GETTING THE DEAL THROUGH

Arbitration

in 55 jurisdictions worldwide

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Laws and institutions

1 Multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Slovakia (as one of two successor states of Czechoslovakia) succeeded to the New York Convention as of 1 January 1993. For Czechoslovakia the New York Convention entered into force as of 10 October 1959. At that time, Czechoslovakia made declarations under article I of the New York Convention, pursuant to which it would apply the Convention to awards made in the territory of another contracting state and to awards made in the territory of a non-contracting state to the extent that such states grant reciprocal treatment. Neither Czechoslovakia nor Slovakia made declarations or notifications under any other articles of the New York Convention.

Slovakia is a party to the following multilateral conventions:

- the Energy Charter Treaty, Lisbon (1998);
- the ICSID Convention (Convention on the Settlement of Investment Disputes between States and Nationals of Other States), Washington (1994);
- the European Convention on International Commercial Arbitration, Geneva (1964);
- the Protocol on Arbitration Clauses, Geneva (1931); and
- the Convention on the Execution of Foreign Arbitral Awards, Geneva (1931).

2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

Slovakia has 56 bilateral investment treaties, of which six (with Italy, Kazakhstan, Kenya, Libya, Morocco and Turkey) have not yet entered into force. In addition to the BITs, Slovakia is a party to a number of bilateral treaties (with 18 countries) that partially deal with the mutual recognition and the enforcement of arbitral awards.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The Arbitration Act (No. 244/2002, as amended) governs adjudication of property disputes arising under domestic or international commercial and civil relations, if the place of arbitration is in Slovakia, and recognition and enforcement of domestic and foreign awards in Slovakia. In addition, the Civil Procedure Code (No. 99/1963, as amended) and the Enforcement Act (No. 233/1995, as amended) regulate certain key arbitration issues. These laws cover domestic and foreign arbitral proceedings and awards and there is no special law dealing with purely domestic or foreign proceedings or awards.

The Arbitration Act does not provide for the definition of 'foreign arbitral proceeding'. It provides, however, that an arbitration award on merits issued within the territory of another state is considered a 'foreign arbitral award'.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The Arbitration Act is based on the UNCITRAL Model Law 1985. The Arbitration Act, however, does not reflect further amendments of the Model Law and therefore differs in certain important aspects. First, the Arbitration Act does not provide for explicit regulation of recognition and enforcement of foreign interim measures. Second, the courts may order interim measures or provisional orders only before the arbitral proceedings have been initiated. Third, if a party challenges the arbitrator, the arbitral tribunal must not make any award while the court proceedings on such objection are pending. Finally, the reasons for setting aside an arbitral award set forth in the Arbitration Act are broader than those outlined in the UNCITRAL Model Law.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

Parties are free to agree upon the majority of issues related to a potential or existing arbitration proceeding. The Arbitration Act does not contain an explicit list of mandatory procedural provisions. However, certain provisions are mandatory. Among these are principal conditions of arbitration (eg, arbitrability of dispute, form of the arbitration agreement, uneven number of arbitrators in arbitral tribunal, minimal personal requirements for arbitrators) or requirement of due process of law in the arbitration proceeding (eg, equal position of the parties; right of parties to access documents and information submitted to the arbitrator or arbitral tribunal by the opposing party without undue delay; and restriction on awards imposing obligations on a party that are impossible to fulfil, forbidden by law, or in conflict with the principle of bonos mores).

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

In determining the substantive law, the rules differ for purely domestic disputes and for disputes with international elements. Pursuant

to the Arbitration Act, in domestic disputes the tribunal shall apply Slovakian law. In disputes with an international element, the decisive factor is the existence of an agreement between the parties as to the applicable substantive law. Each agreement on the applicable law is considered as agreement upon substantive law of the respective state, excluding its conflict of laws principles, unless parties agreed otherwise. If there is no agreement as to the applicable law, the arbitral tribunal shall decide the dispute by applying the law determined according to the conflict of laws principles applicable in Slovakia. Such conflict of laws principles are contained in national legislation (Act No. 97/1963 on International Private and Procedural Law), international treaties and EU legislation (eg, Rome I Regulation).

