceedings, the competent court to order the stay is the court before which the claim for annulment is pending.

**(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

An agreement between the parties and any expression of a will of a party to waive their/ its right to challenge an arbitration award before the award is issued and final is void under the Bulgarian law. A party can make a valid waiver only after the delivery of the award, i.e. after the right to challenge the validity of the award has already arisen.

**(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

Arbitration awards are final and cannot be appealed.

**(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

The Supreme Court of Cassation returns the case to the arbitral tribunal if the award is set aside on the ground of Article 47 (1), items 4, 5 and 6, namely:

- the party had not been duly notified of the appointment of an arbitrator or of the arbitration proceedings or for reasons beyond its control it was not in a position to participate in the proceedings;



- the award settled a dispute outside the scope of the arbitration agreement or solves issues beyond the subject of the dispute;
- the constitution of the arbitration tribunal or of the arbitration procedure were not in conformity with the parties' agreement or—in the absence of an agreement—the ICAA was not applied or the mandatory rules of the ICAA (e.g. the requirement that the parties should be given equal opportunities to present their case) were not complied with.

The tribunal is bound by the decision of the Supreme Court of Cassation and must review the case afresh, taking into consideration the court's instructions on due process and admissibility of arbitration proceedings. Any of the parties may request that the case be reviewed by a different panel of arbitrators.

### **XIII. Recognition and Enforcement of Awards**

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

The recognition and enforcement of a foreign arbitral award in Bulgaria is governed by the New York Convention and the grounds to oppose enforcement are provided therein.

An application for recognition and enforcement is subject to three levels of judicial proceedings under the general provisions on legal action of the Civil Procedure Code: the Sofia City Court as a first instance court, the Sofia Court of Appeal at second instance and the Supreme Court of Cassation as last instance. Enforcement of a foreign arbitration award can only start after the decision by which the recognition and enforcement is granted becomes final. A preliminary injunction can be sought against the debtor to secure the enforcement of the award. The state court will rule on whether to grant the preliminary injunction under the general rules on securing a claim and will determine a guarantee to be provided by the plaintiff ensuring that the latter can cover the damage caused by the injunction in case the enforcement of the award is not granted.

In case of a domestic arbitration award a party may directly request the court to issue a writ of execution after the award has become final. The application is filed with the district court at the place of the registration of the debtor or to the Sofia City Court if the debtor is a foreign entity. The party against which the arbitration award is invoked can only oppose enforcement on the grounds that the award is void due to non-arbitrability of the dispute. The challenge will not automatically stay the enforcement. Enforcement proceedings may be stayed upon request by the debtor and subject to the provision of security.



- (ii) **If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

Following the successful completion of exequatur procedure the party who benefits from the award can request issuance of a writ of execution from the district court at the place of registration of the debtor or, in case of a foreign entity, from Sofia City Court. The writ of execution represents the formal ground to initiate enforcement proceedings.

- (iii) **Are conservatory measures available pending enforcement of the award?**

Injunction measures imposed before or during the arbitration preserve their effect pending enforcement of the award. Once the enforcement begins the enforcement agent will use the frozen assets to collect the awarded sum. Even so, new conservatory measures may be requested pending the enforcement proceedings.

- (iv) **What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

Courts are obliged to issue a writ of execution for the enforcement of a domestic arbitral award which was served to the other party and for the enforcement of a foreign award that has been recognised and granted enforceability in Bulgaria.

We expect that, in case of a foreign arbitral award that was set aside by the court at the place of arbitration, the Bulgarian courts would be inclined to refuse recognition and enforcement, unless there are compelling and extremely serious reasons to disregard the decision setting aside of the award.

- (v) **How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

The type of enforcement measures and available assets of the debtor usually determine the time that is necessary to enforce an award. If enforcement is sought against the debtor's bank accounts it would run faster than enforcement against movable or immovable property to be cashed. Enforcement against bank accounts would normally take up to 3 months, whereas enforcement against movable or immovable property may take much longer—6 months or more.

Enforcement of an award is subject to a limitation period of 5 years as from the delivery of the award.



