

BULGARIA

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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| 1. Law | ● |
| a. Framework | ● |
| b. Adherence to international treaties | ● |
| c. Limited court intervention | ● |
| d. Arbitrator immunity from civil liability | ● |
| 2. Judiciary | ● |
| 3. Legal expertise | ● |
| 4. Rights of representation | ● |
| 5. Accessibility and safety | ● |
| 6. Ethics | ● |
| Evolution of above compared to previous year | ☰ |
| 7. Tech friendliness | ● |
| 8. Compatibility with the Delos Rules | ● |

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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 any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

A jurisdiction with a strong tradition in commercial arbitration, Bulgaria was among the first to implement the 1985 Model Law. Although it has not implemented the 2006 revision of the Model Law, the Bulgarian legislator consistently develops the local environment in a pro-arbitration direction. The recent demonstration of such development is the 2017 reform which reduced the grounds for annulment of awards and partially decentralised jurisdiction among regional courts.

Easy access to *ex parte* pre-arbitration interim measures issued by local courts, respect by local judges of the *competence-competence* doctrine, readily granted assistance by state courts in support of arbitration and a large set of remedies (including interest) available to arbitral tribunals make Bulgaria an appropriate venue for resolution by arbitration of a large variety of disputes.

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| Key places of arbitration in the jurisdiction? | <p>Currently featuring more than 25 institutions, the leading institutional arbitrations are based in the capital, Sofia. The Arbitration court with the Bulgarian Chamber of Commerce and Industry is the most frequently used institution.</p> <p>There are also institutions active in Varna and Bourgas (the seaport towns) and in Plovdiv (the second largest city), which, however, have limited impact on the arbitration climate in the country.</p> |
| Civil law / Common law environment? (if mixed or other, specify) | Civil law. Sharing common features with all Eastern-Europe countries. Bulgaria is also a Member State of the European Union. |
| Confidentiality of arbitrations? | The Arbitration Act is silent on confidentiality; yet it is commonly accepted as a key distinguishing feature of arbitration. The rules of the leading arbitration institutions provide for confidentiality of the proceedings. |
| Requirement to retain (local) counsel? | <p>There are no restrictions on representation in arbitral proceedings.</p> <p>In arbitration related court proceedings (<i>e.g.</i>, annulment, recognition and enforcement, interim measures and gathering of evidence), the parties may choose to defend themselves or to be represented, in which case they need to be represented by a lawyer or in-house counsel engaged on employment contract and having a law degree.¹ In proceedings before the Supreme Court of Cassation, the lawyer shall have at least 5 years of experience.²</p> <p>A lawyer admitted to the bar in a foreign non-EU country may appear before Bulgarian courts only upon receiving special authorization, subject to specific conditions and only together with a Bulgarian lawyer.³ A lawyer from an EU country may appear before local courts without specific authorization, but only together with a Bulgarian lawyer.⁴</p> |

¹ Article 32 of the Civil Proceedings Act.

² Article 24(2) of the Advocacy Act.

³ Article 10 of the Advocacy Act.

⁴ Articles 11 and 12 of the Advocacy Act.

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| Ability to present party employee witness testimony? | Party employees may give witness testimony; arbitral tribunals may take the witnesses' relations with the parties into consideration when determining the probative value of their statements. |
| Ability to hold meetings and/or hearings outside of the seat and/or remotely? | The parties may agree on the place of the hearing, including outside of the seat. Absent such agreement, the tribunal will determine the place of the hearing considering all circumstances of the case and the convenience of the parties. ⁵ The position on remote hearings is less settled, and depends notably on whether the arbitration is institutional and the rules of the institution permit remote hearings. |
| Availability of interest as a remedy? | Bulgarian law explicitly recognizes interest as an available remedy. |
| Ability to claim for reasonable costs incurred for the arbitration? | The leading principle in the allocation of costs is "the costs follow the event", save for excessive lawyers' fees, which the tribunal or the court may refuse to allocate entirely to the losing party. |
| Restrictions regarding contingency fee arrangements and/or third-party funding? | Contingency fee arrangements are permitted and frequently used in practice. The only restriction in court proceedings is that the court would refuse to award costs that the parties did not incur prior to the closing of the proceedings. Third party funding is not regulated, and is yet rarely used. |
| Party to the New York Convention? | The New York Convention has been in force in Bulgaria since 1965. Bulgaria adheres to the New York Convention under the reservations that: (i) it applies the Convention to awards made in the territory of other contracting states; and (ii) regarding awards made in the territory of non-contracting states, Bulgaria applies the Convention subject to strict reciprocity. |
| Party to the ICSID Convention? | Bulgaria is a contracting state to the ICSID Convention as of 21 March 2000, ratified by act of the Parliament on 4 October 2000, entry into force on 13 May 2001 |
| Compatibility with the Delos Rules? | Fully compatible with the Delos Rules; Note that Bulgarian law does not permit waiver of the available recourse against the award (clause 10.2 Delos Rules) |
| Default time-limitation period for civil actions (including contractual)? | The default time-limitation period under Bulgarian law is five /5/ years as from the moment the obligation becomes due. A shorter three /3/-year period applies to certain heads of claims, such as for compensation or liquidated damages for breach of contract, lease, interests or other periodic payments. The period of limitation may be terminated or stayed on grounds enumerated in the Obligations and Contracts Act. There exists an absolute ten /10/-year limitation period applicable to natural persons, which however does not apply to certain groups of claims, such as for compensation for damages resulting from tort, alimony etc. |

⁵ Article 25 of the Arbitration Act.

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| <p>Other key points to note?</p> | <p>The Arbitration Act limits the freedom of the parties in domestic arbitration to choose foreign law applicable to their arbitration agreement. Thus, in domestic arbitration only the Arbitration Act governs the arbitration agreement.</p> <p>The Arbitration Act requires that an arbitrator sitting in Bulgaria shall be a citizen of full age, not convicted for deliberate capital offence, has university degree, at least 8 years of professional experience and high morals. The Act, however, does not require qualification in law.</p> <p>Further, a foreign citizen may not sit as arbitrator in domestic arbitration, but only in international arbitration.⁶</p> <p>The consolidation and/or joinder of arbitral proceedings are subject to very strict interpretation as the Bulgarian legal tradition pays significant tribute to the importance of the right of the parties to participate in the appointment of the tribunal. Consequently, unless the parties clearly agree on the provisions and rules beforehand, consolidation and/or joinder would be possible only upon explicit consent of all parties.</p> |
| <p>World Bank, <i>Enforcing Contracts: Doing Business</i> score for 2020, if available?</p> | <p>Enforcing Contracts rank – 42; Enforcing Contracts score – 67.</p> |
| <p>World Justice Project, <i>Rule of Law Index: Civil Justice</i> score for 2020, if available?</p> | <p>0.56</p> |

⁶ Article 11(2) in conjunction with para.3 of the Transitory and conclusive provisions of the Arbitration Act.

ARBITRATION PRACTITIONER SUMMARY

With very few exceptions, Bulgarian arbitration law mirrors the Model Law (1985) and follows the New York convention, which makes the local arbitration climate familiar and predictable to foreign practitioners. The local courts consistently demonstrate pro-arbitration attitude and a recent reform of the arbitration law even reduced the grounds for setting aside of domestic awards.

Notably, the local law makes non-arbitrable certain categories of disputes, some of which are traditionally arbitrable in other jurisdictions, such as alimony and labour disputes.

