

# Arbitration

in 55 jurisdictions worldwide

Contributing editors: Gerhard Wegen and Stephan Wilske

# 2011



**Published by**  
GLOBAL ARBITRATION REVIEW  
**in association with:**

Anderson Mōri & Tomotsune  
Appleby  
AZB & Partners  
Badri and Salim El Meouchi Law Firm LLP  
Bell Dewar Inc  
Bonn Schmitt Steichen  
Bredin Prat  
Brodermann & Jahn Rechtsanwalts-gesellschaft mbH  
Carlos Aguiar, Ferreira de Lima & Associados, RL  
Cavelier Abogados  
Clifford Chance  
Conway & Partners, Advocaten & Attorneys-at-law  
Dittmar & Indrenius  
Drakopoulos Law Firm  
Dr Colin Ong Legal Services, Advocates & Solicitors  
Esin Law Firm  
Freshfields Bruckhaus Deringer  
George Etomi & Partners  
Glæss Lutz  
Gregoriou & Associates Law Offices  
Habib Al Mulla & Co  
Hamilton Abogados  
Harris Kyriakides LLC  
Hausmaninger Kletter Rechtsanwälte  
Hedman Partners  
Herbert Smith CIS LLP  
Heussen Rechtsanwalts-gesellschaft mbH  
HM Ooi Associates  
Hoet Pelaez Castillo & Duque  
Hogan Lovells US LLP  
Hughes Hubbard & Reed LLP  
Jiménez Cruz Peña  
Karanović & Nikolić  
Kettani Law Firm  
Kim & Chang  
Kimathi & Kimathi, Corporate Attorneys  
Kosheri, Rashed & Riad  
Lalive  
Laszczuk & Partners  
Law Offices Bělohávek  
Law Office Skrastins un Dzenis  
L O Baptista Advogados  
Mkono & Co Advocates in association with SNR Denton  
Motieka & Audzevicius  
Nordia Advokatfirma  
Norton Rose (Middle East) LLP  
Oscós Abogados  
Pestalozzi  
Salans LLP  
Sandart & Partners  
Sherby & Co, Advs  
Stikeman Elliott LLP  
Tilleke & Gibbins  
Tomov & Tomov  
Vasil Kisil & Partners

## Arbitration 2011

**Contributing editor:** Gerhard Wegen and Stephan Wilske Gleiss Lutz

**Business development managers**

Alan Lee  
George Ingledew  
Robyn Hetherington  
Dan White

**Marketing managers**

Ellie Notley  
Sarah Walsh

**Marketing assistant**

Alice Hazard

**Subscriptions manager**

Nadine Radcliffe  
Subscriptions@  
GettingTheDealThrough.com

**Assistant editor**

Adam Myers

**Editorial assistant**

Nina Nowak

**Senior production editor**

Jonathan Cowie

**Chief subeditor**

Jonathan Allen

**Senior subeditor**

Kathryn Smuland

**Subeditors**

Davet Hyland  
Chloe Harries

**Editor-in-chief**

Callum Campbell

**Publisher**

Richard Davey

**Arbitration 2011**

Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
© Law Business Research Ltd  
2011

No photocopying: copyright  
licences do not apply.

ISSN 1750-9947

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of February 2011, be advised that this is a developing area.

