

GUIDE TO ARBITRATION PLACES (GAP)

SERBIA

CHAPTER PREPARED BY

**JELENA BEZAREVIĆ PAJIĆ, NATAŠA LALATOVIĆ ĐORĐEVIĆ AND TANJA ŠUMAR
OF MORAVČEVIĆ VOJNOVIĆ AND PARTNERS IN COOPERATION WITH SCHÖNHERR**

moravčević vojnović and partners
in cooperation with **schönherr**

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SAFESEATS@DELOSDR.ORG | DELOSDR.ORG

JURISDICTION INDICATIVE TRAFFIC LIGHTS ‡

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| 3. Legal expertise | ● |
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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

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

Key places of arbitration in the jurisdiction?	Belgrade.
Civil law / Common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Not explicitly prescribed under the SAA.
Requirement to retain (local) counsel?	Not explicitly provided.
Ability to present party employee witness testimony?	Not forbidden.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Permitted, unless the parties agree otherwise.
Availability of interest as a remedy?	The SAA is silent on the matter of interest. This matter is generally regarded as a part of substantive law.
Ability to claim for reasonable costs incurred for the arbitration?	The SAA does not provide explicit rules for the allocation of costs. In practice, when allocating costs arbitrators take into consideration all the facts of the case, including the outcome.
Restrictions regarding contingency fee arrangements and/or third-party funding?	The SAA does not regulate contingency fee arrangements and/or third-party funding. Local bar rules allow lawyers to agree on contingency or success fees for up to 30% of the value of the dispute (not the value of awarded amount).
Party to the New York Convention?	Yes, with reservations with regard to reciprocity, commercial disputes and retroactive application.
Party to the ICSID Convention?	Yes. The ICSID Convention entered into force for Serbia on 8 June 2007.
Compatibility with the Delos Rules?	Compatible, please see below.
Default time-limitation period for civil actions (including contractual)?	The default substantive time bar is ten years, unless prescribed by the law for specific cases, such as e.g. (i) three years for commercial contractual obligations, (ii) three (as of knowledge of damage and of the person causing damage) and five years (as of the occurrence

	of damage) for damages, (iii) three years for periodical claims such as claims for interest, or principal paid in instalments, that fall due once a year or in shorter periods and five years for the right from which such periodical claims arise, (iv) one year for specifically listed claims such as for heat, water and electricity consumption, subscriptions to periodicals, etc. No general procedural bars for filing a civil action in general but specific procedural preclusions have been prescribed with respect to civil actions in some areas of law, e.g. labour.
Other key points to note?	ϕ
World Bank, <i>Enforcing Contracts: Doing Business</i> score for 2020, if available?	63.1
World Justice Project, <i>Rule of Law Index: Civil Justice</i> score for 2020, if available?	0.51

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	10 June 2006.
UNCITRAL Model Law? If so, any key changes thereto?	Yes, the SAA was modelled after the 1985 UNCITRAL Model Law. Changes include that: <ul style="list-style-type: none"> – the number of arbitrators must be odd; – the parties must appoint arbitrators within a certain timeframe; and – an award may be set aside if it was based on a false witness or expert testimony, counterfeit documents or criminal acts by arbitrators or parties (as established in a final and binding criminal court judgment).
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No, arbitration-related matters fall within the jurisdiction of the Higher Courts (courts of general jurisdiction) and Commercial Courts (courts of special jurisdiction for commercial disputes) in the first instance. Any appeals follow the general route to the Appellate Courts (general jurisdiction) or Commercial Appellate Court (special jurisdiction for commercial disputes).
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes. In practice, they may be difficult to obtain, although the courts have issued them where the applicant justified the urgency or in case of service of process abroad.
Courts' attitude towards the competence-competence principle?	The courts accept that the arbitral tribunal may decide on its own jurisdiction, as expressly provided by the SAA. However, if an arbitral tribunal decides on its jurisdiction as a preliminary matter, a party may still request the intervention of the courts to issue a final decision on the same matter.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	As per the SAA, no, except when (i) the parties have waived the requirement that an arbitral decision include a statement of reasons, or (ii) the decision is based on settlement between the parties (i.e. in a consent award).
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Yes. An award may also be set aside if it is based on a false witness or expert testimony, counterfeit documents or criminal acts by arbitrators or parties (as established in a final and binding criminal court judgment). Assuming the usual duration of arbitration proceedings and given the statutory deadline to request setting aside (3 months from delivery of the award), as well as the usual duration of criminal proceedings, it is unlikely that a party would, in practice, be able to obtain a final and binding criminal court judgment in time to support its set aside application on this ground. Furthermore, while set aside application remain rare in cases known to us, the SAA also leaves the possibility for the court deciding on the set aside application to adjourn the case so that the arbitral tribunal may take action that it deems appropriate to remove any grounds for setting aside.