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| Date of arbitration law? | The International Commercial Arbitration Act was promulgated in 1988, the latest revision being of January 2017. |
| UNCITRAL Model Law? If so, any key changes thereto? 2006 version? | <p>Bulgaria has implemented the 1985 version of the Model Law, but not the 2006 amended version.</p> <p>In 2017, Bulgaria excluded the contradiction to public policy as a ground for the setting aside of domestic awards. The Arbitration Act also restricts foreigners from sitting as arbitrators in domestic arbitrations and provides special requirements and qualifications to arbitrators.</p> |
| Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters? | <p>Until January 2017, almost all arbitration related matters fell within the exclusive jurisdiction of the Sofia City Court (and upon appeal – within the jurisdiction of the Sofia Court of Appeal and the Supreme Court of Cassation). As of January 2017, some functions were decentralized. Now, the regional court at the domicile of the debtor issues the writs of execution for domestic awards; regional courts (not only in Sofia) further have jurisdiction to assist in the gathering of evidence and issuance of injunctive measures in support of arbitration.</p> <p>However, even after the 2017 reform, the Sofia City Court still has exclusive jurisdiction to act as a court of the first instance in proceedings for recognition and enforcement of foreign arbitral awards. The Supreme Court of Cassation retains its exclusive role as the only court instance that can hear motions for annulment of domestic awards. The concentration of jurisdiction in these courts leads to de facto specialization of the judges who repeatedly sit in arbitration-related matters.</p> |
| Availability of <i>ex parte</i> pre-arbitration interim measures? | The Arbitration Act explicitly provides that at any time before or after instituting the arbitration proceedings, a party thereto may request from the state courts interim or injunctive measures. As a matter of principle, these are heard exclusively on an <i>ex parte</i> basis. The respondent may appeal only after the measure is imposed and notified to him. |
| Courts' attitude towards the competence-competence principle? | The competence-competence doctrine is well established in Bulgarian arbitration law and doctrine. Apart from being enshrined |

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| | <p>in an explicit legal provision,⁷ in a recent decision,⁸ the Supreme Court of Cassation held that a claim before the state courts for establishing the nullity of an arbitration clause is inadmissible if the dispute was already submitted to arbitration and while the arbitration is pending. Thus, the Supreme Court partially adopted the doctrine that the arbitrators shall be the first to rule on the validity of the agreement. It is only partially adopted as in the same judgment the Supreme Court held that if the dispute has not been submitted to arbitration yet, the party may have legitimate interest to seize directly the state courts. It is yet to be seen to what extent this judgment will be followed.</p> |
| <p>May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?</p> | <p>An award (or other ruling) shall contain reasons, unless the parties agree otherwise (Article 41 (1) Arbitration Act). Consequently, the parties by agreement may provide for power of the tribunal to issue rulings with reasons to follow in a subsequent award. Lacking such agreement, all acts of the tribunal shall be reasoned.</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>Until January 2017, the grounds for annulment mirrored Article 34 of the Model Law (1985 version) and the New York Convention governed the recognition and enforcement of foreign awards. The 2017 reform of the arbitration law excluded the violation of public policy from the list of grounds for the setting aside of domestic awards, which by operation of Article VII(1) of the New York Convention may also apply to recognition and enforcement of foreign awards. Consequently, compared to the Model Law and the New York Convention, the local law restricts the grounds on which an award may be set aside.</p> |
| <p>Do annulment proceedings typically suspend enforcement proceedings?</p> | <p>The commencement of annulment proceedings does not suspend the enforcement of the award. The party seeking annulment may request from the Supreme Court the suspend the enforcement, which is admissible only upon presentation of a monetary cross-undertaking in amount equal to the amount awarded by the challenged award.</p> |
| <p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p> | <p>By virtue of Article V.1(d) of the New York convention in conjunction with Article 51 of the Arbitration Act, Bulgarian courts would not enforce foreign awards annulled by the courts in the country of origin.</p> |
| <p>If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?</p> | <p>Provided the tribunal guarantees the equal opportunity of each party to present its case in adequate manner, and if the technical requirements do not make it objectively impossible for a party to attend the remote hearing, it should not affect the enforceability of the award. Notably, there are no reported cases yet.</p> |

⁷ Article 19 (1) of the Arbitration Act.

⁸ [Decision No 40 of 29.06.2017 in commercial case No 2448 2015 of the Supreme Court of Cassation, First Commercial Division.](#)

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| <p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p> | <p>The state bodies enjoy limited immunity from enforcement of pecuniary obligations – the payment of the respective amount shall be made from its budget; the enforcement of non-pecuniary obligations follows the general rules.</p> <p>The municipalities enjoy narrower immunity from enforcement of pecuniary obligations – the immunity applies only to funds received as subsidy from the State budget, from EU or other international programs.</p> |
| <p>Is the validity of blockchain-based evidence recognised?</p> | <p>Blockchain-based evidence is not explicitly recognised and where needed, arbitral tribunal and courts should apply <i>accordingly</i> the respective rules on evidence.</p> |
| <p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p> | <p>Under Bulgarian law, an arbitration agreement must be <i>in writing</i>, which is defined as “contained in signed documents or exchanged letters, telexes, telegrams or other means of communication”. Theoretically, an arbitration agreement recorded in blockchain might fit the requirements, yet the hurdle would be to prove that both parties’ expressed consent to be bound by it.</p> |
| <p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p> | <p>In theory, the courts may recognize a blockchain arbitration agreement as valid. However, Bulgarian law contains specific requirement that awards shall be signed, therefore most probably the courts would not consider a blockchain award as original. Notably, there are no recorded cases.</p> |
| <p>Other key points to note?</p> | <p>ϕ</p> |

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

The International Commercial Arbitration Act⁹ (“[Arbitration Act](#)” or the “Act”) regulates both international¹⁰ and domestic arbitration in Bulgaria. The Arbitration Act applies to international arbitration by virtue of Article 1 thereof. With the exception of certain specific provisions, the Arbitration Act applies to domestic arbitration by virtue of Paragraph 3 of the transitory and conclusive provisions thereof.

[Bulgarian Private International Law Code](#) and the [New York Convention](#) apply to the recognition and enforcement of foreign arbitral awards in Bulgaria.

The [Civil Procedure Code](#) defines the arbitrability and regulates arbitration-related proceedings before courts.

The Arbitration Act implements the 1985 revision of the UNCITRAL Model Law. Bulgaria has not yet implemented the 2006 revision of the Model Law.

Following a modification of the Arbitration Act in 2017,¹¹ violation of public policy no longer constitutes a ground for setting aside of a domestic award, which is the first substantial deviation of Bulgarian arbitration law from the Model Law. This was intended to apply to domestic arbitration only,¹² whereas the public policy exception should apply to the recognition and enforcement of foreign awards. However, it may be argued that, pursuant to Article VII (1) of the New York Convention,¹³ the abolishment of the public policy exception should apply to foreign awards as well. There are no reported cases yet.

Another feature of the recent reform of the arbitration law is the intensified control of the courts over the validity of awards and a stricter monitoring by the State of the activity of arbitral institutions and arbitrators in Bulgaria. Further, the reform narrowed the scope of arbitration as it made consumer disputes non-arbitrable.

1.2 When was the arbitration law last revised?

The Arbitration Act was last modified in January 2017.

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

¹⁰ Arbitration is international when at least one of the parties is registered or domiciled abroad, or if the predominant part of its registered capital is owned by a foreign entity/person.

¹¹ [SG issue 8 of 24 January 2017](#).

¹² In the sense that it was introduced as modification of the grounds for setting aside a domestic award – Article 47 of the International Commercial Arbitration Act.

¹³ Article VII (1) of the New York Convention reads:

“The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of in arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.” (emphasis added). Consequently, a party seeking to enforce foreign award in Bulgaria may ascertain that the public policy exception (Article V,2(b) of the New York Convention) does not apply as the local law provides a more favourable treatment.

2. The arbitration agreement

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

As regards international arbitration with seat in Bulgaria, Article 47(1)(2) of the Arbitration Act binds the courts to consider the conclusion and validity of the arbitration agreement in light of the “*law chosen by the parties, or absent such choice – according to this Act*”.

The Arbitration Act limits the freedom of the parties in domestic arbitration to choose a foreign law applicable to their arbitration agreement.¹⁴ As a result, arbitration agreements in domestic arbitrations are governed by the Arbitration Act.

