

## CZECH REPUBLIC

### DELOS GUIDE TO ARBITRATION PLACES (GAP)

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

In the Czech Republic, arbitration is considered and widely used as a speedy and cost-effective alternative to judicial dispute resolution of B2B disputes in court proceedings. The Czech state courts have been mostly supportive of the process of integrating arbitration in the the Czech legal system. The rise in the use of arbitration in the Czech Republic in recent years is mostly due to the importance of Czech businesses in the global economy. As a result, there has been a steady increase in the number of institutional arbitrations under various rules. In contrast, the caseload of the Czech arbitral institutions<sup>1</sup> is on the decline.<sup>2</sup>

Key places of arbitration in the jurisdiction	Prague is considered to be the key place of arbitration in the Czech Republic. Other cities in the Czech Republic are seldom used.
Civil law / Common law environment?	The Czech Republic is a Civil law country, where most of the rules are codified in statutes and regulations, among which the Czech Civil Code plays a major role.
Confidentiality of arbitrations?	Parties to a dispute are not obligated by law to keep the proceedings confidential but it is prevailing good practice to do so. Pursuant to the Arbitration Act, arbitrators are bound by a duty of confidentiality. <sup>3</sup> Arbitrators are subject to a duty of confidentiality for all information in connection with the case acquired during the term of their office, which can only be lifted upon the agreement of the parties to the dispute or by an order of the state court. Releasing an arbitrator from confidentiality is decided on a case-by-case basis. Nevertheless, if not released, the obligation to keep confidential any facts and issues that come to the arbitrator's attention during the term of his/her office <sup>4</sup> lasts without time limitations. However, an arbitrator is

<sup>1</sup> Most commercial disputes in the Czech Republic are referred to the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic. The Arbitration Court has gained international recognition mainly for arbitration of domain-name disputes (it is the only institution in the world to be authorized to arbitrate EU domain disputes). Other arbitration courts established by law are the Exchange Court of Arbitration at the Prague Stock Exchange or Arbitration Court attached to the Czech-Moravian Commodity Exchange Kladno.

<sup>2</sup> There may be various reasons for this decline including the lesser flexibility of the arbitration rules attached to the Czech institutions (e.g., as regards the selection of arbitrators not registered in the list of arbitrators maintained by the institution), less concerns for the costs of such arbitration (the lesser costs involved in a dispute administered by Czech arbitral institution arguably may have been the main driving force for choosing the Czech institution) or overall reputation.

<sup>3</sup> Section 6 of Act No. 216/1994 Coll., on arbitral proceeding and on enforcement of arbitral awards ("Arbitration Act") reads as follows: "(1) The arbitrators shall be bound to maintain confidentiality of any circumstances they have learnt of in connection with their office of arbitrator unless they are released of their duty. (2) Arbitrators may be released from confidentiality by the parties. If the parties do not release the arbitrator from the confidentiality obligation, the decision on the release from confidentiality for serious reasons shall be made by the Chairman of the District Court with jurisdiction over the district in which the arbitrator has his or her permanent residence. If the arbitrator does not have his or her permanent residence in the territory in the Czech Republic, or if the arbitrator's residence cannot be established, the decision on the release from confidentiality shall be made by the Chairman of the District Court with jurisdiction over the district in which the arbitral award was made. If the place where the arbitral award was made cannot be established or if the award was not made in the Czech Republic, the decision shall be made by the Chairman of the District Court for Prague 1." [all quotations of the Czech regulations contained herein are unofficial translations thereof].

<sup>4</sup> Starting from the appointment of the arbitrator until the arbitral proceeding is concluded.

	certainly obliged to provide information about the case in the event of a review <sup>5</sup> or execution of the award by the regular court.
Requirement to retain (local) counsel?	There is no requirement to retain counsel in the arbitral proceeding under the Arbitration Act. By way of analogy, the respective provisions of the Czech Civil Procedure Code <sup>6</sup> apply, hence a party may act on its own or through a representative using a power of attorney. The Czech Act on the Legal Profession must be observed; it follows that if a party is represented by remunerated counsel, such counsel must maintain a status within the Czech Bar Association. <sup>7</sup>
Ability to present party employee witness testimony?	There are no limitations to offering witness testimony from employees of parties to the dispute.
Ability to hold meetings and/or hearings outside of the seat?	The parties are free to agree on any place for the hearing even outside the place of arbitration. In the absence of such agreement, the arbitrators have the power to decide this issue taking into consideration the interest of both parties.
Availability of interest as a remedy?	The Arbitration Act does not lay down specific rules on interest. Interest is considered as tied to a main claim and thus governed by substantive law. It follows that except if the parties agree otherwise, a claim decided under the Czech law as substantive law covers also interest (either on a contractual basis or on the statutory basis). No interest is awarded on the costs of proceedings.
Ability to claim for reasonable costs incurred for the arbitration?	As a general rule, the arbitral tribunal seated in the Czech Republic will always fix the costs of the arbitral proceedings in an award and apportion them on the basis of the principle of costs follow the event. Arbitral tribunals usually take into account each party's rate of success where either of them was partially successful in the dispute. The tribunal has the power to rule that each party shall bear their own costs, if the circumstances require so. Generally, legal expenses are calculated on the basis of the rates fixed in the Decree of the Ministry of Justice, <sup>8</sup> thus they might be different from the actual legal costs incurred by a party. The parties may agree on a different way to allocate the costs provided the agreement is reasonable under the circumstances.

