DELOS
dispute resolution

SLOVAKIA

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

Key places of arbitration in the jurisdiction	Bratislava. It is also common for local parties to submit their dispute to the Vienna International Arbitration Centre, due to its proximity and well-known reputation.
Civil law / Common law environment?	Slovakia is a civil law jurisdiction.
Confidentiality of arbitrations?	Arbitrators are bound by law to keep all the information they come across during the arbitral proceedings confidential. However, this duty does not apply to parties to an arbitration or their representatives.
Requirement to retain (local) counsel?	Parties to arbitrations seated in Slovakia are free to engage an outside counsel or be self-represented.
Ability to present party employee witness testimony?	There are no statutory restrictions as to the evidence that can be presented to the arbitral tribunal, which has wide discretion in determining which evidence will be admitted.
Ability to hold meetings and/or hearings outside of the seat?	It is accepted that arbitral hearings and procedural meetings may take place in a different country from the seat of arbitration.
Availability of interest as a remedy?	Interest on the principal claim can be awarded. It is unlikely that interest on costs of the arbitration would be ordered.
Ability to claim for reasonable costs incurred for the arbitration?	Parties to an arbitration are able to recover costs incurred in the arbitration. Generally, the 'costs follow the event' principle applies.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Legally speaking, there are no restrictions regarding third party funding arrangements. Contingency fee arrangements are allowed up to 20 % of the amount in dispute.
Party to the New York Convention?	Slovakia is a party to the New York Convention, subject to the reciprocity reservation.
Other key points to note	ϕ
WJP Civil Justice score (2017-2018)	ϕ

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The Arbitration Act was enacted in 2012 and was substantially amended with effect from 1 January 2015.
UNCITRAL Model Law? If so, any key changes thereto?	The Arbitration Act is fully based on the 2006 version of the UNCITRAL Model Law. There are no key modifications.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Three general courts exercise jurisdiction over arbitral proceedings: the District Court Bratislava V, the District Court Banska Bystrica and the District Court Kosice I.
Availability of *ex parte* pre-arbitration interim measures?	*Ex parte* pre-arbitration interim relief may be granted by a court.
Courts' attitude towards the competence-competence principle?	Slovak law recognizes the negative effect of the competence-competence principle.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	There are no additional grounds for the annulment of awards rendered in Slovakia on top of those laid out in the New York Convention.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	A court may, but is not obliged to, refuse the enforcement of an award that has been set aside at the seat of the arbitration. There is no case law confirming whether the courts of the Slovak Republic would be willing to enforce awards that have been set aside.
Other key points to note?	• There are no issues with the enforcement of partial awards. However, interim awards are not per se considered as arbitral awards and are not immediately enforceable by the courts of the Slovak Republic. • The commencement of annulment proceedings does not automatically suspend the enforcement of an award. However, upon request of a party, the enforceability of an award may be suspended. • Arbitrators and experts can face civil as well as criminal liability.

JURISDICTION DETAILED ANALYSIS

1. Legal Framework

1.1 Is the arbitration law based on the UNCITRAL Model Law? If yes, what key modifications if any have been made to it?

Commercial arbitrations seated in Slovakia are governed by Act No. 244/2002 Coll. on arbitration, as amended (the Arbitration Act), which applies to both domestic and international commercial arbitrations seated in Slovakia, as well as to the recognition and enforcement of awards. The Arbitration Act is based on the 2006 version of the UNCITRAL Model Law.[1] There are no key modifications.

1.2 When was the arbitration law last revised?

On 1 January 2015, substantially amended the Arbitration Act. The main changes consist of (i) an adoption of a Model Law-compliant regime for commercial arbitration, (ii) its separation from consumer alternative dispute resolution and (iii) an enactment of a new framework for the operation of domestic arbitration institutions. The Arbitration Act was further revised to implement new rules on the establishment of domestic arbitral institutions and to align it with the wording of the new Act No. 160/2015 Coll. the Code of Civil Litigation (the Code of Civil Litigation).[2]

In addition to the Arbitration Act, some sections of the Code of Civil Litigation apply to the relationship between courts and arbitral tribunals, in particular with respect to the power of the courts to assist the arbitral process. The enforcement of both domestic and foreign awards is governed by Act No. 233/1995 Coll. on court bailiffs and enforcement of judgments, as amended (the Code of Civil Enforcement of Judgments).