Do annulment proceedings typically suspend enforcement proceedings?	In general, the filing of an annulment action does not suspend enforcement proceedings.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	As per the SAA, court may refuse to recognise and enforce foreign awards set aside at the seat of arbitration.
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?	Untested in practice, but our view is that if the objecting party has been given a fair and equal opportunity to present its case during the remote hearing, such an order should not affect recognition and enforceability of the award in Serbia.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	An enforcement motion against a public body must be notified to the Ministry of Finance 30 days prior to filing at court.
Is the validity of blockchain-based evidence recognised?	Not specified in legislation and untested in practice.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	Not specified in legislation and untested in practice.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	Not specified in legislation and untested in practice. However, based on current court practice, it is unlikely that the court will consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement.
Other key points to note?	The setting aside/annulment procedure is standard litigation; the decision on the setting aside application is appealable, and may also be subject to revision before the Supreme Court of Cassation.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

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

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

- the number of arbitrators must be odd;
- failing agreement between the parties, the timeframe for appointment of arbitrators is set at 30 days for each individual arbitrator (whether a single arbitrator or individual members of the arbitral tribunal); and
- an award may be set aside if it is based on a false witness or expert testimony, counterfeit documents or criminal acts by arbitrators or parties (as established in a final and binding criminal court judgment, including a foreign judgment recognised in Serbia).

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

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

2. The arbitration agreement

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

The parties are generally free to choose any law or rules to govern the validity of their arbitration agreement.⁵ It is implicit in the SAA that, absent a parties' agreement, in an arbitration seated in the territory of the Republic of Serbia, the arbitration agreement must comply with Serbian law (*lex arbitri*).⁶ If the Parties in their

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

² SAA, Art. 9(1).

³ SAA, Art. 9(2).

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

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

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

arbitration agreement refer to the "place of arbitration" within Serbia, it would be considered that the seat of arbitration is in Serbia. We believe the same would stand for reference to "venue of arbitration". If the Parties did not agree upon the law applicable to their arbitration agreement specifically, and such arbitration agreement was included as a clause within the Parties' contract, as is usually the case, it should be presumed that the arbitration agreement is governed by the law governing the Parties' contract.⁷ Otherwise, the arbitration agreement should be governed by the law of the seat.⁸

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

2.1 Arbitrability

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

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

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

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

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

⁹ SAA, Art. 10(1)(1).

¹⁰ SAA, Arts. 10(1)(2) and 12.

¹¹ SAA, Art. 10(1)(3).

¹² SAA, Art. 10(1)(4).

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

¹⁴ SAA, Art. 5.

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

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

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

¹⁸ Supreme Court of Cassation, Case no. Prev. 137/2014, 11 December 2014; Supreme Court of Cassation, Case no. Prev. 350/2008, 1 October 2008. However, certain authors expressed that the public-status elements of such contracts do not impose limits on the disposal of rights, and that there is no exclusive court jurisdiction prescribed by law, which would deprive these disputes of arbitrability (see M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, pp. 112-113).

¹⁹ Pursuant to the Trademark Act (2009), Art. 7, protection of trademarks falls within the jurisdiction of public (administrative) authority. While a court decision affirming exclusive jurisdiction of state courts over protection of IP rights was remanded (Commercial Appellate Court, Case no. PŽ. 1422/2012, 21 February 2012), it seems that the reason for remanding was the

corporate matters relating to Serbian companies.²⁰

2.2 Written form

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

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

2.3 Parties' qualities and capacity

Under the SAA, every natural or legal person, including the State, its instrumentalities, institutions and companies in which a State has a property interest, may agree to arbitrate.²² Moreover, given that anyone with the capacity to be a party in the civil procedure under the CCP may agree to arbitration,²³ exceptionally, even certain "*forms of association and organization which have no capacity to be a party*", such as consortium²⁴, custom office²⁵, sport organisation²⁶ or similar forms of association or organisation, may be granted a party status in an arbitration if such entities "*substantially meet the requirements for acquiring [party] capacity, and particularly if they hold property that may be subject to enforcement.*"²⁷

