Arbitration

In 60 jurisdictions worldwide

Contributing editors
Gerhard Wegen and Stephan Wilske

2015

GETTING THE DEAL THROUGH

GETTING THE DEAL THROUGH

Arbitration 2015

Contributing editors
Gerhard Wegen and Stephan Wilske
Gleiss Lutz

Publisher
Gideon Roberton
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
Alan Lee
alan.lee@lbresearch.com

Adam Sargent
adam.sargent@lbresearch.com

Dan White
dan.white@lbresearch.com

Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

First published 2006
Tenth edition
ISSN 1750-9947

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

CONTENTS

CONTENTS

Slovakia

Roman Prekop, Monika Simorova and Peter Petho

Barger Prekop sro

Laws and institutions

1 Multilateral conventions relating to arbitration

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

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

Slovakia is a party to the following multilateral conventions:

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

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

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

3 Domestic arbitration law

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

The Arbitration Act (No. 244/2002, as amended) is the primary source of arbitration law in Slovakia, except for consumer arbitration. The Arbitration Act governs arbitral proceedings if the place of arbitration is in Slovakia, and recognition and enforcement of domestic and foreign awards in Slovakia. Since 1 January 2015, consumer arbitration has been governed by the Act on Consumer Arbitration (No. 335/2014). The Act on Consumer Arbitration significantly departs from commercial arbitration standards. The principles and standards of consumer arbitration are not addressed in this document, which focuses exclusively on commercial arbitration.

In addition, the Civil Procedure Code (No. 99/1963, as amended) and the Enforcement Act (No. 233/1995, as amended) regulate certain key arbitration issues. These laws cover domestic and foreign arbitral proceedings and awards and there is no special law dealing with purely domestic or foreign proceedings or awards.

The Arbitration Act does not provide for the definition of 'foreign arbitral proceeding'. It only provides that an arbitration award on merits issued within the territory of another state is considered a 'foreign arbitral award'. While preparing the 2014 Amendment (defined below), some practitioners suggested that a stand-alone act on international commercial arbitration (Swiss model) be adopted. However, this idea did not find adequate support.

4 Domestic arbitration and UNCITRAL

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

In 2014, the legislature adopted an amendment to the Arbitration Act (the 2014 Amendment). The 2014 Amendment became effective on 1 January 2015. The main purpose of the 2014 Amendment was to transpose the UNCITRAL Model Law, as amended in 2006. However, even after the 2014 Amendment, the Arbitration Act does not reflect certain important features of the UNCITRAL Model Law. For instance, the courts may only order interim measures or provisional orders before the arbitral tribunal has been appointed. After the arbitral tribunal has been appointed, courts may only order interim measures against third parties.

5 Mandatory provisions

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

Parties are free to agree upon the majority of issues related to a potential or existing arbitration proceeding. The Arbitration Act does not contain an explicit list of mandatory procedural provisions. However, the following provisions are mandatory:

- principal conditions of arbitration, which include arbitrability of dispute, form of the arbitration agreement, uneven number of arbitrators in the arbitral tribunal and personal requirements for arbitrators; and
- due process of law in the arbitration proceeding, which involve equal position of the parties, the right of parties to access documents and information submitted to the arbitrator or arbitral tribunal by the opposing party without undue delay and a tribunal's duty to order a hearing if requested by a party (see question 24).

6 Substantive law

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

In determining the substantive law, the rules differ slightly for purely domestic disputes and for disputes with international elements. Pursuant to the Arbitration Act, in domestic disputes the arbitral tribunal shall apply the rules of law (not necessarily the particular law of a certain country) agreed by the parties, to the extent that such agreement is permitted under conflict of law rules applicable in Slovakia. Failing such agreement, the arbitral tribunal shall apply the law determined by the conflict of laws rules applicable in Slovakia. In disputes with an international element,

conflict of laws rules applicable in Slovakia permit the parties to agree on the substantive law. Failing such agreement, the tribunal shall apply the substantive law determined by the conflict of laws rules which it considers appropriate.

