

SERBIA

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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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

Serbian arbitration law is currently framed by the 2006 Arbitration Act ("SAA"), modelled after the 1985 UNCITRAL Model Law, with some additions as specified further below. However, before the SAA was enacted, arbitration law was governed by the more general legislation, such as the former Codes of Civil Procedure. In that sense, it could be said that Serbian law is traditionally accepting arbitral dispute resolution, as also evidenced in the operation of, at the moment, two distinct arbitral institutions: one attached to the Serbian Chamber of Commerce, and the other established by the Serbian Arbitration Association.

Key places of arbitration in the jurisdiction	Belgrade
Civil law / Common law environment?	Civil law
Confidentiality of arbitrations?	Not explicitly prescribed under the Serbian Arbitration Act.
Requirement to retain (local) counsel?	Not explicitly provided.
Ability to present party employee witness testimony?	Not forbidden
Ability to hold meetings and/or hearings outside of the seat?	Permitted, unless the parties agreed otherwise.
Availability of interest as a remedy?	The SAA is silent on the matter of interest. This matter is generally regarded as a part of substantive law.
Ability to claim for reasonable costs incurred for the arbitration?	The SAA does not provide explicit rules for the allocation of costs. In practice, arbitrators take into consideration all the facts of the case, including the outcome, before costs allocation.
Restrictions regarding contingency fee arrangements and/or third-party funding?	The SAA does not regulate contingency fee arrangements and/or third-party funding. Local bar rules allow lawyers to agree on type of contingency fees for up to 30% of the value of the dispute (not the value of awarded amount).
Party to the New York Convention?	Yes, with reservations with regard to reciprocity, commercial disputes and retroactive application.
Other key points to note	None
WJP Civil Justice score (2017-2018)	0.49

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	10 June 2006
UNCITRAL Model Law? If so, any key changes thereto?	Yes, the Serbian Arbitration Act was modelled after the 1985 UNCITRAL Model Law. Changes include that: <ul style="list-style-type: none"> – the number of arbitrators must be odd; – the parties must appoint arbitrators within a certain timeframe; and – an award may be set aside if it was based on a false witness or expert testimony, counterfeit documents or criminal acts by arbitrators or parties (as established in a final and binding criminal court judgment).
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No, arbitration-related matters fall within the jurisdiction of the Higher Courts and Commercial Courts in the first instance.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes. Although the courts typically request input from the opponent on applications for interim measures, if applicant can indeed justify urgency or in case of service of process abroad, the courts were willing to issue <i>ex parte</i> interim measures.
Courts' attitude towards the competence-competence principle?	The courts accept that the arbitral tribunal may decide on its own competence, as a rule expressly provided by the Serbian Arbitration Act. However, if an arbitral tribunal decided on its competence as a preliminary matter, a party may still request the courts to decide this matter.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Yes. An award may be set aside if it is based on a false witness or expert testimony, counterfeit documents or criminal acts by arbitrators or parties (as established in a final and binding criminal court judgment).
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	The court may refuse to recognise and enforce foreign awards set aside at the seat of arbitration. This is an express ground for refusal of recognition and enforcement.
Other key points to note?	The setting aside procedure is a standard litigation; the decision on the setting aside application is appealable, and may also be subject to revision before the Supreme Court of Cassation.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

The Serbian Arbitration Act (“SAA”) was modelled after the UNCITRAL Model Law of 1985, and has not been amended since its enactment in mid-2006. No significant amendments to the SAA are expected in the near future.

In large part, the SAA is identical to the UNCITRAL Model Law, however, the legislator included some additional features, which will be highlighted further in the analysis, and which include, by way of example, that:

- the number of arbitrators must be odd;
- the parties must appoint arbitrators within a certain timeframe; and
- an award may be set aside if it is based on a false witness or expert testimony, counterfeit documents or criminal acts by arbitrators or parties (as established in a final and binding criminal court judgment).