Arbitration-like alternative dispute resolution methods applying to consumer contracts are governed by Act. No. 335/2014 Coll. on consumer arbitration (the Consumer ADR Act).

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Parties to an arbitration are free to choose the law governing the arbitration agreement, though it is very rare for parties to do so. This law does not have to be the law of the Slovak Republic, even if the arbitration is seated in Slovakia.

In case of an express choice of the law governing the arbitration agreement, Slovak courts will apply the law chosen by the parties to determine the validity of an arbitration agreement and any claims arising out of the agreement.[3] There are, however, two exceptions to the general freedom to choose the law applicable to the arbitration agreement. If the arbitration is seated in Slovakia, (i) the form of an arbitration agreement and (ii) the objective arbitrability will always be determined according to the law of the Slovak Republic, regardless of the parties' choice of law (third and fourth sentence of section 5(1)).[4]

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1 Slovakia is listed amongst the countries that have adopted legislation based on the UNCITRAL Model Law on International Commercial Arbitration. See http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html.

2 With effect from 1 July 2016, the Slovak Code of Civil Procedure was replaced by three separate codes: the Code of Civil Litigation (Civilný sporový poriadok), the Code of Civil Non-Litigation (Civilný mimosporový poriadok) and the Code of Administrative Court Procedure (Správny súdny poriadok).

3 J. Gyarfas, M. Števček, *et al.*, *Commentary to the Slovak Arbitration Act* (C.H.Beck, Prague, 2016), p. 111.

4 See, also J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 111.

In the absence of the choice of law by the parties, the validity of an arbitration agreement for the purpose of potential set aside proceedings will be determined according to the law of the Slovak Republic (section 40 (1)(a)(1)).

For the purpose of recognition and enforcement of a foreign award in the Slovak Republic, the validity of an arbitration agreement will be determined according to the law to which the parties have subjected it or, failing such agreement, under the law of the country where the award was made (section 50(1)(a)).

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Arbitration clauses are considered separable from the main contract. As specified in section 5 of the Arbitration Act, if an arbitration clause is part of an otherwise invalid contract, the arbitration clause will only be invalid if the grounds for invalidity of the contract affect the arbitration clause as well. This could include, for example, cases of invalidity on the grounds of forgery, undue influence or incapacity.

The principle of separability is generally recognized with respect to all commercial contracts (section 267(3) of Act No. 513/1991 Coll. (the Commercial Code)).

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

An arbitration agreement can be in the form of either a separate agreement or an arbitration clause in a contract (section 4(1)). The only formal requirement that applies to both forms is that it has to be in writing (section 4(2)).

An agreement is considered to be in writing even if it is contained in an exchange of parties' written communication or concluded by purely electronic means, as long as the content of the electronic exchange and the identity of the parties involved are identifiable (section 4(3)). Furthermore, the Arbitration Act contains an explicit acknowledgement that an agreement to arbitrate can also be incorporated by reference to any document containing the arbitration clause, as long as the reference is clear and specific (section 4(4)). An agreement is also in writing in the case of acceding in writing to a contract which contains a valid arbitration clause (section 4(5)). Thus, arbitration clauses contained in corporate documentation are in general automatically binding on new shareholders of the company, without the need for a separate acceptance or signature.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

The general rule is that an arbitration agreement cannot be invoked or enforced against a non-signatory. Slovak law does not recognise the "group of companies" doctrine as a means to bind associated corporate entities to an arbitration agreement and it is unlikely that the doctrine would be applied by the courts.[5]

Nevertheless, there are a few exceptions to the general rule of no extension to non-signatories. In particular, legal successors of the parties to an arbitration agreement are bound by the agreement, unless agreed otherwise in the agreement (section 3(2)). Similarly, the arbitration agreement is also applicable in the case of an assignment or any other substitution in a relationship falling under the arbitration agreement (section 3(2)).

