



СТОПАНСКА КОМОРА
НА МАКЕДОНИЈА
ECONOMIC CHAMBER
OF MACEDONIA



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Embassy of Switzerland in North Macedonia



INTERNATIONAL ARBITRATION CONFERENCE

FROM ARBITRATION LEGISLATION REFORM TO ENHANCING THE BUSINESS CLIMATE

28-29 MARCH 2019
ECONOMIC CHAMBER OF MACEDONIA



Publisher:

Economic Chamber of Macedonia
Dimitrie Cupovski 13 Str., 1000 Skopje

Editors:

Tatjana Shterjova Ph.D.
Nena Nikolovska LL.M.

Design & Graphics:

Stevo Serafimov

Proof reading:

Ivana Iekic

arbitraza@mchamber.mk
<http://arbitraza.mchamber.mk>

CIP - Каталогизација во публикација

Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

347.769(062)

INTERNATIONAL arbitration conference (2019)

From arbitration legislation reform to enhancing the business climate / International arbitration conference 28-29 March, 2019. - Skopje : Economic chamber of Macedonia, 2019. - 43 стр. : илустр. ; 30 см

ISBN 978-608-66070-4-3

а) Арбитража - Собири
COBISS.MK-ID 109934858

„The internationalization of companies leads to accepting and implementing international standards in the business performance and harmonization of domestic with international regulation, but also sharing similar legal values and accepting new methods for the resolution of disputes, which are increasingly applied by the leading companies in the world“

WHY ARBITRATION?

With the increased globalization, including globalization of trade, arbitration becomes a more popular mechanism for settling disputes. Arbitration is a dispute resolution method which is an alternative to the trial before state courts, and is based on the free will of the parties. The arbitration proceedings are terminated with the deliberation of a final and binding award, which the parties undertake to carry out without delay.

Arbitration proceedings on average last shorter than court proceedings. Since a successful business conduct requires uninterrupted business relations, as well as fast and efficient completion of the transactions concluded between the business entities, arbitration could be more effective and more efficient dispute resolution mechanism than the state courts. The usual duration of the arbitration proceedings is from six to nine months, and the proceedings are terminated with the rendering of a final decision which, for the parties, has the effect of an enforceable document. In arbitration proceedings, the subject matter of the disputes is decided in one instance, and there is no further examination of the award of the arbitral tribunal. This is justified by the fact that the arbitral tribunal (sole arbitrator or arbitration panel) is chosen due to the consent of the parties' wills, who appoint the arbitrators in the proceedings.

Arbitration enables faster and smoother resolution of disputes between parties without serious negative repercussions on their business relations. It also ensures that legal complications in one market do not affect the profitable projects and the reputation of the companies in another. Arbitration hearings are closed to the public and all documentation relating to the arbitration proceedings is considered confidential. Arbitration proceedings are usually conducted in a relaxed atmosphere, by arbitrators appointed by the parties. This increases the efficiency of the arbitration proceedings and reduces the possibility of bias in decision-making to the smallest possible extent.

Arbitral tribunal (sole arbitrator or arbitration panel) is a private body which is not part of any state court system. One of the most outstanding benefits of arbitration over litigation is its applicability in international disputes, with minimal or no interference by the national courts. When it comes to disputes with international element, each party does not usually want to entrust the dispute resolution to the national court system of the other party and seeks options for the dispute to be resolved in their own country. As a private body the arbitral tribunal can be constituted of arbitrators from different countries appointed by the parties and the place of arbitration can be in a third country which ensures the independence and impartiality of the arbitrators.

Arbitration law provides simplified regime for recognition and enforcement of foreign arbitral awards. This applies to the countries - signatories of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention from 1958). The success of international arbitration itself is attributed in great part to the New York Convention, primarily due to the ability to enforce foreign awards almost anywhere in the world (in over 150 contracting states to the Convention).

PANEL I: MODERNIZING THE ARBITRATION LEGISLATION: WHAT IS THE RIGHT DIRECTION?

WHAT CHANGES ARE NEEDED TO ENABLE
TECHNOLOGY BASED ARBITRATION?

**Pavle Pensa, Law office “Jadek & Pensa”,
Ljubljana, Slovenia**

THE PUBLIC POLICY AND ARBITRABILITY REFORMS
IN BULGARIA

**Ivaylo Dermendjiev Ph.D., Law Firm “Simeonov
& Dermendjiev Ltd”, Sofia, Bulgaria**



Pavle Pensa,
*Law firm "Jadek & Pensa",
Ljubljana, Slovenia*

WHAT CHANGES ARE NEEDED TO ENABLE TECHNOLOGY BASED ARBITRATION?

New technologies are transforming the ways we are living and doing business.

The pace of the changes is accelerating. Multiple new technologies, like wireless internet, artificial intelligence, the internet of things, advanced robotics, quantum computing, blockchain technology, hologram technology, nanotechnology, and similar, are simultaneously coming into daily use. Businesses that are not able to adapt their business models will collapse. Practices that are not able to use the new technologies will vanish.

Where does international arbitration stand in this period of transformation? Can it fully use the potential of new technologies in the current legal framework? Are we ready to accept that artificial intelligence is not only increasing the efficiency of a standard arbitration process and reducing its costs, but can also substantially influence the arbitral process and decision-making of the arbitrators? Are we ready to accept a "robot arbitrator"? Does the legislation governing arbitration enable effective and enforceable online arbitration?

In the last decade many jurisdictions have made the necessary changes to adapt the dispute resolution processes to the use of new information communication technologies. Legislators have found the way to allow conclusion of arbitration agreements by using the electronic ways of communication. Not only may the arbitration agreements be concluded by e-mails, but many jurisdictions allow conclusion of such agreements through various web applications. Parties may exchange their pleadings through e-mails. Oral hearings need not be face-to-face hearings, but can be done through video-conferencing. While arbitration awards have still predominantly been issued in fully signed hard copies, digital arbitral awards are also acceptable subject to certain rules with respect to electronic signatures. Such small tweaks in current legislation seem to be enough to enable the use of information communication technology in a standard offline arbitral process.

In the time when more and more businesses are moving online, we are

also facing a rapid development of online dispute resolution. For the time being online dispute resolution is mainly used with respect to business-to-consumer transactions. However, we can predict that also resolution of commercial disputes will be moving from face-to-face to online processes. If all the main elements of the arbitral procedure are completed online, we might be speaking of a form of a dispute resolution process which has not entirely the same legal nature as the standard offline arbitration process. Under current legislation, the enforceability of awards rendered in online arbitration process might be questionable. It might be necessary to develop a whole new set of rules regulating online arbitration to make it effective.



Ivaylo Dermendjiev Ph.D

*., Law Firm "Simeonov & Dermendjiev Ltd"
Sofia, Bulgaria*

THE PUBLIC POLICY AND ARBITRABILITY REFORMS IN BULGARIA

1. Towards the elimination of the dualistic (national vs. NYC) setting-aside regime

In 2018, working groups have been debating on the revision of the NY Convention as its implementation creates a complex dual system ("the Russian Doll Effect" or the "double exequatur") where grounds for annulment/setting aside within national law coexist with grounds for resisting enforcement under article V of the NYC.

A ground-breaking proposal that has been universally endorsed in academia suggests that there should be two separate conventions dealing with:

1. Convention 1: Recognition at the arbitral seat/no more setting aside procedure: where public policy of the seat (*lex arbitri*) no longer exists as grounds for resisting recognition = coincides with the Bulgarian "reform" erasing public policy as grounds for setting aside. Even today, French, Swiss, Belgian and Swedish legislations allow parties to agree to exclude set aside proceedings

before the courts of the seat.

2. Convention 2: Enforcement in a country other than the seat where the only ground for resisting enforcement would be a violation of the public policy of that third country (*lex fori*).

This would simplify the setting aside/resisting enforcement dualistic regime.

2. Public policy is no longer grounds for setting aside a domestic arbitral award

In 2017, the Bulgarian legislator amended the Bulgarian International Commercial Arbitration Act to exclude public policy as grounds for challenging arbitral awards rendered by tribunals having their seat in Bulgaria. It stems from the national courts' case law that breaches of due process were the most common grounds for setting aside an award for violation of public policy.

This opens the discussion on the constitutionality of such reform which also creates a difference in the treatment of domestic and foreign awards (NYC) and a possibility for highly dubious awards to subsist and get enforcement.

3. Disputes where one of the parties is a consumer are now non-arbitrable in Bulgaria

In 2017, the Bulgarian legislator amended the Code of Civil Procedure to exclude consumer disputes from the scope of arbitrable matters. This means that any arbitration agreement concluded with regard to a consumer dispute is null and void and any such pending arbitration shall be terminated.

The rationale behind this amendment was to stop local monopolists from creating their own private arbitral institutions administering disputes with their customers, thus being at the same time a judge and a party. Such disputes are henceforth heard before national courts.



PANEL II: REGIONAL ANGLE ON ARBITRATION – WHAT CAN WE LEARN FROM OTHERS’ SUCCESS STORIES OR MISTAKES?

ITALY: NO COUNTRY FOR ARBITRATORS?

**Elisabetta Silvestri, Ph.D., University of Pavia,
Italy**

**COMMERCIAL ARBITRATION IN POLAND: WHAT
WENT WRONG OR ARE WE JUST FINE?**

**Bartosz Karolczyk, Law office “Domański
Zakrzewski Palinka sp.k.”, Warsaw, Poland**

**PSYCHOLOGICAL ASPECTS OF REGIONAL
ARBITRATION**

**Dragan Psodorov, Law office “Joksovic,
Stojanovic & Partners” Belgrade, Serbia**



Elisabetta Silvestri, Ph.D.
*Department of Law,
University of Pavia, Italy*

ITALY - NO COUNTRY FOR ARBITRATORS?

Arbitration is not very popular in Italy in spite of statements to the contrary that one is likely to come across in the literature produced by the few members of the exclusive club of Italian arbitrators. Litigants still prefer to turn to the court system, often intimidated by the high cost of arbitral procedures and the perception that the aura surrounding arbitral tribunals (and, more generally, private justice) makes them an environment which is unwelcoming to ordinary people. That is why typically it is business interests which turn to arbitration, for the resolution of corporate disputes and disputes arising out of commercial contracts at large, as well as disputes in the fields of banking, financial instruments and insurance matters.

