BULGARIA

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I. INTRODUCTION: ARBITRATION IN BULGARIA – HISTORY AND INFRASTRUCTURE

A. History and Current Legislation on Arbitration

1. Historical evolution of law relating to arbitration

For a long period arbitration in Bulgaria operated with extraordinary jurisdiction based on mandatory authority similar to state courts. Thus, a Commercial Arbitration Court was established in 1886 and existed until the Second World War. In 1953, its successor the Arbitration Court with the Bulgarian Chamber of Commerce and Industry ("BCCI") was "re-established" and was initially called "International Trade Arbitration Commission". It operated with extraordinary jurisdiction with respect to disputes arising from the international supply of goods. In 1972 the Court's authority was expanded by the Moscow Convention to all civil disputes between economic organizations of the state members to the former Council for Mutual Economic Assistance. Domestic arbitration was not allowed and therefore inadmissible. During that period the Court acted as an arbitration institution with respect to disputes submitted to it based on arbitration agreements between Bulgarian economic organizations

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and companies outside the framework of the former Council for Mutual Economic Assistance.

In 1964 the Republic of Bulgaria became party to the European Convention on International Commercial Arbitration of 21 April 1961 under the auspices of the Economic Commission for Europe of the United Nations ("the European Convention")[1] and in 1965 to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 under the auspices of UNCITRAL ("the New York Convention").[2]

The Law on International Commercial Arbitration (Закон за международния търговски арбитраж) ("LICA") adopted in 1983[3] and implementing the UNCITRAL Model Law on International Commercial Arbitration for the first time provided for more extensive regulation of international commercial arbitration. Domestic arbitration was first allowed between companies in 1989.

In 2001 the Republic of Bulgaria became party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States under the auspices of the International Bank for Reconstruction and Development (the World Bank) (the "ICSID Convention").[4]

2. Current law

Bulgarian Law has special rules on international and domestic arbitration. Therefore, the international or domestic character of arbitration may result in the application of different rules. The

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[1] Ratified by Decree No 114 of the Presidium of the National Assembly of 14.03.1964 – State Gazette, No 23/20.03.1964. promulgated in SG No 57/21.07.1964, effective as of 11.08.1964.

[2] Ratified by Decree No. 284 of the Presidium of the National Assembly of 8.07.1961 – Notifications, No. 57/18.07.1961, promulgated State Gazette, No. 2/8.01.1965.

[3] Promulgated State Gazette No. 60/5.08.1988, amended and supplemented, SG No. 93/2.11.1993, amended, SG No. 59/26.05.1998, amended and supplemented, SG No. 38/17.04.2001, 46/7.05.2002, Judgment No. 9/24.10.2002 of the Constitutional Court of the Republic of Bulgaria – SG No. 102/1.11.2002, amended, SG No. 59/20.07.2007, effective as of 1.03.2008, amended and supplemented SG No. 8/24.01.2017.

[4] Ratified by law of the National Assembly from 4.10.2000 – State Gazette, No. 85/17.10.2000. Issued by the Ministry of Foreign Affairs, promulgated State Gazette, No. 110/21.12.2001, effective as of 13.05.2001.

criteria employed for the classification of the arbitration as international are to be found in the LICA.

The LICA makes use of both objective and subjective criteria for establishing the international character of arbitration. Both criteria are to be applied cumulatively.

The objective criterion focuses on the international character of the underlying transaction. According to Article 1(2) of the LICA "international commercial arbitration settles civil property disputes arising out of international relations." Hence the cross-border element of the underlying relationship is the objective criterion for the arbitration to qualify as international.

According to the subjective criterion the focus is on the different domicile or corporate seat of the parties. Pursuant to Article 1(2) LICA commercial arbitration would qualify as international if at least one of the parties is domiciled or its seat is in a country other than Bulgaria.

Any arbitration, which is not international, is deemed to be domestic.

The distinction between international and domestic arbitration, save theoretical significance, has a practical importance as follows:

(i) nationality of arbitrators

According to the general rules a foreign national might be appointed as arbitrator only where the arbitration qualifies as an international one. However, by application of paragraph 3 of the Transitional and Concluding provision in conjunction with Article 11(2) of the LICA, a party in a domestic arbitration which is an enterprise with a majority foreign participation may appoint an arbitrator who is not a Bulgarian national.

(ii) language of arbitration

To the extent that the proceeding qualifies as a domestic arbitration, paragraph 3 of the Transitional and Concluding provisions expressly excludes the application of Article 26 of the LICA which provides that in international commercial arbitration parties may choose the language to be used in the course of the arbitration proceedings. The question is whether such legislation technique, i.e. the lack of express right to choose language, is tantamount to implied prohibition to do so. It is usually said that only the mandatory provisions of *lex arbitri* limit party autonomy.

(iii) seat of arbitration

Pursuant to the Civil Procedure Code the seat of arbitration can be outside Bulgaria provided that one of the parties has habitual residence, a corporate seat defined in its constitutional document, or location of the management abroad. It seems that only arbitration which qualifies as international according to the criteria set out in the LICA may be conducted outside Bulgaria.[5]

3. Law reform projects

As specified above in the field of arbitration the Republic of Bulgaria is a party to three multilateral international conventions – the New York Convention, the European Convention and the ICSID Convention.

The bilateral agreements to which the Republic of Bulgaria is a party providing for mutual recognition and enforcement of arbitral awards shall prevail and derogate the application of the New York Convention on the matters governed by them.[6] Furthermore agreements for mutual promotion and protection of investments to which Bulgaria is a party may contain mandatory or optional arbitration clauses with regard to settling of investment disputes

[5] *See* Section II.D.1 on arbitrability.

[6] Such bilateral agreements providing for mutual recognition and enforcement of arbitral awards to which Bulgaria is a party are for example: The Agreement with Hungary for legal assistance in civil, family and criminal proceedings, *ratified by Decree No 595 of the Presidium of the National Assembly of 4.08.1966, promulgated in State Gazette, issue 29 of 11.04.1967, effective as of 10.03.1967*; the agreement with Yugoslavia (currently in force for its successors Serbia, Bosnia and Herzegovina, Slovenia and Croatia) for mutual legal assistance, *ratified by Decree No 167 of the Presidium of the National Assembly of 8.06.1956 - Известия, Issue No 16 of 1957, promulgated in Известия, issue 16 of 22.02.1957, effective as of 26.01.1957*; the Agreement with Tunis for legal assistance in civil and criminal proceedings, *ratified by Decree No 2464 of the State Council of 26.12.1975 – State Gazette, issue 3 of 9.01.1976, issued by the Ministry of Foreign Affairs, promulgated in State Gazette, issue 2 of 6.01.1978 г., effective as of 31.08.1976*; the Agreement for trade and marine navigation with Japan, *ratified by Decree No 647 of the Presidium of the National Assembly of 16.04.1970 – State Gazette, issue 64 of 14.08.1970, promulgated in State Gazette issue 64 of 14.08.1970, effective as of 5.08.1970.*

arising between a state party to the convention and an investor from the other contracting state.[7] [8]

Pursuant to Article 5, paragraph 4 of the Constitution of the Republic of Bulgaria[9] any international treaty, which has been ratified according to a procedure established by the Constitution, which has been promulgated, and which has entered into force for the Republic of Bulgaria, shall be part of the domestic law of the land. Any such treaty shall prevail over any conflicting standards of domestic legislation. Thus the New York Convention, the European Convention, the ICSID Convention and any and all bilateral agreements in the field of arbitration to which the Republic of Bulgaria is a party meeting the above requirements for ratification and entry into force, prevail over any conflicting provisions of the domestic legislation governing arbitration.

The LICA is based on, and implements, the 1985 version of the UNCITRAL Model Law on International Commercial Arbitration (the

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[7] Such agreements are for example the agreement with the United Kingdom, *ratified by law, adopted by the 37th National assembly on 13.09.1996 – SG No. 82/27.09.1669, Issued by the Ministry of finance, promulgated, SG No. 55/11.07.1997, effective as of 24.06.1997,* the Agreement with Hungary, *ratified by law, adopted by the 38th National assembly on 2.03.1995 – SG No. 24/14.03.1995, Issued by the Ministry of finance, promulgated, SG No. 98/7.11.1995, effective as of 7.09.1995*, the Agreement with Austria, *ratified by law, adopted by the 38th National assembly on 31.07.1997 – SG No. 64/8.08.1997, Issued by the Ministry of finance, promulgated, SG No. 99/29.10.1997, effective as of 1.11.1997,* the agreement with China, *ratified by law, adopted by the National Assembly on 7.06.1994 – SG No. 58/19.07.1994, Issued by the Ministry of finance, promulgated, SG No. 48/26.05.1995, effective as of 24.08.1995.*

[8] However, in its judgement on a reference for preliminary ruling in *Slovak Republic v. Achmea B.V.* (Case C-284/16) (the "**Achmea Decision**"), which is binding on all member states to the EU in matters of interpretation of EU law, the Court of the European Union has accepted that the arbitration clauses for settling of investment disputes in the BITs between the EU Member States – under which an investor from one Member State may bring a claim about an investment in the other Member State against that State before an arbitral tribunal – incompatible with Articles 267 and 344 TFEU and therefore are unenforceable.

[9] Promulgated, State Gazette No. 56/13.07.1991 (effective as of 13.07.1991), amended and supplemented, SG No. 85/26.09.2003, SG No. 18/25.02.2005, SG No. 27/31.03.2006, Decision No. 7 of the Constitutional Court of the Republic of Bulgaria of 13.09.2006 – SG No. 78/26.09.2006, SG No. 12/6.02.2007, SG No. 100/18.12.2015.

"UNCITRAL Model Law") however with certain deviations. Several reforms of LICA are aimed at closer harmonization with the UNCITRAL Model Law and the introduction of domestic arbitration, subjecting its regulations to the rules of international arbitration, as well as providing for specific circumstances. The LICA does not implement the 2006 amendments to the UNCITRAL Model Law. Currently the LICA governs both international and domestic arbitration. The provisions of LICA apply only if the seat of the arbitral tribunal is in Bulgaria. As with the UNCITRAL Model Law's "place of arbitration," the seat of the tribunal refers to the legal rather than to the factual venue of the arbitration.

The structure of the law closely follows the UNCITRAL Model Law. The first chapter which deals with general issues such as the scope of application of the law is followed by a chapter on the arbitration agreement (definition, arbitrability, and form of the arbitration agreement). The third chapter deals with the installation of the arbitral tribunal and the challenging of arbitrators, the fourth chapter with the tribunal's jurisdiction (including the power to issue interim measures). The conduct of the arbitration proceeding and the making of the award are governed by the fifth and sixth chapters. The seventh chapter deals with the possibility of setting aside an award under Bulgarian law and the recognition and enforcement of foreign awards. An eighth chapter introduced by an amendment of the LICA entering in to force on 27 January 2017 provides for state supervision of arbitrators and arbitration institutions located in Bulgaria by an Inspectorate with the Bulgarian Ministry of Justice and introduced administrative sanctions to arbitrators in certain limited cases.

The Bulgarian Code of Civil Procedure (Граждански процесуален кодекс)[10] (the "Civil Procedure Code") also provides for certain rules

[10] Promulgated in State Gazette No. 59/20.07.2007, effective as of 1.03.2008, amended and supplemented, SG No. 50/30.05.2008, effective as of 1.03.2008, modified by Judgment No. 3 of the Constitutional Court of the Republic of Bulgaria of 8.07.2008 - SG No. 63/15.07.2008, amended, SG No. 69/5.08.2008, SG No. 12/13.02.2009, effective as of 1.05.2009, supplemented, SG No. 19/13.03.2009, amended and supplemented, SG No. 42/5.06.2009; Judgment No. 4 of the Constitutional Court of the Republic of Bulgaria of 16.06.2009 - SG No. 47/23.06.2009; SG No. 82/16.10.2009, amended and supplemented, SG No. 13/16.02.2010, SG No. 100/21.12.2010, effective as of 21.12.2010; Judgment No. 15/21.12.2010 of the Constitutional Court of the Republic of Bulgaria - SG No. 5/14.01.2011; amended, SG No. 45/15.06.2012, effective as

concerning arbitration, in particular, provisions related to the arbitrability and enforcement of arbitral awards. Unless otherwise provided in an international treaty to which the Republic of Bulgaria is a party, the recognition and admission to enforcement of foreign arbitral awards is governed by the Code on Private International Law (Кодекс на международното частно право) (the "Private International Law Code").[11]

The rules of the arbitration institutions may not be qualified as legislative acts. However, they become mandatory for the parties to a dispute based on their agreement to submit such dispute to be finally settled by such arbitration institution or based on incorporation of such rules by reference in their agreement to settle their dispute by arbitration and for the arbitrator based on his consent to settle the dispute on behalf of the institution.

4. Confidentiality and publication of awards

a) Privacy of proceedings

In contrast to the civil procedure before the courts of law,[12] pursuant to the LICA the arbitration procedure is confidential, this characteristic stemming from the "conventional" nature of the arbitration proceedings. As a result, the arbitral award is not subject to publication, regardless of the consent of the parties thereto.

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of 1.01.2013, amended and supplemented, SG No. 49/29.06.2012, supplemented, SG No. 99/14.12.2012, amended and supplemented, SG No. 15/15.02.2013, effective as of 1.01.2014, amended, SG No. 66/26.07.2013, effective as of 26.07.2013, SG No. 53/27.06.2014, SG No. 98/28.11.2014, effective as of 28.11.2014, amended and supplemented, SG No. 50/3.07.2015, supplemented, SG No. 15/23.02.2016, amended, SG No. 43/7.06.2016, amended and supplemented, SG No. 8/24.01.2017, supplemented, SG No. 13/7.02.2017, amended SG No. 63/4.08.2017, effective as of 5.11.2017, amended and supplemented SG No. 86/27.10.2017, amended SG No. 96/1.12.2017, effective as of 1.01.2018, amended and supplemented SG No. 102/22.12.2017, effective as of 22.12.2017, amended SG No. 42/22.05.2018, amended SG No. 65/7.08.2018, effective as of 7.08.2018.

[11] Promulgated, State Gazette No. 42/17.05.2005, amended, SG No. 59/20.07.2007, effective as of 1.03.2008, SG No. 47/23.06.2009, effective as of 1.10.2009, SG No. 100/21.12.2010, effective as of 21.12.2010.

[12] The Civil Procedure Code provides that the court decision shall be published in the court register which is publicly available.

b) Publication of awards

Practically, some decisions of the arbitration institutions are subject to publication. For instance, the Rules of Arbitration of the Arbitration Court with the BCCI (the "BCCI Arbitration Rules")[13] provide that the Secretaries of the Arbitration Court, upon the instructions of the Chairperson of the Arbitration Court, keep a register with selected arbitral awards of principle importance for the jurisprudence. The registry is publicly available and any third party may by way of written application to the Chairperson of the Arbitration Court at the BCCI obtain a copy of an award therefrom.

Further on, with the express permission of the Chairperson of the said Arbitration Court at the BCCI selected arbitral awards of principle importance are being published in biennial editions of the Arbitration Court with the BCCI, available at the premises of the BCCI. By virtue of the BCCI Arbitration Rules the names of the parties and any data which may be used to the detriment of the latter are not being published. As a result, the parties' consent for publication is not obtained.

The BCCI Arbitration Rules do not contain any provisions regarding publication of awards.

B. Arbitration Infrastructure and Practice in Bulgaria

1. Major arbitration institutions

A leading arbitration institution in Bulgaria is the Arbitration Court with the Bulgarian Chamber of Commerce and Industry (the "Arbitration Court with BCCI"). Most of the domestic commercial arbitrations and almost all of the international commercial arbitrations in Bulgaria are conducted under the auspices of or administered thereby.

[13] Adopted by the Management Board of the BCCI by Resolution recorded in Minutes No. 1 of 31 March 1993 and enters into force on 1 July 1993, subsequently amended by a resolution of the Executive Council of BCCI under No.47/3-2002 of 29.01.2002 effective as of O1.02.2002, further amended a resolution of the Executive Council of BCCI under No.95/1-2008 of 15.01.2008 effective as of 01.02.2008, further amended a resolution of the Executive Council of BCCI under No.67/21-2011 of 15.11.2011, effective as of 01.01.2012, further amended a resolution of the Executive Council of BCCI under No. 72/27-2016 of 29.11.2016 effective as of 01.01.2017.

In addition, there are other domestic arbitration institutions. The Arbitration Court with the Bulgarian Industrial Association (the "Arbitration Court with BIA") also has general competence to handle any disputes which may be subject to arbitration, but concentrates mainly in intellectual property disputes.

In November 2014, a new arbitration center was established in Bulgaria – the KRIB Court of Arbitration (KRIB – Confederation of Employers and Industrialists in Bulgaria), based in Sofia. The KRIB Arbitration Rules are very similar to the ICC Rules 2012. This approach was chosen because first, the ICC Rules of Arbitration have proven their effectiveness; second, there is well-established practice in ICC how certain procedural problems may be resolved and third, there is well established ICC case-law. The Arbitration Court with KRIB has adopted and applies the IBA Guidelines on Conflict of Interest in International Arbitration as well as the IBA Rules of Ethics for International Arbitration.

The Permanent Court of Arbitration with the German-Bulgarian Industrial Commercial Chamber (the "**Arbitration Court with GBICC**") was established in May 2016. The proceedings before the Arbitration Court with GBICC are conducted in line with the Rules of the Arbitration Court with the GBICC (the "**GBICC Arbitration Rules**").

The Arbitration Court with the Bulgarian Stock Exchange – Sofia AD ("the Stock Exchange") handles disputes arising out of the execution and performance of stock-exchange transactions; membership to the Stock Exchange; and other cases related to trading in financial instruments or the activities of the Stock Exchange. The National Institute for Reconciliation and Arbitration with the Ministry of Labour and Social Policy offers arbitration and mediation facilities aimed specifically at resolution of collective labor disputes.