2.5 Are there restrictions to arbitrability? In the affirmative: Do these restrictions relate to specific domains (such as IP, corporate law etc.) or specific persons (i.e. State entities, consumers etc.)?

Arbitration, as a form of dispute resolution, is generally available in civil and commercial matters, including disputes on the existence of a legal relationship or legal title (section 1(2)). The Arbitration Act allows for the

[5] J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 77.

arbitrability of almost all private law relationships that do not involve a consumer contract. In particular, both case law and legal authors confirmed the arbitrability of (i) competition law claims, (ii) intellectual property claims that do not concern the validity of intellectual property assets and (iii) corporate claims that do not concern disputes regarding personal status.[6] The arbitrability of employment claims has not yet been settled. However, the current prevailing view is that employment matters are non-arbitrable in Slovakia[7] (which has been confirmed in Decision of the Slovak Supreme Court No. 1 Cdo 156/2011, dated 11 December 2013).

Private law relationships that involve a consumer contract are arbitrable, but pursuant to a different legal framework. The resolution of disputes involving consumer contracts was carved out from the scope of the Arbitration Act and placed in a separate Consumer ADR Act, which provides for a stricter regulatory regime.

Furthermore, the Arbitration Act contains an exhaustive list of non-arbitrable disputes, namely, (i) personal status of physical persons including divorce, adoption etc.; (ii) ownership rights and other rights *in rem* in respect of immovable property; (iii) forced enforcement (execution) of court or administrative decisions; and (iv) disputes arising out of bankruptcy and work-out proceedings (section 1(3)).

3. Intervention of Domestic Courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

3.1.1 If the place of the arbitration is inside of the jurisdiction?

3.1.2 If the place of the arbitration is outside of the jurisdiction?

Slovak law recognises the 'negative effect' of the competence-competence principle in relation to the jurisdiction of the general courts of the Slovak Republic. The same considerations apply regardless of whether the place of arbitration is inside or outside of the jurisdiction.[8] However, different considerations may apply depending on whether the proceedings before a court were initiated before or after the commencement of the arbitration.

If the arbitration has already commenced, and the same question is pending before a general court, the court must always stay litigation on its own motion until the tribunal rules on its own jurisdiction (the Code of Civil Litigation, section 8).

If the arbitration has not yet commenced, the court will stay litigation upon the objection of a party raised upon or before the first act in the proceedings (the Code of Civil Litigation, section 6(1)), unless (i) the recognition of a foreign award in the same matter[9] has been refused in Slovakia, (ii) the dispute is non-arbitrable under Slovak law or (iii) the tribunal has declined jurisdiction (the Code of Civil Litigation, sections 8(1)(2)). Consequently, at this stage, the court will review the validity of the arbitration agreement only in terms of its objective arbitrability.[10] For this purpose, it should be sufficient that the challenging party shows that the arbitration agreement exists *prima facie*.[11] It shall be noted, however, that the scope of the court intervention has not been tested in practice since the Amendment of 2015 and there are opposing academic views as to whether the courts are only entitled to examine the arbitration agreement in terms of its objective arbitrability or also in terms of its validity in general.[12]

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6 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, pp. 36-52.

7 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 39.

8 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, pp. 702 and 705.

9 "Same matter" implies same parties and same object of the claim.

10 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 701.

11 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 701.