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

Law

Business

Research

<b>Introduction</b> Gerhard Wegen and Stephan Wilske <i>Gleiss Lutz</i>	<b>3</b>
<b>CAS</b> Bernd Ehle and Guillaume Tattevin <i>Lalive</i>	<b>6</b>
<b>CEAC</b> Eckart Brödermann <i>Brodermann &amp; Jahn Rechtsanwalts-gesellschaft mbH</i> Thomas Weimann <i>Clifford Chance</i>	<b>10</b>
<b>DIS</b> Renate Dendorfer <i>Heussen Rechtsanwalts-gesellschaft mbH</i>	<b>15</b>
<b>ICC</b> José Rosell and María Beatriz Burghetto <i>Hughes Hubbard &amp; Reed LLP</i>	<b>19</b>
<b>LCIA</b> Colin Y C Ong <i>Dr Colin Ong Legal Services, Advocates &amp; Solicitors</i>	<b>23</b>
<b>LCIA India</b> Shreyas Jayasimha <i>AZB &amp; Partners</i>	<b>26</b>
<b>PCC</b> Justyna Szpara and Maciej Laszczuk <i>Laszczuk &amp; Partners</i>	<b>30</b>
<b>SIAC</b> BC Yoon, John Rhie and Shinhong Byun <i>Kim &amp; Chang</i>	<b>33</b>
<b>The Swiss Chambers of Commerce</b> Matthias Scherer and Domitille Baizeau <i>Lalive</i>	<b>37</b>
<b>Austria</b> Christian Hausmaninger and Michael Herzer <i>Hausmaninger Kletter Rechtsanwälte</i>	<b>41</b>
<b>Bahrain</b> Adam Vause <i>Norton Rose (Middle East) LLP</i>	<b>49</b>
<b>Bermuda</b> Kiernan Bell <i>Appleby</i>	<b>57</b>
<b>Brazil</b> Luiz Olavo Baptista, Mauricio Almeida Prado and Silvia Bueno de Miranda <i>L O Baptista Advogados</i>	<b>63</b>
<b>Bulgaria</b> Lazar Tomov and Sylvia Steeva <i>Tomov &amp; Tomov</i>	<b>69</b>
<b>Canada</b> John A M Judge, Peter J Cullen, Douglas F Harrison and Marc Laurin <i>Stikeman Elliott LLP</i>	<b>76</b>
<b>Cayman Islands</b> Jeremy Walton <i>Appleby</i>	<b>85</b>
<b>China</b> Peter Yuen <i>Freshfields Bruckhaus Deringer</i>	<b>92</b>
<b>Colombia</b> Edna Sarmiento <i>Cavelier Abogados</i>	<b>100</b>
<b>Cyprus</b> Michalis Kyriakides and Olga Shelyagova <i>Harris Kyriakides LLC</i>	<b>108</b>
<b>Czech Republic</b> Alexander J Bělohávek <i>Law Offices Bělohávek</i>	<b>115</b>
<b>Denmark</b> Niels Schiersing <i>Nordia Advokatfirma</i>	<b>122</b>
<b>Dominican Republic</b> Marcos Peña Rodríguez and Laura Medina Acosta <i>Jiménez Cruz Peña</i>	<b>129</b>
<b>Egypt</b> Tarek F Riad <i>Kosheri, Rashed &amp; Riad</i>	<b>137</b>
<b>England &amp; Wales</b> George Burn, Smeetesh Kakkad and Alex Slade <i>Salans LLP</i>	<b>142</b>
<b>Estonia</b> Kalle Pedak and Urmas Kiik <i>Hedman Partners</i>	<b>152</b>
<b>Finland</b> Petteri Uoti and Johanna Jacobsson <i>Dittmar &amp; Indrenius</i>	<b>159</b>
<b>France</b> Tim Portwood <i>Bredin Prat</i>	<b>166</b>
<b>Germany</b> Stephan Wilske and Claudia Krapfl <i>Gleiss Lutz</i>	<b>175</b>
<b>Ghana</b> Kimathi Kuenyehia, Sr, Ernest Kusi and Sika Kuenyehia <i>Kimathi &amp; Kimathi, Corporate Attorneys</i>	<b>182</b>
<b>Greece</b> Stilianos Gregoriou <i>Gregoriou &amp; Associates Law Offices</i>	<b>189</b>
<b>Guernsey</b> Jeremy Le Tissier <i>Appleby</i>	<b>197</b>
<b>Hong Kong</b> Peter Yuen and John Choong <i>Freshfields Bruckhaus Deringer</i>	<b>203</b>
<b>India</b> Shreyas Jayasimha <i>AZB &amp; Partners</i>	<b>212</b>
<b>Israel</b> Eric S Sherby and Sami Sabzerou <i>Sherby &amp; Co, Advs</i>	<b>222</b>
<b>Japan</b> Shinji Kusakabe <i>Anderson Mōri &amp; Tomotsune</i>	<b>230</b>
<b>Jersey</b> Gillian Robinson and Kai McGrielle <i>Appleby</i>	<b>236</b>
<b>Kazakhstan</b> Yuliya Mitrofanskaya and Bakhyt Tukulov <i>Salans LLP</i>	<b>243</b>
<b>Korea</b> BC Yoon, Jun Hee Kim, Kyo-Hwa Liz Chung <i>Kim &amp; Chang</i>	<b>251</b>
<b>Latvia</b> Verners Skrastins and Daina Bukele <i>Law Office Skrastins un Dzenis</i>	<b>258</b>
<b>Lebanon</b> Chadia El Meouchi, Jihad Rizkallah and Sarah Fakhry <i>Badri and Salim El Meouchi Law Firm</i>	<b>265</b>
<b>Lithuania</b> Ramunas Audzevicius, Tomas Samulevicius and Mantas Juozaitis <i>Motieka &amp; Audzevicius</i>	<b>276</b>
<b>Luxembourg</b> Fabio Trevisan and Marie-Laure Carat <i>Bonn Schmitt Steichen</i>	<b>284</b>
<b>Macedonia</b> Veton Qoku <i>Karanović &amp; Nikolić</i>	<b>291</b>
<b>Malaysia</b> Ooi Huey Miin <i>HM Ooi Associates</i>	<b>297</b>
<b>Mexico</b> Darío U Oscós Coria and Darío A Oscós Rueda <i>Oscós Abogados</i>	<b>305</b>
<b>Morocco</b> Azzedine Kettani and Nadia Kettani <i>Kettani Law Firm</i>	<b>313</b>
<b>Netherlands</b> Nathan O'Malley and Thabiso van den Bosch <i>Conway &amp; Partners, Advocaten &amp; Attorneys-at-law</i>	<b>321</b>
<b>Nigeria</b> George Etomi, Efeomo Olotu and Ivie Omorhirhi <i>George Etomi &amp; Partners</i>	<b>328</b>
<b>Poland</b> Justyna Szpara and Paweł Chojecki <i>Laszczuk &amp; Partners</i>	<b>336</b>
<b>Portugal</b> Carlos Aguiar and Vanessa dos Santos <i>Carlos Aguiar, Ferreira de Lima &amp; Associados,RL</i>	<b>343</b>
<b>Qatar</b> Chadia El Meouchi and Grace Alam <i>Badri and Salim El Meouchi Law Firm LLP</i>	<b>350</b>
<b>Romania</b> Adrian Roseti and Claudia Hutina <i>Drakopoulos Law Firm</i>	<b>360</b>
<b>Russia</b> Dmitry Kurochkin, Francesca Albert and Ekaterina Ushakova <i>Herbert Smith CIS LLP</i>	<b>366</b>
<b>South Africa</b> Tania Siciliano <i>Bell Dewar Inc</i>	<b>374</b>
<b>Spain</b> Calvin A Hamilton and Alina Bondarenko <i>Hamilton Abogados</i>	<b>381</b>
<b>Sweden</b> Eric M Runesson and Simon Arvmyren <i>Sandart &amp; Partners</i>	<b>388</b>
<b>Switzerland</b> Thomas Rohner and Nadja Kubat Erk <i>Pestalozzi</i>	<b>394</b>
<b>Tanzania</b> Nimrod E Mkono, Wilbert Kapinga and Susanne Seifert <i>Mkono &amp; Co Advocates in association with SNR Denton</i>	<b>401</b>
<b>Thailand</b> Sally Veronica Mouhim and Kornkieat Chunhakasikarn <i>Tilleke &amp; Gibbins</i>	<b>407</b>
<b>Turkey</b> Ismail G Esin <i>Esin Law Firm</i>	<b>415</b>
<b>Ukraine</b> Tatyana Slipachuk <i>Vasil Kisil &amp; Partners</i>	<b>422</b>
<b>United Arab Emirates</b> Gordon Blanke and Karim Nassif <i>Habib Al Mulla &amp; Co</i>	<b>432</b>
<b>United States</b> Daniel E González, Richard C Lorenzo, and Kristen M Foslid <i>Hogan Lovells US LLP</i>	<b>440</b>
<b>Venezuela</b> Fernando Pelaez-Pier and José Gregorio Torrealba R <i>Hoet Pelaez Castillo &amp; Duque</i>	<b>447</b>