From a different angle, a look at the Italian statutory rules governing arbitration reveals that arbitration is getting more and more similar to adjudication before state courts. The procedure is quite complex, and that can detract from both the flexibility, which is deemed to be one of the main advantages of arbitral proceedings, and the speed, in light of the fact that the emphasis placed on the time factor is universally valued as the reason for choosing arbitration over litigation. Furthermore, the role of state courts remains quite intrusive. Two examples may clarify this issue. Under Italian law, the arbitral tribunal cannot grant interim measures, since only the courts – according to conventional wisdom – have the coercive powers necessary to grant enforcement of provisional measures. Furthermore, awards can be challenged before a court for a long list of grounds: this increases the possibility that a party will be successful on a motion to have the arbitration award vacated, which seems to frustrate the very purpose of arbitration, namely to provide a faster and less costly resolution to a dispute.



Bartosz Karolczyk,
*Law office "Domański Zakrzewski
Palinka sp.k.", Warsaw, Poland*

COMMERCIAL ARBITRATION IN POLAND: WHAT WENT WRONG OR ARE WE JUST FINE?

In Poland, for many years now, arbitration has been advertised as an attractive alternative to litigation, i.e. dispute resolution before state courts. Still, the disproportion between number of commercial disputes that end up in court system and those submitted to permanent arbitration courts is – pretty much constantly – drastic.

There are often many reasons why a product does not sell. I would argue at least three should be examined here. First, is there in fact a market? Two, is there a problem with the product itself? Three, is there a problem with the way in which it is being advertised or offered for sale?

In discussing the first issue I will look at the actual pool of potential claims that can be subject to arbitration. Has this pool recently increased or decreased? What is the outlook?

Then, I will turn to examine the product, which is a service. To answer if arbitration is indeed an attractive alternative to litigation certainly requires a comparison of criteria that can be quantified. Also, clients are usually interested in knowing (or at least need to be convinced that they know) the service-provider, in this case – the arbitrators. Thus, a look at this element is required.

Next, I shall address the critical questions pertaining to the third reason: Who does the selling? Who is in fact buying? How and when does the sale take place? What about advertising?

Finally, is it important to private and public stakeholders how much selling is taking place?

In my presentation I will try to answer these questions by looking at the legal framework, as well as statistical and anecdotal evidence.



Dragan Psodorov,
Law office "Joksovic, Stojanovic & Partners"
Belgrade, Serbia

PSYCHOLOGICAL ASPECTS OF REGIONAL ARBITRATION

The topic of psychological aspects of regional arbitration or arbitration in general is not often commented on the conferences, at least not under such title, but the notions of the same are known to all professionals in the arbitration. These notions are now therefore put under the same umbrella and this is the reason why we tried to discuss this concept in this conference.

We are of opinion that the "psychological aspects of the regional arbitration", which can be described as "side issues" in the arbitration, could be very important for the users of the arbitration and especially regional arbitration. We believe that it covers at least following aspects such as:

- sharing the same or similar legal tradition between different countries and jurisdictions would certainly be benefit for the users to more easily accept the concept of arbitration, especially in the growing use of common law concepts of productions of documents, cross-examination of witnesses etc.,
- use of "common language" instead of insisting on the neutral (English language) in many regional cases would help saving time, money and would increase the efficiency in the proceedings, avoiding sometimes unnecessary translations, which could be misleading if not done professionally,
- easier understanding of the arbitral procedural rules and regulations of the regional arbitral institutions in comparison to the wide know and most "famous" arbitral institutions, the rules of which are often too sophisticated and more and more complicated and not drafted for "smaller cases". The regional rules can be more flexible and tailor-made.

In short, there are silent features that the regional arbitration institutions could use and emphasize more in order to attract more regional cases, which are all related not to main issues in arbitration, but to some side issues as stated above. However, in our opinion these side issues could be explored more by each regional arbitration institution to explore potential benefits that can be offered to its users, in contrast to the most renowned and leading arbitral institutions.

PANEL III: TRENDS IN ORGANIZING ARBITRATION PROCEEDINGS

SOFT LAW IN THE ORGANIZATION AND CONDUCT OF
COMMERCIAL ARBITRATION PROCEEDINGS – A BRIEF
OVERVIEW OF THE ICC NOTE TO PARTIES AND ARBITRAL
TRIBUNALS

Tanja Planinic, “Pestalozzi”, Zurich, Switzerland

LEGAL TECH IN ARBITRATION – HOW IS IT CHANGING
CASE PREPARATION

**Amanda Neil, “Freshfields Bruckhaus Deringer”,
Vienna, Austria**

CONSOLIDATION OF ARBITRATIONS – TRENDS AND
CHALLENGES

**Boris Porobija, Law office “Porobija & Porobija”,
Zagreb, Croatia**



Tanja Planinic,
"Pestalozzi"
Zurich, Switzerland

SOFT LAW IN THE ORGANIZATION AND CONDUCT OF COMMERCIAL ARBITRATION PROCEEDINGS – A BRIEF OVERVIEW OF THE ICC NOTE TO PARTIES AND ARBITRAL TRIBUNALS

Arbitrators enjoy a broad discretion under leading arbitration procedures and institutional rules when it comes to the conduct of arbitral proceedings – flexibility being the key word. In recent years, however, there has been an emergence of a wide variety of non-binding rules, guidelines, notes or best practices aiming at assisting the process management and helping facilitate arbitrators' effective exercise of the broad discretion they enjoy in conducting arbitration proceedings. While one part of the arbitration community welcomes the development of such procedural "soft law" – which is seen as fostering transparency, certainty and predictability – another part of the same community views the proliferation of procedural soft law instruments as a "judicialisation" of commercial arbitration, as well as an over-regulation and over-formalization of a process that was supposed to be flexible and tailored to the needs of individual cases.

Where are we leaning towards? Is flexibility really traded for predictability? And what about fairness when legal cultures differ in matters such as discovery, the questioning of witnesses, the use of experts or the standards for challenging an arbitrator? The absence of principles established in advance, while perhaps making arbitration less cumbersome in some instances, can however generate feelings of inequality. Most parties to arbitration proceedings anticipate a measure of ordered procedure as a prerequisite to equal treatment and due process.

The IBA Rules on the Taking of Evidence in International Commercial Arbitration and the IBA Guidelines on Conflicts of Interest in International Arbitration are the two most prominent procedural soft law instruments, but they are not the only ones. The UNCITRAL Notes on Organizing Arbitral Proceedings were indeed among the first standards aimed at offering guidance

for organizing and managing commercial arbitration. Their revised and updated 2016 version is meant to reflect contemporary attitudes towards key procedural issues arising in international arbitration.

While it does not constitute procedural soft law *stricto sensu*, the ICC Note to Parties and Tribunals on the Conduct of Arbitration under the ICC Rules of Arbitration (the “Note”) provides parties and arbitral tribunals with practical guidance concerning the conduct of arbitrations under the ICC Rules, and summarises the practices of the ICC Court. The revision of the Note, effective as of 1st January 2019, mainly concerns disclosures by arbitrators and prospective arbitrators; additional services in respect of the constitution of arbitral tribunals; transparency (publication of the identity of arbitrators as well as of that of counsels and of the sector of industry involved, publication of awards based on an opt-out procedure); treaty-based arbitrations and submissions by *amici curiae*; and duties of administrative secretaries.



Amanda Neil,
“Freshfields Bruckhaus Deringer”
Vienna, Austria

LEGAL TECH IN ARBITRATION – HOW IS IT CHANGING CASE PREPARATION?

This presentation will discuss the use of artificial intelligence and legal tech in arbitration and how these tools are changing the way arbitration proceedings are organised and conducted.

Technology is having a profound impact on the services industries, changing the way customers use services and forcing business to rethink their operating models. Law firms are no exception. Clients are demanding that legal services, including arbitration services, are to be delivered faster and more cheaply. Artificial intelligence and legal tech tools allow law firms to deliver on these demands. Through artificial intelligence and legal tech tools, law firms can increase efficiency, find innovative solutions, automate certain tasks and capture knowledge for their clients’ benefit. This enables their lawyers to focus on the tasks that require creative legal thinking and analysis.

In arbitration, artificial intelligence and legal tech tools can help at a number of stages of the proceedings. Tools exist or are being developed to assist in the selection of arbitrators. Whereas currently arbitrator appointments are made primarily based on word-of-mouth and following arbitrator interviews, databases are being developed which enable an arbitrator's track record to be determined instantaneously and in detail. These tools also have application in the context of expert witness selection, making it easier to find experts with the required knowledge and experience.

Tools also exist to assist with document review. Machine-learning assisted contract review software allows huge volumes of documents to be searched and relevant information to be extracted. This allows lawyers to identify useful evidence not only faster and more cheaply, but also more accurately. These tools can also be used to assist with document production, so this phase of the proceedings becomes less onerous.

It is not difficult to imagine that tools will be developed to allow the drafting of submissions and even awards to be automated. These tools already exist with respect to contracts, allowing commonly used transaction documents to be generated automatically by filling out a questionnaire. Arbitration submissions are of course individual, but it is possible that certain parts of submissions or awards could become computer-generated, for example, those parts that set out the timeline or the procedural history.

Finally, many law firms are working hard to create special legal and tech hubs which allow the issues lawyers face on particular matters to be resolved using technological solutions in real time. When lawyers face a challenge on a matter that could be resolved using technology, they can simply call the experts at the tech hub, who will create an app or a programme to assist them to resolve the problem. Tools are even being developed to allow lawyers to create the apps they need on their smartphones themselves!



Artificial intelligence and legal tech are having a profound impact on law firms. They are making the provisions of legal services, including arbitration services, much easier and more cost-effective. The challenge for lawyers will be to keep up with these developments, so they can benefit their clients and keep up with the competition.