12 J. Zámožík, "The objection of lack of jurisdiction of the court on the ground that the dispute shall be dealt with and decided in arbitration, and the so called forced arbitral proceedings", published in *Súkromné Právo*, 5/2017, November 2017.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

We are not aware of any case law available on this topic. Nevertheless, we would expect the courts of the Slovak Republic to perceive anti-suit injunctions rendered by arbitrators as an interference with their sovereignty. It is therefore most likely that such injunctions would not be followed.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

Slovak courts are only entitled to intervene in arbitrations seated in Slovakia. However, in some circumstances, their powers may also extend to arbitrations seated outside of the jurisdiction.

If the seat of arbitration has not yet been determined and at least one of the parties to the arbitration has its registered office, place of business or permanent residence in the territory of the Slovak Republic, the courts of the Slovak Republic are empowered to assist in the establishment of an arbitral tribunal and in the termination of the mandate of an arbitrator (section 1(5)).

Notwithstanding the location of the seat of arbitration, the courts of the Slovak Republic have the power to take evidence and issue interim measures (section 2(3)) before the appointment of the arbitrators. Anti-suit injunctions are unknown to Slovak jurisprudence and the courts are unlikely to issue them. Nevertheless, the provision on interim measures in the Code of Civil Litigation is wide enough to encompass injunctive relief if a party to an arbitration pursues such a claim (the Code of Civil Litigation, section 325).

4. Conduct of the Proceedings

4.1 Can parties retain outside counsel or be self-represented?

Slovak law does not require that parties to an arbitration be represented by a counsel, neither does it restrict the parties' choice of a counsel. Therefore, parties can retain outside counsel, or be self-represented.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

Every arbitrator has a duty to inform the parties about any fact that may have an impact on his or her impartiality (section 9(1)). There is no specific guideline for arbitrators as to which matters should be disclosed. The general rule is that a party may challenge an arbitrator that it has appointed or in whose appointment it has participated (e.g. by approving the list of candidates from which the Appointing Authority selected the arbitrator) and only for reasons of which it became aware after the appointment (section 9(2)).

Parties to an arbitration are in principle free to decide on a procedure for challenging arbitrators, but such an agreement may not exclude the right of a party to ask a court to decide on an unsuccessful challenge (section 9(3)). A court will only accept a challenge that has been brought to it within 30 days following the delivery of the tribunal's decision dismissing the challenge or a challenge that has not been decided by the tribunal within the statutory time limit of 60 days (section 9(5)). The challenge will only be successful if a rational third party could have reasonable doubts that the arbitrator would not act impartially and independently.[13] The standard is even stricter for the purpose of the annulment proceedings, where it is required that the alleged breach of duty to act impartially and independently must have had an impact on the decision on the merits.[14]

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13 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 192.

14 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 194.

A decision of the general court dismissing the challenge of the arbitrator cannot be appealed. While such a request is pending, the arbitral tribunal may continue arbitral proceedings and render an award (section 9(5)).

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Arbitral tribunals can be appointed by the parties themselves, by a natural or a legal person selected by the parties (the appointing authority) or by a general court.

The courts can intervene to assist in the constitution of the arbitral tribunal if the parties do not agree on the identity of an arbitrator or on the procedure for appointing an arbitrator (section 8(2)). In arbitrations with three or more arbitrators, an arbitrator can be selected by the court, upon request of a party, if one of the parties fails to make a nomination within 15 days of the other party's request or if the two appointed arbitrators fail to nominate the presiding arbitrator within 30 days of their nomination. The court will only intervene upon the request of a party, which allows parties to agree on a longer period for the constitution of the arbitral tribunal if needed. In arbitrations with a sole arbitrator, the requesting party may go directly to a court.[15]

An arbitral tribunal can also be constituted by the court if, at the moment of an arbitrator's appointment, (i) the Appointing Authority does not exist; (ii) the Appointing Authority does not have the power to appoint an arbitrator or (iii) the Appointing Authority fails to appoint an arbitrator within the agreed time period (section 6(3)).