# Bulgaria

Lazar Tomov and Sylvia Steeva

Tomov & Tomov

---

## Laws and Institutions

### 1 Multilateral conventions

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

Bulgaria has been a party to the New York Convention since 8 January 1962. Bulgaria has made a reciprocity declaration under article I.

Bulgaria is also a party to the European Convention on International Commercial Arbitration and the Convention for the Settlement of Investment Disputes between States and Nationals of other States.

### 2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

Bulgaria has signed bilateral investment treaties with 67 countries, but eight of these treaties have not entered into force.

### 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?

International arbitration in Bulgaria is governed by the International Commercial Arbitration Act (ICAA). Its English text can be found at [www.bcci.bg/arbitration/index.html](http://www.bcci.bg/arbitration/index.html).

Arbitration is international if it has its seat in Bulgaria and at least one of the parties to it is foreign, or both parties are Bulgarian but one of them has foreign majority ownership. A party is foreign if it has its seat or residence outside Bulgaria. (article 1 ICAA).

Despite its misleading title, the ICAA also applies to domestic arbitration, except that in it the arbitrators, the language of the proceedings and the law governing the arbitration agreement and the merits must be Bulgarian.

The recognition and enforcement of foreign arbitration awards is governed by articles 118 to 122 of the Code of Private International Law, or by the international conventions to which Bulgaria is a party (article 51(2) and (3) ICAA).