Each agreement regarding applicable law is considered as agreement to use the substantive law of the respective state, excluding its conflict of laws principles, unless the parties agree otherwise.

7 Arbitral institutions

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

According to the official list published by the Ministry of Justice, there are more than 100 permanent arbitration courts in Slovakia. The 2014 Amendment introduced certain limits and obligations regarding establishing and operating permanent arbitration courts. These changes apply both to new and existing permanent arbitration courts. Existing permanent arbitration courts must adjust to the new conditions by 31 March 2015. Accordingly, it is expected that the number of permanent arbitration courts will decrease. Arguably, the most prominent permanent arbitration court is the Court of Arbitration of the Slovakian Chamber of Commerce and Industry in Bratislava (SCC Court of Arbitration):

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

The usual place for hearings before the SCC Court of Arbitration is Bratislava. In addition to the personal requirements for arbitrator stipulated by the Arbitration Act, the arbitrator must have a university degree and a minimum of 10 years' professional experience. The SCC Court of Arbitration maintains the list of arbitrators; however, such list is not binding for the parties. The parties can agree on the language of the proceedings. The SCC Court of Arbitration requires that the minutes of the hearing and the award be in Slovak. The arbitration fees (the registration fee and the administrative costs) of the SCC Court of Arbitration are based on the amount in dispute. The arbitration fees are higher (by 75 per cent or 50 percent) if the parties request expedited proceedings (see question 35).

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

The 2014 Amendment significantly modifies provisions on arbitrability. Starting in 2015, arbitral tribunals may hear any dispute (including disputes involving claims for declaratory relief) to the extent that the parties can conclude a settlement. However, it remains unclear whether labour law matters are arbitrable.

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

9 Requirements

What formal and other requirements exist for an arbitration agreement?

An arbitration agreement can be concluded as a separate agreement or can take the form of an arbitration clause in an agreement. The arbitration agreement must be concluded in writing or it is null and void. The agreement is deemed to be in writing if it is:

- included in the parties' mutual written communications;
- concluded by electronic means that records the parties' will and identifies its author;
- included in a written accession to a memorandum of association of a limited liability company;
- included in bylaws of a so called 'interest association' or in other legal entity in which a person acquires a membership; or
- alleged in a statement of claim and the respondent does not deny it in its statement of defence submitted to the arbitral tribunal.

The reference in a contract or in written communication to any document containing an arbitration clause also constitutes a written arbitration agreement, provided that the reference makes that clause part of the contract. Arbitration clauses can also be included general terms and conditions.

An arbitration agreement's failure to meet a formal requirement can be cured by the parties' joint declaration before an arbitrator and recorded in the minutes. Such declaration must contain the arbitration agreement. As of 1 January 2015, such declaration does not have to be made before the commencement of proceedings on jurisdiction.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

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

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

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

11 Third parties – bound by arbitration agreement

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

In general, arbitration agreements bind the parties to the agreement. The legal successors of the parties are also bound, unless the parties specifically excluded such extension in the arbitration agreement. This rule applies to both universal and individual succession (eg, assignment). There is no case law available that would suggest that under Slovakian law an arbitration clause could be extended to a party's parent company.

12 Third parties – participation

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

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

13 Groups of companies

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

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

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

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

Constitution of arbitral tribunal

15 Eligibility of arbitrators

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

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

16 Default appointment of arbitrators

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

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

17 Challenge and replacement of arbitrators

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

An arbitrator must inform the parties without undue delay of circumstances that give rise to doubts as to his or her independence or impartiality that involve his or her relationship to the subject matter of the dispute or to the parties (but not their counsel). Parties may agree on the details of the challenge procedure, except that they may not exclude a party's right to final recourse to a court. Failing such agreement, the following default rules apply: First, a party notifies the arbitral tribunal of the reasons for a challenge. Notwithstanding the foregoing, the party may challenge the arbitrator it appointed or in whose appointing it took part only for reasons it became aware of after the appointment. Second, unless the arbitrator resigns or the other party agrees with the challenge, the arbitral tribunal shall decide on the challenge. If the challenge is not successful, the challenging party may request the court to decide on the challenge. Until the court decides on the challenge, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award. The court's decision on the challenge is final and may not be appealed. If the challenge is upheld, the arbitrator's mandate terminates.