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

General courts[16] are permitted to issue interim measures in support of arbitrations in accordance with the Code of Civil Litigation. In general, interim measures may be granted if it is necessary to temporarily adjust relationships between the parties (when the requesting party is likely to suffer harm if the measure is not granted) or if there is a risk that the enforcement of an award could be endangered (section 326). Interim relief can take many forms, including an order to deposit assets or financial amounts, a prohibition to dispose of assets and a general obligation to perform an action or refrain from doing so (section 325). A general court may also decide on *ex parte* requests for interim measures (the Code of Civil Litigation, section 329(1)).

An interim measure against a party to arbitration may only be issued before the establishment of an arbitral tribunal (Arbitration Act, section 2(2)). Once the arbitral tribunal is established, it alone has jurisdiction to decide on interim relief.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1. Does it provide for the confidentiality of arbitration proceedings?

Arbitrations seated in Slovakia are private under the Arbitration Act. Arbitrators are bound to keep all information they came across during the arbitral proceedings confidential, even after the end of their mandate (section 8(4)). The statutory duty of confidentiality is, however, not extended to the parties or their

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15 The Arbitration Act does not provide for a specific timeline for the parties to first purport to select the sole arbitrator and if they fail, to go to a court.

16 The court system in the Slovak Republic is composed of: (i) general courts, including district courts (first instance courts), regional courts (appeal courts) and the Supreme Court of the Slovak Republic (an appellate review court), and (ii) the Constitutional Court of the Slovak Republic, which is considered as a separate court. For more details on the court system in the Slovak Republic see http://wwwold.justice.sk/a/wfn.aspx?pg=lb&htm=l4/crt_sys.htm.

representatives. The Arbitration Act further provides for a possibility of waiving the arbitrators' duty of confidentiality by agreement of the parties (section 8(4)).

4.5.2. Does it regulate the length of arbitration proceedings?

The Arbitration Act does not regulate the length of the proceedings. The procedural timetable is determined by a tribunal at an early stage of the proceedings by means of a procedural order. Although there are no statutory time limits imposed on arbitrators to render an award, they are bound to act expediously (section 6(a)).

4.5.3. Does it regulate the place where hearings and/or meetings may be held?

The parties are free to agree on the place of arbitration (section 23). In the absence of such agreement, the place of arbitration is determined by the tribunal, having regard to the interests of the parties and circumstances of the case. It is accepted that arbitral proceedings may physically take place in a different state from the seat of arbitration. Likewise, hearings and procedural meetings of the tribunal may be conducted at any place which the arbitral tribunal and the parties consider appropriate (section 23(2)).

4.5.4. Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Unless otherwise agreed by the parties, the arbitral tribunal may grant interim measures if: (i) it is necessary to temporarily regulate relationships between the parties (when the requesting party is likely to suffer harm if the measure is not granted), (ii) there is a risk that the enforcement of an arbitral award might be prejudiced, or (iii) there is a risk that evidence may in the future no longer be available or only available under complicated circumstances (section 22(1)). If the circumstances on which the measure was issued no longer exist, the tribunal will revert the interim measure (section 22b(2)).

Interim measures may be granted to, for example, (i) prohibit the disposal of some assets or funds; (ii) order a party to perform an action or refrain from doing so; (iii) order the disclosure of evidence; or (iv) order a party to deposit financial security with the arbitral tribunal (section 22(3)).

The Arbitration Act recognises standard interim measures as well as *ex parte* interim measures. The arbitral tribunal may grant an *ex parte* interim measure without prior notice to the affected party if authorised to do so in the arbitration agreement (section 22a(1)), but such measures will not be immediately enforceable by Slovak courts. Once served with an *ex parte* measure, the affected party may file an objection with the arbitral tribunal within 15 days (section 22a(3)). If the objection is unsuccessful at the tribunal level, the interim measure will be enforceable by courts. The affected party will have an opportunity to submit further objections to a general court (section 22c(2)).