2.4 Lack of duress, fraud or error

Under this requirement, the parties' intent to submit a dispute to arbitration must be genuine and not tainted by duress, threat, fraud or error.²⁸ Although these generally applicable contract defences may be applied to invalidate the arbitration agreement, the bar for demonstrating such taint on the parties' consent to arbitrate is high and such applications rarely succeed. We believe that these objections are particularly difficult to prove if the contesting party raises them only retrospectively and not at any time before the arbitration proceeding or if the party had the opportunity to consult with the counsel before entering into such arbitration agreement.

lower instance court's failure to establish the applicable law governing the validity of the arbitration agreement. The lower-instance court's position that exclusive jurisdiction stems from the fact that IP rights have *erga omnes*, and not *inter partes* effects established by a contract, does not seem to have been challenged by the higher instances.

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

²¹ SAA, Art. 12.

²² SAA, Art. 5(2).

²³ SAA, Art. 5(3).

²⁴ Consortium could be e.g. formed for the purposes of participation in a tender, as was the case in the Higher Commercial Court case Pz. 14353/05.

²⁵ Custom office does not have its distinct legal personality but is, rather, an organizational sub-unit of the State's Customs Administration within the Ministry of Finance).

²⁶ If such organisation is not registered as a legal entity.

²⁷ CCP, Art. 74(4).

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

2.5 Dispute involving a defined legal relationship

Finally, similar to Article II paragraph 1 of the New York Convention, the SAA provides that an arbitration agreement must refer to disputes arising from a defined legal relationship.²⁹ It may relate to future or existing disputes³⁰ arising out of one or several specific contracts or torts. However, an arbitration agreement may not relate generically to all disputes that conceivably could arise between the parties in connection with any and all of their (unspecified) relations.³¹

Like any other agreement, an arbitration agreement operates *inter partes*.³² The SAA does not specifically recognise the “group of companies” or a similar doctrine, to allow for extending the scope of an arbitration agreement to non-signatories, and there appears to be no published court practice to that effect. Serbian company law recognises, in certain circumstances and as a matter of substantive law, the principle of “corporate veil piercing”. However, while corporate veil piercing may relate to questions of liability, there appears to be no practice allowing this concept to operate so as to establish a binding effect of an arbitration agreement for a non-signatory. Still, rights and obligations arising out of the arbitration agreement are generally transferable, unless agreed otherwise.

3. Intervention of domestic courts

Intervention of domestic courts in arbitration is limited only to activities expressly provided for in the SAA.³³ These activities are intended mainly to resolve a deadlock in case parties are not able to reach an agreement, or when an arbitral tribunal needs assistance. In particular:

- to issue interim measures – both in domestic and international arbitrations and both before and during arbitral proceedings;
- to appoint arbitrators, if the parties or appointment authority have not done so;
- to rule on the challenge of the arbitrators, if the parties have not chosen a different procedure or if they have not chosen a permanent arbitral institution, typically in *ad hoc* arbitrations;
- to issue a final judgment on the tribunal's jurisdiction at the request of one of the parties if the arbitral tribunal is deciding on its jurisdiction as an interlocutory question;
- to assist with collecting evidence, at the request of the arbitral tribunal;
- to deposit for safe-keeping the decision of the arbitral tribunal, at the request of a party;
- to decide on the request for annulment of a domestic arbitral award;³⁴ and
- to recognise and enforce a foreign award.

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

²⁹ Article 9 of the SAA.

³⁰ M. Stanivuković, *Serbian Arbitration Law*, IV.Serbia.7.a in *International Commercial Arbitration* (ed. Eric E. Bergsten), p. 10.

³¹ M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, p. 89.

³² M. Stanivuković, *Međunarodna arbitraža [International Arbitration]*, Belgrade, 2013, p. 142.

³³ SAA, Art. 7.

³⁴ A domestic arbitral award is, irrespective of the nationalities of the parties and the applicable substantive law, an award rendered by a tribunal (or sole arbitrator) seated in Serbia, provided that such tribunal or sole arbitrator did not apply a foreign procedural law. Namely, pursuant to SAA, Art. 64(3), an award which was rendered by a tribunal or sole arbitrator seated in Serbia, applying a foreign procedural law to the arbitral proceedings, will be deemed a foreign arbitral award.

Serbian courts can intervene in arbitrations seated abroad only by ordering interim measures at the request of one of the parties. The court may order any interim measure it deems appropriate, both before and during arbitral proceedings. At the same time, it can order the party seeking interim relief to provide appropriate security for potential loss the opposing party may incur as a consequence of interim relief.