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

According to the official list published by the Ministry of Justice, there are more than 100 permanent arbitration courts in Slovakia. Arguably, the most prominent of these is the Court of Arbitration of the Slovakian Chamber of Commerce and Industry in Bratislava (SCC Court of Arbitration):

The Court of Arbitration of the Slovakian Chamber of Commerce and Industry in Bratislava
Gorkého 9
816 03 Bratislava
Slovakia
http://web.sopk.sk

The usual place for hearings before the SCC Court of Arbitration is Bratislava. In addition to the personal requirements for arbitrator stipulated by the Arbitration Act, the arbitrator must have a university degree and a minimum of 10 years' professional experience. The SCC Court of Arbitration maintains the list of arbitrators; however, such list is not binding for the parties. The parties can agree on the language of the proceedings. The SCC Court of Arbitration requires that the minutes of the hearing and the award be in Slovak. The arbitration fees (the registration fee and the administrative costs) of the SCC Court of Arbitration are based on the amount in dispute. The arbitration fees are higher (by 75 per cent or 50 per cent) if the parties request expedited proceedings (see question 34).

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

Arbitral tribunals in general resolve property disputes arising from national and international commercial and civil legal relationships, provided that the place of arbitration is in Slovakia. Any such dispute is arbitrable insofar as it does not belong to the sole discretion of the courts. There are various debates, with no clear conclusion, regarding arbitrability of labour law matters and disputes over the declaration of a legal action null and void due to its absolute invalidity.

The Arbitration Act provides a list of explicitly non-arbitrable disputes, which include real property disputes regarding creation, modification and termination of ownership rights or other rights in rem, disputes concerning personal status; and disputes relating to enforcement proceedings or arising in the course of bankruptcy or restructuring proceedings.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

An arbitration agreement can be concluded as a separate agreement or can take the form of an arbitration clause in an agreement. The arbitration agreement must be concluded in writing, otherwise it is null and void. The agreement is deemed to be in writing if it is included in a document signed by all parties or in an exchange of letters, telefaxes or other means of telecommunication that provide a record of its content and identify the parties. In general, an arbitration agreement may also be included in general terms and conditions.

Considerably stricter rules apply to arbitration agreements in the consumer protection area. First, the arbitration agreement must not represent the exclusive means of resolving a dispute with a consumer. A consumer's right to choose other means of dispute resolution (specifically general courts) must be effectively preserved (available court decisions suggest that this right must also be preserved where a dispute has already arisen). Arbitral clauses vesting exclusive jurisdiction in arbitration courts are continually viewed as unfair terms in consumer contracts and declared invalid by courts overseeing enforcement of arbitral awards. Also, courts, in consumer protection cases, have recently declared several arbitration agreements contained in the general terms and conditions invalid for the same reason. Foreign arbitral awards may not be recognised or enforced due to conflict with the public policy principles if the above rules are not observed.

An arbitration agreement's failure to meet a formal requirement can be cured by the parties' joint declaration before an arbitrator and recorded in the minutes. Such declaration must contain the arbitration agreement and must be made before the commencement of proceedings on jurisdiction.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

The existence, validity and survival of arbitration clauses are governed by the principles of civil law and commercial law. Circumstances such as death or liquidation of a party to the arbitration agreement without a legal successor, termination of the underlying contract by agreement or passing of time in case of fixed-term arbitration agreements may result in arbitration agreements being no longer enforceable. In cases concerning invalidity and rescission from the underlying contract, the following severability principles apply (i) if the arbitration clause is part of an invalid underlying contract, the arbitration clause is invalid only if the reason for invalidity applies also to the arbitration clause; and (ii) in case the parties rescind from the underlying contract, the rescission does not affect the arbitration clause. The parties, however, may agree otherwise.

Insolvency may also have impact on the enforceability of the arbitration clauses. If the party is declared bankrupt, all proceedings to which it was a party are stayed. In addition, any disputes that have arisen after the declaration of bankruptcy are ex lege non-arbitrable.

Legal incapacity at the time of conclusion of the arbitration agreement renders such agreement invalid. Legal incapacity that occurs afterwards does not render the arbitration agreement unenforceable; however, the incapacitated party must be duly represented.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

In general, arbitration agreements bind the parties to the agreement. The legal successors of the parties are also bound, unless the parties specifically excluded such extension in the arbitration agreement.