The SAA applies to all arbitration proceedings seated in the Republic of Serbia. For these arbitration proceedings, in addition to the SAA, mandatory rules of Serbian law (*i.e.*, such rules, the application of which the parties cannot exclude contractually) also apply even if the parties chose a foreign law to govern their dispute.

The following analysis will focus primarily on the provisions of the SAA, highlighting the specificities of Serbian law where applicable. However, to the extent the SAA did not regulate a certain aspect of arbitration proceedings, this analysis will endeavour to find an appropriate rule within the general rules of civil procedure in the Serbian Code of Civil Procedure (“CCP”) and related legislation.

The analysis was structured to follow the general structure of the questionnaire set out in Section II of the Memorandum circulated to the GAP Working Group – Law Firms & Chambers on 5 September 2017. To that effect, the analysis focuses first on rules pertaining to the arbitration agreement (Section 2), before proceeding to elaborating on the intervention of domestic courts (Section 3), conduct of the proceedings (Section 4), the award (Section 5), and funding arrangements (Section 6).

2. The arbitration agreement

In Serbian law, an arbitration agreement is the basis for arbitration.¹ Under the SAA, the arbitration agreement is the agreement whereby the parties entrust their future or existing disputes in respect of a defined legal relationship to an arbitral tribunal.² It can take the form of (i) an arbitration clause within a contract, or (ii) a separate arbitration agreement.³ Regardless of the form, arbitration agreements are deemed independent and separable from the rest of the contract, *i.e.*, the contract from which the dispute arises.⁴

The parties are generally free to choose any law or rules to govern the substantive validity of their arbitration agreement.⁵ It is implicit in the SAA that, absent any parties’ agreement, in an arbitration seated

¹ Article 4(1) of the SAA; M. Stanivuković, *Serbian Arbitration Law*, IV.Serbia.7.a in *International Commercial Arbitration* (ed. Eric E. Bergsten), p. 10.

² Article 9(1) of the SAA.

³ Article 9(2) of the SAA.

⁴ M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, p. 81.

⁵ As opposed to, for instance, the required form of the arbitration agreement, party capacity and similar matters, for which different laws might be applicable. Article 58(1)(1) of the SAA; M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, p. 83.

in the territory of the Republic of Serbia, the arbitration agreement must comply with Serbian law (*lex arbitri*).⁶ If the Parties did not agree upon the law applicable to their arbitration agreement specifically, and such arbitration agreement was included as a clause within the Parties' contract, as is usually the case, it should be presumed that the arbitration agreement is governed by the law agreed for the Parties' contract.⁷ Otherwise, the arbitration agreement should be governed by the law of the place where the arbitral award is (or will be) rendered.⁸

Every arbitration agreement, in addition to expressing the parties' agreement to resolve a dispute by arbitration, must also (i) refer to an arbitrable dispute;⁹ (ii) be in writing;¹⁰ (iii) be concluded by the parties of necessary qualities or capacity;¹¹ (iv) be concluded without duress, fraud or error;¹² and (v) refer to a dispute involving a defined legal relationship.¹³

2.1 Arbitrability

The concept of arbitrability is reflected in Article 5 of the SAA providing that the "*parties may agree to an arbitration for the resolution of a pecuniary dispute concerning rights they can freely dispose of, except for disputes that are reserved to the exclusive jurisdiction of courts.*"¹⁴

Further developed, this concept entails that, to be arbitrable, a dispute must (a) be pecuniary (in that it should entail or relate to a certain property, acts or assets the value of which can be expressed in monetary terms);¹⁵ and (b) concern rights that the parties may freely dispose of (essentially, that the parties may settle their dispute, *i.e.* waive, transfer, assign or otherwise dispose of the right concerned).