2. Number of cases and other statistics

There is information published on the web site of the arbitration Court with the BCCI showing that more than 60% of the cases have been completed within six to nine months. According to the same source, 1% of the arbitral awards rendered by the BCCI Arbitration Court were subsequently set aside.

Statistical information provided to the writer by the BIA since 2000, when the Arbitration Court with BIA began its activity as an independent adjudicative body, is presented *below*:

Year	Total number of instigated arbitral proceedings	National	International
2000	7	7	-
2001	14	12	2
2002	22	22	-
2003	18	15	3
2004	15	14	1
2005	21	17	4
2006	22	18	4
2007	23	23	–
2008	17	16	1 ad hoc
Total	159	144	15

For the period 2009–2016, the total number of arbitral proceedings held before the BIA Arbitration Court is 185.

There has been no major difference between the duration of domestic and international arbitral proceedings carried out before the Arbitration Court with BIA.

According to the same source of information the average duration of the proceedings is between three and five sessions of the arbitration court. The data regarding the challenged decisions of the Arbitration Court with BIA by years is as follows:

Year	Awards Challenged	Set Aside	Remained in Force
2003	3	1	2
2005	2	1	1
2006	1	–	1
Total	6	2	4

3. Development of arbitration compared with litigation

Although arbitration has gained more popularity as an alternative to the state civil action procedure, in view of the positive legislative reforms aimed at the regulation of the arbitration institute, during the last few years litigation remains the most common way to seek redress of civil rights violations.

II. CURRENT LAW AND PRACTICE

A. Arbitration Agreement

1. Types and validity of agreement

a) Clauses and submission agreements

The arbitration agreement (AA) may be in the form of an arbitration clause, thus forming part of the principal agreement to which the AA refers, or in the form of a separate agreement for submission to arbitration.

The AA is usually in the form of an arbitration clause when it refers to disputes that may potentially arise in the future between/among the relevant parties out of or in relation to the principal legal relationship between/among such parties. The AA is usually in the form of a submission agreement when it refers to one or more disputes that already exist and those in which the parties are willing to submit to arbitration.

By an AA a dispute may be submitted to an institutional arbitration as well as to arbitration ad hoc. The AA must be entered into between/among the same parties that are parties to the principal legal relationship.[14]

The subject matter of the AA may lawfully include any disputes of proprietary nature arising out of or relating to contractual, quasi-contractual or non-contractual (such as delictum or condictio sine causa) civil law relationships, except for disputes arising out of or relating to property ownership title and other rights *in rem*, payment of support or alimony, employment relationship and disputes in which one of the participating parties is a 'consumer'.[15] Respectively, under the Bulgarian law, any dispute of non-proprietary nature

[14] With respect to cases where the option provided by an AA is asymmetrical and one party, but not the other, is permitted to initiate arbitration, the Supreme Court of Cassation has held in its Decision No. 71 of 2 September 2011, commercial case No. 1193/2010, rendered in proceedings seeking to set aside an AA, that such asymmetrical arrangements make the AA null and void. We do not identify any conflicting court authority on this matter so it could be assumed that this is the predominant view of the Bulgarian courts.

[15] For the legal definition of "consumer" please refer to footnote # 33 hereinbelow.

(such as a dispute relating to the establishment of person origin or marriage dissolution) as well as any dispute arising out of or relating to a public receivable, administrative penalty or other sanction, committed crime, real estate title of ownership, payment of alimony, employment relationship or dispute involving consumers is non-arbitrable and an AA with respect to such dispute may not be validly concluded.[16] The Bulgarian law recognizes both national and international AAs.

b) Minimum essential content

The LICA requires the AA to have some minimum content. Such content is essential to the AA and is a condition to the AA validity.

The essential content of AA is limited and it includes only the following: an agreement between/ among the parties that a specific dispute is submitted to arbitration. A dispute is specified by the relationship out of which it arises or to which it refers.[17]

The law permits parties to the AA to provide in the AA, further to the essential content, for all the following:

1. the arbitration institution (if the arbitration institution is not specified, the assumption is that the AA refers to arbitration *ad hoc*);[18]

[16] With respect to the arbitrability of a dispute, please also refer to Section II, D, 2 hereof.

[17] With respect to the arbitrability of a dispute, please refer to our comment in Section II, A, 1 and Section II, D hereof.

[18] There is conflicting court authority in this respect. The Supreme Court of Cassation in its Decision No. 63 of 25 May 2015, commercial case No. 3740/2014, delivered in proceedings for setting aside an arbitral award, concluded that the reference in the AA to "arbitration court" which is not further individualized does not confer jurisdiction to arbitration ad hoc. At the same time the fact that the arbitration institution is not sufficiently individualized makes the AA invalid. In Decision No. 45 of 28 June 2018, commercial case 128/2018 delivered in proceedings for setting aside an arbitral award the Supreme Court of Cassation ruled that in order to be valid, an AA has to contain specification of either an arbitration institution, or in case of arbitration ad hoc – a list of arbitrators from which the parties will choose in case of litigation. The court further elaborated that the AA will be considered invalid if the AA provides only for the place of arbitration but the choice of arbitrators is entrusted with one of the parties who is entitled to unilaterally determine the arbitration panel.

2. the proceedings to be followed in any of the following:
   (i) the formation of the arbitration tribunal; and/or
   (ii) the challenge and replacement of arbitrators; and/ or
   (iii) the hearings, collection of evidence, and issuance of the award; and/ or
3. the place of arbitration; and/ or
4. the language of arbitration; and/ or
5. the governing law.

If the AA includes express provisions on any of these permissible items of content, such express agreement of the parties to the AA prevails. If the AA does not expressly regulate any of these issues, the arbitration tribunal applies the applicable law or, if no legal provision is applicable, rules in accordance with its discretion.

In Bulgaria, the AA is usually in the form of an arbitration clause and, as per example, such clause provides for the following:

> The agreement shall be governed by the [Bulgarian][19] law. Any dispute, controversy or claim arising out of or in relation to the agreement, including any question regarding its existence, validity, interpretation, breach, termination or modification, [as well as the disputes for filling gaps in this contract or its

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Similar conclusion was made by the Sofia Appellate Court in its Ruling No. 1667 of 24 July 2013, private civil case No. 2889/2013, where the court accepted jurisdiction concluding that an AA stating "International Commercial Arbitration Court with the BCCI" is inoperative and confers jurisdiction neither to the BCCI Arbitration Court, nor to an arbitration ad hoc. The Supreme Court of Cassation in its Ruling No. 391 of 22 May 2012, private commercial case No. 235/2012, rendered in proceedings adjudicating on an objection against the jurisdiction of the court due to the existence of an AA, concluded that the reference to "Bulgarian trade chamber" in the AA is sufficient to individualize the arbitration institution. The same ruling also concludes that the mere reference in an AA that a dispute shall be referred to arbitration is sufficient for a valid AA. The Supreme Court of Cassation in its Decision No. 59 of 6 October 2015, commercial case No. 2/2015, refused to set aside an arbitral award rendered by the Arbitration Court of the BCCI, on the grounds that AA is invalid even if it concluded that the AA did not confer jurisdiction to institutional but to ad hoc arbitration.

[19] Or any other governing law.

> adaptation to newly arisen circumstances shall be finally resolved by[20]] [the Court of Arbitration with the Bulgarian Chamber of Commerce and Industry][21] in compliance with its Rules by [specific number of] arbitrators appointed in accordance with such Rules. The seat of arbitration shall be [Sofia, Bulgaria].[22]

AAs in the form of submission agreements are rarely seen. It is also rare for an AA drafted under the Bulgarian law to include express provisions on the arbitration proceedings.

c) Form requirements

Under Bulgarian law the AA is a formal contract. The AA, and any amendment or annex thereto, must be in writing. With respect to the AA the written form is a form of validity.

No notary certification or other official form is required.

The written form requirement is fulfilled in any of the following cases:

1. all parties have signed the AA in one counterpart;
2. each party has signed the AA in a different counterpart;
3. the AA is composed of different letters, telexes, fax messages, e-mails (where the parties agreed that such kind of correspondence will be binding upon them), or other forms or written communication exchanged between/among the parties; or
4. in the event that one of the parties has already brought a claim before an arbitration tribunal and the responding party

[20] The text is square brackets may be omitted. However, it should be noted that in its recent Decision No. 171 of 22 January 201 8, commercial case No. 1791/2016 the Supreme Court of Cassation ruled that the inclusion of an arbitration clause in a commercial agreement does not automatically mean that the arbitration tribunal appointed by the parties will be competent to resolve on issues associated with filling gaps in the agreement or adaption of the agreement to newly arisen circumstances in the lack of explicit parties' agreement to this effect. Thus, if the parties wish to include such disputes in the scope of the tribunal's competence, this has to be explicitly stipulated in the arbitration clause.

[21] Or other arbitration institution.

[22] Or any other seat outside Bulgaria.

> under such claim confirms in writing within the arbitration proceedings that it accepts the dispute to be submitted to arbitration, or takes part in the arbitration proceedings by any of the following specific procedural actions: filing written objections, submitting evidence, filing a counterclaim or attending the arbitral hearing, without challenging the competence of the arbitration tribunal. Thus, the mere failure of the respondent to object against the jurisdiction of the arbitration tribunal when such respondent was duly notified about the arbitration proceedings is not sufficient to confer jurisdiction to the arbitration tribunal.[23]

d) Incorporation by reference

It is permissible under the Bulgarian law and not unusual for a contract of general terms and conditions to include an arbitration clause. The incorporation of an arbitration clause in a contract of general terms and conditions is permissible under the Bulgarian law and is recognized by the applicable case law. Legal requirements regarding the form and validity of an AA fully apply with respect to such arbitration clause.

e) Interpretation

As a contract, the AA is subject to contract law and is interpreted in accordance with the principles and rules of the applicable contract law.[24] Respectively, if the parties have agreed that the principal

[23] An amendment of the LICA which entered into force on 27 January 2017 provided that only a specified list of active participation of the respondent in the arbitration proceedings will amount to a consent to the jurisdiction of the tribunal *i.e*. an AA. Before this amendment of the LICA there was inconsistent court authority as to what qualifies to taking part in arbitration proceedings sufficient to confer jurisdiction to the arbitration tribunal. In particular part of the court authority accepted that it is necessary for the party to take active participation, while the other accepted that it is sufficient that the party was duly notified for the initiated arbitration procedure and did not contest the tribunal's jurisdiction.

[24] It is worth noting that there is conflicting authority of the Supreme Court of Cassation, rendered in proceedings seeking to set aside an arbitral award, with respect to a legal presumption existing under Bulgarian law applicable to commercial transactions executed by a person acting without representative powers. It would be presumed that such transaction is

agreement of which the arbitration clause forms part is governed by, as per example, Bulgarian law, the arbitration clause will also be interpreted in conformity with Bulgarian law. Parties may further agree that the arbitration clause, unlike the rest of the principal agreement, is governed by any other law. If parties to the AA have not made an express choice of law, the arbitration tribunal decides on the applicable law based on the conflicts law rules and interprets the AA in accordance with such applicable law.

2. Enforcing arbitration agreements

a) Declaratory actions in court

Theoretically, an interested party may file a suit with a Bulgarian court for a declaratory judgment seeking to establish that the arbitration agreement is valid and binding. Under Article 4 of the Private International Law Code which is applicable to the extent that the matter does not fall within the ambit of the Council Regulation (EC) No. 1215/2012 of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast) ("**Regulation No. 1215/2012**"), Bulgarian courts are internationally competent where either (i) the respondent is domiciled in Bulgaria or (ii) the claimant or the respondent is a Bulgarian national or a legal entity registered in Bulgaria.

There is otherwise no meaningful legal mechanism under Bulgarian law to compel arbitration.

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confirmed by the merchant on whose behalf it is executed if such merchant has not explicitly opposed against it immediately upon finding out about it. The majority of the discussed court authority accepts that the AA forming part of this transaction would not benefit from the presumption because the AA is separable from the other clauses of the main contract unlike the main contract is not a commercial transaction (for example Decision No. 66 of 7 July 2014 of the Supreme Court of Cassation, commercial case No. 4036/2013 and Decision No. 117 of 31 May 2018 of the Supreme Court of Cassation, commercial case No. 2592/2017). The opposing court authority accepting that the AA benefits from the above presumption applicable to the main contract is expressed for example in Decision No. 7 of 29 January 2015 of the Supreme Court of Cassation, commercial case No. 2540/2014).

b) Applications to compel or stay arbitration

Under Article 8(1) of the LICA, where a party has filed court proceedings in a dispute which is subject to an arbitration agreement, the court must dismiss and terminate such proceedings if the respondent invokes the arbitration agreement. To this end, the respondent must raise its objection within the time limit for submitting its response to the statement of claim; failure to do so within this time limit means that the state court must take jurisdiction over the dispute. Article 131(1) of the Civil Procedure Code sets the generally applicable time limit for filing a response to the statement of claim at one month from receipt of such statement. This time limit, however, is shorter in certain special proceedings under the Civil Procedure Code. Importantly, this is the case in special proceedings applicable to commercial disputes, where the limit is only two weeks from receipt of the statement of claim.

The court may refuse to dismiss the proceedings brought before it only if it finds that the arbitration agreement invoked by the respondent is null and void, inoperative or incapable of being performed, in which case the state court must assume jurisdiction over the dispute.

The most frequent remedy to enforce an arbitration agreement is the invocation of such agreement in pending court proceedings. In addition, enforcement of arbitration agreements is facilitated by Article 8(2) of the LICA whereby arbitration proceedings may commence and continue and an arbitral award may be delivered, even though the same dispute is pending before a national or foreign court. However, in the decision already discussed in footnote 36 below, the Supreme Court of Cassation held that Article 8(2) of the LICA did not apply to disputes with respect to which the state courts had exclusive jurisdiction, effectively meaning that arbitration proceedings commenced or continuing in such circumstances would result in an arbitration award that risks being null and void.[25]

3. Effects on third parties

Bulgarian law recognizes assignment and subrogation with respect to an AA. Respectively, if a third person, in full or in part, steps into the rights and/or obligations of a party to the AA, such third person will also become a party to the AA. This will usually be the case in the

[25] For effect of arbitral award on non-arbitrable disputes please refer to Section II.D.2 hereof.

event of assignment, subrogation, inheriting, succession, merger or acquisition, or other transfer or joint undertaking of obligations by a party under the principal legal relationship to which the AA refers. However, the prevailing court authority rendered in proceedings for setting aside an arbitral award is that the transfer of rights under the principal contract by way of voluntary assignment or legal subrogation does not make the transferee a party to the AA which is included in the principal contract.[26]

The constitution of a third person as party to the AA would require the consent of the other parties to the AA subject to the general requirements of the contract law.

4. Termination and breach

Being a contract, the AA may lawfully terminate on the grounds permissible to any other contract, including, *inter alia*, the following:

1. mutual consent of the parties to the AA;
2. expiration of the agreed term period of validity;
3. completion of a condition with terminating effect;
4. complete enforcement of the AA by issuance of an arbitration award or entrance into effect of a settlement agreement thereunder;
5. unenforceability of the AA due to the death or other objective incapacity of the agreed arbitrator to arbitrate or due to the permanent closing of the agreed arbitration institution.

The AA may further terminate on legal grounds specific only for the AA and unusual for other types of agreements. Such specific termination grounds include, for example, (i) termination of arbitration proceedings by a settlement agreement or issuance of an arbitration award, and (ii) the failure of a party to an effective AA to challenge on

[26] To this effect are the following decisions of the Supreme Court of Cassation – Decision No. 261 of 1 August 2018, commercial case 624/2017, Decision No. 145 of 22 August 2016, commercial case No. 871/2016, Decision No. 71 of 9 July 2915, commercial case No. 3506/2014, Decision No. 46 of 21 July 2015, commercial case No. 3556/2014. The opposite conclusion is made by the Supreme Court of Cassation in its Decision No. 203 of 20 January 2015, commercial case No. 300/2014.

the grounds of such AA the competence of a state court to which a dispute covered by the AA is submitted by the other party.

Case law on this matter is very limited.

B. Doctrine of Separability

1. Statutory provisions

Each of the LICA, the BCCI Arbitration Rules, the Rules of the Court of Arbitration with BIA (the "BIA Arbitration Rules")[27] and the Rules of Arbitration of KRIB (the "KRIB Arbitration Rules")[28] (the BCCI, the BIA and the KRIB Arbitration Rules are jointly referred to as the "**Rules**") provide that the arbitration agreement is separable from the remaining clauses of the contract giving rise to the dispute and the mere fact that such contract might be nonexistent or invalid does not automatically render null and void the arbitration agreement incorporated therein. In other words, circumstances that normally give rise to invalidity of contractual arrangements must affect specifically the arbitration agreement, if such agreement is to be declared null and void. Accordingly, the arbitral tribunal may decide on its own jurisdiction even if a party has raised objections thereto on the basis of an alleged nonexistence or invalidity of the arbitration agreement.

C. Jurisdiction

Under Article 20 of the LICA, Article 26 of the BCCI Arbitration Rules, Article 19 of BIA Arbitration Rules, Article 17 of KRIB Arbitration Rules and Article 5 (5) of GBICC Arbitration Rules respondent's objections to the jurisdiction of the arbitral tribunal must be formulated not later than with the submission of its response to the claimant's request for arbitration. Participation of the objecting party in the constitution and appointment of the arbitral tribunal may not operate as a waiver of its rights to raise objections to the

[27] Adopted by the Management Board of the BIA by Minutes No. 12 of 15 December 1998 and enters into force on 4 January 1999, subsequently amended by a resolution of the Arbitration Collegium of BCCI of 06.03.2001 approved by the Management Board of the BIA by Minutes No. 19 of 14.06.2001 effective as of the same date.

[28] Adopted by the Management Board of the KRIB on 17.09.2014 and enters into force on 17.09.2014.

jurisdiction of the tribunal. If a party is of the opinion that the tribunal is acting beyond its authority, it must raise an objection as soon as this circumstance occurs. The arbitral tribunal may accept an objection to its jurisdiction at a later stage of the proceedings provided that the delay was justifiable. While the LICA is silent on the matter, Article 26(6) of the BCCI Arbitration Rules directs the arbitral tribunal to render a decision on the objection before it proceeds with the merits of the case, unless both jurisdiction and merits turn on the same issues. Ultimately, the tribunal retains a wide margin of appreciation on the matter.