This rule applies to both universal and individual succession (eg, assignment). There is no case law available that would suggest that under Slovakian law an arbitration clause could be extended to a party's parent company.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The Arbitration Act contains no specific regulation concerning participation of third parties; however, in practice relevant provisions of the Civil Procedure Code are followed. The Civil Procedure Code allows third parties having an interest in the proceeding to join the proceedings, either on their own motion or upon a court's request. The courts decide whether to admit a joining party to the proceeding or not. The joining party has the same duties as any party to the proceedings. In institutional arbitration, the rules of procedure usually address this question in detail, mostly following rules set out in the Civil Procedure Code.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

There is no case law available that would suggest that the group of companies' doctrine is recognised in Slovakia.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The Arbitration Act contains no specific provisions dealing with multiparty arbitration agreements or arbitration proceedings. However, the arbitration rules of several permanent arbitration courts (including the SCC Court of Arbitration) deal with multiparty arbitrations and provide for specific rules of arbitrators' appointment.

Constitution of arbitral tribunal

15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

In general, any natural person of any nationality who has full legal capacity, relevant experience to perform as an arbitrator and no criminal record for intentional crime may act as an arbitrator. Certain exceptions are laid down for public officials, such as active judges or public prosecutors; such exceptions are addressed in legislation on protection of public interest. Permanent arbitration courts may provide for further requirements; for example, the SCC Court of Arbitration requires a university degree and 10 years of professional experience. One cannot exclude that requirements of parties relating to nationality, gender or religion of arbitrators would be viewed as controversial. Registration of arbitrators is generally not required, however, some arbitration courts may require registration. For instance, under the SCC Court of Arbitration rules, the parties are free to appoint any person meeting the above-mentioned criteria however, such person must be registered as an ad hoc arbitrator with SCC Court of Arbitration simultaneously with the appointment.

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

Parties may agree on a number of arbitrators. The number must be odd. Failing such agreement, the arbitral tribunal by default consists of three arbitrators. In case of a sole arbitrator, the parties appoint the arbitrator jointly. In case of three arbitrators, each party appoints one arbitrator and the appointed arbitrators subsequently appoint the tribunal's chairman. Failing to do the above within the prescribed time limits, the remaining arbitrator(s) shall be appointed by a person upon which the parties have agreed (often an arbitration authority), or by the court. The agreed-upon person or the court must appoint an arbitrator who meets the relevant professional qualification (if agreed by the parties) and is independent and impartial. In institutional arbitrations, consequences of a failure by the party to actively participate in the process of appointment or requirements on arbitrators are usually addressed in the relevant procedural rules, for example, under the Procedural Rules of SCC Court of Arbitration, the appointments are made by the president of the SCC Court of Arbitration from the official list of arbitrators maintained by the SCC Court of Arbitration. In ad hoc arbitrations, the appointment authority is the competent court.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

An arbitrator must inform the parties without undue delay of circumstances that give rise to doubts as to his or her independence or impartiality that involve his or her relationship to the subject matter of the dispute or to the parties (but not their counsel). Parties may agree on the details of the challenge procedure. Failing such agreement, the default rules apply, pursuant to which, first, a party notifies the arbitration authority (if agreed) or the court, of the reasons for a challenge; notwithstanding the above, the party may challenge the arbitrator appointed by itself only for reasons it became aware of after the appointment. Second, unless the arbitrator resigns or the other party agrees with the challenge, the arbitration authority or the court shall decide on the challenge. Third, until such decision is issued, the arbitral tribunal may continue the proceedings but must not make an award. Finally, the decision on the challenge is final and may not be appealed. If the challenge is upheld, the arbitrator's mandate terminates. A mandate of arbitrator further terminates if the arbitrator withdraws from the office, upon removal of the arbitrator from the office (reasons being failure to meet the conditions to be appointed as arbitrator or failure to act without undue delay after having been advised so by the parties). The arbitrator may be removed from the office jointly by the parties, by a person (often an arbitration authority) the parties have agreed on, or by the court. The mandate of arbitrator further terminates if the arbitrator no longer has full legal capacity or in case of his or her death. Consequently, a substitute arbitrator must be appointed under the same rules for appointment of arbitrators.

The Arbitration Act contains several provisions that are similar to the IBA Guidelines on Conflicts of Interest in International Arbitration (the IBA Guidelines); however, the Arbitration Act does not go into such detail (eg, as regards disclosure obligation of arbitrator, relationship of arbitrator to subject matter of dispute or to parties). There is no publicly accessible case law related to arbitrators' conflict of interest or disclosure obligation expressly referring to the IBA Guidelines.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

Slovakian law does not expressly regulate the relationship between parties and arbitrators. Some academics (advocating the contractual theory of arbitration) argue that a special contract exists between the parties and arbitrators; however, such contractual relationship is without prejudice to the requirement of arbitrator's independence and impartiality. This requirement applies also to party-appointed arbitrators. Each arbitrator must perform the mandate with due care to ensure fair protection of parties' rights and to avoid misuse and breaching of parties' rights. The remuneration and expenses of arbitrators are part of the costs of the proceedings. There is no statutory amount of remuneration. In ad hoc arbitration, the parties may agree on remuneration in the arbitration agreement; otherwise the arbitral tribunal decides on its remuneration and expenses in the final award. In institutional arbitration, arbitrators' remuneration and expenses are determined in accordance with the arbitration court's procedural rules.