Boris Porobija,
*Law office "Porobija & Porobija",
Zagreb, Croatia*

CONSOLIDATION OF ARBITRATIONS TRENDS AND CHALLENGES

As is well known, in September 2011, the ICC, after careful examination and dedicated effort of many arbitration professionals, revised its rules to, inter alia, include a more elaborate rule dealing with consolidation of arbitrations. At the time, only a very few arbitration institutions provided rules on consolidation of separate arbitration proceedings. If they did include such rules, those were often limited to simply reaffirming the consolidation option by parties' consent, i.e. reflecting a well-established principle in international commercial arbitration that consolidation can in any event only be based on parties' consent (be it express or implied). It seems that the ICC Rules of 2011 with respect to consolidation produced a catalysing impact among arbitration institutions and moved them to rethink their own rules on the issue. By now, a significant number of major arbitration institutions adjusted their rules in a manner that considers consolidation in more depth. The common denominator of the new approach seems to include more flexibility on the part of arbitration institutions to impose consolidation where the parties, at the time and in actual circumstances of their parallel disputes, cannot reach agreement on the motion by one of them to consolidate on-going arbitrations. Under revised rules on consolidation, arbitration institutions now tend to take a more pro-active role where the on-going arbitrations are subject to their respective rules. However, the trend could be evolving even beyond that point: the Singapore International Arbitration Centre (SIAC) in December 2017 announced its proposal on cross-institution cooperation for the consolidation of international arbitral proceedings. Their memorandum proposed the adoption of a protocol by arbitral institutions permitting the cross-institution consolidation of arbitral proceedings subject to different institutional arbitration rules. That all suggests that there indeed exists a rational need for the consolidation of arbitrations, where appropriate, at the level of international commercial arbitration. That could apply – mutatis mutandis - to the national arbitration law in North Macedonia also. The typical problems shall be presented.

PANEL IV: ARBITRATION AND CONSTRUCTION DISPUTES

EFFICIENT MANAGEMENT OF CONSTRUCTION
ARBITRATION

Mark Roe, "Pinsent Masons LLP", London, UK,

CLAIM AVOIDANCE PRINCIPLE

Denis Rizaov, Granit AD Skopje, North Macedonia -

MULTI-TIER DISPUTE RESOLUTION CLAUSES IN FIDIC
CONTRACTS

**prof.Toni Deskoski, Ph.D., Faculty of Law "Iustinianus
Primus"-University "Ss.Cyril and Methodius"
Skopje, North Macedonia**

THE ROLE OF THE DISPUTE ADJUDICATION BOARD
(DAB) IN SOLVING DISPUTES UNDER THE FIDIC RED
BOOK

**Ana Pepeljugoska Ph.D., Law office Pepeljugoski
Skopje, North Macedonia**



Mark Roe,
“Pinsent Masons LLP”
London, UK

EFFICIENT MANAGEMENT OF CONSTRUCTION ARBITRATION

The talk will provide an overview in a construction context of:

- Procedural matters such as: other characteristics of different Seats of Arbitration, consideration of the most helpful Arbitration Rules,

Disclosure Rules, The Taking of Evidence, When the support of institutional bodies is necessary.

- The most important differences between Common Law and Civil Code systems
- Enforcement of Awards including: the importance of the New York Convention, and State Immunity.



Denis Rizaov
Legal officer, GD Granit AD Skopje,
Member of the Managing Board of the
Association of Consulting Engineers of
Macedonia- ACEMA

CLAIM AVOIDANCE PRINCIPLE

Even though in construction things do not always go as planned or agreed, it is important to have knowledge and to follow the newest technologies and events, but the practical experience acquired by participating in the construction of the facilities is crucial. The modern building technology is experiencing a staggering development with the objective to minimize the possibilities of making mistakes and losses. There is no room for improvisation. The perfect blend of technology and experiences are the future of the law and construction.

Usually, the known risks are faced in the agreement stage in order to assess the probability of their occurrence and the possible effect, and afterwards to define the agreed responsibility of the risks.

The standard forms of agreement in the construction sector, such as those published by FIDIC tend to balance the responsibility of the participants in the realization of the projects regarding the most well-known risks, with the objective for the deadlines and the agreed price to be as realistic as possible. A general rule is the risk to be given to the party that can control it the best.

Solving complex disputes in the construction sector is often costly and time consuming. In the modern practice and doctrine of project management it is tended, from the beginning of the realization of the projects, an account to be taken to claim avoidance with the objective to avoid disputes and reduction of the unnecessary costs and time. Claim avoidance includes quality insight of the things to be made before the beginning of the performance of the activities to be made, conducting the activities on the basis of signed agreement including clearly defined obligations, using the standard forms of agreements and engineering procedures and professional project management.

In the modern theory and practice of project management the principle of prevention is widely applied and is the best possible initial strategy. The preventive measures an often avert or reduce the effect of the unwanted situations that emerge in the course of the realization of the projects.

Some of the most familiar and mostly used standard forms of agreements in the construction are published by the International Federation of Consulting Engineers- FIDIC seated in Geneva. The United Nations, the European Union and the big banking systems have their own standard forms of agreements for the realization of the investment projects that are often performed with standard forms of agreements published by FIDIC.





prof.Toni Deskoski, Ph.D.,
*Faculty of Law "Iustinianus Primus"-
University "Ss.Cyril and Methodius"
Skopje, North Macedonia*

MULTI-TIER DISPUTE RESOLUTION CLAUSES IN FIDIC CONTRACTS

This article considers the contractual pre-conditions in FIDIC arbitration. International construction projects involve a high level of risk, requiring specific expertise and knowledge concerning the planning and management of several contracts with multiple actors. However, it is vital to plan and predict the protection of the legal rights in the event of a failure of the project. By agreeing to arbitrate, the parties of an international construction project indicate their intent to settle disputes in international arbitration instead of involving the national judiciary. In international construction disputes, the parties may choose to rely on different ADR mechanisms as a contractual pre-conditions to FIDIC Arbitration (by using an engineer consultant or dispute boards with non-binding decisions is an alternative for saving costs and time of international arbitration procedure).

The main focus of this article will be devoted to the Clause 20 of the FIDIC Contracts for major works. Clause 20 provides for a multi-step procedure for the resolution of disputes. In particular FIDIC contracts provide for a comprehensive multi-tier system for resolving the disputes in international construction projects. This system is constituted of different contractual pre-conditions to FIDIC Arbitration such as: 1. determination of a claim by the engineer; 2. a referral of the dispute to a DAB; 3. an attempt to amicable settlement and 4. arbitration. It has been argued that all contractual pre-conditions to FIDIC Arbitration must be exhausted before the arbitration is called. Thus, the parties to FIDIC contracts should use all the tiers as provided and not to initiate arbitration before all 3 tiers are declared unsuccessful. The dispute should go through to all contractual pre-conditions before it is submitted to arbitration. The main downside of this multi-tier process is the time consuming process before the submission of the dispute to arbitration. As the number of FIDIC based contracts increases, the question for the nature of the contractual pre-conditions to the FIDIC Arbitration is a very much valid for all actors and the authors of this article will strive to give proper analysis of the problem.



Ana Pepeljugoska, Ph.D.
Law office Pepeljugoski
Skopje, North Macedonia

THE ROLE OF THE DISPUTE ADJUDICATION BOARD (DAB) IN SOLVING DISPUTES UNDER THE FIDIC RED BOOK

The DABs can be categorized as a form of alternative dispute resolution methods, or more specifically they can fall under the generic category of adjudication. They origin from the USA where the dispute resolution boards were introduced in 1960s for the large civil engineering projects. At a later stage they were introduced as mandatory under the FIDIC 1999 edition. This radical shift was introduced in the Clause 20 (Claims, Dispute Resolution and Arbitration) of the FIDIC Red Book. The 2017 FIDIC edition brought another change, splitting the Claims in Clause 20 and the Dispute Resolution in Clause 21.

FIDIC provides for standing and ad hoc DABs, slowly shifting to standing DABs by default. The DAB can be comprised of one or three members. The DAB member(s) have broad authorities, including the inquisitorial powers and the possibility to inspect and make insight of the actual construction site. Vast majority of the DABs are comprised of engineers, rather than lawyers. However, they are bound by the same rules of impartiality and independence as the arbitrators.

The procedure in front of the DAB has many similarities with the arbitration procedure, especially in the preparation and filing the written submissions. The same can be said for conducting the hearings, the order of presenting the arguments at the hearings, the proposal and questioning of witnesses etc. On the other hand, the DABs timeline is denser and the procedure is usually finished in 84 days. Another point is that the DAB is free to determine its procedural rules and the parties are free to agree on certain procedural aspects.

It is undisputed that the DABs have many advantages and are very often used in the solving construction disputes. It is reasonable to conclude that the benefit of the DABs can be succinctly stated as being a means of resolving disputes by avoiding the cost, time and inflexibility. The main dilemma that arises is whether the DABs are suitable for solving more complex construction disputes. Resent theoretical debates and case law points towards the conclusion that the value of the DAB in the arbitral proceedings is that of a piece of evidence similarly to an expert report. In that respect the DAB in more complex disputes is a "preface" of the arbitration to come, or as the new 2017 FIDIC edition states "condition precedent to arbitration".

PANEL V: INVESTMENT ARBITRATION – OUTLOOKS

WHAT, IF ANYTHING, CAN WE LEARN FROM SOME RECENT SETTING ASIDE DECISIONS ABOUT THE FUTURE OF ISDS?

**Ilija Mitrev Penushliski, Shearman & Stearling LLP,
Paris, France**

ISDS V. INVESTMENT COURTS: WHY ARBITRATION IS (STILL) PREFERABLE

Alan Uzelac, University of Zagreb, Zagreb, Croatia

IMPLICATIONS OF ACHMEA DECISION ON THE FUTURE OF INVESTMENT TREATY ARBITRATION IN THE EU

Ana Stanic, E&A Law Ltd., London, UK

STRUCTURING OF INVESTMENTS, PREPARATION OF INVESTMENT DISPUTES AND CHALLENGES

**Aleksandar Godzo, Law office Godzo Novakovski
Kiceec, Ohrid, North Macedonia**



Ilija Mitrev Penushliski LL.M.,
Shearman & Sterling LLP, Paris, France

WHAT, IF ANYTHING, CAN WE LEARN FROM SOME RECENT SETTING ASIDE DECISIONS ABOUT THE FUTURE OF ISDS?

ISDS is being scrutinized with great intensity by the EU, states from various geographies, the civil sector, and the UN. Many have sounded the death knell of investment arbitration. What, if anything, have domestic courts in major arbitration jurisdictions had to say about this? This presentation will look at recent decisions on the annulment of investor-state awards and assess whether something about the future of ISDS can be read in between the lines or if the jurisprudence reflects normal award control.