4.5.5. Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

The Arbitration Act only lays out general rules with respect to the arbitrators' power to admit and assess evidence. The principal rule is that an arbitral tribunal may only take into account evidence proposed by the parties (section 27(1)). To the extent that any applicable duty of confidentiality, the right to be heard and equal treatment of the parties is preserved, an arbitral tribunal has wide discretion to determine which evidence it intends to take into consideration (section 27(2)).

If the tribunal cannot secure the taking of evidence, it may ask a court for assistance (section 27(4)). Furthermore, if the determination of a dispute depends on the assessment of facts that require professional knowledge, the tribunal may appoint an expert (section 28(1)).

4.5.6. Does it make it mandatory to hold a hearing?

Hearings are not mandatory under the Arbitration Act. In the absence of an agreement of the parties, it is for the arbitral tribunal to decide whether to hold a hearing or decide on the basis of written documents alone (section 23(1)).

4.5.7. Does it prescribe principles governing the awarding of interest?

An arbitral tribunal may award interest on the principal amount awarded in the decision on merits. Slovak law contains a default statutory rate of interest for principal claims, which may vary depending on the subject matter of a dispute.

It is unlikely that interest on costs of arbitration would be ordered.

4.5.8. Does it prescribe principles governing the allocation of arbitration costs?

In the absence of an agreement of the parties, the arbitral tribunal is free to decide on the allocation of arbitration costs.

Generally, 'the costs follow the event' principle is applicable.[17] (See, for example, Rules of Procedure of the Arbitration Court of the Slovak Bar Association, Attachment A, Article IV).

Legal fees are often (but not necessarily) awarded on the basis of a legal decree which sets out an exact amount for each action undertaken in the court (or arbitration) and may not reflect the real expenditure of the parties (Decree of the Ministry of Justice of the Slovak Republic No. 655/2004 Coll. on Legal Counsel Compensation for Rendered Legal Services, as amended).

5. Liability

5.1 Do arbitrators benefit from immunity to civil liability?

Arbitrators are afforded no special immunity for their function as adjudicators and can be liable for damages caused by the exercise of their function in accordance with the Civil Code of the Slovak Republic (section 420)). To give rise to such liability, the challenging party must establish (i) a breach by the arbitrator of his duties, (ii) an occurrence of damage, (iii) a causal link between the breach of duty and the damage caused and (iv) a fault of the arbitrator (whether intentional or negligent).[18]

5.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

Participants in arbitration proceedings can face criminal sanctions if they engage in corruption. According to the Slovak Criminal Code, this can include accepting a bribe, bribery, or indirect corruption (Act No. 300/2005 Coll., as amended, sections 328-336) (the Criminal Code). In the event that allegations of corruption are raised, it will have no suspensive effect over the arbitration or otherwise affect the proceedings.

We are not aware of any other potential criminal liability issues that the participants in an arbitration proceedings seated in the Slovak Republic may face.

6. The award

6.1 Can parties waive the requirement for an award to provide reasons?

The parties can agree that the award does not have to provide reasons (section 34(2)(g)).

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17 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 488.

18 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 157.

6.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

The general rule is that the parties may not exclude by agreement the provisions of Arbitration Act providing for the setting aside of an award (section 42). This applies to the right to seek the annulment for reasons stipulated by law as well as to the time limit governing this right.[19] However, a waiver of the right to seek the annulment of the award on the basis of a specific default (which cannot be reviewed by a court *ex officio*) after the default has already occurred may be possible.[20]

6.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

The only atypical mandatory requirement applicable to arbitral awards rendered in Slovakia is that in every award, an arbitral tribunal must advise the parties about the possibility to initiate set aside proceedings before general courts (section 34(2)(h)).