<sup>5</sup> Such review may be in the form of a state court proceeding initiated upon a motion to set aside an award or a motion to stop execution.

<sup>6</sup> Act No. 99/1963 Coll., Civil Procedure Code, as amended.

<sup>7</sup> The lawyers of EU member states may obtain a status within the Czech Bar Association on basis of Council Directive 77/249/EEC of 22 March 1977 and Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 or subject to limited requirements related to personal and professional integrity (see, Sections 35f – 35n of Act No. 85/1996 Coll., on the Legal Profession. Other foreign lawyers would usually need to pass an exam testing the knowledge of the Czech laws).

<sup>8</sup> Decree of the Ministry of Justice No. 177/1996 Coll., of 4th June 1996, on fees and remuneration of lawyers for the provision of legal services (the Lawyer's Tariff). The reference to the Lawyer's Tariff results from application the Civil Procedure Code applies by way of analogy.

Restrictions regarding contingency fee arrangements and/or third-party funding?	There are no restrictions on third-party funding. Arbitral proceedings are usually funded by the parties themselves. However, it is also possible to seek assistance in financing arbitration expenses, including lawyers' and other fees. This may take the form of a standard loan or an arrangement relating to an agreed proportion of an awarded sum. As far as the contingency fee is concerned, a Czech attorney (or any other counsel maintaining status with the Czech Bar Association) must observe the Code of Professional Conduct. <sup>9</sup> Counsel's compensation may be limited (in case of a dispute between a counsel and a client) to the amount which is reasonable under the given circumstances, <sup>10</sup> (a success fee of more than 25% of the amount at stake is usually not permitted). <sup>11</sup> The common types of contractual remunerations include time-based remuneration, remuneration based on number of conducted legal actions, success fee, monthly rate and others.
Party to the New York Convention?	The Czech Republic is a party to the New York Convention by way of succession since 30 September 1993 (its predecessor Czechoslovakia acceded on 10 July 1959). In accordance with the reservation made by Czechoslovakia at the time the New York Convention was adopted, the Convention does not apply to the recognition and enforcement of foreign awards (awards where the place of arbitration is outside of the territory of Convention member states), unless reciprocity is granted.
Other key points to note	<ul style="list-style-type: none"> <li>• The Czech Republic pays particular respect to the rule of law. In the WJP Rule of Law Index 2016 the Czech Republic ranks the 17th globally with a score amongst the top in the CEE region.</li> <li>• The Arbitration Act does not grant the arbitral tribunals the power to order interim measures (e.g., injunctions). The arbitral tribunals have to seek assistance of the state courts.</li> </ul>
WJP Civil Justice score (2017-2018)	0.74

<sup>9</sup> See, Resolution of the Board of Directors of the Czech Bar Association No. 1/1997 of 31 October 1996.

<sup>10</sup> The Lawyer's Tariff sets forth the basic principle in its Section 4(3): "Contractual remuneration must be reasonable and must not be in a clear disparity with the value and complexity of the matter."

<sup>11</sup> Section 10(5) of the Code of Professional Conduct reads as follows: "The attorney is free to agree on a contractual remuneration determined by a share in the value of the matter or the outcome of the matter if the amount of the remuneration thus agreed is adequate according to the provisions of paragraphs 2 and 3. However, as a rule, the contractual remuneration determined by the share in the result of a matter, shall not exceed 25%."

## ARBITRATION PRACTITIONER SUMMARY

In the Czech Republic, arbitration enjoys a status equivalent to court proceedings. Arbitration has multiple advantages to the traditional court proceedings *e.g.*, single instance, prompt proceedings, informality and reasonable costs. Nowadays we witness a rapid growth in popularity of international arbitration both *ad-hoc* and institutional in the Czech Republic. Many significant domestic and international disputes are arbitrated under the various institutional rules. This has been buttressed by the recent Supreme Court case-law, under which it is possible to submit a wholly domestic dispute to international arbitration.

Date of arbitration law?	The law governing arbitration is found in the Arbitration Act <sup>12</sup> and the Act on Private International Law. <sup>13</sup>
UNCITRAL Model Law? If so, any key changes thereto?	Despite the fact that the Arbitration Act is not an express incorporation of the UNCITRAL Model Law, the majority of its provisions and all its fundamental principles in fact reflect the Model Law. The main differences are in the rules pertaining to arbitrators, the power of arbitrators to order interim measures and the conduct of arbitral proceedings. The Arbitration Act also does not provide for as much detail as the Model Law, since it refers to the provisions of the Civil Procedure Code with respect to issues not regulated by the Arbitration Act.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There is no specialized court dealing with arbitration-related matters.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Arbitral tribunals are not empowered to order any interim measures. They do not even have the power to apply for interim measures to the court. The Arbitration Act states that only the parties may apply to the competent court (the court that would hear the dispute if the arbitration agreement did not exist) to grant interim measures in case the enforcement of an arbitral award may be jeopardized. This applies irrespective of whether the arbitration has been submitted or whether an obligation is imposed on a third party.
Courts' attitude towards the competence-competence principle?	Pursuant to the Arbitration Act, the arbitral tribunal has the power to decide on its own jurisdiction and the courts do not have jurisdiction to make preliminary rulings on the arbitral tribunal's jurisdiction once it has been constituted. If the respondent objects to the arbitral tribunal's jurisdiction in a court after an arbitration has been initiated, the court will stay its proceedings until the arbitral tribunal decides on its jurisdiction. If, however, an objection to the arbitral tribunal's jurisdiction is filed with a court before the commencement of the arbitration, <sup>14</sup>