Ana Stanić
E&A Law Ltd., London, UK

IMPLICATIONS OF ACHMEA DECISION ON THE FUTURE OF INVESTMENT TREATY ARBITRATION IN THE EU

This paper will discuss the implications of the decision of the Court of Justice of the European Union (CJEU) on investment treaty arbitration within the EU and more broadly by discussing:

- the decision itself;
- the jurisdictional implications of the decision in cases of on-going intra- EU BIT arbitrations;
- the jurisdictional implications of the decision on future intra-EU BIT arbitrations;
- the jurisdictional implications of the decision on future Energy Charter Treaty Arbitrations;
- the enforcement and other implications of the decision.



Prof. Dr. Alan Uzelac
Faculty of Law, University of Zagreb
Zagreb, Croatia

ISDS V. INVESTMENT COURTS: WHY ARBITRATION IS (STILL) PREFERABLE

European Union has in the last few years vigorously promoted the policy of replacement of arbitration as a means of investor-state dispute settlement (ISDS). Instead, it advocated the establishment of multilateral investment courts (MICs). In this presentation, I will explain why this move seems to be a step in the wrong direction. The ISDS has played an important role in the global fostering of international investment by securing a basically fair system of dispute resolution in a very specific field. Its deficiencies are not beyond repair; on the other hand, the alternatives offered suffer from flaws that are the same or much more troubling. The proposed solutions for the challenges of effectiveness and quality of the future MIC have so far not showed that their authors understand (or care about) practical details, as demonstrated on a number of procedural features in the proposed dispute resolution system, from time limits to appeal mechanisms. As a result, the effectiveness of such a process is highly questionable. Apart from the concerns regarding its effectiveness, there may be serious concerns regarding the integrity of the process. The criticisms of the customary ISDS mechanisms often relate to the asymmetric nature of the choice of forum, arguing that investors have disproportionate powers since only they may choose the forum which suits them. Yet, the asymmetric right to choose the forum and have a recourse to the selected (arbitration) tribunal can to a large extent be justified by the asymmetric power that parties possess, and the potentially vulnerable position of the investors when faced with the court system of the host country. It will be explained why in the new MIC system, on the other hand, there is a potential bias in favor of the states in the selection of the adjudicators, which is much less tolerable. Some other potentially troubling elements, such as the possibility of discretionary rejection of “claims manifestly without legal merit” upon application of the respondent state, rules excluding investment tribunals’ jurisdiction to review the legality of the state measures and their obligation to follow the “prevailing interpretation of the domestic law” by its “courts or authorities” will be discussed as well. The author concludes that the consequences of the “change of tide” in the approach to investor-state dispute resolution are likely to be detrimental to the very goals of those who advocate the abandoning of investment arbitration.



Aleksandar Godzo,
Law office "Godzo Novakovski Kiceec"
Ohrid, North Macedonia

STRUCTURING INVESTMENTS, PREPARATION FOR AN INVESTMENT DISPUTE AND CHALLENGES

The international legal documents that tackle the treatment of foreign investments by the countries in which the investments are made are becoming more significant in this era of globalization. Traditionally, it seems that the investors make the decision about investing in a certain foreign country based on the economic parameters (labour price, fiscal regulations, access to infrastructure, etc.). However, the legal (dis)advantages start to have greater influence on the decisions about whether to invest in one jurisdiction, i.e. to avoid another one. A great part of these legal conditions have a common ground with whether a certain country has or has not an Agreement for investors' protection concluded with the state wherefrom the foreign investor originates.

Even though it seems they are only declaratory, these international instruments expressed in bilateral investment agreements and multilateral investment agreements are a powerful tool for foreign investors' protection. First and foremost, by advocating the principles of "legitimate expectations", "fair and equal treatment", "protection from confiscation", "full protection and security", "protection of discriminatory treatment", etc. their existence and respect, in the foreign investors' eyes can have a direct influence on the assessment of the business climate in one country.

These instruments have two general points: to reduce the non-commercial risk for the investors and to promote favourable investment climate.

In the past few months, particularly after the fall of SFRY, and of the former Eastern Bloc, in this area there is a proliferation of such agreements.

With the transition, the first disputes between foreign investors and the state hosts took place, a trend that also affected North Macedonia.

The disputes between an investor and the host state are not new, nor can they be foreseen or completely eliminated in the future. It seems that it is a rule for these disputes to usually origin in the domestic legal order before being transferred to the field of international protection, i. e. in front of an international forum. It can be stated that the domestic and international legal orders are

PERMANENT COURT OF ARBITRATION ATTACHED TO THE ECONOMIC CHAMBER OF MACEDONIA

ARBITRATION LEGISLATION IN NORTH MACEDONIA – CURRENT STATE OF PLAY

In the global commercial community North Macedonia has an image of a country which is not entirely arbitration-prone. Although the modern normative framework is (partly) established more than one decade ago, arbitration in North Macedonia is still in its infancy: arbitration is neither well-known nor well-exploited. North Macedonia is far from being an attractive venue for international arbitrations. Furthermore, arbitration has not yet become an issue in courts proceedings, so there have not yet been any viable opportunities for the courts to support arbitration and display a pro-arbitration approach.

Unlike the contemporary trends in arbitration law, the distinction between domestic and international arbitration still pervades the entire legal framework for arbitration in North Macedonia, resulting in two separate laws covering arbitration.

The current legal framework for international arbitration in North Macedonia has been laid down in the Law on International Commercial Arbitration of the Republic of Macedonia, enacted on 21 March 2006 (Annex 1 in this booklet). It is based on the internationally recognized standards of the UNCITRAL Model Law on International Commercial Arbitration of 1985, and in regard to the recognition and enforcement of foreign arbitral awards; it directly calls upon the New York Convention. It did not take account of the amendments of the Model Law that took place in 2006 and therefore it calls for further slight revision and fine-tuning.

In comparison with the progress in the field of international commercial arbitration, Macedonian legislation on domestic arbitration lagged slightly behind this movement. Domestic arbitration is still under the regime of Law on Civil Procedure (Chapter Thirty – Procedure before selected courts - Annex 2 in this booklet) based on the old provisions of Federal Law on Civil Procedure of former Yugoslavia of 1976 and is waiting to be updated for a long time.

This duality in the Macedonian regulatory framework for arbitration brings manifold problems – the provisions of the two Laws provide for inconsistencies and differing solutions regarding several issues, including the arbitrability of disputes, challenge and removal of arbitrators, the grounds for setting aside arbitral awards, etc. Additionally, the provisions regulating domestic arbitration are anachronistic and do not reflect the modern trends of development of arbitration law – this is reflected, for instance, by the terminology used (selected courts) or the possibility for either party to the contract to initiate proceedings requesting the court to announce termination of the validity of the agreement for selected court (art.448 of the Law on Civil Procedure).

WHAT NEEDS TO BE CHANGED?

In order to develop and improve the private sector as an essential and important part of every modern democratic society, companies require extension of the justice menu available to them and dispute resolution in more flexible, informal and faster proceedings different from the proceedings before the state courts. Complexity and rigidity of the legislation and state court system may make the access to justice more difficult. Societies have, therefore, started to identify alternative dispute solutions and ADR methods have gained widespread acceptance. Arbitration as one of the alternative dispute resolution methods derives from the desire of businesses to find more commercially focused and tailor – made dispute resolution mechanisms. Arbitration proceedings provide faster and cheaper access to justice by rendering a decision which is final and binding for the parties.

Uncertainty of judicial processes deters potential investors. The possibility to resolve the potential disputes before arbitration centers is also one of the preconditions for foreign investments. Development of arbitration expands access to justice, decreases court backlogs and saves time and money. Furthermore, arbitration reduces risks, provides durable resolutions compared to litigation, gives more satisfactory settlements, preserves good business relations between disputing parties and preserves confidentiality.

Therefore, the following changes should be introduced to the Macedonian arbitration legislation:

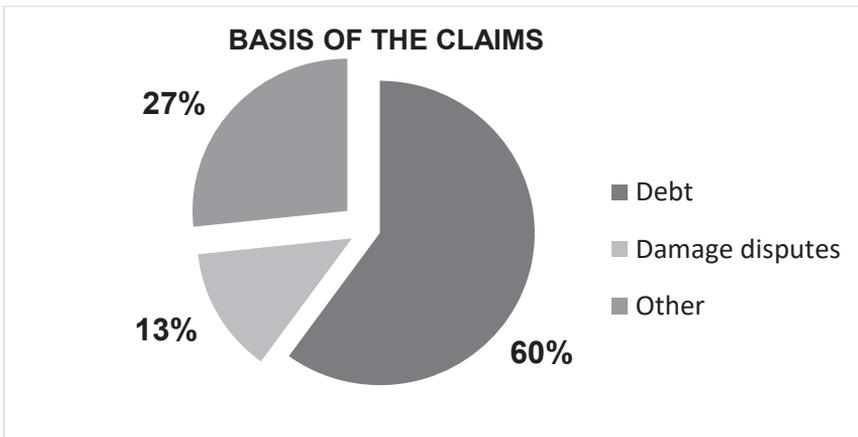
- **ENACTMENT OF A SINGLE SET OF RULES, REGULATING DOMESTIC AND INTERNATIONAL ARBITRATION ON THE SAME PRINCIPLES. THIS WOULD INCLUDE ABOLISHMENT OF CHAPTER THIRTY – PROCEDURE BEFORE SELECTED COURTS IN THE LAW ON CIVIL PROCEDURE, AND MODIFICATIONS OF THE LAW ON INTERNATIONAL COMMERCIAL ARBITRATION OF THE REPUBLIC OF MACEDONIA, SO THAT IT CAN REGULATE ARBITRATION IN GENERAL, INCLUDING ARBITRATION WITH AND WITHOUT INTERNATIONAL ELEMENTS.**
- **ELIMINATION OF THE DUALITY REGARDING SEVERAL ISSUES (THE CONDITIONS AND PROCEDURES FOR CHALLENGE AND REMOVAL OF ARBITRATORS, THE GROUNDS FOR SETTING ASIDE ARBITRAL AWARDS, ETC.) FOR DISPUTES WITH AND WITHOUT INTERNATIONAL ELEMENTS;**
- **ABOLITION OF THE TERM – SELECTED COURTS;**
- **REVISION OF THE PREREQUISITES FOR THE VALIDITY OF THE ARBITRATION AGREEMENT;**
- **EXPANDING THE LIMITS OF ARBITRABILITY OF DISPUTES IN NORTH MACEDONIA;**
- **REVISION OF THE PROVISIONS REGULATING INTERIM MEASURES IN ARBITRATION PROCEEDINGS;**

PERMANENT COURT OF ARBITRATION ATTACHED TO THE ECONOMIC CHAMBER OF MACEDONIA – WHAT HAVE WE ACHIEVED SO FAR?

