ICLG

The International Comparative Legal Guide to:

# International Arbitration 2019

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A practical cross-border insight into international arbitration work

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Alan Falach

**Publisher**
Rory Smith

**Published by**
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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Chapter 22

# Bulgaria

Georgiev, Todorov & Co.

Tsvetelina Dimitrova

## 1 Arbitration Agreements

### 1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

The arbitration agreement may be incorporated in a contract as an arbitration clause or it could be a separate agreement. In any case, the arbitration agreement as any other agreement has to comply with the requirements of the law for its validity, namely requirements for legal capacity of the parties (according to *lex personalis*), form of the agreement and capability of the dispute to be settled by arbitration. The specific rules regarding the arbitration agreement in Bulgaria are incorporated in the International Commercial Arbitration Act (ICCA). Art.7, para.2 of ICAA sets the requirement that the arbitration agreement has to be in written form. It is deemed that the agreement is in writing when it is evidenced in a document, signed by the parties, or in the exchange of letters, telex, telegrams or other communication means. It shall also be considered that the arbitration agreement is evidenced in writing when the defendant accepts in writing or by declaration, recorded in the minutes of the arbitration hearing that the dispute shall be settled by the arbitration or in case the defendant participates in the arbitration proceedings without challenging the arbitration jurisdiction.

### 1.2 What other elements ought to be incorporated in an arbitration agreement?

The arbitration agreement may contain provisions regarding the choice of material and substantive law (if any), the scope of the arbitration, whether the arbitration is *ad hoc* or institutional, the seat of arbitration, the number of arbitrators, rules for the composition and constitution of the arbitral tribunal, procedural rules and such for the collecting of evidence, as well as the term for initiation of arbitration proceedings or the term for validity of the arbitration clause.

### 1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The arbitration agreement itself does not affect the competence of the court to hear the dispute in relation to which the agreement is entered into. Nevertheless, pursuant to Art.8 of ICAA, if the respondent raises an objection that the dispute should be subject to arbitration proceedings within the term for the submission of the statement of defence, the court is obliged to terminate the case, the court resolution being subject to further appeal.

## 2 Governing Legislation

### 2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

Domestic Sources:

International Commercial Arbitration Act 1988 (ICAA)

The International Commercial Arbitration Act (ICAA), enacted in 1988, as amended from time to time (lastly with SG. 8/24 Jan 2017), provides an elaborate and modern regulation on commercial arbitration. ICAA is the main domestic source of law in the area of arbitration, both domestic and international.

Civil Procedure Code 2008 (CPC)

Art.19 deals with the arbitration agreement and its form and determines the eligibility of the disputes to be subject to arbitration. Arts.404–409 determine the grounds and procedures for issuance of a writ of execution, including on the basis of an arbitral award and settlements where the seat of arbitration is in Bulgaria. As far as the courts of law have jurisdiction over some issues related to the arbitration proceedings, they apply CPC when they intervene.

International Private Law Code 2005 (IPLC)

Apart from the conflict of law rules relevant to the determination of the law applicable to the substance of the dispute that is subject to an arbitration (derogated by Rome I for contracts entered into after December 17th, 2009), the Code also contains the procedural rules for the recognition and enforcement of a foreign court decision, to which ICAA expressly refers to regarding the recognition and enforcement of foreign arbitral awards. IPLC rules regarding the law applicable to contractual obligations very closely follow the Rome Convention substituted by Rome I and in force for Bulgaria since the EU accession as of January 1st, 2007.

International Sources:

***Convention for Recognition and Enforcement of Foreign Arbitration Awards (New York Convention).***

For more details see question 11.1 below.

***European Convention for International Commercial Arbitration (European Convention) to which Bulgaria made no reservations or declarations.***

***Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (Washington Convention).***

***Bilateral Mutual Legal Assistance Treaties.***

Bulgaria is a party to bilateral mutual legal assistance treaties with several countries, some of them containing rules on the mutual recognition and enforcement of arbitral awards and even the settlements reached before the arbitration. These rules provide for conditions for refusal for recognition and enforcement that usually slightly differ from those set out in Art.5 of the New York Convention.

### 2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

ICAA governs both domestic and international arbitration. According to Art.1, para.1 of ICAA, the provisions of ICAA apply to international commercial arbitration, based on an arbitration agreement when the place of arbitration is within the territory of the Republic of Bulgaria, as well as to cases of arbitration between parties with residence or a seat in the Republic of Bulgaria (domestic arbitration), apart from the requirement that a foreign national be an arbitrator (except in the cases when a party to the dispute is an enterprise with predominantly foreign shareholders) and the possibility that the language of arbitration be one other than Bulgarian.