<sup>12</sup> Act No. 216/1994 Coll., on arbitral proceeding and on enforcement of arbitral awards.

<sup>13</sup> Act No. 91/2012 Coll., on Private International Law (the "PIL").

<sup>14</sup> The arbitral proceeding is deemed commenced on the day on which the request for arbitration is delivered to the permanent arbitration court or a presiding arbitrator if there is no arbitration court (such as *ad hoc* arbitration).

	<p>the court will decide if there is a valid arbitral agreement. An objection on the grounds of the non-existence, invalidity or termination of the arbitration agreement must be raised by way of an application with a court to rule on this issue no later than at the moment of the objecting party's first procedural act concerning the merits unless the invalidity of the agreement is based on the fact that it was not possible to conclude the agreement in the case.</p>
<p>Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?</p>	<p>In addition to the grounds recognized by the New York Convention, the Arbitration Act allows an award to be challenged on the following grounds in the Czech Republic: (i) the arbitral award was not adopted by a majority of the arbitrators; (ii) the arbitral award requires the party to satisfy an impossible or illegal obligation under Czech law or an obligation not requested by the claimant; and (iii) the rules of the Czech Civil Procedure Code allow a case to be re-opened – such as the discovery of a new circumstance or evidence which existed at the time of the proceedings but was unknown to the given party. Under the Supreme Court's case law only arbitral awards issued in the Czech Republic (where the (legal) seat of arbitration was in the Czech Republic) may be set aside by the Czech court.</p>
<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>An award annulled at the seat, is denied enforcement in the Czech Republic. Unlike the New York Convention where the non-enforcement by reason that the award has been set aside by the court of the seat of arbitration is stipulated as a possibility, the denial of enforcement for this reason is mandatory under Czech law.</p>
<p>Other key points to note?</p>	<p>∅</p>

## JURISDICTION DETAILED ANALYSIS

In the Czech Republic, arbitration has become a commonly used instrument for the resolution of B2B (*i.e.*, commercial) disputes. Even though it was originally used to settle international disputes, arbitration is more used to resolve domestic disputes. A rapid growth in popularity of international arbitrations has been supported by the recent Supreme Court case-law allowing international arbitrations in wholly domestic disputes.<sup>15</sup>

### 1. Legal Framework

#### 1.1 The domestic law governing arbitration

Both domestic and international arbitration taking place in the Czech Republic are governed by the Arbitration Act. Conflict-of-laws rules and rules concerning enforcement are governed by the PIL. Despite the fact that the Arbitration Act is not an express incorporation of the Model Law, the majority of its provisions and all of its fundamental principles in fact reflect the Model Law. The main differences involve the rules pertaining to arbitrators,<sup>16</sup> the power of arbitrators to order interim measures<sup>17</sup> and the conduct of arbitral proceedings.<sup>18</sup> The Arbitration Act also does not provide for as much detail as the Model Law, since it refers to the provisions of the Civil Procedure Code, which governs procedure before the local courts, with respect to issues not regulated by the Arbitration Act.

#### 1.2 International treaties

The recognition and enforcement of foreign awards is governed by the New York Convention which was adopted in the Czech Republic by way of succession on 30 September 1993 (Czechoslovakia acceded on 10 July 1959). In accordance with the reservation made by Czechoslovakia at the time the New York Convention was adopted, the Convention does not apply to the recognition and enforcement of foreign awards (awards where the place of arbitration is outside of the territory of the Convention member states), unless reciprocity is granted. Besides the New York Convention, the Czech Republic is party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (a.k.a. the Washington Convention, since 8 April 1992), Energy Charter Treaty of 1991 (since 16 April 1998) and the European Convention on International Commercial Arbitration of 1961 (since 11 February 1964). The Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 is also still in effect in the Czech Republic, although its significance (impact on practice) is rather limited.