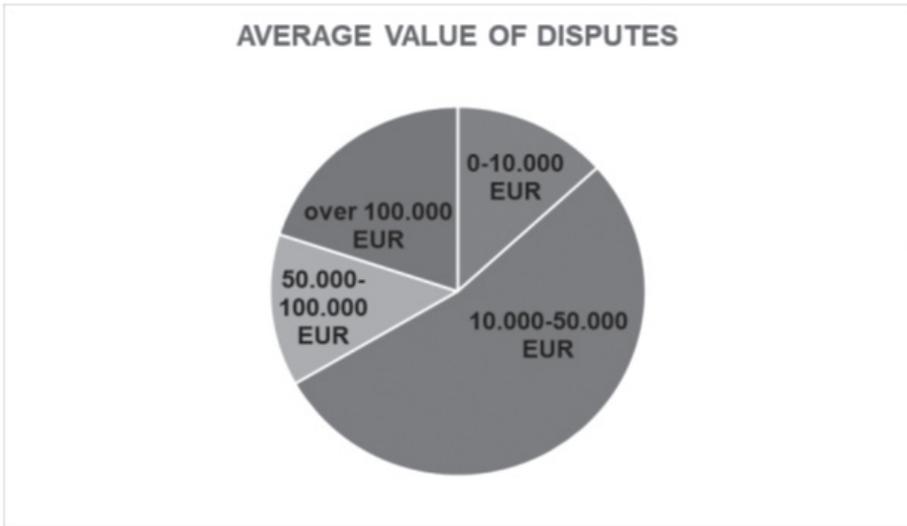
The Permanent Court of Arbitration is the only functioning arbitral institution in the country, which has the jurisdiction to resolve disputes between parties if they have agreed so about rights of which they can freely dispose and for which an exclusive jurisdiction of a court of the Republic of North Macedonia is not provided by law. The Arbitration as an institution for resolution of disputes with international element has been functioning from 1993. Before 1993, the Arbitration was competent only for resolving domestic disputes.

The data on the case load of the Arbitration show that in recent years, there is approximately equal division of disputes with and without international element initiated before the Permanent Court of Arbitration attached to the Economic Chamber of Macedonia. In the period 01.01.2017-31.12.2018, 54% of the initiated proceedings were in disputes with international elements, and 46% were domestic disputes. Parties in the disputes included commercial entities from North Macedonia, Russia, Turkey, Romania, Croatia, Serbia, Bulgaria and China.

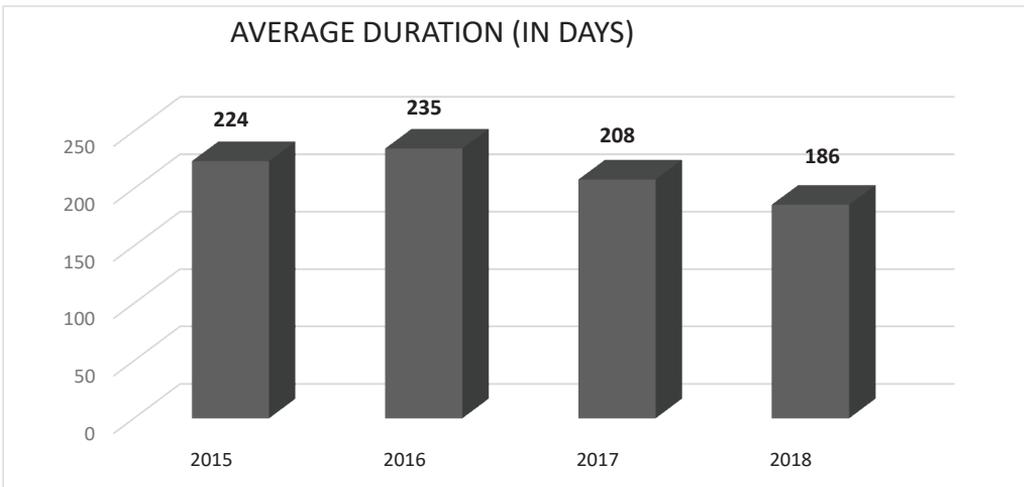
Parties bring various cases before the Permanent Court of Arbitration attached to the Economic Chamber of Macedonia. Most of the claims stated in disputes initiated before the Permanent Court of Arbitration in the period 2017 – 2018 are on the basis of debt, damage compensation and other, and most of those claims arise from construction contracts, trade contracts, contracts for performing security services, shipping services, public procurements etc.



When it comes to the average value of the disputes brought before the Arbitration, almost half of the initiated proceedings were in the value below 50.000 EUR (and most of these are disputes without international element), whilst almost 22% of the initiated proceedings concerned disputes with value higher than 100.000 EUR.



The average duration of the proceedings before the Permanent court of Arbitration is continuously decreasing. In 2018 the average duration was approximately six months (186 days).



WHAT SHOULD BE DONE NEXT?

There is no particular study of the ways businesses in North Macedonia handle conflicts. It is also really hard to get good evidence of how widespread arbitration agreements are. Still, the manner in which day-to-day commercial disputes are being settled suggests a presumption that most companies do not have at all strategic approach for managing conflicts or have difficulties in designing an appropriate system for resolving disputes. Although some notable exceptions exist, the great majority of companies is still reactive and tends to rely on ad hoc approaches to the dispute resolution. Therefore, they do not consider arbitration as a part of a systematic approach to conflict management and settling disputes pursuant to clearly defined business goals and priorities. Arbitration is embraced momentarily (there is almost no planning for dispute resolution in material contracts) and basically by larger companies, particularly those operating internationally.

Small and medium companies in North Macedonia are rarely using arbitration. Not only they do not have a systematic approach for resolving disputes, but also they almost blindly cling to traditional approach “litigation as usual”, particularly in domestic commercial disputes. This, notwithstanding that the litigation process often escalates the original conflict, takes a long time and a lot of money, the parties’ relation deteriorates and none of them are particularly satisfied with the court judgment.

For these reasons, undoubtedly much still needs to be done in order to develop arbitration culture among businesses.

The first step that has to be made is to learn well the lesson about the necessity of anticipating disputes in commercial transactions (both international and domestic) and to plan their resolution and in that context to see why the arbitration agreement matters.

As an alternative to “litigation as usual”, arbitration requires a significant change of mindset and attitude towards dispute resolution. It is well-known that dispute resolution is a part of every society’s culture, and in each society some methods are favored over others.

When it comes to resolution of commercial disputes, there is no recipe to ensure that arbitration will produce general satisfaction among all business users, but still, it is worth to change the business mindset towards arbitration and to try to establish arbitration as a part of philosophy of doing business. Arbitration offers many important and comprehensible advantages: speed, specialization, the freedom to choose the number of arbitrators and the language of the procedure, the opportunity to tailor the procedure to the business goals and priorities, total confidentiality, and potential to maintain the commercial relations between the parties throughout and after the process.

Therefore, future activities should be directed towards highlighting the necessity of legal risk management and taking pro-active approach on having a systematic approach for resolving disputes by businesses in North Macedonia. This, combined with modernization of the arbitration legislation in the country, and further enhancements in the work of the Permanent Court of Arbitration attached to the Economic Chamber of Macedonia (introduction of expedited proceedings, summary resolution of claims, emergency arbitrator, case management and procedural tables), should lead to significant enhancement of the business climate in the country.

Annex 1:

LAW ON INTERNATIONAL COMMERCIAL ARBITRATION OF THE REPUBLIC OF MACEDONIA *“Official Gazette of the Republic Macedonia” no. 39/2006*

CHAPTER I. GENERAL PROVISIONS

Article 1

Scope of Application

(1) The present Law applies to international commercial arbitration if the place of arbitration is in the territory of the Republic of Macedonia. However, the provisions of articles 8, 9 and 37 apply also if the place of arbitration is not within the territory of the Republic of Macedonia.

(2) International commercial arbitration, on the basis of an agreement by the parties, resolves disputes concerning rights of the parties may freely dispose of.

(3) Arbitration is international if:

1) at least one of the parties, at the time of the conclusion of the arbitral agreement, is a natural person whose domicile or habitual residence is not in the territory of the Republic of Macedonia, or a legal person whose place of business is not in the territory of the Republic of Macedonia; or

2) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected is not in the territory of the Republic of Macedonia.

(4) For the purposes of paragraph 3 and 5 of this article:

1) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

2) if a party which is a legal person does not have a place of business, reference is to be made to its branch office.

(5) The resolving of the disputes from paragraph 2 of this article, may be submitted to an arbitration that has place outside the territory of the Republic Macedonia, only if, at least one of the parties, at the time of the conclusion of the arbitral agreement, is a natural person whose domicile or habitual residence is not in the territory of the Republic of Macedonia, or a legal person whose place of business is not in the territory of the Republic of Macedonia.

(6) This Law shall not affect any other law of Republic of Macedonia by virtue of which certain disputes may be subject to exclusive jurisdiction of a court in the Republic of Macedonia.

(7) Republic of Macedonia, legal persons established by the Republic of Macedonia, all other state bodies, the units of local self-government and legal entities established by them can be a party to international commercial arbitration.

Article 2

Definitions and rules of interpretation

(1) For the purposes of this Law:

1."arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

2."arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

3."arbitrator" means sole arbitrator or member or president of an arbitral tribunal.

4."arbitral award" means a decision of the arbitral tribunal on the merits of the dispute;

5."court" means a body of the judicial system of Republic of Macedonia, founded by law;

6."arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

7.where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

8.where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

9.where a provision of this Law, other than in articles 25 (1)(a) on the default of a party and 32(2)(a) on withdrawal of a statement of claim, refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3

Receipt of written communications

(1) Unless otherwise agreed by the parties:

1) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address, if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it,

2) the communication is deemed to have been received on the day it is so delivered.

(2) Provisions of this article shall not apply to delivery of communications in court proceedings.

Article 4

Waiver of right to object

A party who knows or must have known that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.

Article 5

Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this and other Law.

Article 6

Court for certain functions of arbitration assistance and supervision

(1) The functions referred to in article 11 paragraphs 3 and 4, article 13 paragraph 3, article 14, article 16 paragraph 3 shall be performed by the President of the Court of First Instance Skopje I – Skopje or any other judge appointed by him.