Neither the LICA nor any of the Arbitration Rules of BCCI, BIA, GBICC and KRIB provide for any specific limitation on the power of the arbitral tribunal to decide on its own jurisdiction. Generally, the arbitral tribunal is required to decide on this issue upon the request of the party objecting to its jurisdiction. Conceivably, however, circumstances may occur where the arbitral tribunal will have to review the question of its own motion (e.g. possible lack of jurisdiction due to the non-arbitrability of the dispute, or a party refraining from any participation whatsoever in the arbitration proceedings).

1. Interaction of national courts and tribunals

It is obvious, however, that a limitation on the powers of the arbitral tribunal to decide on its own jurisdiction would exist where a state court decision with a *res judicata* effect has already addressed the issue of the jurisdiction of such tribunal. In this respect, the state courts may be called upon to decide matters relating to the scope of the jurisdiction of the arbitral tribunal in circumstances such as court proceedings initiated with a view to setting aside an arbitral award or the invocation of an arbitration clause in court proceedings.[29] However, a party to an arbitration clause may not file a separate claim for declaring the arbitration clause null and void in case that there is an already pending dispute before an arbitration tribunal or a state court with respect to the main agreement in which the arbitration

[29] The Supreme Court of Cassation in its Decision No. 20 of 11 September 2015 under commercial case No. 2652/2014 rendered in proceedings for setting aside an arbitral award, accepted that an AA is no longer operative and set aside an arbitral award rendered after the final judgement of the state court on the same matter where it assumed jurisdiction.

clause was included.[30] This is because the arbitration tribunal or respectively the state court engaged with hearing the pending dispute will be competent to decide on the scope of their own jurisdiction and thus the issue regarding the validity of the AA cannot be separated and reviewed in parallel proceedings.

D. Arbitrability

1. Subjective arbitrability

Under Bulgarian law, any natural person having the capacity to dispose of its rights may validly enter into an arbitration agreement. The capacity to dispose of its rights will be assessed in accordance with applicable conflict of law rules (the Bulgarian Private International Law Code generally refers to the national law of the natural person in question).

In the context of domestic disputes, the capacity of the parties to enter into arbitration agreements is restricted in the sense that such parties may not validly choose a seat of arbitration outside Bulgaria in the event the arbitration agreement is governed by Bulgarian law. If the choice of a seat outside Bulgaria was decisive for the agreement of such parties to submit their disputes to arbitration and the agreement was governed by Bulgarian law, then the Bulgarian courts would treat such arbitration agreement as null and void.[31] The

[30] This position was adopted by the Supreme Court of Cassation in its Decision No. 40 of 29 June 2017, commercial case 2448/2015.

[31] The Supreme Court of Cassation, in its Decision No. 717 of 27 July 2005, civil case No. 18/2004 (published in the Supreme Court of Cassation Bulletin No. 6/20005) delivered in the context of proceedings for recognition in Bulgaria of an English arbitration award, had to deal with the question whether non-observance of the restriction on the choice of the seat of arbitration (a restriction deriving from Bulgarian law) in an arbitration clause governed by English law raised a public policy issue under Article V.2(b) of the New York Convention. The Supreme Court of Cassation confirmed that the restriction in question did not constitute an element of Bulgarian public policy and, therefore, non-observance of this restriction by the arbitration clause could not form the basis, under Article V.2(b) of the New York Convention, for a refusal to recognize the arbitration award based on such arbitration clause. The Supreme Court of Cassation further held that, in any case, the possible invalidity of the arbitration clause by reason of the non-observance of the restriction at issue could only be analyzed in the context of Article V.1(a) of the New York

national or international character of the arbitration is determined as of the date of the arbitration agreement and any change of the domiciliation of any party after the arbitration agreement was entered into does not affect such determination.[32]

The capacity of the legal entities to enter into arbitration agreement is governed by the law of the place of incorporation. There is no general prohibition under Bulgarian law restricting the capacity of legal entities to enter into arbitration agreements (subject to the limitations discussed *below*).

Article 3 of the LICA expressly permits the participation of a state or state entity in arbitrations. Whilst the LICA only applies to arbitrations having their seat in Bulgaria, there is no general prohibition restricting the capacity of the Bulgarian state or Bulgarian state enterprises to become parties to arbitrations seated outside Bulgaria. On a related note, Bulgaria is a party to the ICSID Convention as well as the Energy Charter Treaty and a number of bilateral investment treaties referring to the dispute settlement mechanism under the ICSID Convention; the Bulgarian state may accordingly become a party to arbitration proceedings aimed at resolving investment disputes contemplated in such instruments.

2. Objective arbitrability

Under Bulgarian law, only private law disputes may be submitted to arbitration; administrative and criminal cases are not arbitrable. Article 19 of the Civil Procedure Code further provides that not any private law dispute but only pecuniary disputes (*i.e.* amenable to monetary evaluation) may be the subject matter of arbitration. Finally, under Article 19 of the Civil Procedure Code disputes involving rights *in rem* in and possession of real estate assets, alimony, rights arising

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Convention and from the perspective of English law, which was the law governing the arbitration clause. As the appellant did not furnish any proof of invalidity of the arbitration clause under English law, the Supreme Court of Cassation recognized the arbitration award. This line of reasoning was recently confirmed by the Supreme Court of Cassation in its Ruling No. 150 of 7 March 2018, commercial case No. 1798/2018, which was rendered in proceedings for recognition in Bulgaria of an Austrian arbitration award.

[32] Sofia District Court Decision No. 53 of 7 November 2008 in civil case No. 593 / 2008.

out of employment relationships as well as disputes in which one of the participating parties is a 'consumer'[33,34] are not arbitrable.

In addition, in the context of civil and commercial matters falling within the scope of Regulation No. 1215/2012, the disputes referred to in Article 24 of Regulation No. 1215/2012 (dealing with exclusive jurisdiction of the national courts of a Member State) are not arbitrable.

In the context of matters falling outside the scope of Regulation No. 1215/2012, a number of provisions of the Private International Law Code providing for the exclusive jurisdiction of Bulgarian courts with respect to certain categories of disputes, likewise operates to exclude the arbitrability of the disputes in question. Such provisions include: disputes involving immovable property located in Bulgaria (Article 12(1)); disputes involving industrial property rights where a patent or other registration has been issued in Bulgaria (Article 13(2));[35] and disputes affecting the legal status of entities registered in Bulgaria (Article 19).

In addition to issues which are explicitly excluded from the scope of arbitration, other matters are reserved for the exclusive jurisdiction of the state courts.[36] Insolvency and family law matters are a typical case in point.

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[33] According to the Bulgarian Consumer Protection Act (Promulgated in State Gazette No. 99/09.12.2005, effective as of 10.06.2006 lastly amended and supplemented SG No. 37/4.05.2018) a 'consumer' is any natural person who acquires products or uses services for purposes that do not fall within the sphere of his or her commercial or professional activity, and any natural person who, as a party to a contract under the Consumer Protection Act, acts outside his or her commercial or professional capacity.

[34] The disputes involving consumers were excluded from the list of arbitrable disputes pursuant to an amendment to the Civil Procedure Code which entered into force on 27 January 2017. According to the Transitional Provisions of the law introducing said amendment to the Civil Procedure Code all arbitration proceedings with respect to non-arbitrable disputes pending at the time the discussed amendment entered into force shall be terminated.

[35] However, it should be noted that whilst an arbitral tribunal may not determine *erga omnes* the validity of a patent or a trademark registered in Bulgaria, it may still decide on the rights and obligations of the parties flowing from intellectual property rights.

[36] The consistent practice of the Supreme Court of Cassation expressed for example in Ruling No. 218 of 25 May 2016, private commercial case No. 714/2016, Ruling No. 64 of 1 February 2017, commercial case

1040/2016, Ruling No. 450 of 20 December 2013, private civil case No. 7663/2013, rendered in proceedings seeking admission to cassation of appellate decisions, provides for an unusual example where the state court will assume jurisdiction despite the existence of a valid AA on arbitrable dispute. The Bulgarian Civil Procedure Code provides for a fast track debt recovery procedure as an alternative to civil litigation allowing a creditor to obtain an order for payment from state courts which is subject to immediate execution (meaning that it allows the creditor to obtain a writ of execution and initiate foreclosure over the debtor's assets). The order for payment may be issued based on certain limited instruments including an agreement between the debtor and the creditor with notary certification of the signatures containing payment obligations. Such agreement may also contain a valid AA. If the debtor files a statement of opposition against the order for payment the creditor may continue the foreclosure but will have to establish that its claims are grounded by a final court judgement in standard civil litigation proceedings. The above consistent practice of the Supreme Court of Cassation accepts that state courts have exclusive jurisdiction over such disputes.

In its Decision No. 189 of 9 November 2017, commercial case No. 1675/2017 the Supreme Court of Cassation adopted the view that when the parties are not entitled to resolve a certain dispute with an out-of-court settlement, such a dispute cannot be included in the scope of an arbitration clause. The decision was rendered in proceedings for setting aside an arbitral award which amended a privatization contract based on a Bulgarian law rule authorizing a party to an agreement to seek to amend or terminate the agreement in case of commercial frustration. The Supreme Court of Cassation found that since there are special rules for amending a privatization contract specifically intended to exclude the possibility for parties to the agreement to freely amend it and thus a dispute regarding the amendment of the privatization agreement cannot be resolved by the parties with an out-of-court settlement, the parties to a privatization agreement cannot confer to an arbitration tribunal the competence for resolving such a dispute.

The Supreme Court of Cassation Decision No. 560 of 18 November 2008, civil case 437/2007 provides for another unusual example of non-arbitrability. This decision was rendered in the context of proceedings for setting aside an arbitral award. The award under review had found that the purchaser under a sale of goods contract had not performed its contractual obligations and the seller was accordingly awarded damages. The obligations of the purchaser under the sale of goods contract had been secured with a mortgage over real estate assets owned by a third party. Prior to the arbitration proceedings, that third party had instituted proceedings (due to procedural requirements both the seller and the purchaser were constituted as respondents in these proceedings) before the competent state court with a view to obtaining the de-registration of the mortgage on the basis of the alleged rescission of the sale of

E. Arbitral Tribunal

1. Status and qualifications of arbitrators

a) Number of arbitrators

The LICA stipulates that the arbitration tribunal may consist of one or more than one arbitrator. The number of the arbitrators shall be defined by the parties. The arbitration tribunal shall be composed of three arbitrators in case the parties have not specified their number in the AA.

Furthermore, the parties may agree on the procedure of establishment of an arbitration tribunal. Pursuant to the LICA, should there be no agreement between the parties on the procedure and if the arbitration tribunal consists of three arbitrators, each of the parties shall appoint an arbitrator while the third one shall be appointed by the two arbitrators who had already been appointed by the parties. The President of the BCCI[37] may appoint an arbitrator upon request by one of the parties in case the other party does not appoint an arbitrator within 30 days or in case the two arbitrators do not reach an agreement on the appointment of the third arbitrator within 30 days from their appointment.

Should the case be adjudicated by a sole arbitrator and in case the parties could not reach an agreement on his/her choice, he/she shall be appointed by the President of the BCCI upon request by one of the parties. Such decisions of the President of the BCCI regarding the constitution of the arbitration tribunal are final and are not subject to appeal.

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goods contract by reason of the alleged default of the seller. Under Bulgarian law, the action aimed at the de-registration of the mortgage falls within the exclusive competence of the state courts. The Supreme Cassation Court found that (i) the dispute being the object of the arbitration had been an element of the separate dispute previously brought before the state courts and (ii) no arbitration clause could be invoked against the proceedings pending in the state courts because the claimant (*i.e.* the mortgagor seeking de-registration of the mortgage) was not a party to the arbitration agreement. In such circumstances, it was the Supreme Court of Cassation's view, the dispute that had been the object of the arbitration was actually non-arbitrable and the award was accordingly set aside.

[37] The President of the BCCI is different from the President of the Arbitration Court with the BCCI.

The LICA provides that the arbitrator may be either citizen of the Republic of Bulgaria, or a person of foreign nationality.

Pursuant to the Arbitration Rules of the BCCI, the BIA, the GBICC and KRIB the arbitral tribunal may be composed of a sole arbitrator or of three arbitrators. Pursuant to the Arbitration Rules of the BCCI, GBICC and the BIA when the arbitral tribunal is composed of three arbitrators, each of the parties shall appoint one arbitrator and the two appointed arbitrators on their part shall elect the presiding arbitrator.

Pursuant to the GBICC Arbitration Rules when the arbitral tribunal consists of one arbitrator the parties are obliged to choose this arbitrator form the list of GBICC's arbitrators. In case the dispute will be resolved by three arbitrators, the parties are not bound to choose from this list. However, when the two arbitrators appointed from the parties select a third one, they are obliged to choose this third arbitrator from the GBICC's list.

Under the KRIB Arbitration Rules the party appointed arbitrators (whether the tribunal comprises a sole arbitrator or three arbitrators) are subject to scrutiny check by a committee of the Arbitration Panel of the KRIB Arbitration Court, unless they are included in the list of arbitrators of the institution. When the arbitral tribunal is composed of three arbitrators the presiding arbitrator is directly appointed by a committee of the Arbitration Panel. The KRIB Arbitration Court maintains a list of 26 arbitrators.

The BIA Arbitration Rules provide that the arbitrator shall be elected from a list of arbitrators with the BIA Arbitration Court. Besides that, there is no explicit provision whether the arbitrator shall be citizen of the Republic of Bulgaria, or may be a foreigner. As of the date of this report all 30 arbitrators of the BIA Arbitration Court are Bulgarian nationalities.

The BCCI Arbitration Court maintains three different lists of arbitrators: (i) List of the Arbitrators for National Disputes; and (ii) List of the Arbitrators for International Disputes. In disputes where one of the parties is a foreign entity or a local entity with prevailing foreign participation, such party may appoint for arbitrator a foreign citizen who is not included in the list under item (ii) hereinabove. The presiding arbitrator may be elected under the same conditions. As of the date of this report the List of the Arbitrators for National Disputes consists of 47 arbitrators; the List of the Arbitrators for International Disputes consists of 60 arbitrators.

b) Legal status

Pursuant to the LICA, during the course of their activities the arbitrators must stay independent and impartial and therefore when a person is nominated as an arbitrator for a dispute, he/she must point out all circumstances which may raise any justified doubts for his/her impartiality or independence. In addition, the arbitrator is subject to the same obligation after his/her appointment. The presence of any interest on the outcome of the dispute is one of the most frequently met grounds for challenging an arbitrator.

The Arbitration Court with BCCI has adopted special Ethical Rules of Conduct for Arbitrators (the "BCCI Ethical Rules").[38] The BCCI Ethical Rules shall apply to all member arbitrators of the BCCI Arbitration Court and they are intended to encourage the professionalism and quality of work of the arbitrators, to bear out the justice and impartiality of the arbitration procedure and to raise the public faith in the arbitration as a method for solving disputes. The basic principles set out in the BCCI Ethical Rules are concerned with the professional and personal conduct of the arbitrators and their conduct in the public area, as well. A breach of the BCCI Ethical Rules may lead to the removal of the arbitrator from the lists of arbitrators with BCCI.

The Arbitration Court with KRIB has adopted and applies the IBA Guidelines on Conflict of Interest in International Arbitration as well as the IBA Rules of Ethics for International Arbitration. These guidelines form part of the KRIB Arbitration Rules by way of a reference to them.

The Arbitration Court with GBICC applies Compliance Code of Conduct which form part of the GBICC Arbitration Rules.

The status of the arbitrators with the Court of Arbitration with BIA is not settled in its rules. Pursuant to these rules every appointed arbitrator should file an affidavit showing the lack of circumstances that may raise any doubts to his/her independence.

c) Qualifications and accreditation requirements

Pursuant to Article 11 (3) of the LICA only a person of legal capacity and full age, who has not been sentenced for premediated criminal offence, has at least eight years of professional experience and possesses high moral qualities is eligible to act and be appointed

[38] Adopted by Resolution of the General Meeting of the Arbitration Collegiums of the Arbitration Court with the BCCI dated 23 February 2005.

as arbitrator. The professional qualification of the arbitrator is one of the grounds for challenge of the arbitrator's appointment.

Following an amendment of the LICA which entered into force on 27 January 2017 all arbitrators and arbitration institutions operating in Bulgaria are now subject to supervision an Inspectorate with the Bulgarian Ministry of Justice.

The BCCI Arbitration Court sets a number of qualification requirements that have to be met by the arbitrators to be included in the lists of the institution. They should be graduates in law, who are versed in domestic and international economic relations and in the law which governs such relations, have at least ten years of legal practice experience and have no criminal records.

The BIA Arbitration Rules do not settle the question regarding the qualification of the arbitrators. Despite that, it should be noted that all 30 arbitrators of the Arbitration Court with BIA have a master's degree in law.

The KRIB Arbitration Rules do not stipulate specific qualification requirements to arbitrators. Party appointed arbitrators are subject to scrutiny check by a committee of the Arbitration Panel of the KRIB Arbitration Court, unless they are included in the list of arbitrators of this institution. In any case when such Arbitration Panel scrutinizes the appointment or directly appoints an arbitrator it shall assess whether their availability and qualifications make them suitable to hear the case.

The GBICC Arbitration Rules do not contain specific qualification requirements for arbitrators. Currently 16 masters of Bulgarian and/or German law and one financial expert are included in the GBICC's list of arbitrators.

d) Arbitrators' rights and duties

The relationship between the arbitrator and the parties to the arbitration agreement is civil (not public) by its nature and is based on a contract entered into upon the appointment by which the arbitrator agrees to settle the dispute between the parties against certain remuneration. An agreement exists even where a party refuses to participate in the procedure for the appointment of the arbitrator since the consent to the settling of a dispute by arbitration is also consent for constituting the arbitration tribunal. The contractual relationship exists between each of the parties and each of the appointed arbitrators. Although such contract resembles an agency agreement or an agreement for provision of services, it is strongly

influenced by the adjudicative function assumed by the arbitration. In particular the arbitrator has to be, and remain, independent and impartial. The arbitrator is not an agent of the party, even of the one who has appointed him/her.