#### 1.3 Institutional arbitration bodies v. *ad hoc* arbitrations

The parties may choose to have their dispute heard either before a permanent (institutional) arbitration court or before an *ad hoc* appointed arbitrator or arbitrators. Pursuant to the Arbitration Act, however, a permanent arbitration court can only be established by an act of Parliament. The arbitral awards of other permanent arbitration bodies such as those issued in the Czech Republic under institutional arbitral rules are considered to be rendered by *ad hoc* tribunals under Czech law. Although the rules of a permanent

<sup>15</sup> See, Decision of the Supreme Court No. 23 Cdo 1034/2012, dated 30 September 2013. Pursuant to the PIL, the distinction between a domestic and an international arbitration award lies within a place where the arbitral award is rendered (*see*, Section 120 of the PIL). To this effect, the Supreme Court has clarified that a place of arbitration as agreed between the parties in the arbitration agreement is the only determiner. In contrast, the nationality of the parties and arbitrators, the language of the proceeding or a location of the hearings have no impact on such determination. It is unclear, however, whether such position would be maintained had the parties to arbitration made no agreement on the place of arbitration and thus leave it up to the discretion of the tribunal.

<sup>16</sup> Unlike the Model Law the Arbitration Act requires an odd number of arbitrators.

<sup>17</sup> According to the Arbitration Act arbitrators are not empowered to grant interim measures.

<sup>18</sup> The Arbitration Act provides that – save for the agreement of the parties to the contrary – a hearing must be held.

arbitration body may simply be referred to in an arbitration agreement, Czech law requires that the rules of an *ad hoc* arbitration must be attached to a contract if the parties wish to agree on *ad hoc* arbitration.<sup>19</sup>

#### 1.4 Arbitration Agreement

The Arbitration Act defines an arbitration agreement as an agreement of the parties in which they contract to have their property dispute, which would otherwise fall within the jurisdiction of the courts or which are subject to arbitration under special laws, decided by one or more arbitrators or by permanent arbitral institution.

#### 1.5 Form of the arbitration agreement

Pursuant to the Arbitration Act, arbitration agreement has to be in writing to be valid. The Arbitration Act permits the conclusion of an arbitration agreement by electronic means provided that the content of the agreement and the parties to it are clearly determined. The Arbitration Act does not expressly require that the arbitration agreement be signed by both parties. It can also be concluded by a reference to general terms and conditions governing the main contract if accepted in a way that makes clear that the other party agreed with the arbitration agreement.

#### 1.6 Arbitrability

As a general rule, Czech courts enforce arbitration agreements unless the subject matter of the dispute is non-arbitrable under Czech law. There are three requirements that render a dispute arbitrable. First, the arbitration is permitted in all property disputes. Czech courts interpret the notion of “property dispute” very broadly as a dispute concerning property rights that can be valued in monetary terms. In other words, it covers both disputes over monetary claims as well as disputes over the existence of the right to such performance. Thus, promissory notes claims are arbitrable,<sup>20</sup> as well as, e.g., a dispute over an eviction (from an apartment).<sup>21</sup> By contrast, matters excluded from the scope of arbitration involve disputes related to personal status, most family law disputes, insolvency disputes, disputes arising in connection with enforcement proceedings and incidental disputes (e.g., disputes regulated by Czech Act No. 182/2006, on Insolvency and Its Resolution relating to the authenticity, amount or ranking of claims asserted in insolvency proceedings). In addition, as of December 2016 all B2C disputes are non-arbitrable under the Arbitration Act as well.

Second, the matter in dispute must fall within the court's competence. Disputes that are within the jurisdiction of executive, administrative or other authorities (such as Office for the Protection of Competition, Industrial Property Office etc.) are non-arbitrable. Selected disputes are subjected to arbitration under special laws (especially with regard to the energy and the telecommunications industry).

Third, the right to enter into an arbitration agreement is contingent on the parties' right to settle the subject-matter of the dispute. The Arbitration Act here in fact refers to Section 99 of the Civil Procedure Code which allows for settlements in cases where parties are free to make dispositions with the claim. The boundaries lie in the distinction between adversary, allowing for settlements, and non-adversary proceedings, where the settlements are not permitted. The possibility to settle is assessed according to the law applicable to the merits of the dispute.

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<sup>19</sup> Section 19(4) of Arbitration Act reads as follows: “*The parties may also determine the procedure in the rules of arbitration if these rules are attached to the arbitration agreement. The use of the Rules of the Permanent Court of Arbitration is not thereby affected.*” That being said, the prevailing opinion is that publicly available and notoriously known rules (like, e.g., ICC Rules of Arbitration, LCIA Arbitration Rules) do not have to be attached to the arbitration agreement.

<sup>20</sup> See, Decision of the Supreme Court No. 29 Cdo 1130/2011, dated 31 May 2011.

<sup>21</sup> See, Decision of the Supreme Court No. 20 Cdo 476/2009, dated 23 September 2010.

## 1.7 Arbitration agreement and non-signatories

The Arbitration Act (with one exception) does not provide for the joinder or consolidation of third parties in arbitration. As a matter of fact, arbitral practice in the Czech Republic generally does not recognise the binding nature of an arbitration agreement concluded by a parent company, on its subsidiary, an entity in the same corporate group, an entity in the related legal relationship or any other third party, unless it explicitly agreed to it (*e.g.*, a guarantor is not bound by the arbitration agreement between the creditor and the debtor).<sup>22</sup> The only exception applies to the legal successors of the contracting parties which would be bound unless expressly excluded in the arbitration agreement.