(2) Activities of the President of the court or of the judge appointed by him referred to in paragraph 1 of this article shall not be considered as activities in a court or administrative procedure.

(3) The Court of First Instance Skopje I - Skopje shall have the exclusive jurisdiction to rule on the application for setting aside of Article 35, paragraph 2 of this Law. The activities on the application for setting aside of the arbitral award shall be performed by a single judge.

CHAPTER II. ARBITRATION AGREEMENT

Article 7

Definition and form of arbitration agreement

(1) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.

(2) The reference in a contract to a document containing (general conditions for concluding a legal act, text of an another contract etc.) an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

(3) An arbitration agreement is vlad if the bill of lading contains an express reference to an arbitration clause in a charter party.

Article 8

Arbitration agreement and substantive claim before court about the same dispute matter

(1) If the parties have agreed to submit a dispute to arbitration, the court before which the same matter between the same parties was brought shall upon respondent's objection declare its lack of jurisdiction, annul all actions taken in the proceedings and dismiss the statement of claim, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

(2) The respondent may raise the objection referred to in paragraph 1 of this article no later than at the preparatory hearing or, if no preparatory hearing is held, at the main hearing before the end of the presentation of the statement of defence.

(3) Where an action referred in paragraph 1 of this article has been brought to the court, arbitral proceedings may nevertheless be commenced or continued if they were already commenced, and an award may be made while the issue is still pending before the court.

Article 9

Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10

Number of arbitrators

If the parties have failed to determine the number of arbitrators, the number of arbitrators shall be three.

Article 11

Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs 4) and 5) of this article.

(3) Failing such agreement,

1) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court and;

2) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6 paragraph 1 of this Law.

(4) Where, under an appointment procedure agreed upon by the parties,

1) a party fails to act as required under such procedure, or

2) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

3) a third party, including an institution, fails to perform any function entrusted to it under

such procedure,

any party may request the court or other authority specified in article 6 paragraph 1 of this Law to take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) The court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of the appointment of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

(6) A decision on a matter entrusted by paragraph 3 or 4 of this article to the court shall be subject to no appeal.

Article 12

Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties, unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances that give rise to justifiable doubts as to his impartiality or independence exist, or if he does not possess qualifications agreed to by the parties.

(3) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13

Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph 3 of this Article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in Article 12, paragraph 2) of this Law, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph 2 of this Article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6, paragraph 1 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14

Failure or impossibility to act

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. If the parties fail to reach an agreement upon any of these grounds, any party may request the court to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13 paragraph 2, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 paragraph 2 of this Law.

Article 15

Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed, in accordance to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16

Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause, which forms part of a contract, shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph 2 of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6, paragraph 1 of this Law to decide the matter, which decision shall be subject to no appeal. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17

Power of arbitral tribunal to order interim measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

(2) If a party to which interim measure relates does not agree to undertake it voluntarily, the party that made the motion for such measures may request its enforcement before the competent court.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18

Equal treatment of parties

(1) The parties to proceedings before an arbitral tribunal shall be treated equally.

(2) The arbitral tribunal shall give a full opportunity to the parties to present their case and to respond to statements and claims of their adversary.

Article 19

Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20

Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph 1 of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21

Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular

dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent. The request shall state the names of the parties, the subject-matter of the dispute and contain a reference to the arbitration agreement.

Article 22

Language of the proceedings

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings, especially taking into consideration the language or languages of the main contract arbitration is arising from. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

(3) Until the language of the proceedings has been determined, a claim, a defence and other submissions can be submitted in the language of the main contract.

(4) If neither parties nor arbitrators can reach an agreement on the language of arbitration, the language of arbitration shall be the Macedonian language and its Cyrillic letter.

Article 23

Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars stated by the claimant, unless otherwise agreed by the parties. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they intend to submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24

Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents and of any procedure for taking evidence.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

(4) Unless otherwise agreed by the parties, the arbitral proceedings are not open to the public.

Article 25

Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

1) the claimant fails to communicate his statement of claim in accordance with article 23, paragraph 1, the arbitral tribunal shall terminate the proceedings;

2) the respondent fails to communicate his statement of defence in accordance with article 23, paragraph 1, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

3) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26

Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal:

1) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

2) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present other expert witnesses in order to testify on the points at issue.

(3) The provisions of Article 13 paragraphs 1, 2 and 3 and Article 14, paragraphs 1 and 2 of this Law, will appropriately apply to the challenge of experts appointed by the arbitral tribunal. The decisions of the court delivered according to the provisions of this article shall be subject to no appeal.

Article 27

Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of the Republic of Macedonia assistance in taking evidence, which the arbitral tribunal is not able to take itself. The court may execute the request within its competence, in accordance with a separate law. The procedure for taking evidence is governed by the provisions of the Law of contentious procedure on taking evidence before a judge commissioned by a rogatory letter.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28

Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise agreed by the parties, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law of a state with which the subject matter of the dispute is most closely connected.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29

Decision making by panel of arbitrators

Unless otherwise agreed by the parties:

1) In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by the presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

2) If an arbitrator refuses to take part in the vote on a decision, the other arbitrators may take the decision without him, unless otherwise agreed by the parties.

3) The arbitrator who disagrees with the award may give his dissenting opinion in writing.

4) If a majority cannot be reached, the vote of the presiding arbitrator will be decisive.

Article 30

Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) If the arbitral tribunal finds that the contents of the settlement violate the public order of the Republic of Macedonia, it shall deny the request by the parties to record the settlement in the form of arbitral award on agreed terms from paragraph 1 of this article.

(3) The award on agreed terms from paragraph 1 of this article, shall be made in accordance with the provisions of article 31 and shall state that it is an arbitral award, and such an award has the same status and effect as any other award on the merits of the case.

Article 31

Form and contents of award

(1) The award shall be made in writing and shall be signed by the single arbitrator or by the members of the arbitral tribunal. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with Article 20, paragraph 1 of this Law. The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph 1) of this Article shall be delivered to each party.

(5) Unless otherwise agreed by the parties, the service of the award shall be made pursuant to provisions of Article 3 of this Law. In case delivery can not be performed in accordance with article 3 of this Law, service of the award may be carried out by the court designated in Article 6, paragraph 1 of this Law

Article 32

Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

- 1) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute; or
- 2) the parties agree on the termination of the proceedings; or
- 3) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 35, paragraph 4. In such cases, the tribunal's mandate will be terminated when the respective decision is rendered or by undertaking activities for elimination of the grounds for setting aside.

Article 33

Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

- 1) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar

nature;

2) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(3) The arbitral tribunal may correct any error of the type referred to in paragraph 1, line 1) of this article on its own initiative within thirty days of the date of the award.

(4) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days of receipt of the request.

(5) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (4) of this article.

(6) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

Article 34

Decision on costs

(1) Upon a request by a party, the arbitral tribunal shall determine in the award or an order for the termination of the arbitral proceedings which party and in which proportion has to reimburse the other party the necessary costs of arbitration, including expenses of party representation and the fees of arbitrators, and/or has to bear its own expense, unless otherwise stipulated in the arbitration agreement.

(2) The arbitral tribunal shall decide on the costs of the proceedings according to its free evaluation, taking into account all circumstances of the case, especially the outcome of the dispute.

(3) If the arbitral tribunal fails to decide on costs of proceedings, or if such decision is possible only after termination of the arbitral proceedings, the arbitral tribunal will make a separate award on the costs of proceedings.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 35

Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs 2 and 3 of this Article.

(2) An arbitral award may be set aside by the court specified in Article 6, paragraph 3 of This Law only if:

1) the party making the application furnishes proof that:

- a party to the proceedings was incapable of concluding the arbitration agreement or to be a party to an arbitration proceedings, according to the law applicable to its capacity; or
- the arbitration agreement was not concluded or is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of Republic of Macedonia; or
- the party making the application was not given proper notice of the appointment of an arbitrator or of the commencement of the arbitral proceedings or was otherwise unable to present his case before the arbitral tribunal; or
- the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement. If the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the arbitration agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

2) the court finds, even if a party has not raised these grounds, that:

- the subject-matter of the dispute is not capable of settlement by arbitration under the law of Republic of Macedonia; or
- the award is in conflict with the public policy of the Republic of Macedonia.

(3) An application for setting aside of the arbitral award may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33 of this Law, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action that will eliminate the grounds for setting aside.

CHAPTER VIII. LEGAL EFFECT OF THE AWARD; RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Legal effect of the award

Article 36

Arbitral award rendered in accordance with the provisions of this Law shall have, in respect of the parties, the force of a final judgment and is enforceable.

Article 37

Recognition and enforcement of foreign arbitral awards

(1) A foreign arbitral award shall be the arbitral award which was not made in Republic of Macedonia.

(2) A foreign arbitral award shall be treated as an award pertaining to the state in which it was made.

(3) The recognition and enforcement of foreign arbitral awards shall be carried out according to the provisions of the Convention signed in New York on 10 June 1958 on the recognition and enforcement of foreign arbitral awards (Official gazette of SFRY, International Agreements" no.11/81).

CHAPTER IX. TRANSITIONAL AND FINAL PROVISIONS

Repealing of particular laws

Article 38

By enactment of this Law, the provisions of the following Laws shall be repealed:

1) Articles 97 to 100 of the Conflicts of Laws Act ("Official Gazette of SFRY" no.43/82 and 72/82);

2) Article 1, Paragraph 1, line 2, of the Law on ratification of Convention on the Recognition and enforcement of foreign arbitral awards, of New York, 1958 ("Official Gazette of SFRY, International Contracts" no. 11/81).

Article 39

Application of this Law

(1) Effectiveness of arbitration agreements concluded prior to the coming into force of this Law shall be governed by the legislation previously in force.

(2) Pending arbitration proceedings that have not been completed at the time of the coming into force of this Law shall be conducted according to legislation previously in force. Settlements already made will be replaced, upon a joint proposal of the parties, by the arbitral award referred to in Article 30 of this Law.

(3) Parties may agree on the application of the new Law to pending proceedings.

(4) Judicial proceedings pending at the time of coming into force of this Law shall continue under regulations previously in force.

Article 40

Entry into force

This Law shall come into force on the eighth day following its publication in the "Official Gazette of the Republic of Macedonia".

Annex 2:

LAW ON CIVIL PROCEDURE Official Gazette of the Republic of Macedonia" no. 79/2005, 110/2008, 83/2009, 116/2010, and 124/2015).