As regards foreign awards (which may come before Bulgarian courts in the context of their exequatur in Bulgaria), the courts would apply the conflicts of law rules it considers appropriate to determine the law applicable to the arbitration agreement (almost in all reported cases it was the law of the underlying contract). The courts would also consider the mandatory laws of the seat. The courts in principle shall establish the contents of the foreign applicable law *ex officio* (Article 43 (1) Private International Law Code). As a matter of practice, the courts often rely on the activity of the parties to establish the contents of the foreign law on which they base their respective requests/objections.

2.2 In the absence of an express designation of a ‘seat’ in the arbitration agreement, how do the courts deal with references therein to a ‘venue’ or ‘place’ of arbitration?

Under Bulgarian jurisprudence and legal doctrine, a reference to a ‘venue’ or ‘place’ of arbitration is determination of a ‘seat’. Clear distinguishment also exists between ‘place of hearing’, on the one hand, and ‘seat’/‘venue’/‘place’ of the arbitration, on the other.

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

Article 19(2) of the Arbitration Act mirrors the Model Law and explicitly states that the arbitration agreement is independent from the rest of the contract. Both state courts and arbitrators consistently apply this provision.

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

An arbitration agreement must refer to one or more *defined legal relationships*, regardless of whether contractual or not.

It must be *in writing*. An agreement is “in writing” if it is contained in signed documents or exchanged letters, telexes, telegrams or other means of communication. An implied agreement exists if the respondent – either in writing or by statement recorded in the transcript of a hearing – accepts for the dispute to be resolved through arbitration or participates in arbitral proceedings without objecting to the competence of the tribunal. Recently the law¹⁵ defined the forms of participation in arbitral proceedings that amount to implied acceptance. It is, however, unclear if the list is exhaustive.

Several groups of non-arbitrable disputes (discussed below) further limit the enforceability of an arbitration agreement.

Another requirement for validity, which is not included in the Arbitration Act but follows from the case law, is that the arbitration agreement must not be *unilateral*. The Supreme Court of Cassation considered as *unilateral* clauses that grant only one of the parties with a choice between arbitration and recourse before

¹⁴ Para. 3 of the Transitory and conclusive provisions of the Arbitration Act.

¹⁵ Article 7(3) of the Arbitration Act, indicating as forms of implied consent the submission of statement of reply, presentation of evidence, submission of counterclaim or appearance at the hearing without making an objection to the jurisdiction of the tribunal.

state courts.¹⁶ However, few reported awards take the view that if an arbitration clause grants equal choice to both parties, the clause was not unilateral and consequently – valid.¹⁷

Two more issues deriving from case law merit attention.

For many years commercial or civil contracts incorporating arbitration clauses were concluded by agents acting upon general or specific powers of attorney. In a judgment of 2017, however, the Supreme Court, relying again on the separability doctrine, opined that a power of attorney for conclusion of a given commercial or civil contract does not *per se* incorporate the powers to agree to an arbitration clause contained therein;¹⁸ instead an explicit power of attorney for conclusion of an arbitration agreement is needed.

Second, in the above-mentioned judgment of 2017,¹⁹ as well as in a few others,²⁰ the Supreme Court, relying again on the separability doctrine, opined that the implicit confirmation of the validity of a commercial contract concluded by an ostensible agent does not extend to an arbitration clause contained in the same contract.

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

Generally, an arbitration agreement binds only its signatories. It also binds the universal legal successors of the parties (*e.g.*, in case of a merger of companies).

The question whether assignment of contract also assigns the arbitration agreement contained therein underwent substantial development in recent years.

Initially, the position in arbitration case law was that the assignment of a contract automatically makes the assignee a party to the arbitration agreement contained therein. The arbitrators listed with the BCCI have even rendered a (then – mandatory for arbitrations administered by the BCCI, and after 2017 - only provisionally binding) decision²¹ confirming this practice. In few (not very recent) cases tribunals sitting with the Arbitration court with the BIA have taken the same approach.

At the same time, upon a strict interpretation of an arbitration clause as an independent agreement, the Supreme Court of Cassation rules that the assignment of a contract does not make the assignee a party to the arbitration clause. Consequently, the Supreme Court annuls awards based on “assigned” arbitration agreements for lack of consent. In line with this practice, it is probable that the state courts would refuse recognition of foreign awards in Bulgaria (although there are no reported cases exploring this issue).²²

¹⁶ [Decision № 71 of 2.09.2011 of the Supreme Court of Cassation, commercial case № 1193/2010, II-nd commercial chamber.](#)

¹⁷ See, for instance, Procedural Order in ICC Case № 3/2016.

¹⁸ Judgment № 8 of 8/2/2017 of the Supreme Court of Cassation in case № 1706 of 2016, 2nd commercial division

¹⁹ Ibid

²⁰ Judgment № 157 of 11/1/2013 in case № 611 of 2012 of the Supreme Court of Cassation, 1st commercial division; Judgment № 66 of 7/7/2014 in case № 4036 of 2013 of the Supreme Court of Cassation, 1st commercial division

²¹ [Decision of 18 March 2009](#); Until 2017 the decisions of the College of Arbitrators were unconditionally binding and tribunals sitting with the Arbitration Court at the BCCI were bound to disregard the opinion of the Supreme Court and to assume jurisdiction based on arbitration clauses incorporated in assigned contracts. In January 2017, the Arbitration Court modified its statutes and the decisions of the College of Arbitrators are no longer unconditionally binding. Now the tribunals may disregard decisions of the College of Arbitrators that contradict judgments of the Supreme Court issued in proceedings for setting aside of awards

²² In the words of the Supreme Court of Cassation, “...the assignment of receivables under a contract does not make the assignee a party to the arbitration clause included in the contract ...” Decision №71 of 9 July 2015 of the Supreme Court of Cassation, commercial case № 3506/2014 , II commercial division. Similarly, Decision № 70 of 15.06.2012, commercial case № 112/2012, I commercial division; Decision № 122 of 18 June 2013, commercial case 920/2012 of the II commercial division.

Recently, under the influence of the Supreme Court's position and under penalty of annulment of awards, the domestic arbitration practice has changed and now panels constituted under the Rules of the BCCI terminate claims based on assigned contract for lack of arbitration agreement.

Agency could in theory lead to extension of arbitration agreement concluded by an agent to the principle. Article 292 (2) of the Obligations and contracts act contains specific rules on the effect of the dealings of a non-disclosed agent with regards to the principle, as follows: *"If the agent acts from its own name, the rights and obligations from dealings with third parties arise for it. However, in the relations between the agent and the principle, as well as with regards to third parties that are not acting good faith, these rights are considered rights of the principle."* Notably, there are no reported cases dealing with the application of these rules with regards to the arbitration agreement.

No other grounds exist for the extension of arbitration agreements to non-signatories. Bulgarian law does not recognize *veil-piercing*, *alter ego* or the *group of companies* doctrines. Incorporation by reference, which other legal systems may consider as a ground for the extension of an arbitration agreement, is permissible in Bulgaria as an ordinary method for concluding an arbitration agreement.

Similarly to court judgments, the award is binding on the universal and private successors of the parties; however, under no circumstances it may have effect towards everyone (*i.e.*, it cannot have an *erga omnes* effect).

2.6 Are there restrictions to arbitrability? In the affirmative: do these restrictions relate to specific domains (such as anti-trust, employment law etc.) and/or to specific persons (*i.e.*, State entities, consumers etc.)?

Bulgarian law contains restrictions on arbitrability based both on the subject matter of the dispute and the parties involved, as follows.

Under Article 19(1) of the Civil Procedure Code, only disputes involving pecuniary rights are arbitrable. This excludes disputes concerning non-disposable rights (*e.g.*, family disputes). Antitrust and competition matters are also considered as non-arbitrable. However, where the existence of unfair competition is established, the parties concerned may conclude an arbitration (submission) agreement to deal with compensation issues (although there have been no reported cases of this type). The same applies to IP rights, including patents.