## 1.8 The principles of separability and competence-competence

The principles of separability and competence-competence are both fully respected under Czech law. The separability principle is well established in Supreme Court case law and also reflected in conflict-of-laws rules. Section 15 of the Arbitration Act contains the principle of competence-competence, pursuant to which arbitrators have the exclusive power to decide on their own jurisdiction. If the respondent objects to the arbitral tribunal's jurisdiction in a court after an arbitration has been initiated, the court will stay its proceedings until the arbitral tribunal decides on its jurisdiction. If, however, an objection to the arbitral tribunal's jurisdiction is filed with a court before the commencement of the arbitration, the court will first decide if there is a valid arbitral agreement (Section 106 of the Civil Procedure Code). The parties must raise any objection to the arbitral tribunal's jurisdiction in their first procedural action in the proceedings; otherwise the objection is considered waived. The consent of a party to the arbitration agreement however cannot be presumed if that party is inactive and does not challenge the competence of the tribunal.<sup>23</sup> By contrast, arbitrators are empowered to decide on this issue (*i.e.*, the (in)validity of the agreement where a party is inactive), at any time during arbitral proceedings.

## 2. Arbitration Procedure

### 2.1 Request for arbitration

Arbitral proceedings commence on the date a request for arbitration is received either by the permanent arbitral court or by the presiding arbitrator (the chairman) if one has been determined or appointed. If the presiding arbitrator has not yet been determined or appointed, the request for arbitration must be lodged with any arbitrator already determined or appointed. The request is of a fundamental importance as it may result in significant procedural and substantive law consequences mirroring those of a submission of a lawsuit to a court (such as it stops the lapse of the statute of limitations).

### 2.2 Conduct of the proceedings

The parties are free to reach an agreement on the way the arbitrators conduct the proceedings. Such agreement binds arbitrators. Where parties agree on the jurisdiction of a particular permanent arbitration institution, they are also deemed to have accepted the procedural rules thereof (unless the arbitration agreement stipulates otherwise). If no agreement was concluded between the parties with respect to arbitral proceedings, the Arbitration Act states that arbitrators may conduct the proceedings in a manner they consider appropriate, subject to the principle of equality of the parties. Nevertheless, arbitrators are subject to the mandatory provisions of the Arbitration Act and the Civil Procedure Code (it must be first determined whether a particular rule is appropriate for arbitration proceedings – *e.g.*, a duty of the court to provide instructions to a litigant to supplement its pleadings if it fails to bear the burden of pleading pursuant to Section 118a of the Civil Procedure Code applies to arbitral proceedings only insofar as to

<sup>22</sup> See, Decision of the Supreme Court No. 23 Cdo 111/2009, dated 23 February 2011. As far as the consent to arbitration is concerned, the alter ego doctrines are not recognized under the Czech law.

<sup>23</sup> See, Decision of the Supreme Court No. 20 Cdo 2857/2006, dated 30 October 2008.

prevent adverse *i.e.*, surprising decisions of the arbitrators),<sup>24</sup> from which they cannot deviate (such as the rules addressing the delivery of certain tribunal's correspondence).

### 2.3 Location of the hearings, language, confidentiality

The Arbitration Act states that arbitral proceedings have to be conducted at the location on which the parties have agreed. Otherwise the arbitral tribunal shall determine such location taking into consideration the legitimate interests of the parties. Unless otherwise agreed by the parties, a hearing has to be convened. The parties are free to agree to conduct all or part of the arbitral proceedings in writing or by means of an online arbitration facility.<sup>25</sup> If the arbitration seat is in the Czech Republic, the hearing would usually be in Prague, however, the tribunal is free to move the location of a hearing to some other location in the Czech Republic or abroad. The Arbitration Act does not contain any express provisions in relation to the language of the arbitral proceedings. Generally, hearings are conducted and decisions are made in the Czech language, unless otherwise provided in the arbitration agreement, agreed upon by the parties or determined by the rules of the relevant arbitral institution.

Pursuant to the Arbitration Act arbitral proceedings are non-public. Arbitrators are subjected to the duty of confidentiality concerning all information in connection with the case during the term of their office. The arbitrators are relieved from that duty upon the agreement of the parties or by an order of the regular state court, such as the need to disclose certain facts known to an arbitrator in the criminal proceedings. By contrast, the Arbitration Act does not extend the duty of confidentiality to the parties.

### 2.4 The rules of evidence

The Arbitration Act empowers an arbitral tribunal to examine documentary evidence, witnesses, experts and parties insofar as they voluntarily appear. The arbitral tribunal does not have the power to compel witnesses and the parties to appear or appoint experts to give evidence (parties may agree on such an appointment and on the related costs). In order for the tribunal to obtain evidence other than introduced by a party or to take any steps in the arbitral proceedings which the arbitral tribunal itself is unable to take, it must apply to the state court for legal assistance. Although in Czech arbitration practice the IBA Rules on the Taking of Evidence in International Arbitration are rarely used, nothing precludes parties from agreeing that the IBA Rules should apply with regard to their arbitration.

## 3. Arbitrators

### 3.1 How are arbitrators appointed?

The Arbitration Act offers three ways to determine the number of arbitrators and the procedure of their appointment. First, the parties are encouraged to agree on these matters in their arbitration agreement. The Arbitration Act provides that any number of arbitrators must be odd.