- EXCERPT-

Chapter thirty PROCEDURE IN SELECTED COURTS

Article 439

The provisions of this Chapter shall regulate the procedure in selected courts, whose head office is in the Republic of Macedonia, unless the provisions of other law or of an international agreement state that certain selected court, with head office in the Republic of Macedonia is considered foreign selected court.

Article 440

Out of force

Article 441

(1) The disputes without international element on the rights at free disposal of the parties can be stated in the permanent selected courts, founded by the chambers of economy and other organizations anticipated by law, unless the law determines that certain types of disputes shall be exclusively decided by another court.

(2) Competence of selected courts in other cases can be anticipated only by law.

Article 442

(1) Agreement for selected court can be concluded in regard to certain dispute, as well as in regard to the future disputes which can result from certain legal relation. The agreement for selected court shall be valid only if concluded in writing.

(2) The agreement for selected court shall be considered concluded in writing when it is also concluded by exchange of letters, telegrams, telexes, electronic mail or other means of telecommunication enabling written evidence for the concluded agreement.

(3) The agreement for the selected court shall be considered concluded in writing when it is also concluded by exchange of lawsuit, in which the plaintiff states the existence of such agreement and response to the lawsuit, not abnegated by the defendant.

(4) The agreement for selected court can only be proved with documents.

Article 443

The agreement for selected court shall also be considered concluded in legally valid manner when the provision on competence of the selected court is contained in the general conditions for concluding a legal act.

Article 444

(1) The number of judges in the selected court has to be odd.

(2) Unless the number of judges is established in the agreement of the parties, each party shall appoint one judge and they shall elect a president.

(3) The courts' judges can only be elected president of the selected court.

Article 445

(1) If the parties have agreed on the competence of the selected court when deciding upon a certain dispute, the court where the lawsuit upon the same dispute has been filed and between the same parties, it pronounces itself incompetent upon an objection of the defendant, shall abolish the performed activities in the procedure and shall dismiss the lawsuit.

(2) The objection referred to in paragraph (1) of this Article can be stated by the defendant on a pre-trial hearing at the latest, and if pre-trial hearing is not held, at the main contention before he enters the contention upon the main issue.

Article 446

(1) The party that according to the agreement for selected court shall appoint a judge of the selected court can summon the opposing party in a period of 15 days to perform this appointing and to notify it thereof.

(2) The summons in terms of paragraph (1) of this Article shall be valid only if the party addressing it has appointed its selected judge and has notified the opposing party thereof.

(3) When according to the agreement for selected court, the appointing of the judge shall be performed by a third party, and each party can address the summons referred to in paragraph (2) of this Article to the referred third party.

(4) The person summoned to appoint a judge of the selected court shall be bound to the appointing being performed as soon as such appointing has been announced to the opposing, i.e. to one of the parties.

Article 447

(1) If the judge of the selected court is not appointed on time, and nothing else results from the agreement, the judge shall be appointed by the court, on a proposal of the party.

(2) If the selected judges cannot agree on the selection of president, and nothing else results from the agreement, the president shall be appointed by the court, on a proposal of one of the judges or on a proposal of the party.

(3) The court which would have been competent for the dispute in first instance, unless an agreement has been concluded on the selected court, shall be competent for appointing a judge, i.e. president of the selected court.

(4) No special appeal shall be allowed against the court's determination.

(5) The party refusing to apply the authorization referred to in paragraph (1) or (2) of this Article can with a lawsuit request from the court competent for appointing to announce the termination of the validity of the agreement for the selected court.

Article 448

(1) Except in case of Article 447 of this Law, every party can with a lawsuit request the court to announce termination of the validity of the agreement for selected court:

1) if the parties cannot agree upon the selection of judges they shall jointly appoint and

2) if a person stated in the very agreement on the selected court to have been appointed a judge of the selected court refuses or cannot perform this duty.

(2) The court anticipated in Article 447 paragraph (3) of this Law shall decide upon the claim.

(3) At the hearing for contending the claim, the court shall summon the parties, but the court can adopt the decision even in case when the duly summoned parties have not appeared.

Article 449

(1) A judge of selected court shall be obliged to be exempted whenever there are reasons for exemption, referred to in Article 64 of this Law. Due to the same reasons, the parties can request exemption of a judge of the selected court.

(2) The party that has on its own or together with the opposing party appointed a selected judge can request its exemption, only if the reason for exemption has arisen or the party has acknowledged it after the selected judge was appointed.

(3) Unless the parties have agreed otherwise, the court anticipated in Article 447 paragraph (3) of this Law shall decide upon the exemption.

Article 450

Unless the parties have agreed otherwise, the selected judges shall establish the procedure in the selected court.

Article 451

(1) Hearing of witnesses in the selected court shall be performed without taking an oath.

(2) The selected court cannot use means of coercion nor can it impose punishments against the witnesses, parties and other persons participating in the procedure.

(3) The selected court can request from the court being locally competent for providing legal aid (Article 170), to exhibit certain evidence that it itself is not in position to exhibit. The provisions

of this Law regarding exhibition of evidence with a judge whose assistance is requested shall be applied to the procedure for exhibiting evidence.

Article 452

The selected court can reach a verdict upon impartiality, only if the parties have given it such authorization.

Article 453

(1) When the selected court is composed of more than one judge, the verdict shall be reached with the majority votes, unless otherwise determined in the agreement for the selected court.

(2) Unless it is possible to reach the necessary majority votes, the selected court shall be obliged to notify the parties thereof.

(3) Unless the parties have agreed otherwise in the case referred to in paragraph (2) of this Article, each of them can request the court anticipated in Article 447 paragraph (3) of this Law to pronounce termination of the validity of the agreement for the selected court, with a lawsuit.

Article 454

(1) The verdict of the selected court has to be explained, unless otherwise agreed by the parties.

(2) The master copy of the verdict and all the copies shall be signed by all the selected judges. The verdict shall be also valid when a judge refuses to sign it, and yet it was signed by majority judges and this refusal to sign was confirmed in the verdict.

(3) Copies of the verdict shall be served to the parties through the court anticipated in Article 447 paragraph (3) of this Law. The permanently selected court shall on its own perform the service of its verdicts.

Article 455

The master copy of the verdict, as well as the confirmations for completed service shall be kept in the court anticipated in Article 447 paragraph (3) of this Law, and if the verdict was reached by the permanently selected court than in that court.

Article 456

(1) The verdict of the selected court shall have the capacity of legally valid verdict against the parties, unless the agreement anticipates possibility to abnegate the verdict with the selected court of higher instance.

(2) On a request of the party the court anticipated in Article 447 paragraph (3) of this Law shall

put certificate on the legal validity and enforceability in the copy of the verdict. The permanently selected courts shall on their own put certificate regarding the legal validity and enforceability of their verdicts.

Article 457

(1) The verdict of the selected court can be annulled upon a lawsuit of the party.

(2) The court anticipated in Article 447 paragraph (3) of this Law shall be competent for deciding upon the lawsuit.

Article 458

Annulment of the verdict of the selected court can also be requested if:

1) no agreement has been concluded for the selected court or if that agreement has not been valid (Articles 440 through 444);

2) in terms of the composition of the selected court or in regard to deciding certain provision of this Law or of the agreement for the selected court has been violated;

3) the verdict is not explained in terms of Article 454 paragraph (1) of this Article, or if the master copy or the copies of the verdict have not been signed in the manner determined in Article 454 paragraph (2) of this Law;

4) the selected court has exceeded the limit of its assignment;

5) the pronouncement of the verdict is incomprehensible or contradictory to itself;

6) the verdict of the selected court is against the Constitution of the Republic of Macedonia and to the established basis of the state system and

7) certain reason for repeating the procedure from Article 392 of this Law, exists.

Article 459

(1) The lawsuit for annulling the verdict of the selected court can be filed to the competent court in a period of 30 days. If the annulment is requested due to the reasons stated in Article 458 items 1 through 6 of this Law, this time period shall begin as of the day the verdict is served to the party, and if the party has acknowledged the reasons later, then as of the day of acknowledging. In terms of commencement of the time period when annulment is requested because of the reason stated in Article 458 item 7 of this Law, the provisions of Article 393 paragraphs (1) and (2) of this Law shall accordingly apply.

(2) After one year as of the legal validity of the verdict of the selected court, annulment of the same cannot be requested.

Article 460

The parties cannot agree to waive the application of the provisions of Article 449 paragraph (1) and (2), Article 454 paragraphs (2) and (3) and Articles 457, 458 and 459 of this Law.

Recommended clause

For contracting parties who wish to have future disputes referred to arbitration under the Rules of the Permanent court of Arbitration attached to the Economic chamber of Macedonia, the following clause is recommended:

“All disputes arising out of this Contract or in connection with it, including the disputes concerning its interpretation or validity, shall be settled by the Permanent Court of Arbitration attached to the Economic Chamber of Macedonia, in accordance with the provisions of the Rules of the Permanent Court of Arbitration.”



International Conference

“FROM ARBITRATION LEGISLATION REFORM TO ENHANCING THE BUSINESS CLIMATE”

Date: 28th and 29th March, 2019

Location: Economic Chamber of Macedonia (Skopje), meeting hall 4, fifth floor

- AGENDA -

Day 1

THURSDAY, 28TH MARCH, 2019

9:30 – 10:00 Registration

10:00 – 10:25 Welcoming addresses

- **Goran Rafajlovski Ph.D.**, *president, Permanent Court of Arbitration attached to the Economic Chamber of Macedonia*
- **Kocho Angjushev Ph.D.**, *Deputy Prime Minister of the Republic of North Macedonia, responsible for economic affairs and coordination with the economic sectors*
- **Renata Deskoska Ph.D.**, *Minister of justice in the Government of the Republic of North Macedonia*
- **H.E. Sybille Suter Tejada**, *Ambassador Extraordinary and Plenipotentiary Embassy of Switzerland in North Macedonia*

10:25 – 11:15

PANEL I: MODERNIZING THE ARBITRATION LEGISLATION: WHAT IS THE RIGHT DIRECTION?

- **Pavle Pensa, Law office “Jadek & Pensa”, Ljubljana, Slovenia** - *“What changes are needed to enable technology based arbitration?”*
- **Ivaylo Dermendjiev Ph.D., Law Firm “Simeonov & Dermendjiev Ltd”, Sofia, Bulgaria** - *“The public policy and arbitrability reforms in Bulgaria”*

11:15 – 11:30 Discussion

11:30 – 12:00 Coffee / Tea break

12:00 – 13:10

PANEL II: REGIONAL ANGLE ON ARBITRATION – WHAT CAN WE LEARN FROM OTHERS’ SUCCESS STORIES OR MISTAKES?