The main obligation of the arbitrator arising out of its contract with the parties is to settle the dispute between them. This includes in particular a duty to conduct the arbitration in such a way that it leads to a valid award not open to challenge. If the arbitrator exceeds its authority beyond the scope of the submission to arbitration the consequent award may be set aside or refused enforcement.

As noted above it is the duty of the arbitrator to be unbiased in the settlement of disputes between parties. To ensure compliance with such principles, Article 13 of the LICA provides that when a person is approached in connection with his possible appointment as an arbitrator he/she has to disclose any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence. This duty continues after the appointment stage throughout the arbitral proceedings. In this respect the arbitrator has to avoid all ex parte communications with the parties to the dispute which are incompatible with his/her capacity of a third-party alien to such dispute.

The arbitrator should conduct the arbitral proceedings without undue delay, in a fair manner, treating both parties equally and respect each party's right to be heard. Furthermore, it follows from the contractual nature of the relationship that the arbitrator has to complete its mandate. Pursuant to Article 17 of the LICA where the arbitrator becomes de jure or de facto unable to perform his functions or fails to act without undue delay his mandate is terminated. If such arbitrator does not withdraw from office and no agreement could be reached between the parties for the termination of the arbitrator's mandate, each party is entitled to request the Sofia City Court to decide on the termination of the mandate, which decision is final. In any case of termination of the mandate, a substitute arbitrator should be appointed according to the rules that were applicable to the appointment of the replaced arbitrator. The Chairman is replaced according to the rules that were applicable to his appointment. The BIA Arbitration Rules provide for the nomination of a substitute arbitrator at the appointment stage who automatically replaces the arbitrator in case the latter refuses the appointment or is prevented to exercise his functions.

Under the KRIB Arbitration Rules the Arbitration Council of the KRIB Arbitration Court has wide discretion upon its own motion or

when requested by a party to terminate the appointment of the arbitrator in case he/she is de jure or de facto unable to perform his/her duties, misses deadlines or acts in breach of the IBA guidelines on conflict of interest and the IBA rules of ethics. Under the KRIB Arbitration Rules the replacing arbitrator is always appointed by a committee of the Arbitration Panel.

The arbitrator has to preserve the confidential nature of the arbitral proceedings.

e) Relevant codes of ethics

Guidelines as to what circumstances are subject to disclosure can be found in Article 1 (3) and Article 2 of the BCCI Ethical Rules which are mandatory for the arbitrators enlisted with this arbitration institution. These provide that doubts as to the impartiality and independence of the arbitrator and the lack of personal interest in the outcome of the case occur if the arbitrator: (i) is a person who is a party in the proceedings, a proxy of such party, a relative of such party or of its proxy, as well as where such person and a proxy of the party work in the same law firm; (ii) is a relative to another arbitrator; (iii) before his appointment has provided legal advice to a party in the arbitral proceedings in connection with legal relationships which are their subject matter; (iv) has been a witness, civil appraiser or expert; (v) has common rights, obligations or other common interests (joint work under labour or consultancy agreements) with a party to the arbitral proceedings or its proxies.

The Arbitration Court with KRIB has adopted and applies the IBA Guidelines on Conflict of Interest in International Arbitration as well as the IBA Rules of Ethics for International Arbitration. These guidelines form part of the KRIB Arbitration Rules by way of a reference to them.

The Arbitration Court with GBICC applies Compliance Code of Conduct which form part of the GBICC Arbitration Rules.

The existence of circumstances that give rise to justifiable doubts as to the impartiality or independence of an arbitrator may serve as grounds for his challenge.

2. Appointment of arbitrators

a) Methods of appointment

The procedure applicable to the appointment of the arbitral tribunal is essentially a matter to be agreed upon by the parties and

there are no explicit mandatory rules under Bulgarian law to curb party autonomy in this area. Obviously, parties may detail the appointment procedure in the arbitration agreement. Where the arbitration agreement is silent on the appointment procedures but refers to a set of existing institutional or *ad hoc* arbitration rules, such rules typically provide for an appointment procedure in reasonable detail (*e.g.* Articles 13-15 of the BCCI Arbitration Rules; Article 27-30 BIA Arbitration Rules; Articles 13-17 of the GBICC Arbitration Rules and Articles 12-16 of the KRIB Arbitration Rules). Finally, the provisions of the LICA, which is applicable to arbitrations having their seat in Bulgaria, may step in where the agreement of the parties on the appointment procedure is not otherwise established or the agreed appointment procedure was of no avail.

b) Appointing authorities

In case no party agreement is evident from either explicit clauses in the arbitration agreement or a reference therein to some existing arbitration rules, Article 12 of the LICA sets out the rules to be followed with a view to appointing the arbitral tribunal.

In the event a sole arbitrator is contemplated in the arbitration agreement, such arbitrator is to be appointed by mutual consent of the parties. If the parties are unable to reach an agreement, the LICA designates the President of the BCCI[39] as the authority that is to appoint the sole arbitrator upon the request of either party. The LICA does not specify a particular time limit within which the parties must attempt to reach agreement on the joint appointment before the President of the BCCI may be requested to step in to the process.

In arbitrations with three arbitrators (*i.e.* where the arbitration agreement either explicitly contemplates an arbitral tribunal composed of three arbitrators or is otherwise silent), each party is to appoint an arbitrator and the two arbitrators so appointed are to appoint the third arbitrator. If a party fails to appoint an arbitrator within 30 days of receiving a request to that effect by the other party, the President of the BCCI must make the appointment for the defaulting party upon the other party's request. Likewise, if the two appointed arbitrators are unable to reach agreement on the third arbitrator within 30 days of their appointment, the President of the BCCI acts again as the appointing authority.

[39] The President of the BCCI is different from the President of the BCCI Arbitration Court.

In each case, the President of the BCCI must, in making the appointments under the LICA rules, have due regard for any qualifications required of the arbitrators by the arbitration agreement and to such considerations as may secure the appointment of independent and impartial arbitrators.

It is noteworthy that in disputes not arising out of commercial transactions, the LICA designates the Sofia City Court as the appointing authority (instead of the President of the BCCI).

In the context of an institutional arbitration, the refusal of either party to cooperate in the constitution of the arbitral tribunal is typically dealt with in the relevant institutional arbitration rules applicable to the dispute. Thus, by way of an example under the BCCI Arbitration Rules each party must appoint an arbitrator in arbitrations with three arbitrators. If either party fails to do so, or the party appointed arbitrators fail to appoint the presiding arbitrator the BCCI Arbitration Rules designate the President of the BCCI Arbitration Court[40] as the authority that must appoint, from among the arbitrators on the list of the BCCI Arbitration Court, the arbitrator. Likewise, in arbitrations with a sole arbitrator, failure by the parties to reach agreement on the arbitrator due to either party's refusal to cooperate or otherwise, transfers the appointing authority to the President of the BCCI Arbitration Court.

Under the BCCI Arbitration Rules, the President of the BCCI Arbitration Court steps in as the appointing authority also in the event of multiparty proceedings where parties on the claimant and / or respondent side are unable to come up with a joint appointment of an arbitrator.

Where, in the context of an *ad hoc* arbitration, the parties have agreed on the appointment procedure short of contemplating a scenario under which either party refuses to cooperate in the constitution of the arbitral tribunal, the LICA rules will again apply (subject to the place of arbitration being in Bulgaria) with the effect that the appointing authority is transferred from the defaulting party to the President of the BCCI (where the dispute to be arbitrated arises out of a commercial transaction) or the Sofia City Court (where the dispute to be arbitrated does not arise out of a commercial transaction). In such cases, the President of the BCCI or the Sofia City Court, as the

[40] The President of the BCCI Arbitration Court is different from the President of the BCCI.

case may be, is not under obligation to appoint the arbitrator from among the individuals on the list of the BCCI Arbitration Court.

c) Resignation and its consequences

While the LICA and institutional arbitration rules are largely silent on the matter, some conclusions may be drawn on the basis of provisions dealing with the grounds for challenging an arbitrator and termination of an arbitrator's mandate.

Given that under Article 14 of the LICA an arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties (a provision that is essentially reiterated in the BCCI Arbitration Rules), a resignation by the arbitrator under these types of situations may be deemed to be for valid reasons.

Further, under Article 17 of the LICA an arbitrator is expected to resign if he is unable to perform his functions or fails to act without undue delay (failing resignation, the parties may agree on the termination of the arbitrator's mandate or either party may request such termination from the Sofia City Court).

Outside the circumstances described above, an arbitrator is generally under the obligation to complete his mandate and settle the dispute between the parties. This principle, however, could be put under pressure by an interpretation whereby the arbitral tribunal may not question the resignation of an arbitrator where such resignation is based on the arbitrator's assessment that he is unable to perform his functions.[41] In light of this interpretation, the risk cannot be excluded that the arbitrator could misuse his right to resign by invoking a feigned inability to perform.

3. Challenge and removal

a) Grounds for challenge

Under Article 14(1) of the LICA, any party may challenge an arbitrator "if circumstances exist that give rise to justifiable doubts

[41] Decision of 26 February 2001 in domestic arbitration case No. 54/2002. In this case, the arbitrator appointed by the respondent is prevented from continuing to carry out his duties and filed a letter with the chairman of the arbitral tribunal explaining that he will no longer serve as arbitrator in that case.

as to his impartiality or independence or if he does not possess qualifications agreed to by the parties." However, this right is limited by Article 14(2) of the LICA whereby "a party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made." With respect to reasons of which the party became aware before the appointment, the appointment operates as a waiver of its challenging rights.

The KRIB Arbitration Rules in their Article 15(1) and the GBICC Arbitration Rules in their Article 18(2) introduce grounds for challenging an arbitrator identical to those provided for by the LICA.

Similarly, Article 17(2) of the BCCI Arbitration Rules provides that any party may challenge an arbitrator if "it has doubts about its impartiality, in particular if there is evidence that such arbitrator has a personal interest, direct or indirect, in the outcome of the case."

b) Procedure for challenge

Whilst the parties are free to agree on the challenging procedure, they may not exclude the supervisory powers of the Sofia City Court in the event the challenge is dismissed by the arbitral tribunal.

Unless the challenged arbitrator elects to resign or the other party consents to the challenge, the arbitral tribunal is to decide on the matter in the absence of a challenge procedure specifically agreed upon by the parties. According to Article 15(3) of the KRIB Arbitration Rules it is the Arbitration Council as a body of the KRIB Arbitration Court, and not the particular arbitration tribunal that would decide on the challenge. Under the LICA, the GBICC Arbitration Rules and the BCCI Arbitration Rules, a written statement of the reasons for the challenge is to be filed with the arbitral tribunal within a certain time (15 days for LICA and GBICCA Arbitration Rules and seven days under the LICA) after the challenging party has become aware of the constitution of the arbitral tribunal or any circumstances that may justify the challenge. In addition, no challenge may be made under the BCCI Arbitration Rules and the GBICC Arbitration Rules after evidence and legal arguments have been presented and the arbitral tribunal has declared that the case is fully submitted and closed the proceedings.

Similarly, the KRIB Arbitration Rules provide that the challenging party shall submit the grounds for challenge with the Secretariat of the KRIB Arbitration Court no later than 14 days after becoming aware of the tribunal's constitution or the circumstances giving grounds to the challenge. The Secretariat is then obliged to inform the arbitrator

concerned, the remaining arbitrators and the parties, each of whom is given the opportunity to express their position before the Arbitration Council decides on the challenge.

If the arbitral tribunal dismisses the challenge, the challenging party may file an appeal with The Sofia City Court within seven days of notification that the challenge has been dismissed (Article 16 of the LICA). The decision of the Sofia City Court is final. Neither the challenge nor the appeal against a dismissed challenge prevents the arbitral tribunal from reviewing the case and rendering an award. However, as a matter of practice, arbitral tribunals tend to refrain from proceeding with the case until the outcome of the challenge is clear since the irregular composition of the arbitral tribunal may be invoked as a reason for setting aside the arbitral award at a later stage.[42] On the other hand, the KRIB Arbitration Rules suggest that when an arbitrator's mandate is terminated, the new arbitrator is appointed by a commission constituted by members of the Arbitration Panel which is a body of the KRIB Arbitration Court.

c) Removal procedure

Article 18 of the LICA provides that, where the mandate of an arbitrator terminates for any reason, a new arbitrator is to be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

d) Replacement of arbitrators

Similarly, the BCCI Arbitration Rules and the GBICC Arbitration Rules provide that, where an arbitrator has been successfully challenged, a new arbitrator is to be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced. However, under Article 18(4) of the BCCI Arbitration Rules if the newly appointed arbitrator does not approve of the presiding

[42] The Supreme Court of Cassation in its Decision No. 158 of 28 December 2012, commercial case No. 709/2012 rendered in proceedings for setting aside an arbitral award, accepted that the failure to challenge an arbitrator does not preclude a party to seek setting aside of the arbitral award at a later stage. However, the grounds most commonly employed for challenging the arbitral award in such case is breach of public policy. Following an amendment of the LICA which entered into force on 27 January 2017 breach of public policy may no longer serve as grounds for setting aside an arbitral award.

arbitrator in place, (obviously in arbitrations with three arbitrators), then a new presiding arbitrator must be appointed by the two arbitrators. Under Article 16(4) of the KRIB Arbitration Rules after replacement of an arbitrator takes place, the new tribunal may reconsider the case matters already considered up to that moment, provided that no arbitral award has been delivered with respect to these matters.

4. Arbitrator liability and immunity

Following from the contractual nature of the relationship an arbitrator may be held liable for damages caused as a result of non-performance of his obligations. The LICA does not provide specific rules governing the contractual liability of the arbitrator. In this respect the general rules of contractual liability should apply. However, it should be underlined that it is generally accepted[43] in view of the adjudicative function of the arbitrator that the principle of immunity applicable to state judges should also apply to arbitrators. In particular, the arbitrator should not be held liable for the arbitral award granted unless his actions qualify as a capital offence[44] (for example the arbitrator has been bribed to grant a wrong arbitral award). It should be noted that this principle might be considered to certain extent undermined by an amendment to the LICA, which entered into force on 27 January 2017, according to which arbitrators are subject to administrative sanctions in case they render an arbitral award with respect to a dispute involving a consumer.[45]

Thus, premature withdrawal from the arbitration process without good reason for such resignation, failure to act without undue delay, and violation of confidentiality, are possible breaches of contractual duties which may entail liability for the resulting damage.

The LICA does not provide for specific rules governing the possibility to restrict or exclude the arbitrators' liability. In this respect the general rules of contractual liability should apply. Under Bulgarian

[43] Zh. Stalev, Bulgarian Civil Law of Procedure, (Ninth Edition, Ciela, Sofia, 2012), p.807.

[44] This position was confirmed in Decision No. 12 of 2 April 2018 of the Supreme Court of Cassation, commercial case No. 1553/2017. The same rule is explicitly incorporated in Article 40(1) of the GBICC Arbitration Rules.

[45] According to the same amendment of the Civil Procedure Code these disputes became non-arbitrable. For further details on arbitrability please refer to Section II.D.2 hereof.

law complete exclusion of liability is not possible. Pursuant to Article 94 of the Law on Obligations and Contracts (Закон за задълженията и договорите)[46] any agreement by which the liability of the debtor for willful misconduct or gross negligence is excluded or restricted shall be considered null and void. Thus, parties may agree on restriction or exclusion of arbitrators' liability in other cases.

F. Conducting the Arbitration

1. Law governing procedure

a) Determination of law and rules governing procedure

Under the LICA the chairman of the arbitration tribunal, as opposed to the sole arbitrator, is not empowered to solely decide on the procedural issues. All resolutions of the tribunal, including those on the organization and conduct of arbitration procedure, should be adopted by all the members of the arbitration panel. The tribunal is explicitly empowered by the LICA to issue procedural orders (or resolutions) on specific matters while running the arbitration process including:

(i) resolution for termination of the arbitration proceedings[47] in the cases of: withdrawal of the claim by the claimant (except for the respondent opposes to such withdrawal and the tribunal finds that the respondent has legitimate interest

[46] Promulgated State Gazette No. 275/22.11.1950, effective as of 1.01.1951, Corrected, Izv. No. 2/5.12.1950, amended No. 69/28.08.1951, 92/7.11.1952, SG 85/1.11.1963, 27/3.04.1973, 16/25.02.1977, 28/9.04.1982, 30/13.04.1990, amended and supplemented, SG No. 12/12.02.1993, amended, SG No. 56/29.06.1993, amended and supplemented, SG No. 83/1.10.1996, effective as of 1.11.1996, amended, SG No. 104/6.12.1996, effective as of 7.01.1997, SG No. 83/21.09.1999, effective as of 1.01.2000, SG No. 103/30.11.1999, effective as of 1.01.2000, amended and supplemented, SG No. 34/25.04.2000, effective as of 1.01.2001, supplemented, SG No. 19/28.02.2003, amended, SG No. 42/17.05.2005, SG No. 43/20.05.2005, effective as of 1.09.2005, supplemented, SG No. 36/2.05.2006, effective as of 1.07.2006, amended, SG No. 59/20.07.2007, effective as of 1.03.2008, supplemented, SG No. 92/13.11.2007, SG No. 50/30.05.2008, effective as of 30.05.2008, amended SG No. 96/1.12.2017, effective as of 1.01.2018, supplemented SG No. 42/22.05.2018.