Additionally, to be arbitrable, a dispute must not fall within the exclusive jurisdiction of state courts. In practice, non-arbitrable disputes include certain disputes concerning (i) property rights over real estate;¹⁶ (ii) Serbian insolvency proceedings;¹⁷ (iii) privatisation issues;¹⁸ (iv) intellectual property;¹⁹ and (v) specific corporate matters relating to Serbian companies.²⁰

⁶ Article 58(1)(1) of the SAA; M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, p. 83. This approach is also recognised in Article VI(2) of the European Convention on International Commercial Arbitration ("European Convention") and Article V(1)(a) of the the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention").

⁷ Commercial Appellate Court, Case no. 3 Pž. 6442/15, 16 December 2015.

⁸ M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, p. 83.

⁹ Article 10(1)(1) of the SAA.

¹⁰ Article 10(1)(2) and Article 12 of the SAA.

¹¹ Article 10(1)(3) of the SAA.

¹² Article 10(1)(4) of the SAA.

¹³ Article 9 of the SAA; M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, pp. 88-89.

¹⁴ Article 5 of the SAA.

¹⁵ With the exception of sports arbitration as per Article 53 of the Sports Act (2016). International Bar Association, Arbitration Committee, Subcommittee for Recognition and Enforcement of Arbitral Awards – Country Report on "non-arbitrability" as a defence to the recognition and enforcement of arbitral awards under the New York Convention. Available at: http://www.schoenherr.rs/fileadmin/content-rs/articles/pdf/Report_on_the_Arbitrability_Exception_Serbia_2016.pdf.

¹⁶ For instance, disputes concerning property rights or lease of real estate located in Serbia were normally considered within the exclusive jurisdiction of state courts, as per Article 56 of the Private International Law Code (1982). However, legal doctrine has expressed conflicting views on this provision. For a pro-arbitrability stance see, for instance, Maja Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, pp. 104-106. For a contrary view see, for instance, Vladimir Pavić, National Reports – Serbia, in *World Arbitration Reporter*, Second Edition, 2010, SERB-13.

¹⁷ Commercial Appellate Court, Case no. Pž. 6875/2013, 25 September 2013. The doctrine, however, advocates for a somewhat different approach – that the scope of the "insolvency exception" should depend on the specific circumstances of each case and the connection between the substance of the claim and the insolvency proceedings (M. Stanivuković, *Zakon o stečaju i arbitraža [Serbian Law on Bankruptcy and Arbitration]*, Zbornik radova Pravnog fakulteta u Novom Sadu, br. 1/2014, pp. 124-127).

¹⁸ Supreme Court of Cassation, Case no. Prev. 137/2014, 11 December 2014; Supreme Court of Cassation, Case no. Prev. 350/2008, 1 October 2008. However, certain authors expressed that the public-status elements of such contracts do not

2.2 Written form

There are several forms in which an arbitration agreement may be concluded:²¹

- (i) in writing by signature of the parties;
- (ii) by exchange of notes via means of communication that provide written evidence of the parties' agreement;
- (iii) by referring to another written document containing the arbitration agreement (general conditions, text of another agreement, etc.), if the purpose of such reference is for the arbitration agreement to become an integral part of the written agreement between the parties;
- (iv) if a claimant initiates, in writing, an arbitration proceeding and a respondent expressly accepts arbitration in writing or at the hearing; and
- (v) if a respondent takes part in the arbitration proceeding and engages in discussion on the merits without objecting to the existence of an arbitration agreement or contesting the jurisdiction of the arbitral tribunal.

2.3 Parties' qualities and capacity

Under the SAA, every natural or legal person, including the State, its instrumentalities, institutions and companies in which a State has a property interest, may agree to an arbitration.²² Moreover, given that anyone with the capacity to be a party in the civil procedure under the CCP may agree to arbitration,²³ exceptionally, even certain "*forms of association and organization which have no capacity to be a party*"²⁴ may be granted a party status in an arbitration if such entities "*substantially meet the requirements for acquiring [party] capacity, and particularly if they hold property that may be subject to enforcement.*"²⁵

2.4 Lack of duress, fraud or error

Under this requirement, the parties' intent to submit a dispute to arbitration must be genuine and not tainted by duress, threat, fraud or mistake.²⁶

2.5 Dispute involving a defined legal relationship

Finally, an arbitration agreement must refer to disputes arising from a defined legal relationship.²⁷ It may relate to future or existing disputes²⁸ arising out of one or several specific contracts or tort. However, an

impose limits on the disposal of rights, and that there is no exclusive court jurisdiction prescribed by law, which would deprive these disputes of arbitrability (see M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, pp. 112-113).