---

### 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?

Bulgarian arbitration law is based on the 1985 UNCITRAL Model Law with minor differences in regard to the definition of international arbitration (see question 3) and appeals against an arbitral tribunal's preliminary decision on jurisdiction (see question 20).

---

### 5 Mandatory provisions

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

The only mandatory provisions are that the parties shall be treated equally, that each party shall be given a full opportunity to present its case, and that a party has a right to request that Sofia City Court rule on its challenge of an arbitrator (article 22 ICAA).

It is not clear whether a party could agree to waive or modify its right to seek annulment and resist recognition on the grounds envisaged in the ICAA. Such clauses are met in practice, but so far have not come under the scrutiny of courts.

---

### 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 international arbitration, the arbitral tribunal shall decide the merits of the dispute in accordance with the law chosen by the parties. Unless otherwise agreed by them, any designation of the law of a given state shall be considered as referring to the substantive law of that state and not to its conflict of laws rules (article 38(1) ICAA, rule 36(1) of the BCCI Arbitration Rules). Failing any designation by the parties, the tribunal shall apply the law determined by the conflict of laws rules it deems applicable. In any event, the tribunal shall apply the provisions of the contract and trade usage (article 38(3) ICAA, rule 36(3) of the BCCI Arbitration Rules). There is no requirement that the law chosen by the parties must have a connection with the parties or the contract in dispute. The ICAA and the BCCI Arbitration Rules use the Bulgarian term *zakon*, which means any normative act of a sovereign state. Therefore, the parties could choose non-national rules of law, like UNIDROIT, only to the extent they replace dispositive rules and arbitrators could apply such non-national rules only to the extent they consider them a part of the trade usage. Following the accession of Bulgaria to the EU, the rules of the Rome Convention are considered by Bulgarian arbitrators as the common European understanding of conflicts of law methodology. This means that the applicable law will be the law most closely connected with the subject in dispute.

## 7 Arbitral institutions

What are the most prominent arbitral institutions in your country?

The most prominent arbitration institution is:

### Arbitration Court with the Bulgarian Chamber of Commerce and Industry (BCCI)

9 Iskar Street  
Floor 2  
Sofia 1058  
Bulgaria  
acourt@bccibg  
www.bccibg.com/arb/index.html

The Arbitration Rules of the Arbitration Court with the BCCI (the BCCI Arbitration Rules) follow the provisions of the Bulgarian arbitration law. The arbitration court has a list of arbitrators for domestic arbitrations and a list of arbitrators for international arbitrations. The latter is not binding, but recommended. In international arbitration, the parties may freely choose the language of the proceedings.

The arbitrators' fees are calculated in accordance with a schedule based on the amount in dispute.

## Arbitration agreement

### 8 Arbitrability

Are there any types of disputes that are not arbitrable?

Any private law disputes involving economic interest and relating to rights that the parties are free to dispose of are arbitrable, except disputes concerning property rights and possession of real estate, alimony and child support, and individual employment relationships (article 19 of the Civil Procedure Code). Under this definition, disputes regarding intellectual property rights, competition law and securities transactions are considered arbitrable. There is no case law relating to actions to set aside resolutions of corporate bodies. Although they seem arbitrable under the criteria of article 19 of the Civil Procedure Code, under most established treatises they are not arbitrable. Also arbitrable are private law disputes where one of the parties is the state, or a state organ.

### 9 Requirements

What formal and other requirements exist for an arbitration agreement?

Enforceable arbitration agreements must be in writing (article 7(2) ICAA, rule 2(2) of the BCCI Arbitration Rules). This requirement is complied with when the agreement is contained in a document signed by both parties, in an exchange of letters, faxes, telegrams, or other means of telecommunication, or in general terms and conditions to which the parties have referred. Modern forms of electronic communication are recognised. Any non-compliance with the formal requirements is resolved if, during the arbitral proceedings, the party that could raise an objection in regard to formal validity of the arbitration agreement does not do so.

### 10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

An arbitration agreement is no longer enforceable if it is terminated by mutual agreement of the parties, or due to lapse of time, a condition subsequent, or a waiver of the right to object in court proceedings that the dispute must be decided by arbitration. It is not enforceable if it is void or avoidable according to the law that governs it. The doctrine of separability is recognised (article 19(2)

ICAA, rule 26(2) of the BCCI Arbitration Rules). Accordingly, avoidance, rescission or termination of the underlying contract has no influence on the arbitration agreement. Insolvency, death and legal incapacity of a party subsequent to the signing of the arbitration agreement does not affect its enforceability.