The Civil Procedure Code further explicitly excludes the following types of dispute from arbitration:

- disputes concerning rights *in rem* or possession of immovable assets;
- disputes concerning alimony;
- employment disputes; and
- since January 2017, disputes involving consumers are also non-arbitrable.²³ All cases pending at the time of the legislative change shall be terminated forthwith. Further, awards concerning consumers become null and void and therefore – unenforceable, and the state courts refuse to issue writs of execution based on such awards.

Arbitrability is further limited in cases of insolvency. According to Article 637(6) of the [Commerce Act](#), after initiation of insolvency proceedings, new arbitration proceedings cannot be initiated; regardless of the existence of an arbitration agreement, all claims against the debtor must be filed before the insolvency court.

All arbitral proceedings pending at the time of the initiation of insolvency proceedings must be suspended. If the respective claim is subsequently included in the list of accepted claims, the arbitration will be

²³ Unlike other jurisdiction, under Bulgarian law even submission agreements concluded by consumers after the dispute has arisen are null and void.

terminated; if the claim is not accepted, the suspended proceedings will continue with the participation of the insolvency trustee.

The respondent may challenge the arbitrability of the dispute as a part of its jurisdictional defence. As the non-arbitrability of a dispute is non-waivable,²⁴ the objection may be made later on in the proceedings or used as a ground for challenging the award; failure to challenge the arbitrability in due time does not deprive the respondent of the opportunity to do so later.

3. Intervention of domestic courts

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

The court shall stay litigation upon objection of a party for the existence of an arbitration agreement covering the dispute. Under penalty of implied waiver, the objection for existence of arbitration agreement shall be made not later than with the statement of response. The court may only refuse to stay the litigation if it finds the arbitration agreement "*null and void, inoperative or incapable of being performed*".²⁵ The court should not distinguish between seat of arbitration in Bulgaria or abroad, as far as the arbitration clause is valid and the objection is made in due time.

Bulgarian courts generally tend to enforce arbitration agreements, even imperfect ones.

Unlike other jurisdictions, Bulgarian courts would refuse to enforce a unilateral arbitration clause that grants only one of the parties a choice between arbitration and state courts (notably, if such clauses provide equal rights to both parties, the courts would enforce them).

Bulgarian courts would further refuse to enforce arbitration agreement between assignor and assignee, and also agreements concluded by a representative acting upon a general (a not explicit) power of attorney (see above).

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

Under Bulgarian law, the arbitrators have no powers to bind others but the parties to the arbitration agreement. Consequently, a judge would disregard an injunction issued by an arbitral tribunal ordering a stay of litigation. Further, unless it follows otherwise from the circumstances, the court would not consider such an injunction as a substitute of objection by a party for a stay of litigation; as specified above, the only explicit objection made by a party in due time that the dispute is covered by arbitration agreement would suffice for a stay of the litigation.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

In principle, the courts may intervene in arbitral proceedings only as far as permitted by the Arbitration Act.²⁶ Yet, in few cases courts have intervened in arbitral proceedings on the basis of the general principles of civil litigation and the general right to seek redress from state courts. For example, in one instance the Sofia City Court has issued injunctive relief and ordered suspension of arbitral proceeding based on arbitration clause, the validity of which clause was disputed in court.²⁷ However, upon appeal the Sofia Court of Appeal took the

²⁴ This follows from the mandatory character of the arbitrability rules; it is further implied in Article 5 of the Arbitration Act, according to which a "[p]arty that is aware of non-compliance with a non-imperative provision of this Act, or with a requirement provided in the arbitration agreement, but nevertheless continues to participate in the proceeding without raising immediate objections ... cannot rely on the non-compliance." Consequently, if the non-compliance or breach affects mandatory provision, the party may raise objection at a later stage, including at the stage of challenging the award before the Supreme Court of Cassation.

²⁵ Article 8(1) of the Arbitration Act.

²⁶ Article 6 of the Arbitration Act, mirroring Article 5 of the Model Law (1985).

²⁷ Ruling of 8 March 2012, Civil Case No.2610/2012, Sofia City Court, Civil division, 4th panel.

opposite view and ruled that it is inadmissible for the courts to suspend arbitration proceedings as an injunctive relief and that the eventual shortcomings of the arbitral proceedings may be invoked only in the procedure for setting aside the ensuing award.²⁸

In theory, courts may intervene in similar manner with regard to arbitral proceedings pending outside of the jurisdiction, provided they consider that there is international element that substantiates their jurisdiction. Notably, there are no reported cases allowing such intervention abroad and, taking into consideration the opinion of the Sofia Court of Appeal, most probably Bulgarian courts would be slow to intervene in arbitration proceedings conducted outside of their jurisdiction.

On the other hand, courts may intervene in support of the arbitration or in order to preserve the integrity of the process. Thus, courts may issue interim or conservatory measures for preservation of assets or *status quo* and they may assist in collecting of evidence that cannot be collected by the tribunal (usually because of the lack of coercive powers).²⁹ As regards the maintenance of the integrity of the process, the courts have certain powers with regard to challenges of arbitrators³⁰ and setting aside of awards (for domestic arbitration)³¹ and controlling the enforcement stage (regarding foreign awards).³²

4. The conduct of the proceedings

Arbitrators must ensure equal treatment of the parties and provide them with equal opportunities to present their cases.³³

The parties are free to agree on the procedure for the arbitrators to follow. In the absence of such agreement, the arbitrators will apply the procedure that they consider appropriate, subject always to the duty to ensure equal opportunities for the parties to present their cases. The law also provides basic procedural rules aimed at ensuring the successful completion of the procedure, including a rule for exchange of written statements of claim and defence, rules on counterclaims, the open-hearing principle and documents-only arbitration by exception etc.

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

Parties to arbitral proceedings in Bulgaria may be represented by outside counsel, in-houses, or self-represented. Absent specific agreement of the parties, there are no restrictions as to the qualifications of the representatives, in particular, those not necessarily be lawyers, but may be persons with other qualification the party deems appropriate. In practice, representation by non-lawyers is rare, except for DAB procedures and ensuing arbitrations where it is common for engineers to attend as party-appointed representatives.

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 be of a gravity such as to justify this outcome?

An arbitrator may be challenged if:

- the circumstances raise reasonable doubts regarding his or her impartiality or independence; or
- he or she is not eligible or does not possess the qualifications required by the arbitration agreement.

²⁸ Ruling of 18 April 2013, Civil Case 2032/2012, Sofia Court of Appeal, Civil division, 7th panel.

²⁹ Article 9 of the Arbitration Act: "Each of the parties to an arbitration may request from a state court, prior or while arbitration proceedings are pending, issuance of conservatory measures or conservation of evidence".

³⁰ Article 16 of the Arbitration Act: if the arbitral tribunal dismisses a challenge to an arbitrator the challenging party may challenge the arbitrator before the Sofia City Court.

³¹ Article 47 of the Arbitration Act: the party may challenge the award before the Supreme Court of Cassation on limited ground, among which improper constitution of the arbitral tribunal or non-compliance of the procedure with the agreement of the parties, as well as on certain procedural violations.

³² Article 51 of the Arbitration Act in conjunction with Article V of the New York Convention.

³³ Article 22 of the Arbitration Act.

A party may challenge its own appointed arbitrator only on account of circumstances of which it was not aware at the time of making the appointment.

Further, the appointment may be terminated if the arbitrator becomes incapable of performing his or her functions or fails to act without a reasonable excuse (however, the Sofia City Court has ruled that delayed issuance of an award does not constitute grounds for termination).

Unless the parties agree otherwise, the challenge must be made within 15 days after the challenging party becoming aware of the formation of the tribunal or the circumstances giving rise to the challenge. Notably, some institutional rules provide for shorter terms for the challenge.

Where the arbitral tribunal refuses to accept the challenge, the refusal may be appealed to the Sofia City Court.³⁴ This provision is mandatory and cannot be derogated from by an agreement between the parties. The tribunal may continue the proceedings and render an award while the challenge and appeal are pending. The decision of the Sofia City Court is final.