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

Unlike the liability of state courts, which is governed by a special legislation (Act No. 514/2003 on Liability for Damage Caused in the Exercise of Public Authority), the liability of arbitrators and permanent arbitration courts is not explicitly regulated and there is no publicly available case law addressing the issue. Further, the legal theory in this respect is not uniform. It seems that the prevailing opinion of legal commentators is that arbitrators in ad hoc arbitrations and founders of permanent arbitration courts in institutional arbitrations (permanent arbitration courts are not legal persons) are liable under the Civil Code for damage incurred as a consequence of unlawful arbitral award or arbitration proceedings. To give rise to liability, a fault (intentional or negligent) must be established.

In 2010, Parliament approved a draft amendment to the Arbitration Act regarding liability of arbitrators but the amendment was vetoed by the president and is not effective.

Jurisdiction

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

A party may challenge the jurisdiction of the court but such challenge must be made no later than in its first act in proceedings concerning merits of the case. Provided that the challenge is well founded, the court will suspend the proceedings. However, the court shall hear the case if :

- both parties agree on the court's jurisdiction;
- recognition of foreign arbitral award has been rejected;
- the subject matter of the dispute is not arbitrable under Slovakian laws or goes beyond the tribunal's jurisdiction as agreed in the arbitration agreement;
- the arbitration agreement is invalid or does not exist; or
- the arbitral tribunal has refused to deal with the case.

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

The arbitral tribunal is entitled to rule on its own jurisdiction, including objections regarding the existence or validity of the arbitration agreement. If the arbitral tribunal establishes that it lacks jurisdiction, it suspends (terminates) arbitral proceedings through an arbitration resolution. If the tribunal concludes that it does have jurisdiction, it either issues a separate arbitral resolution to this effect or continues with the proceedings and the decision on jurisdiction then forms part of the final award. In the former case, the party that challenged the tribunal's jurisdiction may request the court, within 30 days of delivery of the resolution, to decide on the challenge. Notwithstanding the ongoing review by the court, the arbitral tribunal may continue the proceedings, decide and issue the award. A decision by the court on the challenge is final and may not be appealed.

Time limits for raising objections vary. In particular, a challenge concerning validity or existence of the arbitration agreement must be filed no later than, or together with, the challenging party's first act in the merits of the case. A challenge that the subject matter of a dispute is not arbitrable under Slovakian law may be filed until the end of the hearing (if there is no hearing, until the issuance of award). A challenge that the dispute goes beyond the tribunal's jurisdiction must be filed as soon as the challenging party, in the course of the proceedings, becomes aware of such fact. We note, however, that it is possible, in as late a stage as the enforcement proceedings, to object to the arbitrability of the subject matter or existence of the arbitration agreement to avoid enforcement. In a very recent decision, the Supreme Court concluded that if an arbitral tribunal makes an award, despite no arbitration agreement having been concluded, the court supervising the enforcement proceedings must not authorise enforcement. The fact that the obliged party failed to challenge the tribunal's jurisdiction or subsequently failed to file a motion for setting aside the award was not found relevant.

Arbitral proceedings

22 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

Failing agreement on place of arbitration, the arbitral tribunal determines the place of arbitration having regard to the character of dispute and interests of parties. In institutional arbitration, the procedural rules of respective permanent arbitration court determine such place. Unless parties agree otherwise, the arbitral tribunal may perform certain specific acts at any proper place (eg, for consultation among its members; hearing of witnesses, experts or the parties; or inspection of goods, property or documents) without prejudice to determined place of arbitration.

Failing agreement on language, the arbitral tribunal determines the language or languages to be used in arbitral proceedings. This determination applies to each written statement of a party and the hearing and award or other communication of the arbitral tribunal. The arbitral tribunal may order official translation of documents into the language of arbitration.

23 Commencement of arbitration

How are arbitral proceedings initiated?