[47] Art. 42 of the LICA.

in issuance of an award), mutual consent of the parties or obstacle for consideration of the case on the merits;

(ii) resolution for termination of the arbitration proceedings[48] in case the claimant without being prevented by objective inability does not submit statements of claim within the term agreed by the parties or determined by the tribunal;

(iii) resolution for admission or non-admission of alteration of the claims or material objections of the parties.[49] It is provided for in the LICA that the tribunal should not admit such alteration if it will considerably cumber the opposite party;

(iv) resolution for appointment of one or more expert in order to clarify specific issues that require special knowledge;

(v) order to one or both parties to provide the expert(s) with the necessary documents and information;

(vi) order to the appointed expert to participate in the oral hearing and to explain and clarify the expert report on the assigned task.

As evident from the above examples, in some of the cases (*e.g*. in case the parties agree on termination of the arbitration) the tribunal should simply apply the respective legal provision stating that a procedural order has to be issued. In most of the cases however, the tribunal has discretion to estimate and decide whether the respective procedural order corresponds to the relevant facts and circumstances ascertained on the case. The tribunal, for instance, should precisely estimate whether the omission of the claimant to submit timely his statements of claim is due to objective inability, whether the alteration of the claim requested by one of the parties shall encumber the other party and to what extent, etc.

As the arbitration is one-instance procedure the procedural orders or resolutions of the tribunal may not be appealed. However, since some of them may affect the validity of the award they may be indirectly controlled by the state court in the set aside process.

The distinction of the procedure on the merits is closely related to the choice of law as well as to the grounds for challenge of the arbitration award. This issue is also connected with the course of the

[48] Art. 33 of the LICA.
[49] Art. 28 of the LICA.

arbitration process in accordance with the principle of efficiency: it is common practice of the Bulgarian courts, including the arbitration institutions, to run the dispute proceedings by resolving the procedural issues first and finally to decide on the cases by considering the substantive matters. However, such a distinction may not be absolute and in all cases the close relation between the substantial and procedural issues should be taken into consideration.

The LICA as well as the Rules do not provide for special definitions or provisions on distinction between substantive and procedural matters. Under the legal doctrine the maters of substance are those related to the issue whether the claim is grounded and the procedural matters refer to the issue whether the claim is admissible. In general, substantive rules state what are the rights and obligations of the legal persons while the procedural norms instruct them how to defend their infringed rights and interests before competent judicial bodies.

b) Notion and role of seat of arbitration

The place of arbitration is extremely important for the enforcement of the award. The seat of arbitration determines the nationality of the award. If the seat is in Bulgaria then the award qualifies as domestic while an award made in arbitration seated abroad makes it a foreign arbitration award (FAA). Bulgarian procedural law subjects domestic awards and FAAs to different enforcement regimes. While domestic awards are directly enforceable, without need for any special recognition procedure, FAAs may undergo three separate court instances for recognition and enforcement which usually takes years. In view of the writer this dualistic treatment runs counter to the public law obligation of Bulgaria undertaken by virtue of Article III of the New York Convention. According with the said provision there shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which New York Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Application of a great number of the provisions of the LICA is presupposed by an arbitration seated in Bulgaria. Therefore, the seat of arbitration determines *lex arbitri* as *lex loci arbitri.* Hence mandatory procedural rules of the place of arbitration are relevant.

The place of arbitration in Bulgaria empowers Bulgarian courts to exercise supportive and supervisory powers in relation to arbitration. The court may order conservatory measures aiming at restraining the dissolution of assets. The Bulgarian courts will have such authority

even where the seat of arbitration is outside Bulgaria. The courts of the seat (*locus arbitri*) are competent to adjudicate upon challenge of the award.

c) Methods for selection of seat absent party choice

The LICA stipulates that parties may agree on the place where the arbitration will take place. In case of the absence of an agreement by the parties on this issue, the place shall be determined by the arbitration court. In such scenario the circumstances of the dispute and the convenience of the parties should be taken into consideration by the arbitration tribunal.

Pursuant to the BCCI Arbitration Rules the place of the arbitration hearings should be the city of Sofia. However, the arbitration tribunal may determine a place of the arbitration other than the city of Sofia upon request by the parties or on its own initiative.

The KRIB Arbitration Rules introduce a default rule that the judicial seat of the arbitration shall be Sofia, which applies in the lack of specific agreement between the parties which has been accepted by the Arbitration Council of the KRIB Arbitration Court.

d) Mandatory rules of procedure

When the seat of arbitration is in Bulgaria, party autonomy with respect to the application of the substantive law chosen by the parties is restricted by the mandatory rules of Bulgarian law. Although there is no express provision in the LICA, as a matter of practice, in absence of express choice of applicable substantive law, the tribunal would apply the conflict of laws rules of the place of arbitration.

2. Conduct of arbitration

a) Basic procedural principles

Besides the principles of disposition and equality of the parties, the arbitral tribunal should observe and apply the following basic principles and rules:

(i) *Adversarial (competitive) process*. The parties are entitled to participate in the arbitration process, to engage and present evidence supporting their positions, to object and oppose to the statements, evidence and position of the other party as

well as to be informed and react to the actions of the arbitral tribunal.

(ii) *Independence and impartiality*. The arbitral tribunal must lead the process in an impartial manner and ground its award on the ascertained facts, collected evidence and the applicable law.

(iii) *Confidentiality*. The arbitration is non-public and any information disclosed by the parties in the course of the arbitration process must be kept strictly confidential.

(iv) *Efficiency*. The arbitration dispute should be conducted and resolved with reasonable promptness, in a manner convenient and efficient for both parties.

(v) *Due Process and Timely Notification*. It is a mandatory rule provided for in the LICA[50] that the parties must be timely notified for any procedural actions carried out with regard to the arbitration case so that they will be able to prepare their case and answer the case of their opponent.

b) Party autonomy and arbitrators' power to determine procedure

Party autonomy is an expression of the principle of disposition[51] in civil proceedings, whether in the state court civil process or arbitration. Because of the consensual nature of the arbitration process the disposition principle finds therein much broader application also expressed in the possibility of the parties to freely determine how the arbitration should be conducted. The parties in this respect may agree on the manner of constitution of the arbitration panel as well as on the place and the language of the arbitration, the applicable law and the particular procedural rules to be followed. Undoubtedly, the freedom of the parties to agree upon the procedural rules of the arbitration gives them the flexibility and control which is considered of essential importance and a main advantage of arbitration compared to state court dispute resolution.

[50] Art. 31 of the LICA.

[51] Under Bulgarian legal doctrine the principle of disposition is apprehended as subjection of the defense of the infringed rights and interests to the will of the concerned party.

Pursuant to the effective Bulgarian legislation, party autonomy to determine the arbitral procedure is not limited by explicit provisions. However, this autonomy is not absolute and may not override the following mandatory principles:

(i) Equality of the parties in dispute. Explicitly the LICA[52] requires that the arbitration procedure notwithstanding whether agreed by the parties or determined by the arbitrator must ensure equal possibilities of the parties to defend their rights. Any arrangement stating that one of the parties shall not be able to participate, present evidence, object, give opinion or exercise other procedural rights in the arbitration shall be null and void.

(ii) Compliance with the public order and the moral norms. Although not explicitly provided for in the LICA it is inadmissible under the general provisions of the Bulgarian law that the parties agree an arbitration procedure in contradiction of the public order or the moral norms.

(iii) Mandatory provisions of the applicable law and the principles accepted by the institutional arbitrations. In all cases the parties may not ignore by their agreement on the arbitral procedure the mandatory rules of the applicable law. This limitation is explicitly adopted by the Rules [53] where, furthermore, it is envisaged that the parties' stipulations on the arbitral procedure may not contradict the principles of the Rules.

(iv) Control of the state court over the defective award. The parties may not exclude by their arrangement the provisions of the law establishing grounds and procedure on challenging of the award by the state court. These rules are designated to ensure the control of the state upon the arbitration and have mandatory nature.

[52] Art. 22 and Art. 24 of the LICA.

[53] Art. 3 (2) of the BCCI Arbitration Rules, Art. 5 (2) of the BIA Arbitration Rules, Art. 3 (2) of the KRIB Arbitration Rules, Art. 25 of the GBICC Arbitration Rules.

c) Documents only arbitrations

Pursuant to an explicit provision of the LICA[54] the parties may agree that their case shall be resolved based on written evidence and opinion only and without oral hearings. The same option is regulated by the Rules.[55] Some of the Rules provide that the case shall be considered without open hearings if the respondent acknowledges the claim by his written response to the statements of claim.[56] In this second hypothesis the arbitration tribunal is bound to proceed based on written documents only, while in the case of an agreement between the parties for arbitration procedure without open hearings, the tribunal may decide that, nevertheless, an oral hearing is necessary.

d) Submissions and notifications

Submissions are regulated lightly by the LICA.[57] The only formal requirements in this regard concern the minimal content of the statement of claim and the written response of the respondent as follows:

> The statement of claim must specify: i) the names and the addresses of the parties, ii) the factual circumstances on which the claim is based, iii) what the tribunal is requested for (*petitum*), iv) what evidence the claimant will present. The written evidence should be enclosed to the statement of claim.

The written response to the statement of claim must state the respondent's position and opinion on the statement of claim and specify what evidence will be engaged by the respondent. The written evidence should be presented jointly with the written response. Both the statement of claim and the written response must be in simple written form signed by the parties or their duly authorised representatives.

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[54] Art. 30 of the LICA.
[55] Art. 24 (3) of the BCCI Arbitration Rules, Art. 36 (3) of the BIA Arbitration Rules, Art. 28 (4) of the KRIB Arbitration Rules and Art. 23(5) of the GBICC Arbitration Rules.
[56] Art. 24 (4) of the BCCI Arbitration Rules and Art. 36 (4) of the BIA Arbitration Rules. This option is not available under the KRIB Arbitration Rules.
[57] Art. 27 (1) and (3) of the LICA.

Contents of the statement of claim and necessary appendices thereto are regulated in more detail by the Rules.[58]

Under the KRIB Arbitration Rules after the statement of claim and the response have been submitted and the arbitral tribunal constituted, the latter shall prepare a case report[59] containing description and legal qualification of parties' claims, list of issues to be clarified in the proceedings, ruling on evidence acceptance and other procedural matters. Simultaneously, the tribunal, after consulting with the parties, prepares a procedural schedule setting deadlines for providing submissions, evidence and other necessary actions. This schedule determines the dates of the case hearings as well. Both the report and the schedule may be consequently amended by the arbitration tribunal.

e) Deadlines, and methods for their extension

The only statutory deadline of preclusive nature is that related to submission of a counterclaim. Pursuant to the LICA[60] the respondent may file a counterclaim together with the written response at the latest. Some of the Rules reinstate this provision[61], others differ from said provision stating that the counterclaim must be submitted until the first hearing at the latest[62] or at a later stage if the counter right is confirmed by a final judgment/award or not disputed by the claimant.[63]

Other legal deadlines (e.g. for submission of statement of claim and written response) could be agreed between the parties or determined by the arbitral tribunal.[64] Failure to comply is permissible if the failure is due to a good reason[65] subject to proof by the party in delay.

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[58] Art. 5 of the BCCI Arbitration Rules, Art. 17 of the BIA Arbitration Rules, Art. 9 of the KRIB Arbitration Rules and Art. 5(1) of the GBICC Arbitration Rules.

[59] *See* Art. 19 of KRIB Arbitration Rules.

[60] Art. 28 of the LICA.

[61] Art. 10 (5) of the KRIB Arbitration Rule and Art. 6(3) of the GBICC Arbitration Rules. Art. 10 (6) of the KRIB Arbitration Rules state that a set-off objection could be filed even later if is confirmed by a final judgment/award or not disputed by the claimant.

[62] Art. 9 (4) of the BCCI Arbitration Rules.

[63] Art. 22 (4) of the BIA Arbitration Rules.

[64] Art. 27 (2) of the LICA.

[65] Art. 33 of the LICA.

Notifications related to the arbitration process must be served to the parties in a timely and proper manner. Pursuant to the LICA[66] it is mandatory that each party is informed in a timely fashion of the arbitral hearing and all procedural actions and issues, including onsite inspection to be carried out by the tribunal, experts' reports, and presentation of new evidence and submissions of the opposite party. The said imperative rule is designed to further the adversarial process.

In case the respondent is declared insolvent or in insolvency procedure conducted under Bulgarian law,[67] any pending arbitration or state court proceedings related to proprietary claim shall be stayed by operation of law. Provided that the claim, which is being arbitrated, has not been recognized within the framework of the insolvency process, then the arbitration proceedings shall be resumed with the participation of the receiver and the claim whatever its nature originally was, shall be deemed a claim for a declaratory relief aiming to establish the existence of the debt. The stay of the proceedings prescribed by the law is not applicable to arbitration cases which concerns non-proprietary claims, *e.g*. a claim concerning deficiencies in a contract or contract adaptation to newly arisen circumstances and the like. The idea behind the mandatory rule for stay and standstill of all pending proprietary claims is that the insolvency procedure is a process of universal execution against the entire property of the insolvent debtor aiming at satisfaction of all recognised claims provided that there are sufficient proceeds. It is for this reason why all creditors, including plaintiffs in arbitration cases, should attest their rights within the insolvency procedure. The above rule applies with one exception – the arbitration proceedings will not be stayed and new arbitration proceedings may be instigated seeking recovery of monetary claims against the debtor secured by security interest created over third party assets.

f) Legal representation

The LICA and the Rules do not provide for any specific rules regarding procedural representation of the parties in the arbitration process. Each party has the unrestricted right to choose and authorise

[66] Art. 31 of the LICA.

[67] Under the Bulgarian law insolvency may be ascertained and announced only within a special procedure conducted by the state court under the provisions of the Law on Commerce, Chapter IV.

its representative(s) in the arbitration. In this regard the persons able to represent a party in arbitration proceedings must be validly authorised in accordance with the applicable law. Special capacity or qualification of the representative is not required.

3. Taking of evidence

a) Admissibility

There are no formal requirements determining the admissibility and weight of evidence in the arbitration process. It is a general rule promulgated expressly in the Rules[68] that the tribunal considers the evidence freely and by its internal belief. The only more specific power of the tribunal in this respect provided for in the Arbitration Rules of the BCCI and KRIB states that, taking into consideration all the circumstances of the case, the tribunal may accept as proven certain facts regarding which one of the parties has impeded collection of evidence admitted by the tribunal.[69]

b) Burden of proof

Under Bulgarian law the arbitration procedure is qualified as adversarial or competitive. It is based on the concept that each party is entitled to participate in the process and may influence equally its own progress as well as the final decision of the tribunal. As explained herein above, the tribunal must ensure the compliance of the arbitration process with this principle.

The collection of evidence could be described as a competition between the parties in which they strive to prove their positions and statements. It is a general rule that each party bears the burden of proof for the facts and circumstances which ascertain its alleged rights and from which the party derives favourable consequences. This principle is reproduced in most of the Rules[70] stating that each party must prove the circumstances on which it bases its claim or objection.

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[68] Art. 29 (5) of the BCCI Arbitration Rules, Art. 38 (3) of the BIA Arbitration Rules and Art. 29 (1) of the KRIB Arbitration Rules.

[69] Art. 29 (2) of the BCCI Arbitration Rules, Art. 29 (3) of the KRIB Arbitration Rules and Art. 32 (1) of the GBICC Arbitration Rules.

[70] Art. 29 (1) of the BCCI Arbitration Rules; Art. 38 (1) of the BIA Arbitration Rules.

Nevertheless, the arbitrators are not indifferent to the process of collecting evidence. The tribunal may require the parties to present evidence, to check the evidence already collected or to collect evidence by its own initiative.

c) Standards of proof

The party which bears the burden of proof has to demonstrate the relevant facts in such manner so that the arbitrators are firmly convinced that the alleged facts are true. Proof aimed at establishing only a probability for the existence of the asserted facts is admissible as far as such facts do not determine the final conclusion about the subject of the dispute.

d) Documentary evidence and privilege

The claimant shall attach to its statement of claim the written evidence relevant to the dispute, whereas the respondent shall attach such evidence to the response of the statement of claim.

The parties may either present the original written documents or copies thereof, certified as true to the original by the parties themselves. At the request of the arbitral tribunal, any original must be presented for inspection. The arbitral tribunal may request the translation of the documents to another language when such translation is considered important for the case.

Email correspondence may also be used as evidence. In case of disagreement on the authenticity of the email messages or their delivery to the addressee, other reliable evidence may be used.[71]

The system of privilege is not applied in Bulgaria. However, the arbitral tribunal and parties shall keep confidential the information disclosed during the arbitration proceedings. Any minutes from the hearings, reports and other documents, received by the arbitral tribunal, shall be deemed confidential.[72]

e) Production of documents

The arbitral tribunal is entitled to require from parties the submission of additional documents, as well as to request third parties (physical persons and legal entities) to issue certificates or submit

[71] Article 29, para.3 of the BCCI Arbitration Rules; Art. 30 (1) of the KRIB Arbitration Rules.

[72] Article 6, para.1 of the BIA Arbitration Rules.

documents at their disposal. The arbitrators may fix time limits for submission of evidence, as well as may extend or restore such time limits in case the respective party has justified valid reasons therefore.[73]

Failure to comply with the time limits would have a different impact on the party's position depending on each particular case. On one hand, in case the argued circumstances are favorable for the party's case, such circumstances would not be considered established and the arbitral tribunal would not take them into account during the deliberations on the case. However, in case the party has created obstacles to the collection of evidence as required by the arbitral tribunal, the latter might consider the respective circumstances as being established.[74]

f) Witnesses

Generally, every person, including a party's officer, employee or other representative, who has knowledge about the circumstances of the dispute, can act as a witness, except where the parties have provided otherwise. The parties and legal advisors of the parties, however, cannot be witnesses within the same proceedings. Whether a particular witness is reliable or the weight that should be given to his evidence is a matter to be decided in due course by the arbitral tribunal, taking into consideration all relevant circumstances of the case.

The LICA and the Rules do not provide for any special rules related to the preparation of witnesses. The LICA and most of the Rules do not provide for any special rules related to written witness statements.[75] Since there is no explicit prohibition on the admissibility of such evidences and provided that the parties have not agreed otherwise, the tribunal is entitled to admit such statements (*i.e.* affidavits).