In practice, the Sofia City Court has applied a strict interpretation of the “reasonable doubt” test, accepting the challenge only where the circumstances objectively lead to partiality or lack of independence. Consequently, a mere failure of an arbitration to disclose should not suffice for a challenge, unless it follows from the undisclosed circumstances that the arbitrator’s impartiality or independence are tainted.

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

The Arbitration Act provides for a default procedure for the appointment of arbitrators, which allows for intervention by state courts only with respect to disputes arising from non-commercial relations.

In *ad hoc* arbitration, unless otherwise agreed, the tribunal is comprised of three arbitrators: each party appoints one arbitrator, and together the party-appointed arbitrators choose the chairperson.

If the respondent fails to nominate an arbitrator within 30 days of receiving the claimant’s notice of arbitration, or if the two party-appointed arbitrators fail to choose the chairperson within 30 days, and if the dispute arises from a commercial relationship, the chairperson of the Bulgarian Chamber of Commerce and Industry (“BCCI”), on request of one of the parties, will act as the appointing authority. The chairperson of the BCCI will consider the qualification requirements contained in the arbitration agreement (and all other relevant circumstances) with a view to appointing an independent and impartial arbitrator.³⁵ Thus, for disputes arising from commercial relations, the chairperson of the BCCI shall act as appointing authority.

For disputes that do not arise from commercial relations, the Sofia City Court shall act as appointing authority.³⁶

The institutional rules provide for a separate default procedure, which is very similar to the above, except for who acts as an appointing authority.³⁷

³⁴ Article 16 of the Arbitration Act.

³⁵ Article 12 of the Arbitration Act.

³⁶ Para. 3(2) of the Transitory and conclusive provisions of the Arbitration Act.

³⁷ For example, the Rules of arbitration of the Arbitration court with the Bulgarian Chamber of Commerce and Industry (the most commonly used institution) provides the same procedure (each party appoints an arbitrator from a closed list and the two party-appointed arbitrators appoint a chairperson from the same list); however, upon a failure of the respondent to nominate an arbitrator or if the two party-appointed arbitrators cannot agree about the chairperson, the chairperson of the BCCI Court of Arbitration (and not the chairperson of the BCCI) will act as appointing authority.

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?

The Arbitration Act explicitly provides that, upon request of a party, either before initiation of the arbitration or while the proceedings are pending, the state courts may order interim measures to:

- protect a party's rights that are the subject matter of the arbitration; or
- guarantee effective enforcement of an eventual favourable award.³⁸

The courts may issue identical measures to those issued in relation to pending litigation, including attachment of movable or immovable assets or receivables (including freezing bank accounts) or other appropriate measures. These are immediately enforceable by bailiffs.

Requests to courts for the issuance of interim measures are always heard on an *ex parte* basis. The court may grant the measure if it finds that the claim in support of which the interim measure is sought is admissible and if the claimant has a *prima facie* case on the merits. As further conditions, the interim measure should be appropriate, proportionate and necessary.

Even where the applicant does not have a *prima facie* case on the merits, the courts may issue interim measures upon presentation of a counter guarantee. As a matter of practice, the guarantee is up to 10% of the value of the claim (in some rear instances going up to 15%); the guarantee remains with the court until the dispute is pending and is used to cover eventual damages of respondent from meritless injunctions (the damages need be established in a separate adversarial process). Judges have discretion to request presentation of counter guarantee even where the claimant has a *prima facie* case on the merits.

The counterparty may appeal against the interim measure in 7 /seven/ days from service of a notice that it was imposed.³⁹

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

The Arbitration Act contains a set of provisions, some of which are mandatory and determine the minimum standard of due process,⁴⁰ but most of them are default provisions that aim to supplement the missing agreement of the parties on the constitution of the tribunal and the conduct of the arbitration.

The Arbitration Act underlines that the parties are free to shape the proceedings,⁴¹ and in the absence of such agreement, the tribunal shall conduct the proceedings in a manner it finds appropriate under the circumstances,⁴² but always subject to the duty to guarantee to both parties equal opportunity to present their case.⁴³

In *ad hoc* arbitration, unless otherwise agreed, the proceeding is considered commenced for all purposes when the respondent receives a request to refer a dispute to arbitration. The aim of this provision was for a simple notice of intention to arbitrate to suffice for the institution of proceedings. This is consistent with Article 33 of the Arbitration Act, which provides for the termination of proceedings if the claimant fails to submit a statement of claim in the timeframe agreed by the parties or determined by the tribunal.

³⁸ Article 9 of the Arbitration Act.

³⁹ Article 396 of the Civil Procedure Code.

⁴⁰ Under Bulgarian law and legal doctrine, the "due process" principle encompasses the equal treatment of the parties and the opportunity to present their case (Article 22 of the Arbitration Act); those of the provisions of the Act that have mandatory character aim to safeguard the due process.

⁴¹ Article 24, sentence 1 of the Arbitration Act.

⁴² Article 24, sentence 2 of the Arbitration Act.

⁴³ Article 24, sentence 3 of the Arbitration Act.

In practice, even in *ad hoc* arbitration, it is relatively rare for the claimant to send a simple request for arbitration; in most cases, the claimant sends a detailed statement of claim containing its grounds and request for relief. This approach is recommended, as the potential insufficiencies of a simple request (most often, insufficient individualisation of the cause of action) may cause uncertainty regarding whether and when the arbitration was properly commenced (with ensuing uncertainty regarding the legal effects of proper commencement – the most important of which being the termination of the limitation period).

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The Arbitration Act is silent on confidentiality. The doctrine highlights the confidentiality and privacy as distinguishing features of arbitration, as is also reflected in certain institutional rules.⁴⁴ However, unless the arbitration clause refers to institutional rules that contain explicit confidentiality provisions, the parties should be prudent to incorporate specific provisions on confidentiality in their arbitration agreement.

The Bulgarian Criminal Code qualifies it as a punishable offence if an expert witness or an interpreter discloses information which constitutes a *secret* and which has become known to them during their participation in the arbitral proceedings.⁴⁵ However, the provision does not indicate that the information is considered as secret because it was disclosed in a pending arbitration. Rather the secrecy follows from factors that are external to the arbitral proceedings, such as the nature of the information in question (trade secrets, patents) etc.

Related to the issue of confidentiality is the question whether information obtained in arbitral proceedings may be disclosed in subsequent proceedings. As the Arbitration Act is silent on this question, the answer depends on how the information is obtained and the nature of the subsequent proceedings.

If the information is obtained in proceedings under arbitration rules that do not contain explicit confidentiality provisions, the disclosing party can seldom prevent disclosure in subsequent proceedings.

If the information is obtained under an obligation of confidentiality, the receiving party most probably cannot use it in subsequent proceedings before the same institution or another institution that observes similar rules.

If the information is used before state courts, the judges will determine the matter by reference to the rules of evidence contained in the Civil Procedure Code. As the litigants have a duty to submit to the courts only the truth, a judge would most probably admit a relevant document on record regardless of the fact that it was produced in breach of confidentiality provisions contained in arbitration rules/agreement.⁴⁶

A party disclosing confidential information may also avail of the new *Trade Secrets Protection Act* (enacted in 2019)

4.5.2 Does it regulate the length of arbitration proceedings?

The Arbitration Act contains no specific provisions on the length of the arbitration proceedings, therefore, it is left to the parties to include appropriate provisions in their arbitration agreement. Absent such agreement,

⁴⁴ Article 24(5) of the Rules of Arbitration of the BCCI provides that “[t]he proceedings before the Arbitration court with the BCCI are confidential.”

Article 8 (1) of the Rules of arbitration of the KRIB Arbitration Court reads as follows: “The arbitrators, the members of the Arbitration Council, the Supervisory Board and the Commissions of the Arbitration Panel, the employees of the Secretariat of the KRIB Court of Arbitration, and all the experts appointed by the Arbitral Tribunal shall be obliged to ensure confidentiality of all documents and information in the arbitration cases of the KRIB Court of Arbitration, which may come to their knowledge. The internal documentation of the KRIB Court of Arbitration and the correspondence between its bodies, the Secretariat and the arbitrators is confidential and shall not be revealed to the parties or third parties.”