Second, the parties can also refer to arbitration rules providing for a number and a mechanism of appointment. If the parties chose to use rules that provide for *ad hoc* arbitration, such rules must be attached to the arbitration agreement. Although some foreign arbitration institutions are not *stricto sensu* considered "permanent arbitration courts" under the Arbitration Act, the prevailing view is that publicly available and notoriously known rules do not have to be attached to the parties' agreement for them to be applicable.

<sup>24</sup> See, Decision of the High Court in Prague No. 1 Cmo 56/2015-196, dated 15 September 2015.

<sup>25</sup> Online arbitration facilities are provided for by an arbitral institution (such as the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic) that allow for submissions to be filed electronically via the internet. An online arbitration facility is usually closely linked to online arbitration under a specific set of rules of arbitration. Under such rules, both parties and arbitrators would use an online setting for all actions related to the arbitral proceeding such as communication, submissions, hearings, payment of fees associated with arbitration proceedings etc.

Finally, absent any such agreement a default procedure under the Arbitration Act is triggered which provides that an arbitral tribunal is composed of three arbitrators, where each party selects one arbitrator and the two party appointed arbitrators select the chairman. If a party does not select its arbitrator within 30 days from the day it received an invitation to do so by the other party or if within the same period the two co-arbitrators cannot agree on the chairman, the respective arbitrator is appointed at the request of a party or any arbitrator by the court. The court also steps in and appoints a new arbitrator if an arbitrator resigns or can no longer fulfil his/her duties.

### 3.2 Who can serve as arbitrator?

Both Czech and foreign citizens may serve as arbitrators. Czech nationals are required to be of at least 18 years old, enjoy legal capacity and have a clean criminal record to serve as arbitrators. By contrast, a foreign national arbitrator is only required to have full legal capacity under Czech law or the law of his/her nationality. Arbitrators in the Czech Republic are not required to follow any arbitrators' code of ethics.

The Arbitration Act does not provide any express provision relating to the immunity of an arbitrator, therefore, the general rules of liability contained in the Civil Code<sup>26</sup> apply.<sup>27</sup> Since under the Czech law it is impossible to waive a liability in advance with respect to the natural rights, intentional harm or harm caused through gross negligence and any harm caused to a weaker party,<sup>28</sup> any exclusion of liability of arbitrators (or an arbitral institution) incorporated in the arbitration rules would be inapplicable, should the agreement be governed by Czech law. Criminal liability of arbitrators is unaffected.

### 3.3 Disclosures and disqualifications of arbitrators

A prospective arbitrator is required to disclose to the parties (or to the state court) all circumstances which are likely to raise justified doubts as to his impartiality and which would disqualify the arbitrator from acting as an arbitrator. The standard for disqualification of an arbitrator from the proceedings is based on an assessment whether there is a reason to doubt his impartiality, taking into account his relationship to the subject matter of the dispute, the parties or their representatives. The arbitrator must resign, if such circumstances arise or are discovered later in the proceedings. If he does not resign and the parties do not agree on his resignation, any party can apply to the state court to disqualify the arbitrator.

## 4. Interim Relief

### 4.1 Interim measures

Arbitral tribunals are not empowered to order any interim measures. They do not even have the power to apply for interim measures to state courts. The Arbitration Act states that only the parties may apply to the competent state court (the court that would hear the dispute if the arbitration agreement did not exist) to grant interim measures in case the enforcement of an arbitral award could be jeopardized. However, it can generally be stated that state courts are reluctant to interfere with foreign court proceedings, for example by issuing anti-suit injunctions (within the EU it would even violate EU law).<sup>29</sup> It is worth noting that a party applying for an interim measure must provide a security in the amount of CZK 50,000 (about USD 2,000) to cover any potential damage caused by the interim measure.

<sup>26</sup> Act No. 89/2012 Coll., the Civil Code.

<sup>27</sup> See, Decision of the Supreme Court No. 25 Cdo 167/2014, dated 27 August 2015.

<sup>28</sup> A weaker party is not defined by the Civil Code, yet it is a concept used therein. The doctrine defines a weaker party as a person (a consumer or even an undertaking) which is on an unequal footing with another party due to its economic position. One's economic position may be determined on the basis of a number of factors such as the financial strength of the business, vertical interconnection, access to technology etc., See, Section 2898 of the Civil Code.

<sup>29</sup> See, Case C-185/07, Allianz SpA (formerly Riunione Adriatica di Sicurtà SpA) and Generali Assicurazioni. Generali SpA v West Tankers Inc [2009] ECR I-663.

## 4.2 Security for costs

The Arbitration Act does not provide for any regulation over security for costs. The parties and arbitrators are, therefore, free to make an agreement regarding this matter.