### 2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

ICAA is based on the UNCITRAL Model Arbitration Law 1985 (the Model Law) and implements its principles and most of its recommendations, but ICAA has not been updated according to the amendments to the UNCITRAL Model Arbitration Law as of 2006. Following the model of arbitration provided by the Model Law, ICAA covers all stages of the arbitral procedure, from the arbitration agreement to the setting aside of the award and recognition and enforcement of a foreign award.

There are certain differences with the Model Law, among which the following are noteworthy: the Bulgarian law does not apply the concept of nullity *vis-à-vis* arbitration awards; ICAA does not provide an opportunity for the suspension of the setting aside proceedings in order for a chance to be given for additional actions that may eliminate the grounds for setting aside; and although not explicitly provided in ICAA, the case law held that when the award is challenged on a ground that affects only a part of it and this part is separable and relatively independent from the rest of the award, only this part of the award may be set aside.

### 2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

The rules regarding the arbitrability of the disputes are mandatory, as well as the form of the validity of the arbitration agreement and the legal capacity of the parties to enter into an arbitration agreement, along with the principle of equal treatment of the parties. In addition, the conflict of laws rules which are part of the Bulgarian International Private Law contain mandatory provisions, as specified in question 4.2 below.

## 3 Jurisdiction

### 3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

Pursuant to Art.19, para.1 of CPC, any civil or commercial property dispute is capable of settlement by arbitration except for disputes in respect of any rights *in rem* or possession of real estate, maintenance obligations (e.g. alimony) or rights under an employment relationship or dispute, where one of the parties is a consumer under §13, item 1 of the Additional Provisions of the Consumer Protection Act. *Per argumentum a contrario* from the provision of Art.19 of CPC, any dispute other than a civil or commercial property dispute is also not allowed to be settled by arbitration. These are either disputes that are not civil or commercial, e.g. administrative disputes or non-pecuniary disputes such as disputes concerning personal rights (e.g. parental rights) or the legal status of a natural person (e.g. divorce, establishment of origin) or legal entities.

The provisions concerning the capability of a dispute to be settled by arbitration are imperative. An arbitral agreement related to a dispute that is not capable of being settled by arbitration will be null and void under Bulgarian law and the award based on such an agreement shall be void as per Art.47, para.2 of ICAA when the seat of arbitration is in Bulgaria. Otherwise, when the seat of arbitration is in another country, the Bulgarian court may reject, as per Art.5, para.2 of the New York Convention, any claim for the recognition and enforcement of foreign arbitral awards related to a dispute that falls within the exclusive jurisdiction of the courts of law according to the Bulgarian law.

### 3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

The arbitral tribunal is permitted to rule on its own jurisdiction as a preliminary question with a separate ruling or to decide on it with its final award on the merits. Unlike the Model Law (which provides the arbitration ruling upon the request of a party to be reconsidered by a court of law), ICAA provides that in any case the decision of the arbitral tribunal on its jurisdiction is final and subject to no appeal.

### 3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

As described in question 1.3 above, Art.8 of ICAA provides that the court of law in front of which a claim is pending related to a dispute, subject to an arbitration agreement, is obliged to terminate the case if the respondent refers to the arbitration agreement within the time limit for submitting the statement of defence. The provision is mandatory and applies irrespective of whether the arbitration agreement envisages arbitration in Bulgaria or abroad. The court may terminate the case unless it finds that the arbitration agreement is null and void or that it has lost its validity or it is impossible to be executed. The court ruling for termination of the case is subject to appeal. If the court decides that it is not prevented from hearing the case, this finding is not subject to a separate appeal, but may be appealed along with the judgment on the merits of the case.

On the other hand, when the claimant has ignored the arbitration agreement and has brought an action to the court, and the respondent within the time limit does not object to the jurisdiction of the court, it is deemed that the parties' consent to arbitrate the same dispute no longer exists and the arbitration agreement is terminated. In this case, the jurisdiction of the arbitration is also terminated and the court of law has to consider the case.

**3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?**

ICAA provides as a principle that, in any case, the decision of the arbitral tribunal on its jurisdiction is final and subject to no appeal. However, regarding the jurisdiction and the competence of the arbitral tribunal, it should be pointed out that among the grounds for challenging the award, exhaustively listed in Art.47 of ICAA, the following are relevant:

- the subject matter of the dispute is not subject to arbitration (Art.47, para.2 ICAA); and
- the award settled a dispute which had not been provided for in the arbitration agreement or contains decisions on issues beyond the scope of the dispute (Art.47, para.1, item 5 of ICAA).

In the former case, the Supreme Court of Cassation, which is the competent court to consider the challenge of the award, shall assume that the award is void according to Art.47, para.2, and any party may submit the dispute to the competent court of law, which will consider it in conformity with CPC.

In the latter, when the ground for repeal is under Art.47, para.1, item 5 of ICCA, the Supreme Court of Cassation will refer the case back to the arbitral tribunal for re-trial.