### 11 Third parties – bound by arbitration agreement

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

Generally, an arbitration agreement is binding only on the parties to it. Successors in the case of full succession and receivers in bankruptcy are bound by the agreements entered into by the deceased or the bankrupt debtor. A principal is bound by an arbitration agreement entered into by its agent, provided that the latter acts within the scope of its authority. Whether the authority includes the right to agree to arbitration is a matter of interpretation. For avoidance of doubt, the issue should be resolved expressly. An agent is not bound by the arbitration clause contained in the contract between its principal and a third party. Guarantors are not bound by the arbitration agreement contained in the contract between the creditor and the debtor whose debt the guarantor guarantees. In the case of assignment, the case law is somewhat contradictory, but many decisions accept that the arbitration clause is transferred and binds the assignee and the debtor.

### 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 ICAA does not contain any provisions in regard to third-party participation. Pursuant to Rule 33 of the BCCI Arbitration Rules, a third party may intervene in or be joined to arbitration proceedings only on the basis of the written consent of all parties concerned. The consent may be expressed beforehand, in the arbitration clause, or it may be reached before the arbitral tribunal. The request to join a party must be filed within the deadline for reply to the statement of claim.

### 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?

The 'group of companies' doctrine is not recognised by Bulgarian law.

### 14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The ICAA is silent on multiparty arbitration agreements. However, the BCCI Arbitration Rules acknowledge them. Pursuant to the equal treatment principle, all parties on each side have to appoint an arbitrator by general consent. If they fail to do so, the chairperson of the Arbitration Court will make the appointment (rule 14(5) of the BCCI Arbitration Rules).

---

**Constitution of arbitral tribunal**


---

**15 Appointment of arbitrators – restrictions**

Are there any restrictions as to who may act as an arbitrator?

The ICAA has no restrictions in regard to international arbitrations. In domestic arbitration, only Bulgarian citizens may act as arbitrators and according to the BCCI Arbitration Rules they must be selected from a list (rule 14(2) and (4)). Judges may act as arbitrators with the permission of the chairperson of the relevant court.

**16 Appointment of arbitrators – default mechanism**

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

Failing prior agreement of the parties as to the number of the arbitrators, the dispute is to be decided by three arbitrators, one arbitrator being appointed by each party and the third one being appointed by the other two arbitrators (article 12(1) ICAA and rule 14(1) of the BCCI Arbitration Rules). If the parties fail to agree on a sole arbitrator, or a party fails to make its appointment, or the arbitrators fail to appoint a presiding arbitrator, the appointing authority is the chairperson of the BCCI under the ICAA and the chairperson of the Arbitration Court under the BCCI Arbitration Rules (article 12(1) ICAA, rules 14 and 15 of the BCCI Arbitration Rules).

**17 Challenge and replacement of arbitrators**

On what grounds and how can an arbitrator be challenged and replaced?

An arbitrator may be challenged if circumstances exist that give rise to reasonable doubts as to his or her impartiality or independence, or if the arbitrator does not have the qualifications agreed by the parties (article 14(1) ICAA). An arbitrator can be challenged by the party that appointed him or her only if that party became aware of the ground for the challenge after the appointment.

The parties may agree on the procedure for challenges. Failing such agreement, a party may challenge an arbitrator by a written reasoned statement of challenge within 14 days of becoming aware of the constitution of the arbitral tribunal or of the grounds for the challenge (article 15 ICAA). The arbitral tribunal decides on the challenge, unless the arbitrator withdraws, or the other party agrees with the challenge. If such challenge is not successful, the challenging party may, within seven days of receiving a notice of the decision, request Sofia City Court to rule on the challenge.

If an arbitrator becomes unable to perform his or her duties, or fails to act without undue delay, the arbitrator's mandate is terminated (article 17 ICAA). In such a case, the arbitrator may resign, or the parties may agree to replace him or her. Failing such a resignation or agreement, either party may request Sofia City Court to terminate the mandate of the arbitrator.

If an arbitrator is successfully challenged, resigns, or is removed, he or she will be replaced pursuant to the procedure of the original appointment (article 18 ICAA).

**18 Relationship between parties and arbitrators**

What is the relationship between parties and arbitrators?

Although the ICAA is silent on the legal nature of this relationship, it is accepted that a service contract exists between each party and each arbitrator. Despite the contract, the arbitrators are independent of the parties in their judgement and should not accept any guidance or directions from them. The arbitrators are bound to act with the skill and diligence of a good arbitrator, and in a

timely manner. In ad hoc arbitration, the remuneration of arbitrators is set in their contracts, and in institutional arbitration, in the schedule of fees.