## 5. Arbitration Award

### 5.1 Requirements for an arbitral award

The arbitral proceedings are concluded either with an arbitral award or with an order of discontinuance (when no arbitral award is issued such as when the request for arbitration has been withdrawn). Both decisions (an arbitral award and an order of discontinuance that contains decisions on costs) are enforceable. The Arbitration Act requires that the award (as well as the order of discontinuance) be rendered in writing, be adopted by a majority of arbitrators and signed by at least a majority of them. The operative part of the award must be unambiguous. Awards must also contain the reasoning unless otherwise agreed by the parties.

The validity and enforceability of an arbitral award is not dependent on any registration procedure. The Arbitration Act only stipulates that awards made in the Czech Republic are subject to safekeeping with a state court or arbitral institution.

### 5.2 Time frame for the arbitral awards

Czech law does not contain any provision with respect to the time limits for issuing an award or for the length of the arbitral proceedings.

### 5.3 Apportioning of arbitration costs, interests

Unless parties agree otherwise, in the Czech Republic, the tribunal will always include a decision on the costs of the arbitral proceedings in an award. The general rule for apportioning the costs is that the party that was fully successful in the case be reimbursed by the losing party for the costs which the winning party has incurred for the arbitral proceedings. If each of the parties was partially successful in the dispute, the arbitral tribunal apportions its cost award accordingly. The tribunal can also decide that neither of the parties is entitled to reimbursement of the costs. The legal costs are included within the reimbursement of the costs; nevertheless, the usual practice is that the legal expenses are calculated according to the rates fixed in the Decree of the Ministry of Justice.<sup>30</sup> Thus the actual amount of reimbursement might be quite different from the actual legal costs incurred by the party.

The Arbitration Act does not lay down specific rules on interest. As a matter of fact, pursuant to Czech law interest is considered to be a part of a claim and thus governed by substantive law. It follows that if parties do not exclude the powers of the arbitrators in this respect, a claim under Czech law subjected to arbitral proceedings will also cover interest (either on a contractual basis or on the statutory basis). No interest is awarded on the costs of proceedings.

## 6. Challenge of the Arbitration Award

### 6.1 Review of an award

Although the Arbitration Act provides for a rather unusual possibility to have an arbitral award reviewed by other arbitrators than the tribunal that has rendered it if the parties so agree, this is rarely used in the Czech Republic. In case an appellate procedure is agreed upon by the parties, the application for review has to be served on the other party within 30 days from the receipt of the award. The agreement of the parties on the appellate procedure would usually contain a provision concerning the scope of the review. In the absence of specific provisions regarding the scope, an arbitral award will be reviewed in whole. This

<sup>30</sup> Decree of the Ministry of Justice No. 177/1996 Coll., of 4 June 1996, on fees and remuneration of lawyers for the provision of legal services (the Lawyer's Tariff).

appeals process is considered a part of the arbitral proceedings, therefore, the provisions of the Arbitration Act apply. For obvious reasons (such as arbitration would lack one of its main benefits in comparison to court proceedings) this appellate procedure has been rarely used. In the majority of cases it is applied in cases when the award is rendered by a sole arbitrator. Instead parties often attempt to set aside arbitral awards in state court, though they are rarely successful. The Supreme Court made clear that only arbitral awards issued in the Czech Republic (where the (legal) seat of arbitration is in the Czech Republic) can be set aside (not appealed) by the court.<sup>31</sup> An application to set aside an award must be filed with the Czech regional court (in Czech: *krajský soud*) within three months after service of the final award on the parties is completed. An award can be challenged on the following grounds:

- the arbitration award was issued in relation to a non-arbitrable dispute;
- the arbitration clause is invalid for other reasons, was terminated or does not cover the subject matter of the dispute (such application will be rejected by the court if the party had an opportunity to raise this ground during the arbitral proceedings but did not do so);
- an arbitrator was not entitled to decide the case based on the arbitration clause or otherwise did not have the capacity to act as arbitrator (such application will be rejected if the argument could have been raised during the arbitral proceedings but the party did not do so);
- the arbitral award was not adopted by a majority of the arbitrators;
- the party was not provided with the opportunity to present its case before the arbitral tribunal – *e.g.*, arguments such as having an opportunity to comment in writing on arguments of other party and a principle of equality in the proceedings are stressed in the Supreme Court case law<sup>32</sup> (this is the most successful ground in Czech courts for setting aside an arbitral award);
- the arbitral award requires the party to satisfy an impossible or illegal obligation under Czech law or an obligation not requested by the claimant (there is no documented award set aside based on this ground);
- the rules of Civil Procedure Code allow a case to be re-opened – new circumstance or evidence existing at the time of the proceedings but which a party did not and could not have any knowledge of (this provision has been very seldom applied).<sup>33</sup>

Even though a pending application does not suspend the enforceability of the arbitral award, the court can stay its enforcement upon an application of the party against which the enforcement is sought if there is a risk of serious prejudice of that party by an immediate execution of the award or if the action to set aside appears to be well grounded. Save for the last ground, only formal not factual grounds may be invoked by a party to set aside an award.

## 6.2 Correction of an award

Typographical errors, errors in computation, as well as other manifest defects in an arbitral award, may be corrected by the arbitrators or by the permanent arbitral institutions at any time, upon application by any party. Such corrections are made by way of a decree of correction, which is subject to the same requirements as an arbitral award (*i.e.*, in writing, decided and signed by the majority of arbitrators and served on the parties). Even though the Arbitration Act does not require a reasoning to be appended to correction, the Civil Procedure Code requires the decision, to state at least, the legal provision(s) relied on and the reasons.