¹⁹ Pursuant to Article 7 of the Trademark Act (2009), protection of trademarks falls within the jurisdiction of public (administrative) authority. While a court decision affirming exclusive jurisdiction of state courts over protection of IP rights was remanded (Commercial Appellate Court, Case no. PŽ. 1422/2012, 21 February 2012), it seems that the reason for remanding was the lower instance court's failure to establish the applicable law governing the validity of the arbitration agreement. The lower-instance court's position that exclusive jurisdiction stems from the fact that IP rights have *erga omnes*, and not *inter partes* effects established by a contract, does not seem to have been challenged by the higher instances.

²⁰ Supreme Court of Serbia, Prev. 333/2001, 6 March 2002 (although, pre-SAA).

²¹ Article 12 of the SAA.

²² Article 5(2) of the SAA.

²³ Article 5(3) of the SAA.

²⁴ Such as, for example, a consortium (*e.g.*, formed for the purposes of participation in a tender, as was the case in the Higher Commercial Court case Pz. 14353/05), a customs office (which does not have its distinct legal personality but is, rather, an organizational sub-unit of the State's Customs Administration within the Ministry of Finance), or a sports association (if not registered as a legal entity).

²⁵ Article 74(4) of the CCP.

²⁶ M. Stanivuković, *Serbian Arbitration Law*, IV.Serbia.7.a in *International Commercial Arbitration* (ed. Eric E. Bergsten), p. 10.

arbitration agreement may not relate generically to all disputes that conceivably could arise between the parties in connection with any and all of their (unspecified) relations.²⁹

Like any other agreement, an arbitration agreement operates *inter partes*.³⁰ The SAA does not specifically recognise the “group of companies” or a similar doctrine, to allow for extending the scope of an arbitration agreement to non-signatories, and there appears to be no published court practice to that effect. Serbian company law recognises, in certain circumstances and as a matter of substantive law, the principle of “corporate veil piercing”. However, while corporate veil piercing may relate to questions of liability, there appears to be no practice allowing this concept to operate so as to establish a binding effect of an arbitration agreement for a non-signatory. Still, rights and obligations arising out of the arbitration agreement are generally transferable, unless agreed otherwise.

3. Intervention of domestic courts

Intervention of domestic courts in arbitration is limited only to activities expressly provided for in the SAA.³¹ These activities are intended mainly to resolve a deadlock in case parties are not able to reach an agreement, or when an arbitral tribunal needs assistance. In particular:

- to issue interim measures – both in domestic and international arbitrations;
- to appoint arbitrators, if the parties or appointment authority have not done so;
- to rule on the challenge of the arbitrators, if the parties have not chosen a different procedure or if they have not chosen a permanent arbitral institution, typically in *ad hoc* arbitrations;
- to issue a final judgment on an interlocutory question at the request of one of the parties if the arbitral tribunal is deciding on its jurisdiction as an interlocutory question;
- to assist with collecting evidence, at the request of the arbitral tribunal;
- to deposit for safe-keeping the decision of the arbitral tribunal, at the request of a party;
- to decide on the request for annulment of a domestic arbitral award;³² and
- to recognise and enforce a foreign award.

If there is a valid arbitration agreement (regardless of the seat of arbitration) the court which received the lawsuit will declare itself incompetent to decide the matter and will dismiss the claim. However, this is not done *ex officio*, but only if a party objects and if this objection is raised before discussing the merits of the case.

Serbian courts could intervene in arbitrations seated abroad only by ordering interim measures at the request of one of the parties. The court may order any interim measure it deems appropriate, both before and during arbitral proceedings. At the same time, it can order the other party to provide appropriate security.