It should be pointed out that when the state court holds that the trial is not within its jurisdiction and it should be referred to arbitration, this ruling binds the arbitral tribunal in its assessment on competence.

**3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?**

As an agreement, the arbitration agreement has legal effect only *vis-à-vis* the parties to it. Nevertheless, in some cases it has effect *vis-à-vis* a third party.

- Although there is no case law of the courts of law, it is widely held among the Bulgarian arbitration courts that in case of assignment of receivables or debts the arbitration clause included in the respective agreement has legal effect between the assignee and a third party, this third party being a debtor or creditor of the assignor pursuant to the agreement assigned (although between the assignee and the counter-party there is no arbitration agreement).
- The same is applicable in case of a contract for transfer of a commercial enterprise between the assignee and the counter-parties of the assignor pursuant to agreements – part of the commercial enterprise, containing an arbitration clause.

**3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?**

There are no specific laws or regulations which provide procedural limitation periods for the commencement of arbitrations in Bulgaria. However, the general principles of the Bulgarian Private Law apply, and thus the commencement of arbitration proceedings is subject to a prescription period, which is considered as a substantive law issue. The typical length of the prescription period is five years, but there are exceptions, prescribed explicitly by statutes, which require shorter periods (e.g. three years for periodic payments, etc.).

**3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?**

Pursuant to Art.637 of CPC, upon institution of insolvency proceedings, arbitration proceedings under pecuniary civil and commercial cases against the debtor, shall be stopped. However, Art.637 of CPC shall not apply in case on the date of institution of the insolvency proceedings, on another case where the debtor is respondent, the court (or the arbitration court) has admitted for a concurrent hearing of the counter-claim of the debtor or objection for set-off made by him. This provision also governs exceptions, as well as conditions for continuing and termination of the arbitral proceeding, stopped due to institution of insolvency proceedings.

In addition, pursuant to Art.637, para.6 of CPC, upon institution of the insolvency proceedings it shall be inadmissible to institute new arbitration proceedings on pecuniary civil or commercial cases against the debtor, subject to several exceptions.

## 4 Choice of Law Rules

**4.1 How is the law applicable to the substance of a dispute determined?**

According to ICAA, the arbitral award has to be based on the applicable law only and, thus, the arbitral tribunal may not decide *ex aequo et bono* or as amiable compositeur. Art.38 of ICAA generally provides that the arbitral tribunal applies the law selected by the parties and in the absence of choice – the law applicable according to the conflict of laws rules that it deems applicable. As far as the seat of the arbitration is in Bulgaria, the arbitral tribunal will apply the Bulgarian International Private Law.

The detailed provisions of Bulgarian International Private Law are codified in the Code for International Private Law (IPLC), but following the accession of Bulgaria to the EU, in the area of the contractual obligations, they are substituted by Rome Regulation I for contracts entered into after December 17th, 2009. In any case, the arbitration tribunal applies the conditions of the contract and takes into consideration the trade customs.

The arbitration tribunal settles the dispute in conformity with the law selected by the parties. When the parties have not specified their choice of applicable law, the arbitration tribunal applies the law indicated applicable pursuant to Rome I Regulation. The general

rule is that the law of the country where the party, required to effect the characteristic performance of the contract, has his habitual residence (established by the IPLC and the Rome Convention) is considered as the applicable one and is combined with a very detailed set of conflict of law rules for a concrete type of contract and thus is not directly applied often.

### 4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

The freedom of the parties to select the applicable law and the application of the law determined as a governing one by the arbitration court is restricted in several ways:

- Apart from the applicable law (selected or determined according to the conflict of law rules), the over-riding mandatory provisions of the law of the forum also apply.
- The over-riding mandatory provisions of the law of the country where the contractual obligation has to be or has been performed is also applicable insofar as they make the performance of the contract unlawful.

  In both these cases, the applicable law is supplemented by rules of the law of another country, although this is not the applicable law.
- The application of a provision of the applicable law may be refused if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

  In this case a provision of the applicable law is not applied despite its principle applicability. According to Art.45, para.3 of IPLC, the arbitration tribunal has to apply another appropriate provision from the same applicable law, and only if (1) there is no such provision in the applicable law, and (2) it is necessary for the settlement of the case, a provision of the Bulgarian law as a law of the forum may be applied by the tribunal.
- Further restriction applies where apart from the choice of law, all other elements relevant to the situation at the time of the choice are located in a country other than the one the law of which has been chosen. In such case, the provisions of the law of the other country which cannot be derogated from by an agreement (mandatory provisions) are also applicable.