⁴⁵ Article 284 of the Criminal Code.

⁴⁶ In theory, a party that breaches contractually undertaken confidentiality obligations is liable for damages resulting from breach of contract. There is no reported Bulgarian case dealing with such situation.

the arbitrators shall organize the conduct of the arbitration in a concise manner as to guarantee resolution of the dispute in reasonable terms.

There are no specific rules in the Arbitration Act addressing whether the tribunal would become *functus officio*, upon expiration of the term agreed by the parties. The Act only provides that the powers of the tribunal cease to exist upon conclusion of the arbitration proceedings (which is meant to be the delivery of the award), except for cases where the award needs to be interpreted or supplemented.⁴⁷ This is an indication that the concept of *functus officio* is not inconsistent with the principles of the Act, yet, notably, the Supreme Court has never dealt with such an issue.

However, as the parties may agree on a time limit either for rendering the award or for the closure of proceedings, an award rendered after the expiration of the agreed time limits may be set aside because the proceedings were not conducted pursuant to the agreement of the parties (Article 47, Item 6 of the Arbitration Act).

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

The Arbitration Act contains default provision that, absent agreement of the parties, the tribunal will determine the venue of the hearing considering all circumstances of the case and the convenience of the parties.⁴⁸

The Arbitration Act endorses the principle that there shall be an oral hearing, unless the parties explicitly agree on *documents-only* proceedings.⁴⁹ The act is silent on remote hearings.

Notably, the Bulgarian Parliament enacted a special *Act on the Measures and Actions during the State of Emergency Declared by a Resolution of the National Assembly of 13 March 2020 and on Addressing the Consequences* (SG 28/2020, last amended SG 98/2020) (this is the period of the lockdown that lasted from 13 March until 13 May 2020, and was followed by a period of *State of extraordinary epidemic situation*, which still continues).

The Act contains a number of measures in almost all spheres of social and political life, while other measures with more limited scope and effect were enacted by Ordinances of the Government or Orders of the Minister of health.

As one of these measures, the Act explicitly permitted online court hearings (subject to certain restrictions and provided all procedural requirements for due process be observed). Notably, the Act mentioned “court”, but not “arbitration” hearings, yet the organization of the arbitration proceedings followed the trend. Until this Act, online or distance hearings, including by video conference, were applied predominantly in international cases, and almost never in domestic arbitrations. In response to practical needs and rising demand, some institutional rules (such as those of the BCCI in its 2019 revision, which was further elaborated in the december-2020 edition) included provisions on remote hearing.

Consequently, in proceedings subject to institutional rules that permit distance hearing, the tribunal may order/permit it even in case one of the parties objects. In other cases that are subject only to the Arbitration Act and are not covered by similar institutional rules, upon objection of a party the tribunal should not order remote hearing.

Notably, the Parliament now works on a bill for amendment of the Civil Procedure Act, with the purpose further to clarify and facilitate the online hearings, to regulate the online serving of process and summons,

⁴⁷ Article 46 of the Arbitration Act.

⁴⁸ Article 25 of the Arbitration Act.

⁴⁹ Article 30 of the Arbitration Act

etc. As the bill is still under preparation, it is not clear how far the reform would reach, yet it is expected that it may also modify the Arbitration Act rules.

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

The Arbitration Act expressly provides the arbitral tribunal, upon request by one of the parties, with the power to order the other party to take appropriate measures for the protection of the rights of the requesting party.⁵⁰ The Act further states that the tribunal may require the requesting party to present security.

The only condition provided by the Act is that the measures shall be *appropriate*. Following the constant practice developed in proceedings before state courts, most Bulgarian practitioners are likely to consider as preconditions for such measures the admissibility of the claim, the existence of a *prima facie* case on the merits for the requesting party and the proportionality and necessity of the required measures.

The powers of the arbitrators are limited to the parties; by law, they have no coercive powers that could permit them to issue orders with effect to third parties. Further, the orders are not enforceable through the courts of law and the only liability for failure of the addressee to comply with the order is the liability for damages caused to the counterparty by the failure to comply. As a result, the parties rarely apply for such measures and in most cases, they prefer to apply to state courts to issue injunctive measures.

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 only explicit provision of the Arbitration Act concerning the collecting of evidence provides for the powers of the tribunal to appoint one or more expert witness who shall prepare a report on points in issue that require special or technical knowledge.⁵¹ Further, the tribunal may order the parties to present the expert witness/es with the necessary information or to procure access to documents, goods or premises as far as necessary for the preparation of the report.

As evident from the above, and by contrast to many other jurisdictions, the tribunal has a proactive role in the appointment of an expert witness. Most commonly in practice, the parties request from the tribunal to permit preparation of a report by expert witness(es) on specific issues and the tribunal, upon consideration of the relevance, admissibility, and necessity of the report, appoints one or more experts with appropriate qualification to prepare the report on specific issues.

In addition, the tribunal may request from the state courts, or upon request by a party – may authorize it to make the application directly, for the collection of evidence.⁵² Such a request concerns evidence that the tribunal, due to lack of coercive powers, cannot collect itself, such as collecting witness testimony of third parties who refuse to appear before the tribunal voluntarily, and alike.

As regards the other types of evidence, the tribunal has discretion to determine appropriate rules and procedure on admissibility and collecting of evidence,⁵³ but most often, it is guided by the rules contained in the Civil Procedure Code.⁵⁴ Thus, the arbitrators would permit testimony of a fact witness if the testimony were relevant and necessary; allow the parties and their statutory representatives (managers or directors) to give *explanations*, and not *testimony*; permit parties' employees to present evidence, etc. This approach is

⁵⁰ Article 21 of the Arbitration Act.

⁵¹ Article 36 of the Arbitration Act.

⁵² Article 37 of the Arbitration Act.

⁵³ Article 24 of the Arbitration Act.

⁵⁴ It is a common practice for arbitrators sitting under the auspices of the BCCI to issue procedural order where it is specified that the tribunal will apply rules similar to those contained in the CPC, save for the preclusion periods.

consistent with the perception that the rules on evidence contained in the Civil Procedure Code reflect most parties' legitimate expectations.

Tribunals usually would allocate the burden of proof as applicable in civil litigation, which is that each party shall prove the facts upon which it relies.

The Arbitration Act is silent on whether the tribunal may draw adverse inference from the conduct of a party, and in particular, if the party has created obstacles to the collection of evidence.

4.5.6 Does it make it mandatory to hold a hearing?

The Arbitration Act permits the parties to agree on documents-only arbitration, in which case the tribunal needs not hold a hearing.⁵⁵ However, the very same provision provides that the tribunal may nevertheless summon the parties for a hearing if it determines that this is necessary for the "*correct resolving of the dispute*". This limitation of parties' autonomy reflects the prevailing principles of due process and equality of the parties, expressly provided for in the Act.⁵⁶

As mentioned above, the 2020 revision of the BCCI Rules permitted the tribunal to have a distance hearing even if case one of the parties objects, as far as the circumstances warrant it.

4.5.7 Does it prescribe principles governing the awarding of interest?

Bulgarian law distinguishes between interest as a charge for borrowing money and interest as compensation for a delay in payment. Tribunals sitting in Bulgaria may award both types of interest.

Bulgarian legal tradition considers the issues of interest as part of the substantive law; therefore, tribunals may award interest as determined in the applicable substantive law and the contract of the parties.

Regarding interest as a charge for borrowing money, the tribunal will award at the rate agreed between the parties.