#### XIV. Sovereign Immunity

- (i) **Do state parties enjoy immunities in your jurisdiction? Under what conditions?**

Subject to several exceptions set out in applicable law foreign states are immune from civil jurisdiction of Bulgarian courts. However, in view of contractual basis of arbitration, a state cannot rely on immunity in arbitration proceedings and court proceedings associated with them (e.g. proceeding for injunctive measures or challenge of an arbitrator).

- (ii) **Are there any special rules that apply to the enforcement of an award against a state or state entity?**

Pursuant to Articles 519 and 520 of the Civil Procedure Code enforcement of monetary awards is not allowed against the Bulgarian state and state institutions/entities. The pecuniary receivables against government institutions shall be paid out of the budgetary spending authority of the said institutions provided for this purpose. To this end, the writ of execution shall be presented to the financial authority of the relevant institution. If spending authority is not available, the superior institution shall undertake the measures necessary for a provision for such authority in the next succeeding budget at the latest.

There is no special legal provision but reasonably we assume that the same protection is to apply in case of enforcement against a foreign state and foreign state institution.

#### XV. Investment Treaty Arbitration

- (i) **Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Bulgaria is a party to the Washington Convention and to the Convention Establishing the Multilateral Investment Guarantee Agency.

- (ii) **Has your country entered into bilateral investment treaties with other countries?**

Yes, Bulgaria has entered into bilateral investment treaties with more than 50 countries. More detailed information can be found by visiting the website of the Bulgarian Investment Agency (<http://www.investbg.government.bg>).



## XVI. Resources

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

The first point of reference for all practitioners in Bulgaria are the leading textbook of Professor Zhivko Stalev “Civil Procedure” which includes a chapter on arbitration and commercial arbitration. Also, the Arbitration Court at the BCCI publishes annual books with excerpts of selection of its arbitral awards during the years.

- (ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

We are not aware of any such regular educational events in the field of arbitration.

## XVII. Trends and Developments

- (i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

In commercial disputes arbitration has become an alternative to court proceeding the popularity of which has been growing over the last 20 years. The number of arbitration institutions is growing, as well as the number of contracts that provide for arbitration.

- (ii) **What are the trends in relation to other ADR procedures, such as mediation?**

Mediation in Bulgaria also enjoys increasing popularity. After the adoption of the Mediation Act in 2004 a number of mediation centers have been established and training programs are regularly announced. The Uniform Register of Mediators is maintained by the Minister of Justice and all mediators are to be listed there.

- (iii) **Are there any noteworthy recent developments in arbitration or ADR?**

A noteworthy recent development in arbitration in Bulgaria is the amendment of the ICAA adopted together with amendments to the Protection of Consumers Act, both promulgated on January 24, 2017, whereby:

1/ the requirements to become an arbitrator have been stipulated in the law, namely: to be legally competent, of legal age, not to have been convicted of a premeditated crime of a general nature, to have a university degree, to have at least 8 years of professional experience and to have high integrity;



2/ each arbitration court is obliged to keep records where all closed cases shall be kept for a period of 10 years after the end of the proceedings. After expiry of this period only the awards and the grounds for them, and the concluded settlements, shall be kept;

3/a new Chapter 8 of ICAA provides for administrative and penal liability of arbitrators and arbitration institutions in case of violation of the rules related to securing adherence to that law. The Minister of Justice is empowered to undertake inspections and control compliance with the law;

4/ any clause of a contract concluded by and between a trader and a consumer, whereby the parties entrust an arbitration tribunal with solving a dispute between them, outside the procedure for alternative dispute resolution for consumer disputes within the meaning of and under the provisions of the Protection of Consumers Act, shall be void.

The above developments are the result of a public debate and the initiative of the National Ombudsman in relation to a number of arbitral awards issues against consumers by arbitral tribunals and arbitration institutions that have appeared to be established and to function illegally, have no records whatsoever and the consumers - defendants in arbitration proceedings - have been surprised to receive writs of executions on the grounds of awards without having been properly summoned and given the chance to defend themselves.