- **Elisabetta Silvestri, Ph.D., University of Pavia, Italy** - *“Italy: No Country for Arbitrators?”*
- **Bartosz Karolczyk, Law office “Domański Zakrzewski Palinka sp.k.”, Warsaw, Poland** - *“Commercial arbitration in Poland: what went wrong or are we just fine?”*
- **Dragan Psodorov, Law office “Joksovic, Stojanovic & Partners” Belgrade, Serbia** - *“Psychological aspects of regional arbitration”*

13:10 – 13:25 Discussion

International Conference

“FROM ARBITRATION LEGISLATION REFORM TO ENHANCING THE BUSINESS CLIMATE”

13:25 – 14:40

PANEL III: TRENDS IN ORGANIZING ARBITRATION PROCEEDINGS

- **Boris Porobija, Law office “Porobija & Porobija”, Zagreb, Croatia** – *“Consolidation of Arbitrations – Trends and Challenges”*
- **Tanja Planinic, “Pestalozzi”, Zurich, Switzerland** – *“Soft law in the organization and conduct of commercial arbitration proceedings – A brief overview of the ICC Note to Parties and Arbitral Tribunals”*
- **Amanda Neil, “Freshfields Bruckhaus Deringer”, Vienna, Austria** – *“Legal tech in arbitration – how is it changing case preparation”*

14:40 – 15:00 Discussion

15:00 – 16:00 Cocktail Lunch

Day 2

FRIDAY, 29 MARCH 2019

10:00 – 11:30

PANEL IV: ARBITRATION AND CONSTRUCTION DISPUTES

- **Mark Roe, “Pinsent Masons LLP”, London, UK** - *„Efficient management of Construction Arbitration”*
- **Denis Rizaov, Granit AD, Skopje, North Macedonia** - *“Claim Avoidance Principle”*
- **prof.Toni Deskoski, Ph.D., Faculty of Law “Iustinianus Primus”-University “Ss.Cyril and Methodius” Skopje, North Macedonia** – *“Multi-tier dispute resolution clauses in FIDIC contracts”*
- **Ana Pepeljugoska Ph.D., Law office Pepeljugoski, Skopje, North Macedonia** – *“The role of the Dispute Adjudication Board (DAB) in solving disputes under the FIDIC Red Book”*

11:30 – 11:45 Discussion

11:45 – 12:15 Coffee / Tea break

12:15 – 13:45

PANEL V: INVESTMENT ARBITRATION – OUTLOOKS

- **Ilija Mitrov Penushliski, Shearman & Stearling LLP, Paris, France** – *“What, if anything, can we learn from some recent setting aside decisions about the future of ISDS?”*
- **Alan Uzelac, University of Zagreb, Zagreb, Croatia** - *“ISDS v. Investment Courts: Why Arbitration is (Still) Preferable”*
- **Ana Stanic, E&A Law Ltd., London, UK** - *“Implications of Achmea decision on the future of investment treaty arbitration in the EU”*
- **Aleksandar Godzo, Law office Godzo Novakovski Kiceec, Ohrid, North Macedonia** – *“Structuring of investments, preparation of investment disputes and challenges”*

13:45 – 14:00 Discussion

14:00 – 15:00 Cocktail Lunch

Меѓународна арбитражна конференција
„ПРЕКУ УНАПРЕДУВАЊЕ НА АРБИТРАЖНОТО ЗАКОНОДАВСТВО ДО ПОДОБРО
ДЕЛОВНО ОПКРУЖУВАЊЕ“

Датум: 28 и 29 Март 2019 година
Стопанска комора на Македонија, сала 4 на петти кат

- АГЕНДА -

ДЕН 1

28 МАРТ 2019 ГОДИНА (ЧЕТВРТОК)

9:30 – 10:00 Регистрација на учесниците

10:00 – 10:25 Воведни обраќања

- **д-р Горан Рафајловски**, претседател, Постојан избран суд – Арбитража при Стопанската Комора на Македонија
- **д-р Кочо Анѓушев**, заменик на претседателот на Владата на Република Северна Македонија, задолжен за економски прашања и за координација со економските ресори
- **д-р Рената Дескоска**, Министер за правда во Владата на Република Северна Македонија
- **Сибил Сутер Техада**, амбасадор, Амбасада на Швајцарија во Северна Македонија

10:25 – 11:15

ПАНЕЛ I: МОДЕРНИЗИРАЊЕ НА АРБИТРАЖНОТО ЗАКОНОДАВСТВО – КОЈ Е ВИСТИНСКИОТ ПРАВЕЦ

- **Павле Пенса**, Адвокатско друштво „Jadek & Pensa“, Љубљана, Словенија – „Какви промени се потребни за да се овозможи арбитража заснована на технологијата?“
- **д-р Ивајло Дерменџиев**, Адвокатско друштво „Симеонов и Дерменџиев“, Софија, Бугарија - „Јавниот поредок и реформите на арбитрабилноста во Бугарија“

11:15 – 11:30 Дискусија

11:30 – 12:00 Пауза за кафе

12:00 – 13:10

ПАНЕЛ II: РЕГИОНАЛНА ПЕРСПЕКТИВА НА АРБИТРАЖАТА – ШТО МОЖЕМЕ ДА НАУЧИМЕ ОД УСПЕШНИТЕ ПРИКАЗНИ ИЛИ ГРЕШКИТЕ НА ДРУГИТЕ?

- **проф. д-р Елисабета Силвестри**, Универзитет во Павиа, Италија – „Италија не е земја за арбитра?“
- **Бартош Каролчук**, Адвокатско друштво „Domański Zakrzewski Palinka sp.k.“, Варшава, Полска – „Трговска арбитража во Полска: што тргна погрешно или сосема ни е добро?“
- **Драган Псодоров**, Адвокатско друштво „Joksovic, Stojanovic & Partners“ Белград, Србија – „Психолошки аспекти на регионалната арбитража“

13:10 – 13:25 Дискусија

13:25 – 14:40

ПАНЕЛ III: СОВРЕМЕНИ ТРЕНДОВИ ВО ОРГАНИЗИРАЊЕТО НА АРБИТРАЖНИТЕ ПОСТАПКИ

- **Борис Поробија, Адвокатско друштво „Porobija & Porobija“, Загреб, Хрватска –** *„Спојување на арбитражни постапки – трендови и предизвици“*
- **Тања Планиниќ, Адвокатско друштво „Pestalozzi“, Цирих, Швајцарија –** *“Примена на „меко право“ во организирањето и спроведувањето на трговските арбитражни постапки – краток осврт на „ICC Note to Parties and Arbitral Tribunals“*
- **Аманда Нил, Адвокатско друштво „Freshfields Bruckhaus Deringer“, Виена, Австрија –** *“Legal tech“ во арбитражата – како го менува начинот на подготовка на арбитражните предмети“*

14:40 – 15:00 Дискусија

15:00 – 16:00 Коктел-ручек

ДЕН 2

29 МАРТ 2019 ГОДИНА (ПЕТОК)

10:00 – 11:30

ПАНЕЛ IV: АРБИТРАЖАТА И ГРАДЕЖНИТЕ СПОРОВИ

- **Марк Роу, Адвокатско друштво „Pinsent Masons LLP“, Лондон, Велика Британија,** *„Ефикасно менаџирање на арбитражните постапки во градежните спорови“*
- **Денис Ризаов, „Гранит“ АД Скопје, Македонија –** *“Принципот на избегнување на оштетни побарувања“*
- **проф. д-р Тони Дескоски, Правен факултет „Јустинијан Први“ – Универзитет „Св.Кирил и Методиј“, Скопје, Македонија –** *„Повеќестепени клаузули за решавање на спорите во ФИДИК моделите на договор“*
- **д-р Ана Пепељугоска, Адвокатско друштво „Пепељугоски“, Скопје, Македонија –** *„Улогата на Одборот за решавање на спорови (Dispute Adjudication Board - DAB) во решавањето на спорите според правилата на ФИДИК Црвената книга“*

11:30 – 11:45 Дискусија

11:45 – 12:15 Пауза за кафе

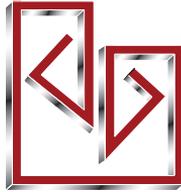
12:15 – 13:45

ПАНЕЛ V: ИНВЕСТИЦИСКА АРБИТРАЖА - ПЕРСПЕКТИВИ

- **Илија Митрев Пенушлиски, Адвокатско друштво „Shearman & Stearling LLP“** **Париз, Франција –** *“Што би можело да се научи од неодамнешните одлуки за поништување на арбитражни одлуки во однос на иднината на ISDS (Investor-state dispute settlement)“*
- **проф. д-р Алан Узелац, Правен факултет при Универзитетот во Загреб ,** **Загреб, Хрватска –** *“ISDS (Investor-state dispute settlement) наспроти Инвестициските судови – зошто арбитражата е (сè уште) подобро решение“*
- **Ана Станиќ, „Адвокатско друштво „E&A Law Ltd.“, Лондон, Велика Британија –** *“Импликациите на одлуката во случајот „Achmea“ врз иднината на инвестициската арбитража во ЕУ“*
- **Александар Гоцо, Адвокатско друштво „Гоцо, Новаковски, Кичеец“, Охрид, Македонија –** *“Структурирање на инвестиции, подготовка за инвестициски спор и предизвици“*

13:45 – 14:00 Дискусија

14:00 – 15:00 Коктел-ручек



СТОПАНСКА КОМОРА
НА МАКЕДОНИЈА
ECONOMIC CHAMBER
OF MACEDONIA



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Embassy of Switzerland in North Macedonia

Date: 28th and 29th March, 2019

Location: Economic Chamber of Macedonia (Skopje)
Meeting hall 4, fifth floor

Permanent court of Arbitration attached to the Economic chamber of Macedonia

Address: Dimitrie Cupovski 13, 1000 Skopje

President:

Goran Rafajlovski Ph.D.

Contact:

Tatjana Shterjova Ph.D.,

Ph:+389 2 3244065, E-mail: tatjana@mchamber.mk

Nena Nikolovska LL.M.,

Ph:+389 2 3244054, E-mail: nena@mchamber.mk