The LICA and the Rules do not provide for any special rules related to the cross-examination of witnesses. However, the parties are entitled to question the other parties' witnesses without limitations. The arbitral tribunal may question witnesses at any time before, during, or after examination by the parties.

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[73] Article 30, para.5 of the BCCI Arbitration Rules and Art. 27 of the GBICC Arbitration Rules.

[74] Article 29, para.2 of the BCCI Arbitration Rules; Art. 29 (3) of the KRIB Arbitration Rules.

[75] Except for the KRIB Arbitration Rules and the GBICC Arbitration Rules which explicitly allows them.

Witnesses shall be questioned at the hearing only in case the party presenting the witness has specified the circumstances to be clarified thereby, provided that the witness appears voluntarily before the arbitral tribunal.[76]

If a party wishes to present evidence from a person who will not appear voluntarily, upon approval of the arbitral tribunal the party shall apply for a subpoena before the state court having jurisdiction on this matter. The party shall identify the intended witness (name and address), describe the subjects on which the witness's testimony is sought and state why such subjects are relevant and material to the outcome of the case. The state court is under obligation to subpoena and question the designated witness. The practice of the courts differs with regard to the procedure. On one occasion the court requested the party applying for such assistance to get a list of questions approved by the arbitration tribunal prior to examination of the witness.

g) Tribunal-appointed experts

According to the LICA and Rules, upon request of the parties or at its own discretion, the arbitral tribunal is entitled to appoint one or more experts having special knowledge in order to report on specific issues determined by the arbitral tribunal.

Expert evidence normally assists the arbitral tribunal in forming an opinion in relation to technical matters of specialist knowledge. Therefore, the expert merely assists the arbitral tribunal to determine relevant issues of fact but the decision is ultimately the tribunal's. The arbitral tribunal may request that the parties provide any relevant and material information to the experts or to provide access to any relevant documents, goods, samples, personal or real property, for inspection when necessary for the preparation of the report. [77] The parties shall submit any evidence, on which the report is grounded except where the parties have provided otherwise.

The expert shall report in writing to the arbitral tribunal. The report shall describe the method, evidence and information used in arriving at the conclusions. The tribunal shall ensure that a copy of the report has been sent to the parties in a sufficient time prior to the hearing so as to give them opportunity to review the report and prepare for the oral examination of the expert.

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[76] Article 30, para.4 of the BCCI Arbitration Rules, Art. 30 (6) of the KRIB Arbitration Rules.

[77] Article 36, para.1 of the LICA.

The basic rule is that the arbitral tribunal shall designate the issues on which the expert shall report after consulting with the parties. It follows that the parties are entitled to submit questions to the experts; however, the arbitral tribunal decides on their relevance to the dispute and finally designates the issues subject to the expert report.

The experts shall be independent from the parties and the arbitral tribunal. They shall not be relatives of the arbitrators or be employees or otherwise related to the parties. The absence of relationships between experts, parties and arbitrators ensures the experts' impartiality in the case.

The LICA and Rules do not stipulate special rules regarding the right to reject a proposed/appointed expert. Generally, the arbitral tribunal appoints three experts, where each party is entitled to propose one expert and the arbitral tribunal appoints the third expert.

Although not compulsory, in the prevailing number of cases, the arbitral court, upon request of the parties or at its own discretion, summons the expert to be present and questioned at the hearing. The parties have an opportunity to comment and ask the tribunal to include additional issues to be determined by the expert. In case of a disagreement with the expert report, the parties are entitled to request the appointment of other experts to provide conclusions on the controversial issue. Alternatively, each party may request a report on the same issues to be prepared by three experts. If the request is granted, each party shall appoint one expert and then the court shall appoint the third expert.

h) Party-appointed experts

The concept of party-appointed experts is recognized only by the KRIB Arbitration Rules which in its Art. 30 (4) provides that each party may provide as evidence in the case reports made by experts appointed by it. The arbitral tribunal, upon request of the parties or at its own motion, may summon the party appointed expert to be present and questioned at the hearing.

4. Interim measures of protection

a) Jurisdiction for granting interim measures

Besides limitations on the arbitrator's authority stemming from the ambit of the applicable rules and mandatory rules of *lex arbitri*, there are inherent limits on the arbitrator's power arising directly

from the contractual nature of arbitration. A tribunal may not order provisional measures addressed to third parties not parties to the arbitration. Furthermore, unless agreed by the parties, a tribunal lacks coercive power to enforce its measures and cannot impose penalties for non- compliance. This disadvantage is mitigated by the persuasive powers of the tribunal. It can draw negative interference from non-compliance with its orders or take that into account when deciding on the cost of arbitration. The third limitation is that interim relief can be granted only once the tribunal has been set up. The Rules do not provide for any options for appointment of emergency arbitrators or granting of interim conservatory measures before the tribunal is formed either.

The tribunal is not entitled by operation of law to impose attachments of assets. Even if such power stems from the arbitration agreement, the order of the tribunal cannot be enforced. According to Bulgarian Procedural Law this power is exclusively reserved for the state courts.

b) Availability of preliminary or ex parte orders

Article 21 of the LICA introduces the right of the parties to submit motions to the arbitration tribunal to compel the other party in taking suitable measures, which will serve as a conservatory measure insuring the rights of the demanding party. The tribunal may ask the other party to undertake such measures. Evident from this provision is that the tribunal has very limited power with reference to the imposition of appropriate interim measures of protection.

The LICA and applicable Rules do not impose the requirement that the measure of interim relief be connected with the subject matter of the dispute. Thus the main purpose of the provisional measure is to preserve the status quo, to stabilize the relations between the parties to the dispute and to secure a successful enforcement of the award.

As a matter of practice the arbitral tribunals abstain from making such orders, as the arbitrators feel that by imposing such measures they may prejudice the case.

c) Security for costs

Should the tribunal, following the request of one of the parties, enter an order for interim relief, it may ask the requesting party to provide security. The purpose of this security is to indemnity the other party if the claim proves to be unsuccessful.

5. Interaction between national courts and arbitration tribunals

According to Article 6 of the LICA, state court actions related to arbitration procedures are allowed only in the cases envisaged by the LICA. Therefore, Bulgarian arbitration law enjoys the principle that the state court shall not encroach upon the jurisdiction and authority of the arbitration tribunal and interfere with the parties' contractual agreement to try their dispute by the chosen method for dispute settlement.[78]

The state court shall assist in the arbitration process before or during arbitration proceedings, and after the arbitral award has been passed.

The provisions of Bulgarian legislation regulating the court intervention are of mandatory nature and therefore apply to all arbitrations seated in Bulgaria, irrespective of which is the national law applicable to the arbitration procedure. This is expressly stated with reference to the supervisory powers of the Sofia City Court in the event a challenge against an arbitrator is dismissed by the arbitral tribunal.

a) Court assistance during the arbitration

Section 37 of the LICA allows the arbitration tribunal, or a party to the arbitration proceedings with approval of the arbitration tribunal, to ask for the assistance of the state court in the gathering of evidence under the compelling regime of the Civil Procedure Code. The state courts are under obligation to assist the arbitration court. The assistance of the state court may for example be required to compel the attendance of witnesses and interrogate them, order third party disclosure, or require an inspection of the subject-matter.

The difficulty associated with this provision is that there is no special procedure for the collection of evidence in support of the

[78] By way of an example a state court is not authorized to stay the arbitral proceedings as an interim measure (to this effect Sofia Appellate Court Ruling No. 883 of 18 April 2013 in civil case No. 2032/2012). Similarly, although state courts are authorized to appoint a special representative to party in state court proceedings in case a conflict of interest exists between that party and its legal representative, the state court is not authorized to appoint a special representative to a party in pending arbitration proceedings (to this effect Supreme Court of Cassation Ruling No. 604 of 21 November 2016 in commercial case No. 1992/2016).

arbitration process. As a result the judges apply different rules. For instance, if the requested evidence is an examination of a witness then the court may simply subpoena the witness without having any knowledge of the facts of the case to give the parties opportunity to question the witness. Alternatively, the state court may ask the arbitration tribunal to approve a list of questions which shall be addressed to the witness. Application of different procedures leads to uncertainty. As has been stated above, the tribunals lack power to order the attachment of assets.

The parties to the arbitration agreement are entitled at any moment before or after the commencement of the proceedings to seek interim relief available to the state courts as per the Civil Procedure Code. It is noteworthy that pursuant to Article 25 of the Code on Private International Law, Bulgarian courts have jurisdiction to issue an order for provisional measures provided that the asset is located in Bulgaria and the award is capable of being recognized and enforced in Bulgaria. If these conditions are met Article 10 of the LICA would allow the court to grant interim or conservatory measures even where the seat of arbitration is outside Bulgaria.

b) Court assistance after the arbitration

Once an award has been rendered, Court assistance may be sought when a challenge is mounted against the award or a party seeks to enforce it.

6. Multiparty, multi-action and multi-contract arbitration

a) Consolidation of arbitrations

The applicable rule on multi-party arbitrations is that any party to the AA can be a party to the arbitration proceedings, staying therein either on the part of the claimant or on the part of the respondent.

In the event that the AA is entered into among more than two parties and all of such parties are constituted either as claimant or respondent in the arbitration proceedings, the objection to the plurality of either party to the arbitration proceedings will be unsustainable.

In the event that the AA is entered, as per example, between two parties and such parties are constituted in the arbitration proceedings as claimant and respondent, respectively, the objection to the plurality of either party to the arbitration proceedings will be valid and

sustainable, since the arbitration proceedings may validly be developed and binding only on the parties to the AA.

If the AA does not include an express provision regarding the constitution of the arbitral tribunal, the applicable rules of the Bulgarian law provide that a dispute submitted to arbitration will be resolved by one or three arbitrators. In the event of a single arbitrator, the claimant and respondent agree on the arbitrator. In the event of an arbitration tribunal of 3 arbitrators, the claimant and respondent each appoint one arbitrator and such two appointed arbitrators jointly appoint the third arbitrator on the tribunal.

It is permissible under the law to consolidate arbitration proceedings subject to the applicable requirements regarding the arbitrability of the relevant disputes. Case law on this issue is very limited.[79]

b) Joinder of third parties

A third party to the arbitration proceedings can step in (or be dragged into) the proceedings as claimant or respondent subject to consent of both the claimant and the respondent, and of the third person. This procedural action is permissible until the date of the respondent's statement of response to the statement of claim under the proceedings.

In any event, the third person must have been or must become a party to the AA and such person's claim or the claim against such person, as the case may be, must be arbitrable.

7. Law and rules of law applicable to the merits

a) Determining the applicable law and rules

The issue of applicable substantive law arises in the context of international arbitration cases. In case of domestic arbitration, i.e. between parties with residences or seats in the Republic of Bulgaria,

[79] In Art. 20, the KRIB Arbitration Rules allow the consolidation of arbitration proceedings pending before the KRIB Arbitration Court based on a request of any of these parties in the following cases: (1) all parties to the pending arbitration proceedings agree to the consolidation; (2) all claims under the pending arbitration proceedings are based on the same AA; or (3) the AAs are at least compatible and all disputes which are the subject matter of the pending arbitration proceedings are related to the same legal relationship.

the provisions of LICA on the determination of the applicable substantive law apply when the legal relations have such a private international law element which as result of application of the Bulgarian private international law leads to the application of foreign law.[80]

b) Party autonomy

The LICA recognizes party autonomy, i.e. parties are free to determine the substantive law or rules applicable to the merits of the dispute to be resolved by arbitration.[81] This choice is and shall be binding on the arbitration tribunal. This is also confirmed in BCCI Arbitration Rules, Article 36 (1), the KRIB Arbitration Rules, Article 32 (1) and the GBICC Arbitration Rules, Article 25. The intention of the parties as to the applicable law may be express or implied. Arbitrators would find there to be an implied choice of the applicable law where the parties argue their case on the basis of the same law, even though they have not expressly agreed on its application.[82] The choice of applicable law made by the parties is a choice of substantive law. Therefore reference to the conflict of laws rules of the chosen legal system, *i.e*. renvoi, is excluded. Party autonomy is subject to certain limits such as the mandatory rules of the applicable law and the mandatory rules of the seat of arbitration. The latter shall be applied in cases where failure to do so may be inconsistent with public policy, e.g. where an element of illegality or immorality is asserted.

c) Determination by arbitrators

When parties have made no choice of law with respect to the merits of the dispute, the arbitration tribunal shall determine the applicable law using the conflict of law rules which it considers appropriate (*voice inderecte*). As a matter of practice, arbitration tribunals apply conflict rules of the place of arbitration. The BCCI Arbitration Rules provides that when there is a convention applicable to the subject matter of the dispute, the tribunal shall apply the rules of the convention. On one occasion the arbitration tribunal stated that the Convention on International Sale of Goods (CISG) shall apply to the merits of the dispute provided that all conditions for application of

[80] LICA, Transitional and Concluding Provisions, para 3 (3).
[81] LICA, Article 38(1).
[82] BCCI International Arbitration Case 2/1994 Ciela.

the CISG were present.[83] In all cases the tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

The LICA deviates from the Model Law by not providing the option for the parties to authorize the arbitration tribunal to decide *ex aequo et bono* or as amiable compositeur. Therefore, in no circumstances may the tribunal may decide according to fairness and common-sense principles at the exclusion of the applicable rules of law.

d) Non-national substantive rules, general principles of law and transnational rules

There is no legislative ground for the application of *lex mercatoria* as general principles of international commercial law and common standards and rules. According to the respective provision of LICA and BCCI Arbitration Rules, the choice made by the parties shall refer to law and not to general principles of law or to rules which have not made a legal order.

8. Costs

a) Arbitration costs

Costs related to arbitration can be divided into two main groups: arbitration costs and legal costs. Arbitration costs include the arbitrator's fees, expenses connected with the hearings, fees and expenses of any expert appointed by the tribunal, and the administrative expenses of the arbitration institution.

Statutory law does not expressly address advance on costs in arbitral proceedings. The KRIB Arbitration Rules, the GBICC Arbitration Rules and the BCCI Arbitration Rules operate under an advance on costs system. However, while the BCCI Arbitration Rules and the GBICC Arbitration Rules provide that the advance on cost is payable solely by the claimant, the KRIB Arbitration Rules introduce distribution of advance payment between the parties.

Under the BCCI Arbitration Rules, the Chairperson of the Arbitration Court with the BCCI determines the amount of the advance on the costs associated with expenses connected with the hearings.

[83] BCCI International Arbitration Case 33/1998 Ciela, the principle applied by the arbitration tribunal in BCCI International Arbitration Case 16/2006 (not published).

The Chairperson fixes the deposit based upon anticipated costs related to the proceedings. The amount of the advance for costs associated with arbitrator's fees and administrative expenses of the arbitration institution is determined in the Tariff on Arbitration Fees and Costs for Arbitration Cases before the BCCI Arbitration Court (the "BCCI Tariff") which is a part of BCCI Arbitration Rules.[84] The Chairperson fixes separate advances with respect to principle claim and a counterclaim. When in the course of the arbitral proceedings one of the parties requests that evidence be collected, the arbitration tribunal has discretion to determine the additional advance on costs payable by the requesting party. [85]When the hearing and meetings are conducted at location different from the place and seat of the arbitration, the arbitration tribunal has discretion to determine additional advance on cost payable in equal shares by claimant and respondent.[86] When a party appointed arbitrator has incurred expenses connected with his/her participation, the respective party shall bear those expenses regardless of the outcome of the case.[87]

Under the BCCI Arbitration Rules upon filing of the claim the claimant is required to pay an arbitration fee, which covers both administrative costs and arbitrators' fees. The arbitration fee is fixed on the basis of the amount in dispute (it is due with respect to the principal claim, counter-claims and set-off objections) and is calculated in accordance with the schedule of costs contained in the BCCI Tariff.

The BCCI Tariff indicates the maximum tariff amount to be charged and provides a scale of administrative charges applicable depending on the value in dispute.

Arbitration costs under the KRIB Arbitration Rules are divided into two subcategories – arbitration fees and costs for the proceedings.

The arbitration fees under the KRIB Arbitration Rules include a fixed registration fee and a proportionate fee.[88] The claimant pays a fixed registration fee of BGN 500 when submitting the statement of claim. The same registration fee is payable also by the defendant in case the latter decides to file a counterclaim or a set-off objection. The proportionate fees payable by the parties are determined on the basis of the value of the claim (for the claimant) or the counterclaim/

[84] *See* Article 47 (1) from BCCI Arbitration Rules.
[85] *See* Article 47 (2) from the BCCI Arbitration Rules.
[86] *See* Paragraph 7 (1) from the BCCI Tariff.
[87] *See* Paragraph 7 (2) and (3) from the BCCI Tariff.
[88] *See* Article 42 (2) and (3) from the KRIB Arbitration Rules.

set-off objection (for the defendant).[89] The amount of the proportionate fee due is calculated by the Secretariat in compliance with the rules of the KRIB Arbitration Fees Tariff. Paying half of the determined proportionate fee is a condition for the case file being transferred to the arbitration tribunal. The other half should be paid after the case report has been drafted.[90]

The costs for proceedings under the KRIB Arbitration Rules include, *inter alia*, costs for delivering written notifications, collecting evidence, questioning witnesses, costs for experts. The costs of the proceedings are paid in advance and no action is taken prior to the making of an advance payment sufficient to cover the costs for its execution. The distribution of the burden of the costs for the proceedings between the parties is determined by the arbitration tribunal, and prior to its constitution – by the Secretariat.

The arbitration fees under the GBICC Arbitration Rules include a fixed registration fee and a proportionate fee. The claimant pays a fixed registration fee of EUR 500 when submitting the statement of claim. Such a registration fee is not payable by the defendant in case of a counterclaim or a set-off objection. The proportionate fees payable by the parties are determined on the basis of the value of the claim (for the claimant) or the counterclaim/ set-off objection (for the defendant). The amount the proportionate fee due is paid in the advance. In case of factual or legal complexity of the dispute the arbitral tribunal is entitled to increase the amount of the proportionate fee with up to 50 %.