### 4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

Usually, the law of the seat of arbitration is applicable also to the arbitral agreement, but the parties may choose another law to apply to the arbitral agreement. Both laws should be adhered to, as the arbitration award will be rendered and respectively challenged in the state of the seat of arbitration. The award may be set aside due to the inability of the dispute to be subject to arbitration, according to the law of the state of the seat of the arbitration.

## 5 Selection of Arbitral Tribunal

### 5.1 Are there any limits to the parties' autonomy to select arbitrators?

The law does not provide for any requirements and limitations with relation to the qualification of the arbitrators. In case of arbitration between parties with residence or seat in the Republic of Bulgaria (domestic arbitration), a foreign national may not be an arbitrator (except in the cases when a party to the dispute is an enterprise with predominantly foreign shareholders). The parties may agree that the dispute will be arbitrated by an arbitrator or arbitrators with specific qualifications. The rules of the arbitration courts may provide for requirements to be satisfied by the arbitrators (e.g., to be legal professionals). Usually, Bulgarian courts of arbitration maintain a list of arbitrators.

### 5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

If the parties fail to agree on the appointment of arbitrators, the appointing authority is obliged to select an arbitrator taking into consideration his or her qualifications as they have been agreed by the parties, as well as all circumstances which ensure the appointment of an independent and impartial arbitrator.

The parties may determine the procedure for the composition of the arbitral tribunal. If they fail to agree on the procedure, the default rules of ICAA apply. They provide as an appointing institution:

- in a case of a commercial dispute – the President of the Bulgarian Chamber of Commerce and Industry; and
- in a case of non-commercial dispute – the Sofia City Court.

Usually, when an arbitration court is agreed, its rules provide the arbitration institution (via the president of the respective arbitration court) to act as an appointing authority.

### 5.3 Can a court intervene in the selection of arbitrators? If so, how?

The court cannot intervene in the selection of arbitrators (apart from the case where the court acts as an appointing authority as per ICCA rules – see question 5.2), but has the authority to rule on the subsequent challenge of an arbitrator.

If the challenge of an arbitrator by a party is rejected by the arbitral tribunal, the party who initiated it may request, within seven days upon receiving the notification about the decision, the Sofia City Court to decide on the challenge. The court considers the petition in compliance with the CPC rules in respect of appeal of rulings. The applicability of the rule providing for a court review of the tribunal's decision on the challenge of an arbitrator may not be derogated by the parties.

### 5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

An arbitrator must be impartial and independent from the parties. The provision of Art.13 of ICAA imposes an obligation to any person who is approached with an offer to be nominated as an arbitrator or is appointed as arbitrator to disclose all circumstances that may raise any justifiable doubts as to his or her impartiality or independence. This obligation remains during the whole arbitration procedure and the arbitrator has to reveal without delay any such circumstances that have arisen after the appointment. In its recent judgment (judgment number 158 as of December 28th, 2012 on commercial case 709/2012 of Commercial Division), the Supreme Court of Cassation held that the non-disclosure by an arbitrator of facts which are relevant to his independence and to the lack of relations between the arbitrator and a party constitutes grounds for repeal of the arbitral award. Moreover, this arbitral award has been repealed on the grounds of *ordre public* since the default of the arbitrator to disclose its relations with the legal

representative of one of the parties is in breach of the right of the other party to a fair trial. Furthermore, in this judgment the Supreme Court of Cassation applied broader criteria for assessment of the independency and impartiality of the arbitrators – it held that this assessment is not based only on formal legal definitions or on relations which are explicitly defined as such by statutes, but that one should apply the statute in order to achieve its aim, not to be limited by the literal meaning of the respective provisions. This judgment is an important step towards the development of case law on the impartiality and independency of the arbitrators.

## 6 Procedural Rules

### 6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

Based on the Model Law, ICAA provides basic rules covering all stages of the arbitral process, leaving the parties with vast possibilities to modify or replace most of them with other rules to be agreed among the parties. There are only several mandatory provisions related to the fundamental principles of the arbitration or the public order, from which the parties to all arbitral proceedings cannot deviate, such as the scope of the arbitration, the courts of law intervention, the form of the arbitral agreement, the challenge of an arbitrator, the termination of the powers of the arbitral tribunal, setting aside the arbitral award and recognition and enforcement of the arbitral award are also mandatory and apply to all arbitral proceedings sited in Bulgaria.

Thus the parties are entitled to choose: an arbitration court or arbitration *ad hoc* to determine the number of arbitrators; the appointment procedures, including the appointment institution; the procedural rules to be followed during the case, including the rules for taking evidence; and the language and the seat of arbitration, etc.