General rules on contractual liability apply to arbitrators. However, according to some authors, there is an implied term that arbitrators are liable only for gross negligence or intentional wrongs.

---

**Jurisdiction**


---

**19 Court proceedings despite arbitration agreement**

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 court before which a claim is brought in relation to a dispute subject to an arbitration agreement shall dismiss the claim as inadmissible, if the respondent raises such an objection within the time limit for filing its response to the statement of claim. If the respondent fails to do so, its right is deemed waived. However, if after the objection the court finds that the arbitration agreement is null and void, no longer enforceable, or incapable of being performed, the case shall not be dismissed (article 8(1) ICAA). The existing case law is not sufficiently clear to allow a definitive answer as to whether the court will subject the arbitration agreement to full examination or will apply a prima facie test under the negative effect of the Kompetenz-Kompetenz principle. For the time being it is safer to presume the former approach.

**20 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?

Arbitral tribunals have the power to decide on their competence. A jurisdictional objection could be raised at the latest by the answer to the statement of claim or, exceptionally, later, if the delay is excusable (articles 19(1) and 20 ICAA and rule 26 of the BCCI Arbitration Rules). An arbitral tribunal rules on its jurisdiction in a preliminary decision or in a final award. The preliminary decision on jurisdiction is not subject to appeal.

Arbitration tribunals may start proceedings, continue them, and render an award, even if the same dispute is pending before a domestic or a foreign court (article 8(2) ICAA).

---

**Arbitral proceedings**


---

**21 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 prior agreement of the parties, both the language and the place of arbitration shall be determined by the arbitral tribunal. In determining the place of arbitration, the tribunal must take into account the circumstances of the case and the convenience of the parties (article 25 and 26 ICAA).

**22 Commencement of arbitration**

How are arbitral proceedings initiated?

The ICAA provides that arbitration proceedings are initiated by a notice of arbitration without specifying any particular requirements for it (article 23 ICAA). However, it is accepted that the notice should state an intention to start arbitration, the facts on which the claim is based, the relief sought and a nomination of an arbitrator.

Arbitration proceedings under the BCCI Arbitration Rules are initiated by a statement of claim. The statement of claim should state the names and addresses of parties, the amount in dispute, the facts on which the claim is based, the relief sought and a nomination of an arbitrator. It shall be signed, accompanied by a copy of the arbitration agreement, written evidence supporting the claim, certificates of good standing of the parties and a receipt for payment of the administrative fees and charges. It shall be submitted in a number of copies sufficient for each respondent and for the tribunal (rules 4 and 5 of the BCCI Arbitration Rules).

### 23 Hearing

Is a hearing required and what rules apply?

If the parties agree, the arbitral tribunal may render an award without a hearing. However, despite such an agreement, the arbitral tribunal may schedule a hearing if it finds it necessary for the proper adjudication of the dispute (article 30 ICAA, rule 24(3) of the BCCI Arbitration Rules). The tribunal may organise the hearing as it finds it appropriate, provided that due process and equal treatment of the parties are observed.

### 24 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 the absence of party agreement, the arbitral tribunal applies the procedural rules it finds appropriate (article 24 ICAA, rules 3(2) and (3) of the BCCI Arbitration Rules). Pursuant to this liberal rule, arbitrators have significant freedom to structure the fact finding procedure, including to apply the IBA Rules on Taking Evidence. Witnesses, documents, experts and inspections are admissible and often used. The parties, or their officers and employees may testify. The IBA Rules are increasingly applied, although they are not often directly cited.

### 25 Court involvement

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

The arbitral tribunal or either of the parties, with the approval of the tribunal, may request the competent municipal court to assist in taking of evidence (article 37 ICAA, rule 31 of the BCCI Arbitration Rules). Courts may also intervene in the following instances: to adjudicate on a challenge of an arbitrator or on a request to terminate the mandate of an arbitrator (article 16 ICAA and article 17(2) ICAA); and to order interim measures in relation to a claim or evidence (article 9 ICAA).

### 26 Confidentiality

Is confidentiality ensured?

The ICAA is silent on confidentiality of arbitration proceedings. Rule 24(5) of the BCCI Arbitration Rules provides that the proceedings before it are confidential and documents related to the cases are provided only to the parties. In addition, the Ethical Rules for Arbitrators provide that they should keep the proceedings confidential. Enforcement proceedings are not confidential.