<sup>31</sup> Decision of the Supreme Court No. 23 Cdo 1034/2012, dated 30 September 2013.

<sup>32</sup> *See, e.g.*, Decision of the Supreme Court No. 29 Cdo 1579/2011, dated 21 March 2013 or Decision of the Supreme Court No. 23 Cdo 2016/2011, dated 27 February 2013.

<sup>33</sup> *See, e.g.*, Decision of the Supreme Court No. 29 Cdo 4575/2008, dated 25 February 2010.

## 7. Enforcement of the Arbitration Award

Denial of enforcement of an arbitral award is also rather unusual in the Czech Republic. It is mainly because the Czech Republic is a signatory to most international treaties addressing arbitration and thus follows a pro-arbitration international practice. The Arbitration Act states that provisions of the act apply only if they do not contradict the provisions of an international treaty. Therefore, the New York Convention takes precedence over the act and foreign arbitral awards issued in jurisdictions that are party to the New York Convention must be enforced in the same manner as domestic arbitral awards (issued in the Czech Republic). A foreign award will also be enforced if it is issued in a jurisdiction that has a reciprocity agreement with the Czech Republic. The reciprocity requirement is deemed satisfied if the respective foreign country declares, in a general way, that awards are enforceable provided there is reciprocity. Nevertheless, foreign arbitral awards will not be enforced if:

- the foreign award is not final, binding and enforceable in accordance with the law of the issuing country;
- the award was annulled under the law of the country where it was issued – unlike the New York Convention which contemplates that non-enforcement by this reason is a possibility only, the PIL mandates the denial of enforcement for this reason;
- the award contains a defect for which a petition could be filed to set aside an award issued in the Czech Republic (the grounds for setting aside are mentioned above) – such a decision of the court has no impact on the validity of the award, it only affects recognition and enforcement in the Czech Republic;
- the award conflicts with Czech public order – it would be contrary to public order if the award imposes obligations contrary to mandatory law (e.g., the Constitutional Court ruled that a public order ground for non-enforcement arises when the fundamental rights of parties are violated).<sup>34</sup>

### 7.1 Enforcement procedure

There is no specific procedure to follow in order to obtain recognition of a foreign award. An applicant must supply the court with an original or duly certified copy of the award and the arbitration agreement along with a translation into the Czech language (necessary if the foreign award is not drawn up in Czech which is not usually the case). An award containing information of its final and binding character as well as its enforceability is recognized in that it is taken into consideration as if it were a court judgment. If an obliged party does not carry out its obligations under an award voluntarily, the entitled party may file an application for enforcement with the state court (the competent court would be a court, in the territorial coverage of which the obliged party resides or has property). The decision of the court enforcing a foreign arbitral award must be reasoned. Apart from enforcement conducted by the court which tends to be rather slow, the Czech law provides for enforcement with private executors, *i.e.*, under Act No. 120/2001 (executing proceeding). Enforcement through private executors is often a preferred choice of the parties successful in the dispute since private executors are – for example – entitled to simultaneously issue multiple execution orders and the creditor is thus not obliged to pursue the property of the debtor itself. Both domestic awards and foreign awards falling under the New York Convention (and probably also by other international treaties binding upon the Czech Republic) might be enforced by private executors similarly to Czech state courts' judgments. Such option is however not as readily available to foreign arbitral awards as to the domestic awards. Under the recent Czech Supreme Court's case law, a foreign arbitral

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<sup>34</sup> It is worth noting for example that in a recent decision the Supreme Court ruled that damages could have punitive and/or preventive character and thus cracked the door open for punitive damages to be enforceable in the Czech Republic albeit not permitted under Czech law (provided that the amount of punitive damages is not manifestly disproportionate to the loss sustained) – *See*, Decision of the Supreme Court No. 30 Cdo 3157/2013, dated 22 August 2014.

award can only be enforced in execution proceedings subject to prior recognition proceedings.<sup>35</sup> This is considered to be a drawback since the enforcement with private executors is deemed to be more efficient than court's enforcement.

During the enforcement proceedings, the state courts would only assess whether the formal requirements as set above have been met, they do not review the merits of the case. However, unlike provided under the New York Convention, the existence of each ground for non-enforcement will be considered by the courts ex officio.

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<sup>35</sup> In Decision of the Supreme Court No. 20 Cdo 1165/2016, dated 3 November 2016, the Czech Supreme Court has refused to enforce an international arbitration award (rendered as per the New York Convention) through execution proceeding. The Court made a clear distinction between domestic arbitral awards (which without a need for recognition can be enforced through execution proceeding) and foreign arbitral awards (which in essence undergo the same procedure as any decision of a foreign court). This decision has been subject to vast criticism of all arbitration community in the Czech Republic as in fact questioning the authority of the New York Convention; *See also*, in the same vein, decision of the Supreme Court No. 20 Cdo 5882/2016, dated 16 August 2017.