### 6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

The initial stages of the arbitration proceedings are elaborated in ICAA in a way providing each party with a possibility to present its case. The following procedural steps are required by law:

- The claim and the answer have to be presented within a time period agreed on by the parties or determined by the arbitral tribunal. If the claimant fails to submit the statement of claim within the time limit, the tribunal terminates the proceedings, unless the failure is justified.
- Art.27 of ICAA provides requirements regarding the content of the statement of claim and the statement of defence.
- The respondent may file a counter-claim at the latest with the statement of defence.

### 6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

There are no specific rules that govern the conduct of counsel in arbitral proceedings. The general rules of conduct, envisaged in the Attorney Act, are applicable only for legal representation before state courts.

### 6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

The arbitrators are empowered to decide on: (1) jurisdictional issues; (2) procedural issues (including the rules on gathering of evidence) – in an absence of procedural rules agreed by the parties, the arbitrator decides on the rules to be followed, providing the parties with equal opportunities in the proceedings; (3) merits of the case; and (4) requests for correction and interpretation of the arbitration award.

The arbitrators have the duty to act impartially and independently and to disclose the circumstances, specified in question 5.4.

### 6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

The relevant act which governs this issue is the Bulgarian Attorney Act. It establishes strict limitations on the ability of lawyers from other jurisdictions to represent parties in Bulgarian judicial proceedings, but they are irrelevant for arbitration proceedings. There are not any restrictions, established in ICCA, based on nationality or legal capacity of the lawyers and legal counsels representing parties to arbitral proceedings.

### 6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There are no laws or regulations which provide for immunity for arbitrators.

### 6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The Bulgarian courts do not have the power to intervene in procedural issues, which arise during an arbitration proceeding.

Under specified circumstances (set out in Art.47, para.1, items 4 and 6 of ICCA), the Supreme Court of Cassation may subsequently (when considering the challenge of the award) assess the compliance with the mandatory rules concerning the composition of the arbitral tribunal and the notification of the parties for appointment of an arbitrator or commencement of the arbitration proceedings.

## 7 Preliminary Relief and Interim Measures

### 7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

Concerning the interim measures ordered by the arbitral tribunal or the court, ICAA adheres to the original text of Art.17 of the Model Law, adopted in 1985. The provisions of the new Chapter IV A of the Model Law, adopted in 2006, are not implemented in Bulgarian law. In principle, the courts of law are competent to pronounce

interim measures. Although, according to Art.21 of ICAA, the arbitral tribunal may order one of the parties to undertake appropriate measures for securing the rights of the other, under Bulgarian law, the provisional measures ordered by an arbitral tribunal seated in Bulgaria may not be enforced. CPC rules on the enforcement of provisional measures are applicable only when the measures are ordered by a court of law.

ICAA does not provide for specific types of provisional measures. Nevertheless, the most effective and most frequently ordered ones – garnishments, real estate liens, etc. – may be ordered only by the courts of law and imposed by bailiffs.

**7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?**

The court is entitled to order the preliminary measures, if so requested by the party to the arbitration proceeding in order to secure their rights. ICAA does not provide explicitly for conditions for ordering the provisional measures. So when the Bulgarian law is the applicable procedural law, the arbitral tribunals usually apply the conditions established in the CPC and applied by the courts of law (but the remark regarding their enforceability in question 7.1 should be borne in mind).

The circumstances under which interim measures are imposed by the national courts are:

(1) there is a reasonable possibility the requesting party to succeed on the merits of the case, the determination of the tribunal being based on the relevant written evidence presented;

(2) there is a need for a provisional measure to be ordered; and

(3) the provisional measure will not result in harm not adequately reparable by compensation for damages.

Provided the claim is not filed yet, it has to be filed within a period of time to be determined by the court which may not be longer than one month.

**7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?**

The Bulgarian courts usually deal with the requests for interim relief by a party to an arbitration agreement under the same criteria and within the same periods of time as the requests related to claims filed in front of the courts of law.

**7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?**

An anti-suit injunction is not allowed under Bulgarian law.

**7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?**

Bulgarian law does not allow either a national court or an arbitral tribunal to order security for costs.

**7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?**

Preliminary relief granted by an arbitral tribunal is not enforceable under Bulgarian law. It is generally accepted in theory and practice that the preliminary relief granted by an arbitral tribunal is subject to voluntarily compliance of the parties to the dispute.

## 8 Evidentiary Matters

**8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?**

ICAA rules on the taking of evidence are rather general. Thus, the arbitration court usually applies the evidentiary rules agreed by the parties or, in the absence of such agreement, the rules determined by the tribunal and notified to the parties. It is common for the parties to use some rules of CPC on the taking of evidence, which are usually agreed or determined as the applicable ones.

**8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?**

The current legislation does not provide any specific requirements regarding this issue. Each party may ask the other party to disclose a document and the arbitral tribunal decides on the request depending on the relevance and availability of the document and taking into consideration other reasons as well (confidentiality, classified information, etc.). Provided a disclosure is ordered and the party fails to disclose the document, the tribunal may infer that such document would be adverse to the interest of the party. There are no specific provisions regarding the attendance of witnesses. The tribunal may order appearance, but the witness is not obliged to attend the hearing.

