GETTING THE DEAL THROUGH

Arbitration

in 49 jurisdictions worldwide

2014

Contributing editors: Gerhard Wegen and Stephan Wilske

Published by
Getting the Deal Through
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ASAR – Al Ruwayeh & Partners
Association for International Arbitration
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Arbitration 2014

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Getting the Deal Through is delighted to publish the ninth edition of *Arbitration*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 49 jurisdictions featured. New jurisdictions this year include Equatorial Guinea, Mexico, Nigeria and Scotland.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editors Gerhard Wegen and Stephan Wilske of Gleiss Lutz for their continued assistance with this volume.

Getting the Deal Through
London
January 2014

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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 7908 1188
Fax: +44 20 7229 6910

First published 2006
Ninth edition
ISSN 1750-9947

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

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1 Multilateral conventions relating to arbitration

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

3 Domestic arbitration law

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

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

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

4 Domestic arbitration and UNCITRAL

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

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

5 Mandatory provisions

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

Parties are free to agree upon the majority of issues related to a potential or existing arbitration proceeding. The Arbitration Act does not contain an explicit list of mandatory procedural provisions. However, 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;
- 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 No. 24); and
- restrictions on awards imposing obligations on a party that are impossible to fulfil, forbidden by law, or in conflict with the principle of bonos mores.

6 Substantive law

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

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

7 Arbitral institutions

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

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

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

The usual place for hearings before the SCC Court of Arbitration is Bratislava. In addition to the personal requirements for arbitrators 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

This rule applies to both universal and

18 Relationship between parties and arbitrators

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

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

19 Immunity of arbitrators from liability

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

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

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

Jurisdiction 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 resolution to this effect or continues with the proceedings and the decision on jurisdiction then forms part of the final award. In the former case, the party that challenged the tribunal's jurisdiction may request the court, within 30 days of delivery of the resolution, to decide on the challenge. Notwithstanding the ongoing review by the court, the arbitral tribunal may continue the proceedings, decide and issue the award. A decision by the court on the challenge is final and may not be appealed.

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

Arbitral proceedings

22 Place and language of arbitration

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

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

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

23 Commencement of arbitration

How are arbitral proceedings initiated?

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

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

24 Hearing

Is a hearing required and what rules apply?

Failing agreement of parties, the arbitral tribunal decides at its own discretion whether to hold a hearing or to conduct a written proceeding; however, pursuant to the Arbitration Act the tribunal

The arbitral tribunal may require the party requesting an interim measure to provide adequate security in relation to the interim measure. No specific rules are provided in the Arbitration Act.

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 vote on the award is recorded in writing in the minutes of the hearing on the vote.

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 minutes of the hearing on the vote.

34 Form and content requirements

What form and content requirements exist for an award?

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

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

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

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

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?

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 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 fifteen days of the delivery of the award. The procedural rules for revision proceedings are similar to the original proceedings. An action to have an award set aside must be brought to the court within 30 days of the delivery of the award. The reasons for setting aside an award are listed exhaustively in the Arbitration Act. In brief, an award may be set aside if:

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

In addition, the Constitutional Court seems to have opened a new avenue for potential challenges of domestic arbitral awards. In 2011, the 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. In addition to standard conditions of the proceedings, the court in enforcement proceedings ex officio examines whether the dispute

Update and trends

In 2012, the Ministry of Justice began to prepare amendments to the arbitration law in Slovakia. Reportedly, the new legislation will overhaul consumer arbitration, remove those provisions from the Arbitration Act and create a standalone consumer arbitration regulation. The aim is to strengthen the position of consumers in arbitration. The Arbitration Act is also expected to be amended to comply with standards set by a 2006 revision of the UNCITRAL Model Law on Arbitration. The amendment will touch on currently problematic issues such as the arbitrability of claims for declaratory relief.

There are three recent investment arbitration decisions in relation to the 2007 reform of the health-care system in Slovakia. The shareholders of the local health insurance companies sought protection under a BIT with the Netherlands (Achmea BV (formerly Eureko BV) and HICEE BV) and under a BIT with Austria (European American Investment Bank AG (EURAM)), respectively. Based on publicly available information, the following facts can be established:

- Achmea Arbitration: in December 2012, the arbitral tribunal ordered Slovakia to pay Achmea damages of approximately €22 million plus interest and litigation 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 attempted 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.
- HICEE Arbitration: The tribunal ruled that it did not have jurisdiction to hear the case, based on the fact that the BIT with the Netherlands does not protect indirect shareholding in a Slovak entity through a Slovak holding company.
- EURAM Arbitration: The tribunal ruled that it did not have jurisdiction to hear most of the claims. Slovakia raised two additional jurisdictional objections. The proceeding is pending.

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

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

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.

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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. 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 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.