Arbitral proceedings are initiated by filing a statement of claims. Unless the parties agree otherwise, the arbitral proceedings commence on date of receipt of the statement of claims by the respondent, if the arbitrators have not been appointed yet; by the chairman of the arbitral tribunal, if appointed; otherwise, by any member of the arbitral tribunal;

or by the permanent arbitration court in institutional arbitration. The statement of claims must contain identification of parties, true description of facts, specification of proposed evidence, specification of relevant provisions of law, required decision on merits of the case and signature of the claimant. Each respondent and the arbitral tribunal must receive a copy of the statement of claims. The Procedural Rules of the SCC Court of Arbitration lay down additional material requirements (eg, specification of dispute's value) and formal requirements (eg, the claimant must deliver sufficient copies for each respondent and member of the arbitral tribunal as well as the secretary of the SCC Court of Arbitration).

24 Hearing

Is a hearing required and what rules apply?

Failing agreement of parties, the arbitral tribunal decides at its own discretion whether to hold a hearing or to conduct a written proceeding; however, pursuant to the Arbitration Act the tribunal always orders a hearing at an appropriate stage if requested by a party. The parties must be given sufficient advance notice (at least 30 days if the notice is being delivered outside of Slovakia) of any hearing. The parties participate in a hearing directly or through their representatives.

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

In general, the arbitral tribunal must establish the facts of the case completely, quickly and effectively. Statutory procedure for the taking of evidence is fairly general and anticipates a wide range of discretion for the parties' agreement or for the arbitral tribunal.

First of all, the arbitral tribunal only examines evidence proposed by the parties. The arbitral tribunal, at its own discretion, considers choice of evidence and the manner of taking of evidence (eg, hearing of witnesses, parties and experts, submission of documentary evidence, inspection of goods or real property). On the other hand, if there are mandatory provisions on taking of evidence, the tribunal must abide by them. For instance, if witnesses or experts are under a statutory confidentiality obligation (eg, classified information, commercial or bank secrets), they may be heard only if they have been exempted according to respective laws.

Under the Arbitration Act the arbitral tribunal cannot, unlike the courts in standard civil proceedings, enforce cooperation of third persons (eg, witnesses, experts or third persons possessing a relevant documentary evidence or property) in arbitration proceedings. As regards experts, the arbitral tribunal may appoint an expert if the decision depends on assessment of facts requiring special knowledge; however, it is not unusual that parties submit party-appointed expert opinions. Unlike the IBA Rules on the Taking of Evidence in International Arbitration, under which the tribunal-appointed expert may order a party to provide any relevant assistance, the Arbitration Act vests this competence in the arbitral tribunal.

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

The arbitral tribunal may request assistance from a court in connection with enforcement of interim measures ordered by the arbitral tribunal and taking of evidence. During the arbitral proceedings, the court may intervene in relation to the appointment and challenging of arbitrators (unless the parties agreed on a person – typically an arbitration authority – to decide on appointments or challenges of arbitrators and challenges to the tribunal's jurisdiction).

27 Confidentiality

Is confidentiality ensured?

The whole arbitral proceeding is by default confidential; however the parties are free to agree otherwise. Arbitrators must keep confidential all information of which they become aware during the arbitral proceedings. The arbitral awards are also kept confidential. The principle of confidentiality, however, does not apply to effective decisions of state courts issued in proceedings on setting aside the award and proceedings concerning enforcement of arbitral awards. Since 1 January 2012, decisions of state courts have been mandatorily publicised, identifying the parties (if they are legal persons), counsel, designation of arbitral tribunal and arbitrators and subject matter of dispute, including amounts at stake. Exceptions apply only to the personal data of natural persons.

Interim measures

28 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

The Arbitration Act provides that a party to the arbitration may request, and the court may order, interim measures before arbitration proceedings have been initiated. After proceedings have been initiated, interim measures, with two exceptions, may only be ordered by the arbitral tribunal (see question 30). First, the court may order interim measures if the place of arbitration has not yet been determined. Second, the court may order interim measures if the place of arbitration is outside Slovakia. Details of the court proceedings relating to interim measures are provided for in the Civil Procedure Code. In brief, the court may order interim measures if it is necessary to temporarily regulate relationships between the parties or if concerns exist that enforcement of the decision may be endangered. Interim measures may take various forms, including inter alia, a prohibition to dispose of immoveable or moveable assets or rights, an obligation to deposit moveable goods or financial amounts with the court or a general obligation to do something, to refrain from doing something or to bear something.