**8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?**

Art.37 of ICCA allows the tribunal and a party with the tribunal's approval to request from the competent court of law to take relevant evidence. This opportunity is used usually for the disclosure of documents from a non-party in the proceedings. However, the court may not require the attendance of witnesses before the arbitral tribunal.

**8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?**

In addition to the above-mentioned (in question 8.1) peculiarities of the rules on the taking of evidence, ICAA stipulates that during the proceedings the tribunal may examine witnesses of facts, appoint expert witnesses or inspect documents, goods or other evidence. It may summon the expert witness upon request by any of the parties or upon its own initiative and oblige the expert witness after submitting his/her report to participate in the hearing in order to give clarifications.

When the taking of some evidence relevant for the case depends on a third party's cooperation, the tribunal on its initiative or at a request of the party concerned may ask the competent court of law to take it. The Bulgarian court of law may summon and examine a witness reluctant to appear voluntarily in front of the arbitral tribunal. If the witness refuses to appear in front of the court of law he/she may be fined and made to appear involuntarily.

There is not a requirement for witnesses to be sworn in before the tribunal. Cross-examination is allowed.

**8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?**

Bulgarian law does not provide any rules on privileged documents in arbitration proceedings, and respectively no rules on waiver of privilege exist.

As per the Bulgarian Attorney Act, attorney-at-law papers, files, electronic documents, computer equipment and other carriers of information are privileged and confidential. Correspondence between an attorney-at-law and a client, irrespective of the manner it is maintained, including electronically, is also privileged and confidential. Thus, the carriers of this privileged and confidential information may not be used as evidence, including in arbitration proceedings.

## 9 Making an Award

**9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contain reasons or that the arbitrators sign every page?**

- Majority: Where the arbitrators are more than one, the award is rendered by the majority, unless the parties have agreed otherwise. The arbitrator who does not agree with the award shall set out a dissenting opinion in writing. If a majority cannot be constituted, the award is rendered by the presiding arbitrator.
- Reasons: The award has to contain reasons, unless the parties have agreed otherwise or it is an award rendered on agreed conditions.
- Signatures: The award is signed by the arbitrator or the arbitrators. In the case of arbitration with the participation of more than one arbitrator, the signatures of the majority of the members of the arbitration tribunal shall be considered sufficient if the signatories have stated the reason for the missing signature.

An award by consent may be pronounced on the basis of a joint request of the parties enclosed with the settlement agreed. There is no need to provide reasons in this case.

**9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?**

According to Art.43.(1) of ICCA, the arbitral tribunal, upon request of either party or on its own initiative, may **correct** the award in connection with any computation errors as well as any other evident factual error made by it. The other party shall be informed for the so requested correction by the petitioner or by the arbitration tribunal if it acts on its own initiative. Each party after informing the other one shall be entitled to **request from the arbitration tribunal to interpret the award**. The request for the correction or interpretation shall be made within a period of 60 days after the receipt of the award unless another time limit has been agreed by the parties. When the arbitration tribunal acts on its own initiative it shall make the correction within 60 days from the announcement of the award. The arbitration tribunal shall make the correction or the interpretation after hearing the parties or after giving them the opportunity to forward written statements within the time limit determined by it. It shall decide on the correction or the interpretation within 30 days from the request. The corrections and the interpretations shall become part of the award.

In addition, the arbitral tribunal may give an **additional award** upon request from either of the parties on claims omitted in the first award. The party that requests the additional award shall inform the other party for the request within 30 days from the receipt of the award. Given the request is well-grounded, the arbitration tribunal renders the additional award within 60 days.

## 10 Challenge of an Award

**10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?**

The award may be challenged only on limited grounds, which are equal to those prescribed by the Model Law and the European Convention, and only within a limited period of time – three months from the day the claimant has received the award.

The grounds for challenging the award are listed in Art.47 of ICAA and are the following:

- the party lacked capacity at the time of the conclusion of the arbitration agreement;
- the arbitration agreement had not been concluded or is void pursuant to the law chosen by the parties, and in the case of absence of such a choice, pursuant to this law;
- a party had not been duly notified of the appointment of an arbitrator or of the arbitration proceedings, or due to reasons beyond its control it could not participate in the proceedings;
- the award settled a dispute which had not been provided for in the arbitration agreement or contains decisions on issues beyond the scope of the dispute; or
- the constitution of the arbitration tribunal of the arbitration procedure was not in conformity with the agreement between the parties unless it contradicted the imperative provisions of this law (i.e. ICAA), and in the absence of an agreement – in case the provisions of this law had not been applied.