A mandate of arbitrator further terminates if the arbitrator withdraws from office, upon removal of the arbitrator from office (reasons being failure to meet the conditions to be appointed as arbitrator or failure to act without undue delay after having been advised so by the parties). The arbitrator may be removed from office jointly by the parties or upon upholding the challenge by the arbitral tribunal or the court. The mandate of arbitrator further terminates if the arbitrator no longer has full legal capacity or in case of his or her death. Consequently, a substitute arbitrator must be appointed under the same rules for appointment of arbitrators.

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

18 Relationship between parties and arbitrators

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

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

19 Immunity of arbitrators from liability

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

Unlike the liability of state courts, which is governed by a special legislation (Act No. 514/2003 on Liability for Damage Caused in the Exercise of Public Authority), the liability of arbitrators and permanent arbitration courts is not explicitly regulated and there is no publicly available case law addressing the issue. Further, the legal theory in this respect is not uniform. It

seems that the prevailing opinion of legal commentators is that arbitrators in ad hoc arbitrations and founders of permanent arbitration courts in institutional arbitrations (permanent arbitration courts are not legal persons) are liable under the Civil Code for damage incurred as a consequence of unlawful arbitral award or arbitration proceedings. To give rise to liability, a fault (intentional or negligent) must be established.

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

Jurisdiction and competence of arbitral tribunal

20 Court proceedings contrary to arbitration agreements

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

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

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

21 Jurisdiction of arbitral tribunal

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

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

Time limits for raising objections vary. In particular, a challenge concerning validity or existence of the arbitration agreement must be filed no later than, or together with, the challenging party's first act in the merits of the case. A challenge that the subject matter of a dispute is not arbitrable under Slovak law or that the dispute must be determined under the Act on Consumer Arbitration may be filed until the end of the hearing (if there is no hearing, until the issuance of award). A challenge that the dispute goes beyond the tribunal's jurisdiction must be filed as soon as the challenging party, in the course of the proceedings, becomes aware of such fact.

We note, however, that it is possible, in as late a stage as the enforcement proceedings, to object to the arbitrability of the subject matter or existence of the arbitration agreement to avoid enforcement. The Supreme Court concluded that if an arbitral tribunal makes an award, despite no arbitration agreement having been concluded, the court supervising the enforcement proceedings must not authorise enforcement. The fact that the obliged party failed to challenge the tribunal's jurisdiction or subsequently failed to file a motion for setting aside the award was not found relevant. However, the 2014 Amendment is expected to limit the consequences of this decision as it assumes that an arbitration clause was concluded in writing if the respondent fails to challenge the tribunal's jurisdiction in its statement of defence submitted to the tribunal.

Arbitral proceedings

22 Place and language of arbitration

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

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

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

23 Commencement of arbitration

How are arbitral proceedings initiated?

Arbitral proceedings are initiated by filing a statement of claims. Unless the parties agree otherwise, the arbitral proceedings commence on date of receipt of the statement of claims by the respondent, if the arbitrators have not been appointed yet; by the chairman of the arbitral tribunal, if appointed; otherwise, by any member of the arbitral tribunal; or by the permanent arbitration court in institutional arbitration. The statement of claims must contain identification of parties, true description of facts, specification of proposed evidence, specification of relevant provisions of law, required decision on merits of the case and signature of the claimant or its representatives. Each respondent and the arbitral tribunal must receive a copy of the statement of claims. The Procedural Rules of the SCC Court of Arbitration lay down additional material requirements (eg, specification of dispute's value) and formal requirements (eg, the claimant must deliver sufficient copies for each respondent and member of the arbitral tribunal as well as the secretary of the SCC Court of Arbitration).