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

The Arbitration Act includes no provisions on emergency arbitrators. Yet, the procedural rules of SCC Court of Arbitration partially address such situation, however, only in relation to the securing of evidence. In particular, if a party requests an urgent measure after the submission of a claim and prior to the constitution of an arbitral tribunal, the chairman of the SCC Court of Arbitration can appoint an expert or make other appropriate arrangements to secure evidence.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

The tribunal may, after commencement of the proceedings and upon request of a party to the arbitration, order interim measures it considers necessary having regard to the subject matter of the dispute. The Arbitration Act provides for no details with respect to the kinds of measures or specific types to be ordered, however, in practice relevant provisions of the Civil Procedure Code are followed (see question 28). The arbitral tribunal may require the party requesting an interim measure to provide adequate security in relation to the interim measure. No specific rules are provided in the Arbitration Act.

Awards

31 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal is made by a majority of all its members. A unanimous vote is not required. If one or more arbitrators do not participate in a vote, the other arbitrators may decide without them. In case of a tied vote, the chairman of the tribunal has a casting vote. The vote on the award is recorded in writing in the minutes of the hearing on the vote.

32 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The Arbitration Act recognises existence of dissenting opinions. If an arbitrator has been outvoted, the dissenting opinion has no consequences for the award, provided that the required majority has been achieved. The arbitrator, however, may attach the dissenting opinion, together with reasons, to the minutes of the hearing on the vote.

33 Form and content requirements

What form and content requirements exist for an award?

The form requirements for an award include the written form of the award and signatures of majority of arbitrators. If any arbitrator's signature is absent, the reason must be stated in the award. The content requirements include:

- identification of the arbitral tribunal;
- names of the arbitrators;
- identification of the parties and their agents;
- place of arbitration;
- date of the award;
- operative part – decision on the substance;
- grounds of the decision – except where the parties have agreed than no justification is needed or the award is a consent order; and
- information on possibilities of recourse to the court concerning the setting aside of award.

The operative part of the award must also contain the decision on costs of the arbitration.

34 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

The Arbitration Act does not specify any time limit within which the award has to be rendered.

Certain arbitral institutions (eg, the SCC Court of Arbitration), however, allow the parties to request expedited arbitral proceedings, within which the award is issued in a specific, relatively short time. The time limit is usually a couple of months (eg, for the SCC Court of Arbitration either one month or four months) and starts to run from the date of payment of the court fee. The fees for expedited proceedings are higher than standard fees. If the arbitral tribunal does not meet the expedited time limits, the fee is reduced to the standard amount; however, there are no further procedural consequences.

35 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The date of award is relevant for the time limits for correction of the award (see question 40). The date of delivery of the award is decisive for the time limits for interpretation of the award by the arbitral tribunal (see question 40), time limits for review of the award by other arbitrators and time limits for setting aside of the award (for both see question 41).

36 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The Arbitration Act specifically deals with a final award on the substance of the matter and an award on the agreed conditions of the parties (consent order). The rules of arbitration courts, however, usually allow partial awards, as well as interim awards. Both concepts are standard in civil court proceedings, therefore broadly accepted. The Arbitration Act does not define the types of relief. It sets out general rules pursuant to which the tribunal must decide on every request and may not go further than requested in the relief. The tribunal may not grant relief that contradicts or evades law or is in conflict with the bonos mores principle or imposes obligations impossible to fulfil. In practice, the relief can be for fulfilment of certain obligations or declaratory. The fulfilment covers both monetary and non-monetary obligations. The declaratory relief contains a declaration as to whether certain legal relationships or rights exist.

37 Termination of proceedings

By what other means than an award can proceedings be terminated?

The Arbitration Act provides that arbitral proceedings shall be terminated if parties after commencement of the proceedings agree on settlement, if the tribunal in deciding on jurisdiction concludes that it does not have jurisdiction to hear the case, and through default, for example, where a party fails to pay the deposit on the costs of arbitral proceedings or fails to amend or supplement the statement of claims, after having been required to do so, or if the statement of claims does not meet the legal requirements.

38 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Arbitral tribunals decide on the allocation of costs of proceedings based on rules agreed by the parties in the arbitration agreement. In institutional arbitration, the arbitration courts apply their procedural rules. In the absence of such rules, the relevant provisions of the Civil Procedure Code apply, pursuant to which the court would order that the costs of the successful party are recovered by the losing party. If the success was only partial, the court may order that the costs be apportioned or that no costs be recovered. The above are the basic rules, however, further rules exist addressing specific situations (for example, taking into consideration behaviour of the parties during proceedings).