It should be noted that in the latest amendments of ICCA, Art.47, para.2 provides that arbitration decisions handed down in disputes, the object of which is not subject to arbitration, shall be void.

**10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?**

The provision of Art.47 of ICAA is mandatory and none of the grounds for the challenge of the award can be excluded or reduced by the parties.

**10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?**

In relation to question 10.2 and the mandatory character of the provision of Art.47 of ICAA, the parties cannot expand the scope of appeal of an arbitral award beyond the ground listed in the provision.

**10.4 What is the procedure for appealing an arbitral award in your jurisdiction?**

Each party may challenge the award. ICAA specifies the competent court for considering the claim, namely the Supreme Court of Cassation. It acts as a court of first instance applying CPC rules for hearing of the case by a first instance court, but its decision is final and is subject to no appeal.

## 11 Enforcement of an Award

**11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?**

The New York Convention was signed by Bulgaria on December 17th, 1961 and has been in force since January 8th, 1962.

Upon ratification, Bulgaria made a reservation pursuant to Art.1, para.3, sent.I of the Convention, so the New York Convention is applicable to arbitral awards issued in the territory of another contracting state. It is applied in respect of awards issued in the territory of non-contracting states on the basis of strict reciprocity – only to the extent to which those states grant reciprocal treatment of Bulgarian arbitral awards.

The relevant national legislation is ICAA. Art.51, para.2 of ICAA refers to the international instruments to which Bulgaria is a party in respect of the recognition and enforcement of foreign arbitral awards. As a result, no implementing legislation has been enacted. The New York Convention is directly applied by the Bulgarian courts and thus any risk of incorrect implementation in the national legislation has been avoided.

**11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?**

Bulgaria is a party to the European Convention for International Commercial Arbitration (see question 2.1 above).

**11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?**

An award rendered by an arbitration with a place in Bulgaria may be directly enforced in Bulgaria. According to Art.51, para.1 of ICAA, the Sofia City Court issues, upon request of the party, a writ of execution only on the basis of the award and a proof that the award is delivered to the debtor.

Foreign arbitral awards are subject to recognition and enforcement. According to the provision of Art.51, para.3 of ICAA, the actions for recognition and admission to the enforcement of foreign arbitral awards and of the settlements reached before foreign arbitration courts have to be brought before the Sofia City Court and Arts.118 to 122 of PILC shall apply, *mutatis mutandis*, to the hearing of such actions. The mentioned provisions of the PILC are applicable to foreign arbitral awards only as far as they are compatible with the New York Convention. The enforcement and admission may be refused only on the grounds of Art.5 of the New York Convention. The court cannot retry the case on the merits.

The decision of the Sofia City Court is subject to an appeal in front of the Sofia Court of Appeal, the decision of which may be appealed in front of the Supreme Court of Cassation.

After their recognition and admission, the foreign awards become enforceable in Bulgaria. The court of the enforcement (the Sofia City Court) upon request of the creditor may issue a writ of execution, which will be handed to the creditor only after the decision on enforcement has entered into force – Art.405 of CPC.

**11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?**

Pursuant to Art.41, para.1 of ICAA, when the arbitral award is being served, it becomes valid and binding for the parties and enforceable. Thus, the award possesses *res judicata* which is the same as that of the judgments. Due to the fact that the arbitral award is related to and derives from the arbitration agreement, *res judicata* of the award has the same subjective scope (the category of parties to which *res judicata* applies) as that of the agreement, i.e. it is binding on the parties only, not on third parties.

The award will have *res judicata* and the dispute settled by it cannot be re-examined in court or arbitration proceedings. The final arbitral award shall be binding upon the parties and the public authorities in Bulgaria.

ICCA does not provide for any type of revision of the award, including on the grounds of the discovery of some unknown facts affecting decisively the award. Thus setting aside as described in question 10.1 is an exclusive recourse against the arbitral award.

**11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?**

Usually, the most fundamental principles of Bulgarian law (e.g. violation of the principle of equal treatment of the parties) are deemed to form the public policy.

## 12 Confidentiality

**12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?**

ICAA is silent on this issue, but as a standard practice the arbitration proceedings in Bulgaria are confidential. However, arbitration courts in their rules usually explicitly provide for confidentiality of the proceedings. For example, the Rules of Arbitration of the Arbitration court with the Bulgarian Chamber of Commerce and Industry provides for non-public proceedings.

**12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?**

Information disclosed in arbitral proceedings cannot be referred to and cannot be relied on in subsequent court or arbitral proceedings.

## 13 Remedies / Interests / Costs

**13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?**

The types of remedies to be awarded and the limits on them depend on the applicable substantive law. Bulgarian law does not provide punitive damages, as well as most of the civil law jurisdictions.