24 Hearing

Is a hearing required and what rules apply?

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

25 Evidence

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

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

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

Under the Arbitration Act the arbitral tribunal cannot, unlike the courts in standard civil proceedings, enforce cooperation of third persons (eg, witnesses, experts or third persons possessing a relevant documentary

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

26 Court involvement

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

The arbitral tribunal may request assistance from a court in connection with enforcement of interim measures ordered by the arbitral tribunal and taking of evidence. During the arbitral proceedings, the court may intervene in relation to the appointment and challenging of arbitrators.

27 Confidentiality

Is confidentiality ensured?

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

Interim measures and sanctioning powers

28 Interim measures by the courts

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

The Arbitration Act provides that a party to the arbitration may request, and the court may order, interim measures before the arbitral tribunal has been appointed. After the arbitral tribunal has been appointed, a party may only request a court to order interim measures against third persons. Details of the court proceedings relating to interim measures are provided for in the Civil Procedure Code. In brief, the court may order interim measures if it is necessary to temporarily regulate relationships between the parties or if concerns exist that enforcement of the decision may be endangered. Interim measures may take various forms, including inter alia, a prohibition to dispose of immoveable or moveable assets or rights, an obligation to deposit moveable goods or financial amounts with the court or a general obligation to do something, to refrain from doing something or to bear something.

29 Interim measures by an emergency arbitrator

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

Under the 2014 Amendment, the Arbitration Act explicitly allows parties to agree that a permanent arbitration court can order an interim measure before the arbitral tribunal has been appointed. The procedural rules of SCC Court of Arbitration partially address such situation, however, only in relation to the securing of evidence. In particular, if a party requests an urgent measure after the submission of a claim and prior to the constitution of an arbitral tribunal, the chairman of the SCC Court of Arbitration can appoint an expert or make other appropriate arrangements to secure evidence.

30 Interim measures by the arbitral tribunal

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

The 2014 Amendment introduced numerous changes regarding interim measures ordered by arbitral tribunals. First, the Arbitration Act now clearly lists reasons for ordering interim measures. Pursuant to the Arbitration Act, upon request of a party to the arbitration, the arbitral tribunal may order interim measures if it is necessary to temporarily adjust relations between the parties or there is a threat that the enforcement of the award or preservation of evidence could be endangered. The arbitral tribunal may require the party requesting an interim measure to provide adequate security for damages that may occur as a result of the interim measure. If the party fails to pay such security, the arbitral tribunal must dismiss the request.

Second, pursuant to the 2014 Amendment the Arbitration Act now lists specific types of interim measures. This list is not exhaustive. Third, the 2014 Amendment also introduced ex parte interim measures. As opposed to the UNCITRAL Model Law, however, the parties must agree on the applicability of provisions on ex parte interim measures. Fourth, pursuant to the 2014 Amendment, the Arbitration Act now explicitly states when interim measures expire. In particular, an interim measure ceases to exist:

- if the claim on merits was rejected;
- if the claim on merits was upheld and 30 days lapsed following the date when the award became enforceable; or
- upon expiration of the time period for which it was ordered. Upon request of a party, the arbitral tribunal may also cancel the interim measure if it is no longer necessary.

Finally, pursuant to the 2014 Amendment, the Arbitration Act now provides that interim measures, except for ex parte interim measures, are directly enforceable. The 2014 Amendment indicates that foreign interim measures might also be enforceable. However, it remains to be seen whether enforcement courts would support this interpretation.

31 Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration?

The Arbitration Act or the Procedural Rules of the SCC Court of Arbitration do not deal with the arbitral tribunal's competence to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration. Additionally, there is no case law suggesting that the arbitral tribunal is entitled to do so.