The KRIB Arbitration Fees Tariff introduces a 2% discount on the proportionate fees in the event that the party has agreed to receive written notifications by electronic means and has indicated an e-mail address for this purpose.

The BCCI Arbitration Rules and the GBICC Arbitration Rules do not expressly provide the consequences for a claimant failing to pay an advance on cost. However, it is established practice that if the claimant fails to pay the initial advance on cost, the Chairperson of the Arbitration Court will not proceed with the service of the statement of claim to the respondent. If a party fails to pay an advance on cost for the collection of evidence, the arbitration tribunal has discretion to refuse collection of that evidence.[91] The KRIB Arbitration Rules,

[89] *See* Article 42 (7) from the KRIB Arbitration Rules.
[90] *See* Article 42 (8) and (9) from the KRIB Arbitration Rules.
[91] *See* Article 47 (3) from the BCCI Arbitration Rules.

however, explicitly provide that failure of the party to pay the requested advance costs results in the case file not being transferred to the arbitration tribunal (in case the first part of the proportionate fee is not paid), termination of the proceedings (when the second part of the proportionate fee is not paid) or in non-performance of the requested procedural action (when the costs for the proceedings are not paid).

Both the BCCI and the KRIB Arbitration Rules provide that if a sole arbitrator adjudicates the case, the arbitration fee is decreased by 50%.

In addition, if the arbitral proceedings are prematurely terminated depending on the stage of the procedure, 75% or 50% of the arbitration fees as the case may be shall be reimbursed to the claimant.

In the absence of an agreement by the parties, the arbitration tribunal shall order the losing party to pay the cost for arbitration.[92] The amount of the cost includes the arbitration cost and the legal cost of the prevailing party.

The arbitration tribunal shall make special provisions regarding the allocation of costs in its final award.

b) Legal costs

The arbitration institutions do not collect value added tax as part of the advance on cost. Providing a private dispute resolution service for the parties qualifies the arbitrators as persons exercising independent business activity. As such, arbitrators are subject to registration with the competent tax authority for the purpose of VAT taxation.

There are no binding tariffs which determine legal fees for representation in arbitration proceedings. Regulation № 1 in effect as of 9 July 2004 issued by the Supreme Bar Council (hereinafter referred to as "Supreme Bar Council's Regulation") fixes the minimum tariff amount to be charged. As per this regulation, fees are calculated based on the amount in dispute. However, it is the usual practice for attorneys to agree on higher amounts. Fee arrangements between lawyers and their clients, such as an hourly rate for legal work or flat fees, are becoming common practice. Under Bulgarian Law, contingency and success fees are not prohibited save in the case of legal representation in criminal cases.

[92] *See* Paragraph 8(1) from the BCCI Tariff and Article 43 (2) from the KRIB Arbitration Rules.

The prevailing party may make a claim to the tribunal that it be paid costs for legal representation and assistance if such costs were proved during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable. In defining what legal cost may be reasonable the tribunal shall take into account the amount in dispute, the complexity of the subject-matter, the time spent, and any other relevant circumstances of the case. Provided that the tribunal finds that the amount of the legal cost is not reasonable, it may award a less amount but the minimum, which is subject to recovery, is the minimum as per the Supreme Bar Council's Regulation.

If the successful party fails to prove the legal costs incurred in the proceedings and provided that the successful party claims reimbursement of legal cost, the tribunal shall determine this cost at the minimum as set out in the Supreme Bar Council's Regulation.

G. Arbitration Award

1. Types of awards

a) Partial awards

With the exception of the BCCI, GBICC and KRIB Arbitration Rules there are no other legal entities that examine partial arbitration award issues. In analogy with the interim awards, the Arbitration Court with the BCCI, GBICC and KRIB may pass a partial award if the circumstances on the dispute demand such award.

Furthermore, the LICA provides a special provision regarding additional arbitration awards. An additional award may be passed on the claims that have not been considered by the arbitration tribunal. Such additional award may be requested by one of the parties that shall notify the opponent party for its claim within 30 days after receiving the award. The arbitration court should render an additional award within a 60-day period if the claim is well-grounded.

b) Final awards

The arbitration dispute shall be terminated by the final arbitration award pursuant to the provisions of the LICA. Where the arbitrators are more than one, the final award shall be rendered by a majority unless the parties have agreed otherwise. The final award shall become effective by its delivery to one of the parties and shall become

obligatory to both parties. The Rules strictly follow the compulsory regulations of the law that the arbitral award should be final and put an end to the dispute.

c) Interim awards

Neither the LICA, nor the BIA, BCCI, GBICC and KRIB Arbitration Rules set forth any explicit provisions regarding the interim type of award. The BCCI Arbitration Rules provides that a preliminary award may be rendered in case the circumstances on the arbitration dispute demand so.

It is to be noted that to the best of our knowledge the courts of arbitration with BCCI and BIA, which are the leading arbitration institutions in the Republic of Bulgaria, do not have a large practice on setting such preliminary awards.

d) Consent awards

Pursuant to the LICA and the BCCI, BIA, GBICC and KRIB Arbitration Rules, the dispute shall be dismissed if the parties reach an agreement. Furthermore, the parties may request the arbitration court to incorporate such agreement in an arbitration award under agreed conditions. The award on agreed terms shall have the same force as the award on the merits of the dispute. It is to be noted that the grounds for an award on agreed terms do not have to be specified in the award.

e) Default awards

The issues regarding the default award, where the arbitration tribunal may continue with the arbitration proceedings and pass an award in the absence of the party that fails to appear in person or to be represented at the arbitration hearings, are not covered by Bulgarian legislation. Nor is this procedure recognized by the BCCI and BIA. Furthermore, the BCCI Arbitration Rules stipulate that each party may require the case to be heard in its absence. The KRIB Arbitration Rules provide that a hearing could be held even in the absence of a party which has been duly notified about it.

2. Form requirements

a) Essential content

According to the LICA, the award shall be made in writing. The Rules provide for the mandatory content of the award: the name and seat of the arbitration court; date and place of the award; arbitrators' names; identification of the parties and the other participants in the case; subject and summary of the circumstances of the dispute; the rulings, including the obligations imposed upon the respective parties, (*i.e.* payment of the costs); reasons behind the rulings; and arbitrators' signatures.

The BCCI Arbitration Rules additionally specify that in case the arbitrators are not listed by the BCCI, the chairman of the arbitration court shall appoint a three-member committee, which shall verify whether the award complies with the requirements of the LICA and the BCCI Arbitration Rules in terms of form and minimum content of the award. The committee shall decide in writing thereon within 3 days as of the award's submission with the court. The arbitrators shall comply with the recommendations of the committee within 3 days as of their submission.

The KRIB Arbitration Rules (Art. 38) and the GBICC Arbitration Rules (Art. 35(12) provide for a regime of scrutiny of each arbitral award before it is issued which is a relatively new concept for Bulgarian arbitration institutions. Pursuant to the KRIB Arbitration Rules the arbitration tribunal is required to submit the draft arbitral award to the Secretariat of the KRIB Arbitration Court. The draft award is then scrutinized by a committee of the Arbitrational Panel of the KRIB Arbitration Court. Under the GBICC Arbitration Rules each arbitral award should be examined by a committee of three arbitrators appointed by the Arbitration Presidium and chosen from the GBICC's list of arbitrators. If the committee finds that the arbitral award breaches certain mandatory rules of the LICA or the GBICC Arbitration Rules, the arbitral tribunal is obliged to remedy the breach in a week's term.

b) Reasons

According to the LICA and Rules, the award shall state the reasons upon which it is based, except where the parties have provided otherwise or where the award is based on a settlement on agreed terms. The need for a reasoned award is a guarantee that the award

will be recognised and enforced in national courts since the absence of grounds might be deemed contrary to the public policy of the country in which enforcement is sought.[93]

c) Time limits for making award

According to the LICA and Rules, the award shall indicate the place and date it was made. Indicating the date is significant because there are fixed time limits for requesting an amendment, correction and interpretation of the award running as of the date of the award's making.

d) Notification to parties and registration

According to the LICA, once the award is signed by the arbitrators, it shall be delivered to the parties. The award is considered announced and entered into effect with its delivery to one of the parties. The effective award becomes enforceable and binding on the parties.

According to the Rules, once signed the award shall be registered in the awards' book, whereas a copy of the award shall be delivered to the parties only after the costs associated with the arbitration case have been fully paid by the parties. The parties and their representatives shall have access to the awards' book.

In case the parties have not agreed on the language of the award and one of the parties has its seat abroad, the award may be translated and sent to such party at its cost if requested thereby. The copies and translations of the award shall be certified by the secretary of the arbitration court with his signature and the stamp of the court. In case of delay of the translation, the secretary of the court shall communicate to the foreign party the award's content.

The LICA requires that the secretary of the court shall keep files on cases for 10 years as of the date on which the awards and rulings were announced. After this term the files shall be destroyed, except for the awards and settlement agreements, which shall be kept in perpetuity.

[93] Lawrence W. Newman, Richard D. Hill, Leading Arbitrators' Guide to International Arbitration (2nd Edition, Juris Publishing, 2008), p.402.

3. Decision making

a) Deliberations

Generally, the award shall be made once the tribunal decides that the case is fully submitted.

The LICA does not provide time limits for the arbitral tribunal to make an arbitral award. However, the parties may determine such time limits in the respective agreement. In the latter case, the arbitral tribunal shall comply with such time limits. According to the BCCI Arbitration Rules the award shall be registered with the secretariat within one month as of the day on which the tribunal closed the proceedings. The KRIB Arbitration Rules have similar rule but also provides that in complicated cases the time for deliberation of the award is two months. As a matter of practice, it is widely accepted that the term for issuance of the award commences on the day the parties submitted their final written pleadings. The term provided for in the BCCI Arbitration Rules is not mandatory and delivery of the award after expiration of this term is not a ground for challenge of the award.

According to the BCCI Arbitration Rules, the arbitration tribunal may decide to reopen the case when:

(i) the right of any parties to be heard was violated,

(ii) a party was not able to attend the hearings for reasons beyond its control, as well as was not able to notify the arbitral tribunal therefore,

(iii) it determines that additional evidence shall be gathered on the case, or that,

(iv) additional circumstances should be established with a view of fair dispute resolution.

The KRIB Arbitration Rules also provides that the arbitration tribunal may decide to reopen the case before the award is rendered when it is established that the right of defense of either party has been violated or that the case requires additional clarification with regard to the circumstances surrounding it. According to the GBICC Arbitration Rules the case may be reopen if the tribunal considers that additional clarification of relevant circumstances is needed or further evidence should be collected.

b) Majority or Consensus?

When the case is being adjudicated by a sole arbitrator, the award shall be made and signed by this arbitrator.

According to the LICA, in case there is an arbitral tribunal, the award shall be made by the majority of the arbitrators unless the parties have agreed otherwise. If a majority cannot be reached, the award shall be made by the chairman of the panel.

According to the Rules, the award shall be made in camera by the majority of the arbitrators, and the chairman of the panel shall vote last.

c) Dissenting and concurring opinions

The LICA expressly acknowledges the arbitrators' right to attach dissenting opinions in writing.

The Rules further specify that an arbitrator having a dissenting opinion shall sign the award simultaneously with the majority, indicating his position with the abbreviation "о.м." Within seven days as of signing the award, the arbitrator shall attach to the award the dissenting opinion. The BCII and BIA Arbitration Rules additionally state that in case the 7-day period has lapsed and the dissenting opinion has not been submitted, the chairman certifies the lapse of the term and there is a presumption that the arbitrator has waived the dissenting opinion.

d) Signature

According to the LICA, the award shall be signed by the arbitrators. In case of a panel, the majority of the arbitrators shall sign the award; however, the reasons for missing signatures, if any, shall be stated by the signatories.

According to the BCCI Arbitration Rules the award shall be drafted by the arbitrator, reporting the case, and signed by the chairman and all members of the panel. In case an arbitrator cannot or refuses to sign the award, the chairman certifies the respective circumstance with his signature on the award specifying the reasons thereby.

4. Settlement

a) Settlement recorded in an award

After reaching a settlement the parties may request the tribunal to reproduce their arrangements in an arbitration award (award on agreed terms) which will have the full effect of an award on the essence of the case. The award on agreed terms shall not be questioned. It is sufficient that the parties have reached a settlement and requested the tribunal to resolve on the case in this way. Special requirements for the form of the settlement are not envisaged in the law. It could be signed in simple written form or even reflected in the protocol of oral hearings.

b) Settlement without an award

At any stage of the arbitral procedure the parties may decide to arrange their relations by conclusion of a settlement agreement with or without the support of the arbitral tribunal. As a general rule settlement should be encouraged by the tribunal. Under Bulgarian law[94] the settlement agreement represents a stipulation for avoidance or termination of a potential or pending dispute by mutual concessions.

The parties may reach a settlement agreement outside the arbitration procedure. In such a case the arbitration should be terminated by a resolution of the tribunal without consideration of the dispute on its merits.

5. Correction, supplementation, and amendment

a) Correcting the award

Correction of the award is admissible in case of a factual inaccuracy, which refers to wrong calculation, writing or other evident incorrectness.[95] Correction may be initiated by a party or by the tribunal *ex officio* within a definite term. In this regard the LICA fixes a deadline of 60 days[96] as of, respectively, receipt of the award by the party or issuance of the award but the parties may agree or the Rules may provide for a shorter term.[97] The tribunal resolves on the

[94] Art. 365 of the Law on the Obligations and Contracts.
[95] Art. 43 (1) of the LICA.
[96] Art. 43 (3) of the LICA.
[97] Pursuant to the BIA Arbitration Rules the deadline for initiation of correction or interpretation procedure is 1 month. Pursuant to the KRIB

correction request following a special hearing or exchange of written opinion between the parties, as the tribunal may decide how to proceed. The resolution on the correction shall be adopted under the same rules as the adoption of the award and is considered integral part of the award. Therefore the resolution for correction has retroactive effect.

b) Additional award

In case the tribunal has omitted to resolve on certain claim each party is entitled to request issuance of an additional award on the claim omitted. The request may be initiated within 30 days as of receiving the awards and the requesting party must notify the other party within the same term.[98] This request should also be considered under the rules for adoption of the award. In fact, the procedure on issuance of additional award represents a renewal of the arbitration process regarding the non-considered claim. If the request is grounded, the tribunal should issue the additional award within 60 days as of being approached. Unlike the resolutions on correction and interpretation of the award the additional award takes effect *ex nunc* and binds the parties as if it was duly served to them.

c) Interpretation of award

Each of the parties may ask the tribunal to interpret the award. The interpretation aims at clarifying the unclear points of the award and shall be conducted under the same procedure as the correction discussed herein above. The only difference is that the tribunal may not initiate an interpretation procedure *ex officio.* The tribunal's resolution on the interpretation also represents an integral part of the award and, thus, has a retroactive effect.

Arbitration Rules the deadline is 30 days if initiated by the parties or 45 days if initiated by the tribunal.

[98] Art. 44 of the LICA.

H. Challenge and Other Actions against the Award

1. Setting aside

a) Grounds

The arbitral award[99] can be challenged before the Supreme Court of Cassation on the following grounds:

a. if the claimant proves incapability upon execution of the arbitration agreement;

b. the arbitration agreement has not been executed or is invalid under the law to which the parties have subjected it or, failing any indication thereon, under LICA;

c. if the claimant was not given a proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise, owing to circumstances beyond his control, unable to present his case;

d. the arbitration award stipulates on a dispute not subjected in the arbitration agreement or rules on matters beyond the dispute;

e. either the arbitration tribunal's composition or the arbitration procedure exceeds parties' agreement except when the latter is in breach of mandatory provisions of LICA or on failure for identification thereon, where the provisions of LICA have not been applied.

Amendments in the Civil Procedure Code and the LICA which entered into force on 27 January 2017 replaced the non-arbitrability of the dispute and incompliance with public policy of the Republic of Bulgaria as grounds for setting aside an arbitral award. Following such amendments all arbitral awards rendered on non-arbitrable disputes shall be considered null and void. This means that the

[99] It should be noted that only the final arbitral award may be challenged before he Supreme Court of Cassation. Interim procedural ruling (*e.g*. ruling of the arbitration tribunal assuming competence to resolve on the dispute based on a valid arbitration clause) may not be separately challenged. This was confirmed by the Supreme Court of Cassation in its Ruling No. 118 of 2 March 2017, commercial case No. 167/2017.

interested party may rely directly on the nullity of the arbitral award without undergoing the process of challenging the award.

According to the Transitional Provisions of the law introducing said amendment to the Civil Procedure Code all arbitration proceedings with respect to non-arbitrable disputes pending at the time the discussed amendment entered into force shall be terminated. However, since the law did not provide for a retroactive effect of the amendments broadening the scope of the non-arbitrable disputes, in principle the arbitral awards already rendered with respect to disputes which pursuant to the 2017 amendment became non-arbitrable, cannot be challenged as null and void based on the new rules. Nevertheless, subsequent case law of the Supreme Court of Cassation[100] established an exception to this rule. The court's position is that if a party has filed a claim for setting aside an arbitration award within the time limits provided in the LICA, this arbitration award may be (based on the 2017 amendment) declared null and void by the Supreme Court of Cassation even though it was delivered prior to the adoption of the 2017 amendment. This is allowed since the procedure for challenging of the arbitral award is seen by the Supreme Court of Cassation as a second phase of the arbitration procedure. Thus, as long as the arbitration process is not completely finished, the Supreme Court of Cassation may take into account the new legislation and apply it towards the arbitration awards in the 'second' challenge phase of the procedure.