4. The conduct of the proceedings

4.1 Party representation

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

4.2 Arbitrators' independence and impartiality; constitution of the tribunal

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

Parties can challenge the appointment of an arbitrator solely if there are circumstances that reasonably raise doubts as to his or her independence or impartiality, or if he or she does not fulfil the requirements agreed to by the parties, if any. That said, an arbitrator's failure to disclose some circumstances that could raise doubts as to his or her independence and impartiality should not, as such and without more, constitute a sufficient reason for a successful challenge. Rather, the relevant circumstances should be such that they actually raise doubts as to the arbitrator's independence and impartiality and therefore justify the arbitrator's removal. Further, once the arbitrator has been appointed, the parties can challenge him or her only for reasons that arose or of which the party learned after the arbitrator was appointed.

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

Courts will assist in the constitution of the arbitral tribunal in *ad hoc* arbitrations if: (i) parties fail to agree on the number of arbitrators and/or fail to appoint an arbitrator (within 30 days from the other party's request), and/or (ii) if the 'appointing authority' selected by the parties fails to do so.³⁵

4.3 Conduct of the arbitration proceedings

The SAA applies only to arbitral proceedings that are seated in Serbia. The parties may agree on the rules of procedure or agree to apply the rules of an arbitral institution; if they fail to do so, the arbitral tribunal can conduct the procedure in the manner it deems fit.

However, mandatory provisions of the SAA cannot be excluded. This includes the main principle that parties to the arbitration are equal and must be treated equally.³⁶ The arbitral tribunal is obliged to allow a party to present its arguments and evidence, as well as to comment on the actions of the other party(ies).³⁷ Furthermore, the parties must receive timely notice of every oral hearing and every meeting of the arbitral tribunal scheduled *e.g.*, for site visits or document inspection. Each party must receive each and every submission of the other party(ies), and expert opinions or other documents that represent evidence.

³⁵ SAA, Art. 16.

³⁶ SAA, Art. 33.

³⁷ SAA, Art. 33.

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

- the confidentiality of the arbitration proceedings is not expressly regulated. Thus, if the parties wish to ensure confidentiality of their arbitration proceedings, they are strongly advised to stipulate it in advance;
- neither the time frame for conducting the proceedings nor time limit for the arbitral tribunal to render an award are specified in the SAA;
- unless the parties have agreed otherwise, an arbitral tribunal may decide to meet at any place it deems most appropriate for a hearing, examination of witnesses, experts or the parties, voting, or review of documents, as well as to hold hearings/meetings remotely;³⁸
- unless the parties have agreed otherwise, at the request of a party, an arbitral tribunal can grant any interim relief that it deems necessary based on the subject matter of the dispute. At the same time, it can order the party seeking relief to provide appropriate security (for potential damages the opposing party may incur as a consequence of interim relief);³⁹
- arbitrators may decide on the admissibility, relevance and probative value of the proposed and presented evidence, unless the parties have agreed otherwise. Documentary evidence is commonly admitted, as well as factual evidence and expert witness reports. The IBA Rules on the Taking of Evidence in International Commercial Arbitration may be taken into account if so agreed by the parties, or, otherwise, if preferred by the arbitrators as best practice. Also, the arbitral tribunal may seek a court's assistance in the obtaining of evidence;
- a hearing is not mandatory. However, the arbitral tribunal will hold a hearing at either party's request, unless the parties previously agreed that a hearing would not be held;
- the SAA is silent on the matter of interest. In litigation, however, interest is only allowed on the principal claim. In Serbia, the applicable interest rate is either determined by the parties in the underlying agreement (contractual interest rate) or provided for by the law (statutory interest rate). However, the mentioned rules are generally regarded as a part of substantive law and would apply in arbitration only if Serbian law was chosen as the applicable substantive law;
- a decision on costs is a mandatory part of an arbitral award. When making such a decision, the arbitrators should take into consideration all the facts of the case, including the outcome. The "loser pays" rule is not explicitly provided for under the SAA, although it applies in Serbian litigation. While it is often applied by arbitral tribunals, they are also free to apply other principles. At the request of the tribunal, the parties are obliged to make an advance payment on the costs.