## Interim measures

### 27 Interim measures by the courts

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

Before and during the arbitration proceedings, either party may request courts to impose interim measures in regard to the claim and the evidence (article 9 ICAA). A request for interim measures is not considered inconsistent with the arbitration agreement or waiver of it. The courts may grant a ban to transfer a real estate, an attachment of moveables and receivables, or any other appropriate measure (article 397 of the Civil Procedure Code). Courts have no exclusivity.

### 28 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?

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order the other party to take appropriate measures to preserve the applicant's rights (article 21 ICAA and article 28 of the BCCI Arbitration Rules). The provisions give arbitrators a wide discretion to grant measures directed at preservation of evidence, or preservation of status quo, or facilitation of the enforcement of the award. Tribunals can order interim measures in a procedural order or an interim award. Since arbitrators have jurisdiction only over the parties to the dispute and no coercive powers, the interim measures are not binding on third parties and are not subject to enforcement by the tribunal. Nevertheless, they are not toothless. Their disregard might lead to adverse inference, adverse adjustment of the cost, and liability in damages for the non-complying party for a breach of the arbitration agreement. In addition, an interim award related to such measures may be enforced through the court system.

## Awards

### 29 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 if an arbitrator refuses to take part in a vote or sign the award?

Unless otherwise agreed by the parties, the award of the arbitral tribunal can be rendered by a majority of all its members or, in the absence of a majority, by the presiding arbitrator (article 39 ICAA, rule 38(2) of the BCCI Arbitration Rules). If an arbitrator refuses to sign the award, this does not affect the validity of the award, provided that the majority of the arbitrators have signed it and have explained the reason for the missing signature (article 41(2) ICAA, rule 38(4) of the BCCI Arbitration Rules).

### 30 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The ICCA does not contain specific provisions on dissenting opinions. However, it is generally accepted that an arbitrator may prepare and submit a dissenting opinion. Pursuant to rule 38(5) of the BCCI Arbitration Rules the dissenting arbitrator must sign the award and note that he is dissenting. Within seven days he or she must submit in writing a dissenting opinion, which is then attached to the award. If the dissenting arbitrator fails to submit his or her opinion within the deadline, he or she is deemed to have withdrawn it.

**31 Form and content requirements**

What form and content requirements exist for an award?

The arbitral award shall be made in writing, shall state the place and the date of arbitration, and shall be signed by arbitrators. It shall also state the reasons for the decision, unless the parties have agreed otherwise, or it is an award on agreed terms (article 41 ICCA).

The BCCI Arbitration Rules further elaborate that the award must also state the name of the arbitration court, the names of the arbitrators, the names of the parties and the other participants in the case, the subject matter of the dispute and the facts of case (rule 39 of the BCCI Arbitration Rules).

**32 Time limit for award**

Does the award have to be rendered within a certain time limit under your domestic arbitration law?

Neither the ICAA nor the Arbitration Rules provide for any time limits, but it is accepted that the award should be rendered in a reasonable time.

**33 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 the award is not relevant for any time limit. The date of delivery of the award is relevant for the time limit for interpretation, correction, supplementation and annulment of the award (see questions 38 and 39).

**34 Types of awards**

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

An arbitral tribunal may render final awards, awards on agreed terms, partial awards, and interim awards. On procedural issues, arbitral tribunals render procedural orders.

The ICAA and the BCCI Arbitration Rules do not impose any limitations on the tribunals in regard to the relief they may grant. The issue is determined by law applicable to the merits. Under Bulgarian law, tribunals may grant damages, specific performance and declaratory awards.

**35 Termination of proceedings**

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

Arbitral proceedings are terminated by a procedural order:

- if the claimant defaults (claimant fails to submit a statement of claim, or fails to remedy the defect in it, and the delay is not excusable (article 33 ICAA, rule 8(3) of the BCCI Arbitration Rules));
- if the claimant withdraws its claim, unless the respondent objects and the arbitral tribunal finds that the respondent has a legitimate interest in an award being rendered (article 42(1) ICAA, rule 45(2)(1) of the BCCI Arbitration Rules);
- if the parties have agreed to terminate the proceedings, for example if they reach a settlement on the dispute that they do not wish to be incorporated in an award (article 42(2) ICAA), or if neither of them has undertaken steps to reopen a case that has been stayed more than six months on their request (rule 45(2)(2) of the BCCI Arbitration Rules); or
- if the arbitral tribunal finds that there is some reason not to hear the case and render a decision on the merits (article 42(3) ICAA, rule 45(2)(3) of the BCCI Arbitration Rules).

**36 Cost allocation and recovery**

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

The ICAA is silent on this issue. Pursuant to the BCCI Arbitration Rules, unless otherwise agreed by the parties, the costs are allocated according to the rule 'the costs follow the event'. Recoverable costs include administrative fees, arbitrators' fees, attorneys' fees, and other expenses related to the proceedings. The costs must be reasonable and supported by sufficient proof. Otherwise, the party will be awarded only the minimal attorneys' fees set by the Bulgarian Bar Council.