²⁷ Article 9 of the SAA.

²⁸ M. Stanivuković, *Serbian Arbitration Law*, IV.Serbia.7.a in *International Commercial Arbitration* (ed. Eric E. Bergsten), p. 10.

²⁹ M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, p. 89.

³⁰ M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, p. 142.

³¹ Article 7 of the SAA.

³² A domestic arbitral award is, irrespective of the nationalities of the parties and the applicable substantive law, an award rendered by a tribunal (or sole arbitrator) seated in Serbia, provided that such tribunal or sole arbitrator did not apply a foreign procedural law. Namely, pursuant to Article 64(3) of the SAA, an award which was rendered by a tribunal or sole arbitrator seated in Serbia, applying a foreign procedural law to the arbitral proceedings, will be deemed a foreign arbitral award.

4. The conduct of the proceedings

4.1 Party representation

The SAA does not regulate party representation, while the CCP allows parties to be self-represented or to engage counsel before domestic courts. Under the SAA therefore, there are no limitations with regard to the parties' retaining outside counsel or taking part self-represented.

4.2 Arbitrators' independence and impartiality; constitution of the tribunal

The courts control arbitrators' independence and impartiality at the party's request.

Parties can challenge the appointment of an arbitrator solely if there are circumstances that reasonably raise doubts as to his or her independence or impartiality, or if he or she does not fulfil the requirements agreed to by the parties, if any. Further, once the arbitrator has been appointed, the parties can challenge him or her only for reasons that arose or of which the party learned after the arbitrator was appointed.

Parties can agree on the procedure for challenging the appointment of arbitrators. In case of no agreement, or if the case is not administered by an arbitral institution, the competent court will decide upon the challenge (the challenge can be made within 15 days of the date when the party learned of the appointment or of the reasons for the challenge). In doing so, the court is not obliged to take into account the IBA Guidelines on Conflicts of Interest in International Arbitration, unless the parties have explicitly agreed on their application. Even if the procedure for challenging the arbitrator is in progress, the arbitral tribunal can continue the arbitral proceedings and render its decision.

Courts will assist in the constitution of the arbitral tribunal in *ad hoc* arbitrations if: (i) parties fail to agree on the number of arbitrators and/or fail to appoint an arbitrator (within 30 days from the other party's request), and/or (ii) if the 'appointing authority' selected by the parties fails to do so.³³

4.3 Conduct of the arbitration proceedings

The SAA applies only to arbitral proceedings that are seated in Serbia. The parties may agree on the rules of procedure or agree to apply rules of some arbitral institution; if they fail to do so, the arbitral tribunal can conduct the procedure in the manner it deems fit. However, mandatory provisions of the SAA cannot be excluded. This includes the main principle that parties to the arbitration are equal and must be treated equally.³⁴ The arbitral tribunal is obliged to allow a party to present its arguments and evidence, as well as to comment on the actions of the other side.³⁵ Furthermore, the parties must receive timely notice of every oral hearing and every meeting of the arbitral tribunal scheduled *e.g.*, for site visits or document inspection. Each party must receive each and every submission of the other side, and expert opinions or other documents that represent evidence.

Some of the more specific features regarding the conduct of the arbitration proceedings include that:

- confidentiality of the arbitration proceedings is not expressly regulated. Thus, if the parties wish to ensure confidentiality of their arbitration proceedings, they are strongly advised to stipulate it in advance;
- neither the time frame for conducting the proceedings nor time limit for the arbitral tribunal to render an award are specified in the SAA;

³³ Article 16 of the SAA.

³⁴ Article 33 of the SAA.

³⁵ Article 33 of the SAA.