Awards

32 Decisions by the arbitral tribunal

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

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal is made by a majority of all its members. A unanimous vote is not required. If one or more arbitrators do not participate in a vote, the other arbitrators may decide without them. In case of a tied vote, the chairman of the tribunal has a casting vote. The award must be signed by all members of the arbitral tribunal. If a tribunal member refuses to sign the award or does not sign it for any reason, this must be noted in the award together with the reason.

33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

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

34 Form and content requirements

What form and content requirements exist for an award?

The 2014 Amendment introduced the concept that the award must be in hard-copy format (as opposed to electronic form). The content requirements include:

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

The operative part of the award does not have to include the decision on costs of the arbitration. The arbitral tribunal may decide on costs in a separate award, after it has rendered a final award.

35 Time limit for award

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

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

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

However, the parties do not seem to have an effective remedy if there is a delay in rendering awards. Recently, the Constitutional Court refused to hear a constitutional complaint concerning delayed arbitration proceedings, arguing that the private character of arbitration excludes its jurisdiction to intervene in the arbitration proceedings until the award has been issued.

36 Date of award

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

The date of award is relevant for the time limits for correction of the award (see question 41). The date of delivery of the award is decisive for the time limits for interpretation of the award by the arbitral tribunal (see question 41), time limits for review of the award by other arbitrators and time limits for setting aside of the award (for both see question 42).

37 Types of awards

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

The Arbitration Act differentiates between partial awards, final awards on the substance of the matter, awards on costs and consent awards (awards on the agreed conditions of the parties).

Besides standard relief for monetary and non-monetary performance, the Arbitration Act permits declaratory relief and relief for substituting will to enter into contract.

38 Termination of proceedings

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

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

39 Cost allocation and recovery

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

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

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

40 Interest

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

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

Proceedings subsequent to issuance of award

41 Interpretation and correction of awards

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

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

42 Challenge of awards

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

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

Revision of an award is initiated by a party to the arbitration filing a motion to revise the award. Such motion must be filed within 15 days of the delivery of the award. The procedural rules for revision proceedings are similar to the original proceedings.

An action to have an award set aside must be brought to the court within 60 days of the delivery of the award. The reasons for setting aside an award are listed exhaustively in the Arbitration Act. Under the 2014 Amendment, these reasons are practically identical to those set out in the UNITRAL Model Law. In addition, the court hearing an application to set aside an arbitral award must disregard the reasons which it cannot raise on its own (article 36 (1)(a) of the UNCITRAL Model Law) if the party failed to raise them in the arbitral proceeding within the stipulated time period or, failing such stipulation, without undue delay.

In addition, the Constitutional Court seems to have opened a new avenue for potential challenges of domestic arbitral awards. In 2011, the

Update and trends

Reform of Arbitration Law
The 2014 Amendment and the new Act on Consumer Arbitration have significantly modified arbitration law in Slovakia. We have addressed the most important changes introduced by the 2014 Amendment above. The Act on Consumer Arbitration created a stand-alone regulation of consumer arbitration that aims to rectify prior problems with consumer arbitration in Slovakia. It contains more rigid rules than the Arbitration Act. For instance, the arbitration agreement cannot be concluded by reference to general terms and conditions. In addition, the Act on Consumer Arbitration imposes strict requirements for qualification of arbitrators. In order to qualify as a consumer disputes arbitrator, one must now: have graduated from law school, have practised law for five years and pass an exam at the Ministry of Justice (only judges, notaries, advocates and prosecutors are exempted from the exam requirement). One must obtain an official permission from the Ministry of Justice in order to establish and operate a permanent court entitled to hear consumer disputes.

Investment Claim for Revocation of Talc Mining Licence
In July 2014, EuroGas Inc and Belmont Resources Inc filed an ICSID investment claim against Slovakia under Slovakia's BIT with Canada. According to press releases, the claimants are seeking compensation of €2.3 billion for allegedly wrongful revocation of their talc mining licence.