Regarding interest as compensation (*i.e.*, late payment interest), where Bulgarian law applies and if the parties have not agreed on liquidated damages, the tribunal shall award statutory interest from the date of delay at the annual rate of the basic interest rate of the Bulgarian National Bank plus 10 points.⁵⁷

Notably, the arbitrators listed with the Bulgarian Chamber of Commerce and Industry (BCCI) have rendered a mandatory decision⁵⁸ on the conflict between statutory interest for delay and contractually agreed liquidated damages. According to the decision, if the contract provides for liquidated damages due for delay of payment, the tribunal shall apply it both for the period of delay and for the period from submissions of the statement of claim until final payment of all awarded amounts. This decision is conditionally mandatory only for the arbitrators sitting with the BCCI. In civil litigation, it is common that the judgment grants liquidated damages for the period of delay occurring prior to the initiation of the litigation, and statutory interest for the period from the submission of the statement of claim until final payment of all awarded amounts.

⁵⁵ Article 30 of the Arbitration Act.

⁵⁶ Article 22 of the Arbitration Act: "The parties to the proceedings are equal. The arbitral tribunal shall grant each of them equal opportunity to protect its rights." (free translation)

⁵⁷ Article 86 of the Bulgarian Obligations and Contracts act in conjunction with Ordinance № 426 of the Council of Ministers of 18.12.2014 for determination of the amount of statutory interest on overdue pecuniary obligations.

⁵⁸ [Decision №2/1 March 2010.](#)

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

The Arbitration Act is silent on the allocation of arbitration costs. Each arbitration institution applies its own rules on costs; however, all institutions in Bulgaria structure the costs on an ad valorem basis (*i.e.*, in proportion to the estimated value of the transaction concerned).

Under Bulgarian legal tradition, legal costs are allocated on the “costs follow the event” principle. This rule is explicitly stipulated in the Civil Procedure Code (applicable to litigations, but followed as an *appropriate rule* in domestic arbitration as well). However, the parties may agree on a different allocation of costs.

Lawyers’ fees are negotiated with the client and are generally borne by the losing party. If the lawyers’ fees are excessive (based on the amount in dispute and complexity of the case), the arbitrators may reduce the proportion allocated to the losing party.

State courts do not order security for costs, as both the Civil Procedure Code and the International Commercial Arbitration Act contain no specific provision on this matter.

The institutional rules will empower the tribunal to order appropriate conservatory and provisional measures, which may also include security for costs. In practice, there has been no reported case of security for costs being ordered by arbitral tribunals; further, such orders would have very little practical effect, given the lack of coercive powers.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

The Arbitration Act is silent on arbitrator liability, but Bulgarian jurisprudence considers them to be liable for wilful misconduct, gross negligence and crimes committed in connection with the rendering of the award. Such liability is based on Tort law.

Arbitrators do not benefit from judicial immunity. However, it is commonly accepted that they should not be held liable for a *wrong* decision that is not a result of a wilful misconduct, gross negligence or crime.

There has been only one court decision dealing with arbitrator liability for rendering an unenforceable award. A tribunal sitting with the Bulgarian Chamber of Commerce and Industry (BCCI) rendered an award that was subsequently denied enforcement by Italian courts. In this case the claimant filed a claim for damages against the BCCI, not the arbitrators. The Supreme Court of Cassation eventually dismissed the claim, finding that the institutional court of arbitration merely administers cases and is not liable for the alleged misconduct of the arbitrators. However, the Supreme Court of Cassation mentioned in passing that arbitrators would not be liable for rendering an unenforceable award only as far as it was not a result of wilful misconduct.

As mentioned, an important exception concerning the non-arbitrable cases involving consumers was created in January 2017. As a result, a new rule in the Arbitration Act provides that an arbitrator who renders an award in a dispute involving a consumer is personally liable and the Minister of Justice may impose a fine between BGN 500 and BGN 2,500 and for a second offence – a fine of up to BNG 5,000.⁵⁹

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

The participants in arbitration proceedings in Bulgaria fall within the scope of application of the [Bulgarian Criminal Code](#).

⁵⁹ Article 53 (new) of the Arbitration Act; the exchange rate EUR-BGN is fixed by law at EUR 1 = BGN s1.95583.

Arbitrators are liable for bribery.⁶⁰ The same applies to expert witnesses and for counsel of the parties.⁶¹

Further, the expert witnesses and interpreters are explicitly held liable for disclosure of information which constitutes a secret and which has become known to them during their participation in the arbitral proceedings.⁶²

In addition, the expert witnesses are also liable for deliberately or negligently giving an untrue expert witness statement.⁶³

Finally, the witnesses of fact as well as interpreters may be held liable for perjury.⁶⁴ Further, there is a liability for giving untrue written declarations in court.⁶⁵ There exists an alternative theory that these two cases do not apply to arbitration proceedings as the *arbitrators* are not *court* in the sense of a *state court*, yet the majority of scholars support the applicability of the criminal liability for perjury to arbitration proceedings and as a matter of practice, the arbitrators always warn fact witnesses that they are subject to criminal liability for perjury.

5. The award

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

The award must be in writing and contain reasons. The arbitrators may not reason their award, provided that the parties so agree or if the award is an award by consent.⁶⁶

The award must state the date on which it was rendered and the place of arbitration.⁶⁷

⁶⁰ Article 305 of the Criminal Code (Amended, SG No. 92/2002): "(1) The punishments for bribery under the preceding paragraphs shall also be imposed to an arbiter or expert, appointed by a court, institution, enterprise or organisation where they perpetrate such acts in connection with the tasks entrusted to them, as well as on the person who proposes, promises, or gives such a bribe.

(2) Punishments for bribery under the preceding articles shall be imposed to a defence counsel of any party in judicial proceedings where he/she commits an act, as stated above, to help adjudicate to the benefit of the adversary or to the detriment of their client pending criminal or civil proceedings at stake, as well to the individual who proposes, promises or gives such bribe".

⁶¹ Article 305 of the Criminal Code (Amended, SG No. 92/2002), paragraph 2.

⁶² Article 284 (Amended, SG No. 26/2004): "(1) An official who, to the detriment of the state, of an enterprise, an organisation or private person, informs another or publishes information which has been entrusted or accessible to him officially and of which he knows it constitutes an official secret, shall be punished by imprisonment for up to two years or by probation.

(2) The punishment for an act under paragraph 1 shall be also imposed on a person who is not an official, who works in a state institution, enterprise or public organisation, to the knowledge of who information has come, in connection with his work, constituting an official secret.

(3) If the act under paragraph (1) has been committed by an expert witness, translator or interpreter with respect to information which has become known to him in connection with a task assigned thereto, and which such a person has been obliged to keep in secret, the punishment shall be deprivation liberty for up to two years or probation."

⁶³ Article 291: "(1) Persons who in their capacity of expert before the court or another respective body of authority orally or in writing consciously give untrue conclusion, shall be punished by imprisonment for one to five years and by deprivation of the right under Article 37 (1), sub-paragraph 7.

(2) Where the act under the preceding paragraph has been committed through negligence, the punishment shall be imprisonment for up to one year or probation. The court may also rule deprivation of the right under Article 37 (1), sub paragraph 7."

⁶⁴ Article 290 : "(1) Persons who, in their capacity of witness before the court or before another respective body of authority, orally or in writing consciously assert untrue statement or hold back the truth, shall be punished for perjury by imprisonment for up to five years.

(2) The same punishment shall also be imposed on a translator or interpreter who before the court or another respective body of authority, orally or in writing consciously renders untrue translation or interpretation."

⁶⁵ Article 290a (New, SG No. 28/1982): "Persons who assert untrue statement or hold back the truth in an affidavit presented in court, shall be punished by imprisonment for up to three years."

⁶⁶ Article 41 (1) of the Arbitration Act.

⁶⁷ Article 41 (1) of the Arbitration Act.

The award must be signed by the arbitrators. If it has been rendered by the majority of the arbitrators, the award need be signed only by the majority of the members; however, in such case the award must state the reasons for the missing signature(s).⁶⁸

The award must be notified to the parties. It is considered notified on the date it is delivered to at least one of the parties. From this moment, the award becomes final, binding and enforceable. Further, the term for filing a request for setting aside runs for the respective party from the date of its notification.

The Arbitration Act does not provide for scrutiny of awards, yet some institutional rules provide for it.