The parties are free to agree on the costs and the rules of their recovery. Lacking such rules, as a standard, recoverable costs include expenses of the parties and their representatives, costs of carrying out the evidence, fees for arbitration proceedings, remuneration of the arbitration court and expenses incurred by the court, remuneration of the experts and interpreters, and remuneration of the legal counsel. The tribunals tend to award statutory attorneys' fees (set out in the Decree No. 655/2004 on Remuneration and Costs of Advocates, as amended), as opposed to negotiated fees.

39 Interest

May interest be awarded for principal claims and for costs and at what rate?

Interest for principal claims may be awarded. Whether and at what rate it is awarded depends on the substance and the subject matter of the claim. The rules are set out in the applicable substantive law governing the dispute and the claim.

Proceedings subsequent to issuance of award

40 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The arbitral tribunal can correct any clerical or typographical errors or errors in computation and other errors of a similar nature within 30 days of the date of award, either on its own motion or upon request of a party. The tribunal delivers the corrected award to the parties. Time limits (eg, for setting aside the award) begin to run from the date of delivery of the corrected award. Any party may ask the arbitral tribunal to interpret any part of the award. Such request must be filed within 30 days of the receipt of the award.

41 Challenge of awards

How and on what grounds can awards be challenged and set aside?

The Arbitration Act provides for both the possibility to challenge an award and have it revised by another arbitrator or arbitration tribunal and the possibility to petition the court to set aside the award. The former is, however, available only if the parties in the arbitration agreement explicitly agreed so. Both remedies are only available with respect to domestic arbitral awards.

Revision of an award is initiated by a party to the arbitration filing a motion to revise the award. Such motion must be filed within fifteen days of the delivery of the award. The procedural rules for revision proceedings are similar to the original proceedings. An action to have an award set aside must be brought to the court within 30 days of the delivery of the award. The reasons for setting aside an award are listed exhaustively in the Arbitration Act. In brief, an award may be set aside if:

- it has been issued in a non-arbitrable dispute;
- it has been issued in a matter that was already finally decided by the court or by another arbitral tribunal;
- one of the parties contests the validity of the arbitration agreement;
- it has been issued in a matter not covered by the arbitration agreement and the party objected to it during the arbitral proceeding;
- an incapacitated party was not represented, or a party was represented by a person without the power of attorney with no subsequent approval for the actions taken;
- an award was made with the participation of an arbitrator, who had to be excluded due to bias (see question 17) or should have been excluded, but the party could not decide on his or her replacement, not because of its own fault, before issuance of the award;
- the principle of equal treatment of the parties has not been upheld;
- there are reasons for which the party may apply for a retrial under the Civil Procedure Code (the parties may agree to exclude this reason for setting aside the award, however the parties may not mutually agree on excluding any other of these reasons);
- the award was affected by a criminal act for which an arbitrator, a party or an expert have been found guilty; or
- the consumer protection legislation has been violated.

42 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

There are two levels of appeal in proceedings concerning the action to set aside the award. The first level – ordinary appeal (*odvolanie*) – is available in all cases, the second level – extraordinary appeal (*dovolanie*) – only if certain specific conditions set out in the Civil Procedure Code are met. The length of the proceedings varies. Based on statistics of the Ministry of Justice, the district and regional courts both decide within 14 months. The costs mainly consist of the court fees and attorneys' fees. The court fees in connection with an action to set aside the award reach €331.50, the same fee applies to ordinary appeal and the fee for extraordinary appeal is €663. Attorneys' fees are recoverable only to the extent set out in Decree No. 655/2004 on Remuneration and Costs of Advocates, as amended. As a general rule, the costs are borne by the losing party.

43 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Valid and effective domestic awards become enforceable automatically after expiry of the deadline for voluntary fulfilment of obligations stipulated by the domestic award. If an action for setting aside the award is filed, the award remains valid and effective. The court may, upon a motion of a party, postpone its enforcement.

The enforcement rules are set out in the Enforcement Act. In addition to standard conditions of the proceedings, the court in enforcement proceedings ex officio examines whether the dispute was arbitrable, whether there exists any other previous decision (judicial or arbitral) addressing the same dispute (res judicata) and whether the obligations imposed by the award are possible, not forbidden by law and not in contradiction with the bonos mores principle; and, specifically, in consumer protection disputes, the court examines whether the arbitration agreement is an unfair term. If any of the above is found, the court will not enforce the award and will terminate the enforcement proceedings. The above is without prejudice to possible jurisdiction objections or setting aside proceedings.