Health Care Reform Arbitrations
Following the 2007 reform of the health-care system in Slovakia, shareholders of the local health insurance companies brought several investment arbitration cases against Slovakia. In June 2014, the arbitral tribunal in the *EURAM v Slovak Republic* dispute under a BIT with Austria held that it has no jurisdiction over the claims since EURAM waived its right to claim protection under the BIT as it initiated a suit on the same matter before Slovak courts. This award follows the tribunal's October 2012 award in which it denied jurisdiction to hear most of the claims.

According to publicly available information, only the *Achmea v Slovak Republic* dispute under Slovakia's BIT with the Netherlands seems to be open. In this dispute, the arbitral tribunal ordered Slovakia to pay Achmea damages in the amount of approximately €22 million plus interest and costs in the amount of approximately €3 million. Slovakia brought a petition to set aside the final award before the German courts. These proceedings are pending. Notwithstanding the proceedings before the German courts, Achmea started to enforce the final award in Luxembourg. According to the Slovak government's representatives, the Luxembourg enforcement court has frozen Slovakia's bank accounts holding approximately €30 million in Luxembourg pending the results of the German proceedings.

Constitutional Court for the first time reviewed the merits of an arbitral award issued in Slovakia and set it aside. The Court held that the tribunal manifestly erred in its application of substantive law and thus violated the complainant's right to a reasoned decision that clearly and comprehensibly addressed all relevant factual and legal issues. However, recent case law indicates that the Constitutional Court would set aside an arbitral award only in an identical situation.

43 Levels of appeal

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

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

44 Recognition and enforcement

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

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

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

45 Enforcement of foreign awards

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

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

46 Cost of enforcement

What costs are incurred in enforcing awards?

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

Other

47 Judicial system influence

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

Arbitration practice in Slovakia is significantly affected by the Civil Procedure Code that is to be applied to questions not specifically addressed in the Arbitration Act. In particular, the Civil Procedure Code applies to procedural questions not addressed in the Arbitration Act, provided that the nature of the matter permits such application. The Arbitration Act does not provide for a US-style discovery or witness preparation. As a result, there is no apparent tendency to apply such tools to the arbitration

in Slovakia. On the other hand, in general, arbitrators are free to set the procedural rules and, for example, may decide on applying special rules on evidence taking such as the IBA Rules on the Taking of Evidence.

48 Professional or ethical rules applicable to counsel

Are specific professional or ethical rules applicable to counsel in international arbitration in your country? Does best practice in your country reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

There are no specific professional or ethical rules applicable to counsel in international arbitration in Slovakia.

49 Regulation of activities

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

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

BARGER PREKOP ATTORNEYS

Roman Prekop **rprekop@bargerprekop.com**
Monika Simorova **msimorova@bargerprekop.com**
Peter Petho **ppetho@bargerprekop.com**

Einsteinova 24
851 01 Bratislava
Slovakia

Tel: +421 2 3211 9890
Fax: +421 2 3211 9899
www.bargerprekop.com

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Arbitration
Asset Recovery
Aviation Finance & Leasing
Banking Regulation
Cartel Regulation
Climate Regulation
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Domains and Domain Names
Dominance
e-Commerce
Electricity Regulation
Enforcement of Foreign Judgments
Environment
Foreign Investment Review
Franchise
Gas Regulation
Government Investigations
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Labour & Employment
Licensing
Life Sciences
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Private Antitrust Litigation
Private Client
Private Equity
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Restructuring & Insolvency
Right of Publicity
Securities Finance
Securities Litigation
Ship Finance
Shipbuilding
Shipping
State Aid
Tax Controversy
Tax on Inbound Investment
Telecoms and Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

Online

www.gettingthedealthrough.com

iPad app

Available on iTunes

Law Business Research

Arbitration
ISSN 1750-9947

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

LACCA
LATIN AMERICAN CORPORATE COUNSEL ASSOCIATION

Official Partner of the Latin American Corporate Counsel Association

ABA Section of International Law
Your Gateway to International Practice

Strategic Research Sponsor of the ABA Section of International Law