- unless the parties have agreed otherwise, an arbitral tribunal may decide to meet at any place it deems most appropriate for a hearing, examination of witnesses, experts or the parties, voting, or review of documents;³⁶
- unless the parties have agreed otherwise, at the request of a party, an arbitral tribunal can grant any interim relief that it deems necessary based on the subject matter of the dispute. At the same time, it can order the other party to provide appropriate security;³⁷
- arbitrators may decide on the admissibility, relevance and probative value of the proposed and presented evidence, unless the parties have agreed otherwise. Documentary evidence is commonly admitted, as well as factual evidence and expert witness reports. The IBA Rules on the Taking of Evidence in International Commercial Arbitration may be taken into account if so agreed by the parties, or, otherwise, if preferred by the arbitrators as best practice. Also, the arbitral tribunal may seek a court’s assistance in the obtaining of evidence;
- a hearing is not mandatory. However, the arbitral tribunal will hold a hearing at either party’s request, unless the parties previously agreed that a hearing would not be held;
- the SAA is silent on the matter of interest. In litigation, however, interest is only allowed on the principal claim. In Serbia, the applicable interest rate is either determined by the parties in the underlying agreement (contractual interest rate) or provided for by the law (statutory interest rate). However, the mentioned rules are generally regarded as a part of substantive law and would apply in arbitration only if Serbian law was chosen as the applicable substantive law;
- a decision on costs is a mandatory part of an arbitral award. When making such a decision, the arbitrators should take into consideration all the facts of the case, including the outcome. The “loser pays” rule is not explicitly provided for under the SAA, although it applies in Serbian litigation. While it is often applied by arbitral tribunals, they are also free to apply other principles. At the request of the tribunal, the parties are obliged to make an advance payment on the costs.

4.4 Liability

The SAA does not regulate the issue of arbitrators’ immunity. However, in practice, immunity is commonly agreed on in the terms of reference or terms of appointment for each particular case; however, even then, liability cannot be excluded in cases of wilful misconduct or gross negligence on the arbitrator’s part. This is so as a result of the express and mandatory stipulation in the Serbian Contracts and Torts Act,³⁸ that liability for damages caused by wilful misconduct or gross negligence can never be contractually excluded in advance.³⁹ Likewise, the SAA does not address any potential criminal liability of the participants in an arbitration; therefore, general rules provided in the criminal law legislation may apply.

5. The award

The SAA defines an award as a decision on the substance of the dispute whereby the arbitral tribunal decides all claims of the parties (the final arbitral award).⁴⁰ It recognizes also the possibility of making a partial or interim award.⁴¹

³⁶ Article 34 of the SAA.

³⁷ Article 31 of the SAA.

³⁸ Article 265 of the Contracts and Torts Act.

³⁹ Moreover, under Article 265 of the Contracts and Torts Act, a Serbian court could be requested to annul a contractual provision excluding liability even for damages caused by (ordinary) negligence, provided that such contractual provision is a result of the contracting parties’ unequal positions.

⁴⁰ Article 48 (1) of the SAA.

In terms of rendering a valid arbitration award, the requirements mostly correspond to those expressed by the 1985 UNCITRAL Model Law,⁴² with the addition that an award must also contain an introduction, a decision on the substance of the dispute, and a decision on costs,⁴³ and that *all* arbitrators must participate in deliberation, unless the parties otherwise agreed.⁴⁴ The parties may waive the requirement that the award shall contain a statement of reasons.⁴⁵

An arbitral award is final and binding upon the parties and there is no appeal mechanism.⁴⁶ The only remedy against an award rendered in Serbia is an application for setting aside, which the parties may not waive in advance.⁴⁷ Setting aside allows only for a very limited (no review of the merits) control of the award,⁴⁸ and on grounds which are substantially similar to those provided in the UNCITRAL Model Law of 1985 (which served as the model for the SAA).