Other than that, an award must be in writing (section 34(1) (which in this context means a hard copy) and signed by a majority of the arbitrators, with a stated reason for any absent signature (section 32(3)). It must identify the arbitral institution, names of the arbitrators, names of the parties, place of arbitration and the date on which it was made (section 34(3)). An arbitral award shall contain a decision and, if the parties have not agreed otherwise, reasons for the decision (section 34(2)(g)). An award shall also state the amount of costs of the proceedings and the ratio of their distribution between the parties (section 34(4)). If the tribunal orders a party to perform something, it must also specify the time limit for the performance (section 34(4)).

6.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

The Arbitration Act explicitly recognizes that the parties may agree in the arbitration agreement that the award will be reviewed by another arbitrator (section 37). The Arbitration Act stipulates that the request for review should be filed within 15 days of the award's delivery, although this time limit can be modified by the parties' agreement.[21] The parties may also specify the scope of the review and the method of taking evidence.[22]

A limited form of review of an award occurs also at the enforcement stage. The relevant court for the enforcement (district court Banska Bystrica) scrutinizes, on its own motion, (i) whether the substance of the dispute can be arbitrated under the laws of the Slovak Republic and (ii) whether its recognition and enforcement would be against public policy. The review of an award on these two grounds should take place regardless of whether the seat of the arbitration is in Slovakia or abroad.[23] Other grounds for refusing the recognition and enforcement of the award are considered by the court only when raised by a party. However, if the seat of arbitration is in Slovakia, the party against whom the enforcement is sought is precluded from raising grounds for refusing the enforcement of the award if it did not initiate set-aside proceedings.[24]

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19 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 598.

20 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 597.

21 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 505.

22 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 505.

23 For foreign awards, this duty is explicitly stated in section 50 (2) of the Slovak Arbitration Act. For domestic awards, it is less clear as there is no explicit reference to either public policy or objective arbitrability in the applicable law (the Code of Civil Enforcement of Judgments), but the prevailing view is that the court will in any case make such an examination before giving effect to a domestic award. One exception to the review of a domestic award on these two grounds by the relevant court for the enforcement is when the relevant court for the annulment refused the challenge of the award - in such case; the relevant court for the annulment had already performed the same review *ex officio*. J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 610-611.

24 J. Gyarfas, *Commentary to the Slovak Arbitration Act*, p. 610.

6.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

The New York Convention is applicable with respect to the recognition and enforcement of foreign awards (only) and is implemented in sections 46-50 of the Slovak Arbitration Act. In accordance with the New York Convention, the Arbitration Act only lays out the basic formal requirements for the recognition and enforcement of foreign awards and the limited grounds on the basis of which the recognition and enforcement may be refused. A more detailed procedure for the enforcement of both local and foreign awards is laid out in the Code of Civil Enforcement of Judgments.

The enforcement of both local and foreign awards commences upon the filing of an electronic execution application with the District Court Banska Bystrica (sections 48 and 49 of the Code of Civil Enforcement of Judgments), together with: (i) the original foreign award or its certified copy, (ii) the original arbitration agreement or its certified copy; and in case of foreign awards (iii) an official Slovak translation of both the award and the arbitration agreement (section 47 of the Arbitration Act).

The procedure upon the receipt of the execution application differs depending on whether enforcement of a foreign or a domestic award is sought. In case of domestic awards, the court proceeds directly to an examination of the enforceability of the award. If the court considers that none of the grounds for refusing the enforcement listed in section 53(3) of the Code of Civil Enforcement of Judgements[25] are present, it approves the execution and instructs a randomly selected executor.[26] It is only after the court's approval that the party against whom the enforcement is sought will be notified (section 61 of the Code of Civil Enforcement of Judgements). The party against whom the enforcement is sought is precluded from challenging the enforcement if it is on the grounds that could have been addressed by means of the set-aside proceedings.