Awards are not subject to registration with the state courts, but with the secretariats of the institutions under the rules of which they have been rendered. A recent legislative change obliged the institutions to keep the files for at least 10 years and the awards, reasoning thereto and the approved settlements – for an indefinite period. Theoretically, the same requirement would apply *by analogy* to the chairperson of an *ad hoc* tribunal.

The arbitral tribunal may award the same remedies as state courts, including specific performance, liquidated damages, interest, declaratory relief and refrain orders.

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

Under Bulgarian law, the possibility for recourse before the Supreme Court of Cassation for setting aside of awards is considered fundamental guarantee of due process and cannot be waived.

As a result, even where the parties have waived the requirement for the award to contain reasons, the control of the Supreme Court of Cassation would be limited to an extent, yet it cannot be waived completely.

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

No atypical requirements apply to rendering a valid award.

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

Awards rendered under the Arbitration Act are final and binding upon notice to the parties and are not subject to appeal,⁶⁹ such awards are subject only to requests for annulment.⁷⁰

5.5 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?

On notification to the parties, domestic awards are enforceable as court judgments without limitations. In order to obtain a writ of execution, the party needs to produce to the regional court (for Sofia – the Sofia City Court) a copy of the award and evidence that it was served upon the debtor. The procedure is *ex parte* and the debtor may invoke irregularities of the procedure only by appeal against the order permitting issuance of the writ.

A legislative change in January 2017 extended the control of the state courts. Before the reform, the only available recourse was a request to Supreme Court of Cassation (the highest court instance in Bulgaria) for setting aside the award. Now a regional court seized with a request for issuance of writ of execution on the basis of domestic award shall dismiss the request if the award is *null and void*, i.e. if it resolves non-arbitrable dispute or if one of the parties was a consumer. Thus, not only the Supreme Court of Cassation in annulment

⁶⁸ Article 41 (2) of the Arbitration Act.

⁶⁹ Article 38 (4) of the Arbitration Act.

⁷⁰ Article 47 of the Arbitration Act, mirroring Article 34 of the Model Law (1985).

proceedings, but also all regional courts in proceedings for issuance of writs, may control the validity of the domestic awards.

Foreign awards are enforceable only after state courts grant recognition and permit their enforcement pursuant to the New York Convention. The creditor must file a statement of claim before the Sofia City Court, the decision of which is subject to appeal before the Sofia Court of Appeal, thence to appeal before the Supreme Court of Cassation.

As regards time limits to enforce, as a matter of Bulgarian law and under penalty of statutory preclusion, the party to whom the award is favourable should commence enforcement within 5 years from notification of the award.

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

The initiation of annulment proceedings does not by itself suspend the enforcement. The time limit to apply for annulment of an award is 3 (three) months from the notification of the award to the respective party.⁷¹ In case of requests for supplement or interpretation of the award, the term runs from the date of receipt of the supplement award/interpretation. The Supreme Court may suspend enforcement only if the party has submitted a request for annulment that is *prima facie* admissible and filed within the statutory 3-month period from the notification of the award, and further, only if the party presents a guarantee in the form of monetary deposit covering the entire amount of the award whose annulment is sought.⁷²

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

An award set aside by the courts in the country of origin would be refused recognition and enforcement on the grounds of Article V1(e) of the New York Convention. In two recent court proceedings⁷³ for recognition and enforcement of ICC partial awards, two different judges suspended the proceedings pending annulment procedure in Austria (the seat of the arbitration). In doing so, the judges opined that, should the awards be annulled before the courts at the seat of arbitration, recognition and enforcement in Bulgaria would not be possible.

5.8 Are foreign awards readily enforceable in practice?

The Bulgarian courts have a pro-enforcement attitude and foreign awards are generally recognized and enforced in Bulgaria. There are very few instances when foreign awards were refused recognition in Bulgaria.

6. Funding arrangements

6.1 Are there laws or regulations relating to, or 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 laws, regulations or restrictions?

There are no restrictions to contingency or alternative fee arrangements, and in fact these are often used in practice. Third party funding is not contradictory to the local law, but is not very common in practice yet – there have been very few reported cases involving third party funding.

However, as a result of an interpretative decision of the Supreme Court of Cassation (which is mandatory to all state courts) the courts award only costs that are actually incurred and proven prior to the close of the respective proceedings. Consequently, a court seized with a request for annulment or for recognition of

⁷¹ Article 48(1) of the Arbitration Act.

⁷² Article 48 (2) of the Arbitration Act.

⁷³ Case № 1535/2011 Sofia City Court, Commercial Division, VI-5 panel; Case № 2248/2011 Sofia city Court, Commercial Division, VI-8 panel.

foreign award would not award contingency fees as these would not be paid (and proven) prior to the close of the proceedings.

Further, courts may refuse to order the losing party to participate in the legal costs of the winning party if those costs are excessive. This may affect the third party – funder.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

Bulgarian law and institutional rules do not contain rules on it. However, as the tribunals enjoy freedom to determine appropriate procedure to be applied,⁷⁴ they may also permit feeding and managing digital evidence, provided however that they shall always guarantee both parties “*equal opportunity to present its case*”.⁷⁵

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

Article 7 (2) of the Arbitration Act recognises as valid an arbitration agreement contained in “*other means of communication*”. Therefore, theoretically, an agreement recorded in a blockchain may qualify as properly recorded by *other means* and consequently – valid. Notably, there are no reported cases on this matter.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

On the basis of the arguments in item 7.2 above, such an agreement appears to be, and in the view of the author - it should be, considered valid. However, there are no reported cases on this matter yet.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Under Bulgarian law, a document may be signed either by a handwritten signature, or electronically.

A ‘signature’ is the handwritten name of the author of the document affixed to it. A copied or stamped signature, for the purpose of Bulgarian civil procedure, does not constitute a ‘signature’, but a picture thereof. Consequently, an award signed by inserting the image of a signature is not ‘signed’ pursuant to the requirements of Bulgarian law. As a result, an award that bears an image of a signature of the arbitrators may not qualify as ‘signed’ according to the requirements of Article 41 of the Arbitration Act and cannot be enforced.

As regards ‘electronic signature’, Bulgarian law contains explicit regulation thereof in the Electronic Document and Electronic Certification Services Act, and its validity is further endorsed in the Civil Procedure Code. The ‘electronic signature’ is defined as an “*electronic signature within the meaning of Article 3, Item 10 of Regulation (EU) No. 910/2014*”.⁷⁶ Consequently, any award signed by electronic signature that qualifies under the Regulation (EU) No. 910/2014 shall for all purposes be considered a ‘signed’ document. Therefore, it fulfils the formal requirements for validity of Bulgarian law and shall be enforceable. Notably, there are no reported cases dealing with this issue yet.

⁷⁴ Article 24 of the Arbitration Act

⁷⁵ Article 22 of the Arbitration Act

⁷⁶ Article 13 of the Electronic Document and Electronic Certification Services Act

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

After the reform in January 2017, there are no imminent plans for reform of the arbitration law. There is a bill for amendment of the Civil Procedure Act, which shall clarify and facilitate online hearings, online serving of process and summons, etc., yet it will only circumstantially affect the arbitration law.

9. Compatibility of the Delos Rules with local arbitration law

The Delos Rules are compatible with the mandatory provisions of the Arbitration Act and other relevant laws, as well as with the Bulgarian legal theory and tradition.

10. Further reading

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ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

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| Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team? | ϕ |
| Main arbitration hearing facilities for in-person hearings? | The Bulgarian Chamber of Commerce and Industry offers hearing facilities and services (https://www.bcci.bg/bcci-services.html) |
| Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction? | https://www.e-arc.com/printing-solutions/reprographics/ |
| Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction? | The Bulgarian Chamber of Commerce and Industry offers hearing facilities and services (https://www.bcci.bg/bcci-services.html) |
| Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English? | http://www.sofita.com/en/ http://lozanova48.com/en/ |
| Other leading arbitral bodies with offices in the jurisdiction? | ϕ |