Foreign awards must be recognised before they can be enforced. The requirements in the Arbitration Act that must be fulfilled for a foreign award to be successfully recognised are practically identical to those set out in the New York Convention. Slovakian courts do not issue individual decisions on recognition of foreign awards (exequatur). In practice, the court deciding on enforcement, after having received the documentation required for recognition of an award, regards the foreign award as a domestic award. The recognition is regarded as a preliminary question in enforcement proceedings. The enforcement rules for foreign arbitral awards are set out in the Enforcement Act. They are identical to those for domestic awards.

44 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The Arbitration Act explicitly allows that a party to the arbitration that applied for the setting aside of a foreign award abroad files a motion requesting the relevant court in Slovakia to postpone enforcement until the setting aside is decided upon and provides that courts will not recognise and enforce awards that have been set aside by the courts at the place of arbitration. Nonetheless, there is no publicly accessible case law that would address the limitation set out in the European Convention on International Commercial Arbitration.

Update and trends

Recently, the Ministry of Justice signalled that it is launching the review and reform of arbitration law in Slovakia to reduce the case load that national courts have to handle. The first draft of the new arbitration act is expected in the first quarter of 2013. At the same time, the Civil Procedure Code and the Enforcement Act should undergo important amendments, which would directly effect arbitration in Slovakia.

New legislation should address practical problems that arbitration in Slovakia currently faces. Among them, consumer protection seems to be most pertinent. National courts extensively review and set aside arbitral awards reasoning that arbitration agreements are concluded as unfair terms. The new act should reflect this unwanted situation and strengthen consumers' position.

One of the discussed topics is also review by the Constitutional Court of merits of arbitral awards. In 2011, the Constitutional Court for the first time reviewed the merits of an arbitral award and cancelled the award arguing that the tribunal manifestly erred in its application of law (error of law as such is not an eligible reason for setting aside the award) and thus breached the party's right to due process. The decision in question may open a new avenue for potential challenges of arbitral awards.

As regards investment arbitration, much attention focused on three separate cases brought by shareholders of local health insurance companies. All cases relate to the 2007 reform of health care system in Slovakia. The shareholders sought protection under a BIT with the Netherlands (Eureko BV and HICEE BV) and under a BIT with Austria (European American Investment Bank AG), respectively. Based on publicly available information, the following facts can be established. The *Eureko* tribunal has followed findings of *Eastern Sugar* and dismissed the 'intra-EU' objection to its jurisdiction. The same position was maintained by the Frankfurt appellate court and the case was subsequently appealed to the court of last instance which is now expected to provide the final result. In HICEE, the tribunal held that it lacked jurisdiction as the BIT did not protect investment in one locally incorporated entity through another. The tribunal in *European American Investment Bank* was expected to issue its jurisdictional award in December 2011, but the award has not yet been rendered.

45 Cost of enforcement

What costs are incurred in enforcing awards?

The costs include court fees, fees of judicial executors and attorneys' fees. The basic court fee for commencement of enforcement procedure is €16.50. Objections against enforcement (by the debtor) are not subject to any court fee. The fees of judicial executors include remuneration and costs of the judicial executor. The remuneration of the judicial executor is 20 per cent of the enforced amount with a maximum of €33,193.92. If no amount is enforced, the judicial executor is entitled only to the remuneration for performed legal actions (fixed fee) with a minimum of €33. In addition, the judicial executor has a right to compensation for reasonably incurred costs. Attorneys' fees are set out in Decree No. 655/2004 on Remuneration and Costs of Advocates, as amended. As a general rule, the costs of enforcement are borne by the losing party.

Other

46 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

Arbitration practice in Slovakia is significantly affected by the Civil Procedure Code that is to be applied to questions not specifically addressed in the Arbitration Act. The Arbitration Act does not provide for a US-style discovery or witness preparation. As a result, there is no apparent tendency to apply such tools to the arbitration in Slovakia. On the other hand, in general arbitrators are free to set the procedural rules and, for example, may decide on applying special rules on evidence taking such as the IBA Rules on the Taking of Evidence.

47 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

There are no unusual restrictions or rules applying to counsel and arbitrators from outside Slovakia appearing and sitting in Slovakia-seated arbitrations.

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