The above amendments to the Civil Procedure Code and the LICA further excluded disputes involving consumers from the arbitrable disputes, introduced administrative sanctions for arbitrators in certain cases and implemented the requirement of active participation of the defendant in the arbitration proceedings to confer jurisdiction to the arbitration tribunal where no previous AA existed. They were introduced to combat existing malpractices in arbitrations against consumers. There was a growing number of arbitral awards rendered by a number of arbitration institutions against consumers based on AA contained in general terms where frequently the consumer was

[100] This position was supported in a number of decisions of the Supreme Court of Cassation, including Decision No. 374 of 9 January 2019, commercial case No. 2076/2018, Decision No. 214 of 30 January 2018, commercial case No. 1056/2017, Decision No. 18 of 26 February 2018, commercial case No. 753/2017, Decision No. 250 of 25 January 2018, commercial case No. 1404/2017.

not effectively informed about the initiation of the arbitration proceedings which prevented him/her to participate.

However, the motives behind the replacement of "incompliance with public policy" as grounds for setting aside an arbitral award are unclear. Breaches of due process, for example, were most common grounds for challenging arbitral awards under the qualification of "incompliance with public policy".

Following the repeal of the provision which allowed arbitral awards to be challenged due to incompliance with public policy, the Supreme Court of Cassation produced inconsistent case law as to the application of the new rules in pending procedures for challenge of arbitral awards. Part of the decisions[101] adopt the view that since the provisions outlining the grounds for setting aside an arbitral award are of procedural nature and under Bulgarian law newly adopted procedural rules should be applied in pending disputes unless the amendment law provides otherwise, the "incompliance with public policy" may no longer be relied on as grounds for challenging an arbitral award even with respect to awards rendered prior to the 2017 amendment. Other panels[102] adopted the view that since the Transitional Provisions of the law introducing the discussed amendment to the Civil Procedure Code provide that arbitration procedures initiated prior to the entry into force of the amended law should be completed in accordance with the procedure applicable prior to the amendment, the "incompliance with the public policy" may be used as ground for challenging arbitral awards which were rendered prior to the day the 2017 amendments entered into force.

In the view of the writer the replacement of "incompliance with public policy" as grounds for setting aside an arbitral award creates dualistic treatment of domestic and international arbitral awards which runs counter to the public law obligation of Bulgaria undertaken by virtue of Article III of the New York Convention. According with the said provision there shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which New York Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards. This is because public policy remains, by virtue of the provisions of the

[101] Decision No. 70 of 22 June 2018, commercial case No. 587/2017, Decision No. 94 of 28 July 2017, commercial case No. 1394/2016.

[102] Decision No. 125 of 28 July 2017, commercial case No. 351/2017, Decision No. 171 of 22 January 2018, commercial case No. 1791/2016.

New York Convention, grounds for refusing recognition of international arbitral awards.

b) Time limits

Pursuant to Art. 48 (1) of LICA the setting aside request can be made within three months from the date of the receipt of the award by the appellant. However, in its settled case law the Supreme Court of Cassation has adopted the position that the deadline for submitting the challenge request should be calculated as from the day the claimant has gained knowledge about the rendered arbitral award and not from the actual receipt of the award.[103]

c) Procedure

The appeal is submitted with the Supreme Court of Cassation. The Supreme Court of Cassation is not allowed to examine the merits of the case.

d) Limiting judicial review of awards by contract

The grounds for challenge are introduced in imperative manner. The parties are not free to either contract out of the envisaged grounds for challenge or to expand the scope of appeal of an arbitral tribunal beyond the grounds available in the LICA.

e) Effects of successful challenge

Should the Supreme Court of Cassation set aside the award and provided that the grounds of "a," or "b" listed in H.1.a. *above* are present, the party is entitled to file a claim with a competent state court. On the other hand, when the grounds of "c," or "d," or "e" are present the Supreme Court of Cassation shall remit the case back to

[103] *See* for instance the following cases in which the Supreme Court of Cassation found that if the claimant was served by a bailiff with a notice for commencement of enforcement proceedings which contains a reference to a specified arbitral award, this is sufficient evidence for the date when the claimant gained knowledge about the rendered award and the three-month period for filing a challenge request should be calculated as from that date – Decision No. 244 of 24 July 2018, commercial case 2885/2017, Ruling No. 257 of 26 July 2018, commercial case 1307/2017.

the arbitral tribunal for rehearing. In this case the parties are allowed to require new arbitration tribunal to hear the case.

The judgment of the Supreme Court of Cassation is final and binding and is not subject to further judicial review. In recent resolution it has been held that the judgment of the Supreme Court of Cassation is not subject to reversal procedure which is seen as extraordinary means for challenging of binding court decision.[104]

2. Appeal on the merits

a) Is it allowed?

LICA does not provide a procedure for appeal of the award on the merits.

b) Grounds

The award is subject to setting aside on very limited grounds set out in the LICA mirroring the grounds for refusing recognition as per the Article V of the New York Convention with the exception of the non-arbitrability of the dispute and incompliance with public policy which may not serve as grounds for setting aside of an arbitral award. An arbitral award on non-arbitrable dispute is null and void.

III. RECOGNITION AND ENFORCEMENT OF AWARDS

A. Domestic Awards

1. Statutory or other regime

a) Formal requirement for enforcement of awards

In contrast to the UNCITRAL Model Law, the LICA no longer provides for a specific procedure for recognition and enforcement of a domestic arbitral award in order to render it enforceable.[105] This is considered a remarkable diversion of the LICA. The arbitral award shall be recognized as final, binding upon the parties thereto, and

[104] Resolution № 23/24.02.2009, commercial case 44/2009 Supreme Court of Cassation, Commercial Division, Ciela.

[105] The procedure for recognition and enforcement of a domestic arbitral award was abolished with an amendment of LICA, promulgated in State Gazette Issue 93 as of 2 November 1993.

enforceable with the sole fact of serving it to one of the parties to the dispute. Thereafter, the award is subject to foreclosure and may be challenged only through the setting aside procedure.

b) Enforcement procedure

Pursuant to the LICA, the enforcement procedure shall be initiated by the party seeking to enforce the arbitral award. The party shall file an application with the district court where the seat and registered address of the debtor is located to obtain a writ of execution. The application shall be accompanied by the original or certified copy of the arbitral award and evidence that it has been served to the party against which the enforcement is sought. At this stage of proceedings debtor shall not be served notice for the application.

Pursuant to the Civil Procedure Code, the district court shall adjudicate on the application in *ex parte* proceedings within a period of seven days as of submission of the application. It is noteworthy that the scope of court's examination is limited to formal check of whether (i) the award is valid on the face of it and (ii) it certifies receivables subject to foreclosure against a debtor. However, the amendment of the Civil Procedure Code and the LICA which entered into force on 27 January 2017 which provided that an arbitral award rendered on non-arbitrable dispute is null and void, also introduced a general prohibition to district courts to issue writ of execution based on such arbitral awards. This prohibition will require district courts to go beyond the formal check in the *ex parte* proceedings on the issuance of writ of execution.

The writ of execution shall be issued in one original document and a note thereof shall be made on the award.

The writ of execution is not subject to appeal. Nevertheless, the interested party is entitled to appeal the court order whereby the issuance of the writ of execution was allowed. The court order shall be appealed before the Sofia Appeal Court within a 2-week period as of the date on which the order was served to the applicant. The period for challenging the order runs for the debtor as of the date on which the latter is served with an invitation for voluntary performance by the enforcement agent. The appeal shall not suspend the enforcement procedure. The resolution of the Sofia Court of Appeals is final and not subject to further review.

Once the party seeking to enforce the award has obtained the writ of execution it may, at its sole discretion, initiate execution proceedings

with the competent enforcement agent.[106] The application shall be accompanied by the writ of execution and shall specify the foreclosure method(s), *e.g*. foreclosure over tangibles or real estates, receivables or shares. The following enforcement measures may be requested so as to prevent debtor from disposal with his assets: freezing of bank accounts, detrain on shares and company participations, attachment of real estates of debtor, etc. The consequence of the attachment is that the debtor shall not be entitled to dispose of the attached property/ receivables. Any disposal to that effect following the attachment shall not be enforceable vis-à-vis the applicant. At this stage of the execution proceedings, the enforcement agent shall serve the debtor an invitation for voluntary performance wherein the attachments imposed, or the date on which they shall be imposed, shall be specified. The term for voluntary performance is 2-weeks as of receipt of the invitation.

Debtor's failure to perform within the period for voluntary performance entitles the enforcement agent to commence compulsory foreclosure over the debtor's assets without necessity to grant another notice for voluntary performance, and/or without the possibility to extend such period.

B. Foreign Awards

1. Various regulatory regimes

a) Domestic rules

The LICA provides that the enforcement of the foreign arbitration awards shall take place in accordance with the International Treaties to which Bulgaria is a party.[107] As a Contracting State, Bulgaria is

[106] The application for initiation of execution proceedings shall be filed with the enforcement bailiff in whose region (i) the tangible or intangible assets of debtor are located; (ii) the seat or the permanent address of the third party is, when the foreclosure is over receivables of debtor towards such third party; (iii) the place of performance of certain actions or inactions of debtor; or (iv) the permanent or the temporary address of the applicant or debtor, at the discretion of the applicant, if debtor owes alimony. If the applicant has filed the application with the enforcement bailiff in whose region applicant's permanent address is, then the bailiff shall send the file with the competent bailiff as per the rules above, except when the foreclosure is over receivables of debtor towards a third party.

[107] Article 51(2) LICA: "For the recognition and enforcement of foreign awards the international treaties concluded by the Republic of Bulgaria shall apply."

bound by the provisions of the New York Convention. The New York Convention has left it to the domestic legislation to provide procedural rules for recognition and enforcement of the Foreign Arbitral Award (FAA). Bulgarian judicial practice has accepted that FAA shall be recognized and enforced by way of the special procedure, which is in place for the recognition and enforcement of foreign judgments. However, unlike the case of a domestic arbitral award, the cancellation or proclamation of invalidity of a foreign arbitral award may not be pursued before a Bulgarian court.

The judgment of the Sofia City Court is subject to appeal before the Sofia Court of Appeals by the aggrieved party. The decision of the Appeals Court is subject to appeal before the Supreme Court of Cassation. Pursuant to Civil Procedure Code the cassation procedure will be facultative and the party wishing to challenge the appellate decision should provide evidence for the presence of the grounds for admission of the cassation appeal. If the Supreme Court of Cassation is satisfied that the cassation appeal is admissible then it shall consider the merits of the appeal.

b) New York Convention

Bulgaria is a signatory to the United Nation Convention on Recognition and Enforcement of Foreign Arbitral Awards[108] ("New York Convention"), subject to the reservation that it applies only to awards made in the territory of another contracting party. In case the arbitration award is not rendered on the territory of a signatory to the New York Convention, Bulgaria reserves the right to apply the New York Convention rules subject to strict reciprocity. The New York Convention was ratified 1961 and promulgated on 8 January 1965.

2. Application of New York Convention by local courts

a) Grounds for refusing recognition and enforcement

The Sofia City Court shall not review the merits of the dispute and shall recognize the FAA provided that the recognition requirements set out in Article IV, paragraph 1 of the of the New York Convention are met and none of the obstacles referred to in Article V of the New York Convention has been proven (in case of Article V, paragraph 1) by the party which attempt to resist recognition or exist (in case of

[108] Promulgated in State Gazette Issue No.2/8 January 1965.

Article V, paragraph 2). The party against whom recognition is sought may not resist it by proving that the debt has been paid. If the declaration of enforceability is to be refused the Sofia City Court will rule that the FAA is not recognized in Bulgaria.

b) Enforcement procedure

According to Article 118 of the Code on Private International Law, foreign judgments (and foreign arbitral awards) shall be recognized – without more – by the body to which the judgment (foreign arbitral award) is submitted. There is, therefore, no special procedure for or requirement of recognition of a FFA in Bulgaria. Such recognition is presumed and need not be separately proclaimed.

A party seeking enforcement of a FAA is required to pursue a claim before the Sofia City Court. The claim shall be accompanied with the following documents: duly authenticated original award or a duly certified copy thereof certified by the Bulgarian Ministry of Foreign Affairs; certificate that the award is final and binding certified by the Bulgarian Ministry of Foreign Affairs; and an original arbitration agreement or a duly certified copy thereof. There is no time limit for filing such claim.

IV. APPENDICES AND RELEVANT INSTRUMENTS

A. National legislation (See the Appendices at www.arbitrationlaw.com/books/world-arbitration-reporter-war-second-edition)

B. Major Arbitration Institutions

Names	Addresses	Websites
Arbitration Court on Commercial Disputes	Bourgas, 2Б Serdika Str., fl. 3, office 6	www.arbitar.eu
Arbitration Court at Bulgarian Stock Exchange	Sofia 1000, 6 Tri Ushi Str.	www.bse-sofia.bg

Names	Addresses	Websites
Arbitration court at Bulgarian Industrial Association	Sofia 1000, 16-20 Alabin Str.	www.bia-bg.com/ arbitration/default.htm
Arbitration court at Bulgarian Chamber of Commerce and Industry	Sofia 1058, 9 Iskar Str., floor 2	https://www.bcci.bg/bcci-arbitration-court.html
Arbitration Court at Industrial Association - Plovdiv	Plovdiv 4003, 37 Tsar Boris III Obedinitel, Palate 27	www.arbitraj.biapl.org
Sofia Arbitration Court at Association for Domestic and International Arbitrage	Sofia 1271, Ilienci, 13 Grozden Str.	Not available
Commercial Arbitration Court at National Juridical Foundation	Sofia 1309, 97-99 Pernik Str., apt. 2	www.tasnuf.org
Centre for Alternative Dispute Resolution at the Union of Bulgarian Jurists	Sofia 1301, 7 Pirotska Str., floor 3	www.sub.bg/center_sporprav.htm

Names	Addresses	Websites
Arbitration Court at Public Procurement Agency	Sofia 1000, 4 Lege Str., ,	www.aop.bg
KRIB (Confederation of Employers and Industrialists in Bulgaria) Court of Arbitration	Sofia 1463, 8 Khan Asparouh Str.	http://arbitration.bg
Permanent Arbitration Court with the German-Bulgarian Industrial Commercial Chamber	Sofia, 25A Frederik Julio-Kuri Str.	https://bulgarien.ahk.de/bg/dienstleistungen/schiedsgericht/

C. Cases

Supreme Court of Cassation Ruling No. 105 of 11 February 2013 in commercial case No. 975/2012, published in Apis (software products, containing, among other data, Bulgarian law, regulations and court precedents);

Supreme Court of Cassation Decision No. 63 of 25 May 2015 in commercial case No. 3740/2014, published in Apis;

Supreme Court of Cassation Ruling No. 391 of 22 May 2012 in private commercial case No. 235/2012, published in Apis;

Supreme Court of Cassation Decision No. 59 of 6 October 2015 in commercial case No. 2/2015, published in Apis;

Supreme Court of Cassation Decision No. 145 of 22 August 2016 in commercial case No. 871/2016, published in Apis;

Supreme Court of Cassation Decision No. 71 of 9 July 2015 in commercial case No. 3506/2014, published in Apis;

Supreme Court of Cassation Decision No. 46 of 21 July 2015 in commercial case No. 3556/2014, published in Apis;

Supreme Court of Cassation Decision No. 203 of 20 January 2015 in commercial case No. 1300/2014, published in Apis;

Supreme Court of Cassation Decision No. 66 of 7 July 2014 in commercial case No. 4036/2013, published in Apis;

Supreme Court of Cassation Decision No. 7 of 29 January 2015 in commercial case No. 2540/2014, published in Apis;

Supreme Court of Cassation Decision No. 20 of 11 September 2015 in commercial case No. 2652/2014, published in Apis;

Supreme Court of Cassation Decision No. 717 of 27 June 2005 in commercial case No. 18/2004, published in the Supreme Court of Cassation Bulletin No. 6/2005;

Sofia District Court Decision No. 53 of 7 November 2008 in civil case No. 593/2008, published in Apis;

Supreme Court of Cassation Ruling No. 218 of 25 May 2016 in private commercial case No. 714/2016, published in Apis;

Supreme Court of Cassation Ruling No. 6 of 1 February 2017 in commercial case No. 1040/2016, published in Apis;

Supreme Court of Cassation Ruling No. 450 of 20 December 2013 in private civil case No. 7663/2013, published in Apis;

Supreme Court of Cassation Decision No. 560 of 18 November 2008 in civil case No. 437/2007, published in Apis;

Decision of 26 February 2001 in domestic arbitration case No. 54/2002, published in Apis;

Supreme Court of Cassation Decision No. 158 of 28 December 2012 in commercial case No. 709/2012, published in Apis;

Sofia Appellate Court Ruling No. 1147 of 23 June 2011 in civil case No. 2039/2011, published in Apis;

Supreme Court of Cassation Decision No. 190 of 5 January 2016 in commercial case No. 3126/2014, published in Apis;

Supreme Court of Cassation Decision No. 199 of 28 November 2016 in commercial case No. 794/2016, published in Apis;

Sofia Appellate Court Ruling No. 883 of 18 April 2013 in civil case No. 2032/2012, published in Apis;

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Supreme Court of Cassation Ruling No. 604 of 21 November 2016 in commercial case No. 1992/2016, published in Apis;

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Supreme Court of Cassation Decision No. 30 of 1 August 2018, commercial case No. 636/2017, published in Ciela;

Supreme Court of Cassation Decision No. 45 of 28 June 2018, commercial case 128/2018, published in Ciela;

Supreme Court of Cassation Decision No. 171 of 22 January 2018, commercial case No. 1791/2016, published in Ciela;

Supreme Court of Cassation Decision No. 117 of 31 May 2018, commercial case No. 2592/2017, published in Ciela;

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Supreme Court of Cassation Decision No. 12 of 2 April 2018, commercial case No. 1553/2017, published in Ciela;

Supreme Court of Cassation Ruling No. 118 of 2 March 2017, commercial case No. 167/2017, published in Ciela;

Supreme Court of Cassation Decision No. 374 of 9 January 2019, commercial case No. 2076/2018, published in Ciela;

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Supreme Court of Cassation Decision No. 171 of 22 January 2018, commercial case No. 1791/2016, published in Ciela;

Supreme Court of Cassation Decision No. 244 of 24 July 2018, commercial case 2885/2017, published in Ciela;

Ruling No. 150 of 7 March 2018, commercial case No. 1798/2018, published in Ciela;

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