**13.2 What, if any, interest is available, and how is the rate of interest determined?**

This issue is also governed by the applicable substantive law. If this is Bulgarian law, a statutory interest rate equal to the basic interest rate determined by the Bulgarian National Bank plus 10% is applied to the late payments.

**13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?**

The allocation of the costs is based on the principle that the costs (arbitration fees and expenses, expenses for gathering evidence and reasonable attorneys' fees made) are to be borne by the unsuccessful party.

**13.4 Is an award subject to tax? If so, in what circumstances and on what basis?**

The arbitration award itself is not subject to tax.

**13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?**

There are no statutory restrictions on third parties funding claims. It is the obligation of the party which brings the claim to provide evidence for the payment of the respective fee and the source of the funds is not examined. Contingency fees are legal and are used in Bulgaria in relation to civil and commercial claims in front of national courts. To the best of our knowledge, there are no "professional" funders active in the Bulgarian market for legal services.

## 14 Investor State Arbitrations

**14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?**

Bulgaria ratified ICSID on October 4th, 2000.

**14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?**

Bulgaria is party to 57 BITs (in force). Bulgaria is also party to the Energy Charter Treaty and the Convention on Establishing the Multilateral Investment Guarantee Agency.

**14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?**

It cannot be concluded that the wording of the Bulgarian BITs has peculiarities far more different from the standard terms and provisions in BITs of the OECD countries.

**14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?**

The sources which govern this issue are both international and domestic. Among the former are the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations (1963), bilateral consular conventions to which Bulgaria is a party and general principles of international law. Bulgaria is not a signatory to the European Convention on State Immunity.

The latter category comprises the relevant provisions of CPC; there are no specific statutes which deal with state immunity.

The provision of Art.18, para.1 of CPC stipulates that the Bulgarian courts are competent on claims, a party to which is a foreign state, as well as and a person who has court immunity, in the following cases:

1. in event of a waiver of court immunity;
2. on claims, grounded on contractual relations, where the performance of the obligation shall be in the Republic of Bulgaria;
3. on claims for damages from tort, done in the Republic of Bulgaria;
4. on claims regarding rights to succession property and vacant succession in the Republic of Bulgaria; or
5. on lawsuits, which are under the exclusive jurisdiction of the Bulgarian courts.

The provisions of para.1, items 2, 3 and 4 shall not be applied for legal transactions and actions, performed in execution of official functions of the persons, respectively in relation with the exercising of sovereign rights of the foreign state.

## 15 General

### 15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

According to the latest amendments in the Bulgarian legislation, an arbitrator may be an able-bodied citizen of legal age who has not been convicted of an intentional crime of a general nature, has a university degree, at least eight years of professional experience and possesses high moral qualities. A new incorporation in ICAA is also the provision of Art.31, para.2 which provides that each party shall also have the option to check the case remotely, including via the website of the arbitration court.

Another major amendment in 2017 was the revocation of Art.47, para.3 of ICAA, whereas if the subject of the dispute is not subject to arbitration or the arbitration decision contradicts the public order of the Republic of Bulgaria, this no longer is ground for revocation of the award.

As a general trend, the disputes referred to arbitration are related to business transactions and contractual obligations. As a result of the increased arbitration proceedings, there are more cases in front of the Bulgarian courts of law on arbitration-related issues. For that reason, there is a steady tendency for the development of relevant case law of the Sofia City Court (the competent court) on the challenge of arbitrators and of the Supreme Court of Cassation on the challenge of arbitral awards.

### 15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

Recently, some arbitration courts enacted expedient rules and even rules on electronic arbitration, although there has been no e-arbitration put into operation yet.

**Tsvetelina Dimitrova**

Georgiev, Todorov & Co.
27 Parchevich str.
Sofia
Bulgaria

*Tel:* *+359 2 937 65 17*
*Email:* *ts.dimitrova@georg-tod.com*
*URL:* *www.georg-tod.com*

Tsvetelina Dimitrova has a Ph.D. in Private International Law focused on investment dispute settlement, and is concentrating strongly on the standards of protection of foreign investment and the mechanisms of protection of foreign investors.

While detecting the most problematic matters for foreign investors and analysing the main grounds for disputes, Tsvetelina provides legal consultations on structuring investments before they are made in order to protect the interest of the investors in the best possible way.

Tsvetelina has a strong focus on EU law and has been participating in a case before the CJEU with reference to preliminary ruling on the side of Bulgarian administrative court.

Tsvetelina is certified by the BCCI for successful training on the issues of the Arbitration Court.

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Georgiev, Todorov & Co. was founded in 1991 as one of the first Bulgarian law firms. Currently, we are one of the largest business law firms in the country, consisting of seven partners and 52 lawyers that have always been proud of rendering excellent legal service.

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glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com