The enforcement procedures generally differ depending on whether the award is domestic or foreign.⁴⁹

A *domestic arbitration award* can be enforced directly, under the Serbian Enforcement and Securities Act ("SESA"), since it has the force of a final court judgment.⁵⁰ Thus, after the voluntary execution term set by the award expires, a party may use such award as an "enforceable document" under the SESA to request enforcement.⁵¹

However, a *foreign arbitral award* must first be recognised by the competent court, to gain the same effect as a domestic arbitral award.⁵² Such recognition (and enforcement) of foreign arbitral awards is generally governed by the SAA, the New York Convention and the European Convention. Grounds for refusal of recognition under the SAA correspond to those listed in Article V of the New York Convention, and are not country specific. Recognition of a foreign arbitral award can be the subject matter of an independent proceeding, or it can be decided as a provisional/preliminary question in an enforcement proceeding.

Enforcement of the award is not automatically suspended in case of parallel set aside proceedings. However, a Serbian court may adjourn its decision on a requested recognition of a foreign arbitral award until parallel setting aside or suspension of enforcement proceedings are completed in the state in which or under the laws of which the award was made.⁵³

⁴¹ Article 48 (2) of the SAA.

⁴² Global Arbitration Review, Commercial Arbitration 2017, Serbia, question 37. Available at: <http://globalarbitrationreview.com/jurisdiction/1004539/serbia>.

⁴³ Article 53 of the SAA.

⁴⁴ Article 51(2) of the SAA.

⁴⁵ Article 53 (1) of the SAA.

⁴⁶ Global Arbitration Review, Commercial Arbitration 2017, Serbia, question 41.

⁴⁷ Article 62 of the SAA.

⁴⁸ Sketching the Setting Aside of Arbitral Awards in Serbia, Kluwer Arbitration Blog (2017), Available at: <http://arbitrationblog.kluwerarbitration.com/2017/09/28/sketching-setting-aside-arbitral-awards-serbia/>.

⁴⁹ Getting the Deal Through - Dispute Resolution (2014), Serbia, question 31 (available at: http://www.schoenherr.rs/fileadmin/content-rs/articles/pdf/DR2014_Serbia.pdf); Schoenherr Roadmap 2014: Serbia & Montenegro: Enforcing Foreign Court Judgments and Arbitral Awards. Available at: http://www.schoenherr.rs/fileadmin/content-rs/articles/pdf/Roadmap2014_Enforcing_Foreign_Court_Judgments_and_Arbitral_Awards.pdf. In principle, a domestic arbitral award is one rendered in arbitration seated in Serbia, while a foreign arbitration award is one rendered in arbitration seated abroad, as well as an award made by an arbitral tribunal seated in Serbia which applied foreign law to the arbitral proceedings (Article 64(3) of the SAA).

⁵⁰ Article 64(1) of the SAA.

⁵¹ Articles 41 and 42 of the SESA.

⁵² Article 64(2) of the SAA.

⁵³ Article 67(1) of the SAA.

If the award has been set aside by the court of the state in which, or under the law of which, it was made, Serbian courts may refuse to recognize (and enforce) such award in Serbia.⁵⁴ If the award was set aside while enforcement was pending in Serbia, the enforcement procedure can be terminated.⁵⁵ However, if the award had already been enforced, the opposing party may only apply for counter-enforcement.⁵⁶

Although there is no comprehensive statistic, the limited publicly available practice shows that foreign arbitral awards do seem readily enforceable in Serbia.⁵⁷

6. Funding arrangements

The SAA does not regulate third-party funding or any particular fee arrangements, nor has a Serbian court decided on these matters yet. Local bar rules allow lawyers to agree on type of contingency fees for up to 30% of the value of the dispute (not the value of awarded amount).

⁵⁴ Article 66(1)(5) of the SAA.

⁵⁵ Article 129 of the SESA.

⁵⁶ Article 115 of the SESA.

⁵⁷ See, for instance, International Bar Association, Arbitration Committee, Subcommittee for Recognition and Enforcement of Arbitral Awards – Country Report on ‘public policy’ as a defence to the recognition and enforcement of arbitral awards under the New York Convention, Appendix. Available at: http://www.schoenherr.rs/fileadmin/content-rs/articles/pdf/Report_on_the_Public_Policy_Exception_Serbia_2016.pdf.