4.4 Liability

The SAA does not regulate the issue of arbitrators' immunity. However, in practice, immunity is commonly agreed on in the terms of reference or terms of appointment for each particular case; however, even then, liability cannot be excluded in cases of wilful misconduct or gross negligence on the arbitrator's part. This is so as a result of the express and mandatory stipulation in the Serbian Contracts and Torts Act,⁴⁰ that liability for damages caused by wilful misconduct or gross negligence can never be contractually excluded in

³⁸ SAA, Art. 34. There is no available case law on whether the tribunal may hold hearings or meeting remotely, should one party objects to it. Still, we see no obstacles for the tribunal to conduct the proceedings in this manner and, provided that the objecting party is given a fair and equal opportunity to present its case on such hearing or meeting, we believe it is unlikely that such an order would affect recognition and enforceability of the award.

³⁹ SAA, Art. 31.

⁴⁰ Contracts and Torts Act, Art. 265.

advance.⁴¹ Likewise, the SAA does not address any potential criminal liability of the participants in an arbitration (e.g. for fraud); therefore, general rules provided in the criminal law legislation may apply.

5. The award

The SAA defines an award as a decision on the substance of the dispute whereby the arbitral tribunal decides all claims of the parties (the final arbitral award).⁴² It recognizes also the possibility of making a partial or interim award.⁴³

In terms of rendering a valid arbitration award, the requirements mostly correspond to those expressed by the 1985 UNCITRAL Model Law,⁴⁴ with the addition that an award must also contain an introduction, a decision on the substance of the dispute, and a decision on costs,⁴⁵ and that *all* arbitrators must participate in deliberation, unless the parties otherwise agreed.⁴⁶ The parties may waive the requirement that the award shall contain a statement of reasons.⁴⁷

An arbitral award is final and binding upon the parties and there is no appeal mechanism.⁴⁸ The only remedy against an award rendered in Serbia is an application for setting aside, which the parties may not waive in advance.⁴⁹ Setting aside allows only for a very limited control of the award (no review of the merits),⁵⁰ and on grounds which are substantially similar to those provided in the UNCITRAL Model Law of 1985 (which served as the model for the SAA).

The enforcement procedures generally differ depending on whether the award is domestic or foreign.⁵¹

A *domestic arbitration award* can be enforced directly, under the Serbian Enforcement and Securities Act ("**SESA**"), since it has the force of a final court judgment.⁵² Thus, after the voluntary execution term set by the award expires, a party may use such award as an "enforceable document" under the SESA to request enforcement.⁵³

However, a *foreign arbitral award* must first be recognised by the competent court, to gain the same effect as a domestic arbitral award.⁵⁴ Such recognition (and enforcement) of foreign arbitral awards is generally governed by the SAA, the New York Convention and the European Convention. Grounds for refusal of

⁴¹ Moreover, under the Contracts and Torts Act, Art. 265, a Serbian court could be requested to annul a contractual provision excluding liability even for damages caused by (ordinary) negligence, provided that such contractual provision is a result of the contracting parties' unequal positions.

⁴² SAA, Art. 48(1).

⁴³ SAA, Art. 48(2).

⁴⁴ Global Arbitration Review, Commercial Arbitration 2017, Serbia, question 37. Available at: <http://globalarbitrationreview.com/jurisdiction/1004539/serbia>.

⁴⁵ SAA, Art. 53.

⁴⁶ SAA, Art. 51(2).

⁴⁷ SAA, Art. 53(1).

⁴⁸ Global Arbitration Review, Commercial Arbitration 2017, Serbia, question 41.

⁴⁹ SAA, Art. 62.

⁵⁰ Sketching the Setting Aside of Arbitral Awards in Serbia, Kluwer Arbitration Blog (2017), Available at: <http://arbitrationblog.kluwerarbitration.com/2017/09/28/sketching-setting-aside-arbitral-awards-serbia/>.

⁵¹ Getting the Deal Through - Dispute Resolution (2014), Serbia, question 31 (available at: http://www.schoenherr.rs/fileadmin/content-rs/articles/pdf/DR2014_Serbia.pdf); Schoenherr Roadmap 2014: Serbia & Montenegro: Enforcing Foreign Court Judgments and Arbitral Awards. Available at: http://www.schoenherr.rs/fileadmin/content-rs/articles/pdf/Roadmap2014_Enforcing_Foreign_Court_Judgments_and_Arbitral_Awards.pdf. In principle, a domestic arbitral award is one rendered in arbitration seated in Serbia, while a foreign arbitration award is one rendered in arbitration seated abroad, as well as an award made by an arbitral tribunal seated in Serbia which applied foreign law to the arbitral proceedings (SAA, Art. 64(3)).

⁵² SAA, Art. 64(1).

⁵³ SESA, Arts. 41 and 42.