In case of foreign awards, the court notifies[27] the party against whom the award is sought to be enforced directly upon the receipt of the execution application (section 54(1) of the Code of Civil Enforcement of Judgements), to allow it to put forward the possible grounds for refusing the recognition and enforcement of the award pursuant to section 50(1) of the Arbitration Act. The party must do so within 15 days of its notification of the execution application (section 54 (2) of the Code of Civil Enforcement of Judgements). Even if the party did not object to the enforcement of the award, the court will, on its own motion, examine whether the substance of the dispute can be arbitrated under the laws of the Slovak Republic and whether the recognition and enforcement of the award would be against public policy (section 54 (2) of the Code of Civil Enforcement of Judgements in conjunction with section 50(2) of the Arbitration Act). If the court considers that none of the grounds for refusing the recognition and enforcement of the award are present, it approves the execution and instructs a randomly selected executor.[28] Any decision refusing the recognition and enforcement of an award can be appealed within 15 days of receipt of the decision.

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25 Amongst the most common grounds are: (a) general non-compliance with the law and (b) existence of reasons on the basis of which the execution could be stopped at a later stage. The examination of objective arbitrability and compliance with public policy should fall within the scope of the review.

26 There is no specific time-frame for this, though the court shall act without undue delay.

27 The notification may take months if the party against whom the enforcement is sought has no presence in the Slovak Republic. In such cases, it seems that the court may proceed directly to the examination of (i) objective arbitrability and (ii) compliance with public policy without notifying the party. The party against whom the enforcement is sought will be then entitled to raise grounds against the enforcement of the award pursuant to section 50 (1) of the Arbitration Act later in the proceedings.

28 If the execution application does not have to be delivered outside of the Slovak Republic, the court's approval can be granted within 15 days upon receipt of the execution application.

Foreign awards which do not need to be enforced[29] can be recognized by special court decisions (section 49(3) of the Arbitration Act). The recognition by special decision is effected by a court order and delivered to the claimant only. The court order allowing for the recognition of the award cannot be appealed.

6.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

There is no automatic suspension of the right to enforce an award upon the commencement of annulment proceedings. However, the court deciding on the set aside action may suspend the enforceability of the award upon the request of a party (section 40(3)).

6.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

A court may, but is not obliged to, refuse the enforcement of an award that has been set aside at the country of its origin (section 50(1)(e)). Upon the request of a party, a court may also stay the enforcement of an award if an application for setting aside the award has been made at the country of its origin (section 48).

6.8 Are foreign awards readily enforceable in practice?

Following the Amendment of 2015, the pro-arbitration and pro-enforcement attitude of the Slovak courts has started to emerge. The public policy exception is rarely used and there is a number of recent enforcement decisions that emphasise that "public policy" ought to be interpreted narrowly and in accordance with international standards.

In addition, the Constitutional Court of the Slovak Republic has published an opinion to serve as a unifying interpretation of some of the controversial arbitration related aspects[30] (Opinion of the Constitutional Court of the Slovak Republic No. PLz. ÚS 5/2015, dated 18 November 2015), which the general courts of the Slovak Republic are expected to follow.

7. Funding arrangements

7.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such restrictions?

In principle, nothing in Slovak law prohibits third-party funding arrangements in commercial arbitration.

Contingency fee arrangements are also allowed, provided they do not exceed 20 per cent of the value of the matter (Decree of the Ministry of Justice of the Slovak Republic No. 655/2004 Coll. on Legal Counsel Compensation for Rendered Legal Services, as amended).

8. Is there likely to be any significant reform of the arbitration law in the near future?

No significant reform of arbitration law will is expected in the near future.

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29 This refers to a situation where a party to an arbitration seeks to use the award as a 'shield' rather than a 'sword' to block any attempt to initiate new proceedings on questions which have already been decided in the arbitration. The recognition of an award without its enforcement is typically sought in the context of declaratory awards or awards that dismissed the claim altogether.

30 These controversial aspects concern the jurisdiction of the Constitutional Court of the Slovak Republic to review arbitral awards and arbitral proceedings upon request of a party. It has been confirmed that the Constitutional Court of the Slovak Republic has no jurisdiction to decide on complaints against the arbitral proceedings or arbitral awards.