⁵⁴ SAA, Art. 64(2).

recognition under the SAA correspond to those listed in Article V of the New York Convention, and are not country specific. Recognition of a foreign arbitral award can be the subject matter of an independent proceeding, or it can be decided as a provisional/preliminary question in an enforcement proceeding.

Enforcement of the award is not automatically suspended in case of parallel set aside proceedings. However, a Serbian court may adjourn its decision on a requested recognition of a foreign arbitral award until parallel setting aside or suspension of enforcement proceedings are completed in the country in which or under the laws of which the award was made.⁵⁵

If the award has been set aside by the court of the country in which, or under the law of which, it was made, Serbian courts may refuse to recognize (and enforce) such award in Serbia.⁵⁶ If the award was set aside while enforcement was pending in Serbia, the enforcement procedure can be terminated.⁵⁷ However, if the award has already been enforced, the opposing party may only apply for counter-enforcement.⁵⁸

Although there is no comprehensive statistic, the limited publicly available practice shows that foreign arbitral awards do seem readily enforceable in Serbia.⁵⁹ The time limit for enforcement is 10 years from the date of the award.

6. Funding arrangements

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

7. Arbitration and technology

Although Serbia recently enacted the Digital Property Act, blockchain-related matters remain unregulated. Issues such as validity and admissibility of blockchain-based evidence or validity of arbitration agreements recorded on a blockchain are still unresolved under Serbian law, and consequently untested in practice. Nonetheless, based on current court practice, it is unlikely that the court would consider a blockchain arbitration agreement and/or award as an original for the purposes of recognition and enforcement.

The question of electronically signed documents is slightly more developed. In principle, only a securely electronically signed document may qualify as an original:⁶⁰ the requirement is that it is signed by a "qualified electronic signature", *i.e.* an advanced electronic signature created by a qualified electronic signature creation device, and based on a qualified certificate for electronic signature.⁶¹

However, the specific issue of electronically signed arbitral awards has not been tested in practice.

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

No; at present, there are no published proposals for amendments to the SAA and no substantial amendments are expected to be proposed in the near future.

⁵⁵ SAA, Art. 67(1).

⁵⁶ SAA, Art. 66(1)(5).

⁵⁷ SESA, Art. 129.

⁵⁸ SESA, Art. 115.

⁵⁹ See, for instance, International Bar Association, Arbitration Committee, Subcommittee for Recognition and Enforcement of Arbitral Awards – Country Report on 'public policy' as a defence to the recognition and enforcement of arbitral awards under the New York Convention, Appendix. Available at: http://www.schoenherr.rs/fileadmin/content-rs/articles/pdf/Report_on_the_Public_Policy_Exception_Serbia_2016.pdf.

⁶⁰ Electronic Document, Electronic Identification and Trust Services in Electronic Business Act, Art. 50. Available at: [https://mtt.gov.rs/en/download/1\(2\)/Law%20on%20electronic%20document%20electronic%20identification%20and%20trust%20services%20in%20electronic%20business.pdf](https://mtt.gov.rs/en/download/1(2)/Law%20on%20electronic%20document%20electronic%20identification%20and%20trust%20services%20in%20electronic%20business.pdf).

⁶¹ Electronic Document, Electronic Identification and Trust Services in Electronic Business Act, Art. 2(30).

9. Compatibility of the Delos Rules with local arbitration law

The SAA leaves wide discretion to the parties to shape their arbitration proceedings according to their preferences. It does not govern the matters covered by the Delos Rules in a mandatory way, so the parties may derogate from the SAA in those areas, including by agreeing on the application of the Delos Rules. That said, the Delos Rules are compatible with the SAA, save as qualified in the following paragraph.

It cannot be excluded, however, that one of the parties could argue that some of the specific solutions provided for in the Delos Rules run contrary to the SAA (such as, *e.g.*, the way the arbitral tribunal is constituted), in an attempt to avoid recognition and enforcement, or to set aside an award. Although the courts should recognise that choosing the Delos Rules in their entirety is a valid exercise of party autonomy, the courts' reactions to procedural solutions that do not fit the usual pattern are yet to be tested in practice.

10. Further reading

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ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	Permanent Arbitration at the Chamber of Commerce and Industry of Serbia (http://www.stalnaarbitraza.rs/en/); Belgrade Arbitration Centre (https://www.arbitrationassociation.org/en/).
Main arbitration hearing facilities for in-person hearings?	ϕ
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	ϕ
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	ϕ
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	ϕ
Other leading arbitral bodies with offices in the jurisdiction?	ϕ