**37 Interest**

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

Pre-award interest depends on the applicable law on the merits. If Bulgarian law is applicable, arbitrators apply statutory interest at a rate set by a decree of the Council of Ministers. The interest has to be requested.

Since the ICAA and the BCCI Arbitration Rules are silent on post-award interest, in the absence of party agreement, the tribunal has discretion to decide on this issue. In domestic arbitration, arbitral tribunals award the above-mentioned statutory interest. Usually, interest on costs is not awarded.

**Proceedings subsequent to issuance of award****38 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 may correct in the award any errors in computation, typographical errors or obvious factual mistakes, interpret the award, or render an additional award as to claims presented in the proceedings but omitted in the award. While the tribunal may correct the award at the request of each party or on its own, it may interpret the award or render an additional award only at a party's request. The tribunal must give the parties an opportunity to present their observations on the issue. The time limits for requests for correction, interpretation or additional award are respectively 60 days, 60 days, and 30 days from receipt of the award by the applicant (articles 43 and 44 ICAA, rules 42 and 43 of the BCCI Arbitration Rules).

**39 Challenge of awards**

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

An award may be set aside on an application to the Supreme Cassation Court on the following grounds:

- a party was under some incapacity at the time of entering the arbitration agreement;
- the arbitration agreement was not entered into in accordance with or is not valid under the law to which the parties have subjected it or, failing party agreement, under the ICCA;
- the subject of the dispute is not capable of settlement by arbitration or the award is in conflict with the public policy of the Republic of Bulgaria;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was unable to take part in the proceedings because of reasons not attributable to it;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; or

**Update and trends**

As a result of the uncertainties related to the interpretation and application of the recently adopted Civil Procedure Code, and the increased number of defaulted debtors precipitated by the financial crisis, the number of arbitration cases has increased significantly. As per 1 January 2011 there are no pending investment arbitrations against Bulgaria.

- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the ICAA from which the parties cannot derogate, or, failing such agreement, was not in accordance with the ICAA (article 47 ICCA).

Due to linguistic and translation issues, the grounds for annulment of an arbitral award are formulated somewhat differently than the UNCITRAL Model Law. Nevertheless, they are interpreted and applied in accordance with its text.

The application must be made within three months of the service of the award on the applicant. In the case of correction, interpretation, or supplementation of the award, the period runs as of the tribunal’s ruling on this issue.

**40 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?

A decision on a set-aside application cannot be appealed. If no extraordinary circumstances arise, the challenge is usually decided within several months. The court charges are determined at the court’s discretion (article 71 of the Civil Procedure Code). The minimum attorneys’ fees are 2 per cent of the awarded sum. The costs are allocated in accordance with the outcome of the case.

**41 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?

The competent court for recognition and enforcement of domestic and foreign awards is Sofia City Court.

An application for enforcement of a domestic award must be accompanied by a copy of the award and evidence that it was

served on the debtor. The proceedings are ex parte. The court only checks that the award has no obvious irregularities on its face, such as if it is not signed, and issues an enforcement order.

Foreign awards that do not fall in the scope of an international convention are recognised and enforced in accordance with articles 118 to 122 of the Code of Private International Law. Foreign awards that fall in the scope of an international treaty are enforced according to the applicable treaty. In the case of the New York Convention or the European Convention, the application must be accompanied by duly authenticated originals, or duly certified copies of the arbitral award and the arbitration agreement. If these documents are not in Bulgarian, an official translation must be submitted. The proceedings are adversarial with participation of both parties, and end with a court decision granting or refusing recognition. The decision is subject to two levels of appeal, the second one by leave. After it has entered into force, the Sofia City Court, at the request of the claimant, will issue an enforcement order.

The grounds for refusal of recognition are those listed in article V of the New York Convention. There are no indications suggesting that Bulgarian courts apply the New York Convention in an internationally unacceptable manner.

**42 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?

Bulgaria has no domestic law that is more favourable than the New York Convention and allows the enforcement of an award set aside at the seat of the arbitration. However, if the parties to such an award are from states that are parties to both the New York Convention and European Convention, the award could be enforced. Pursuant to article VII of the New York Convention, the applicant may rely on more favourable international convention, and the European Convention permits the enforcement of annulled awards.

**43 Cost of enforcement**

What costs are incurred in enforcing awards?

The court charges for recognition of a foreign award are 0.4 per cent of the sum awarded, but not less than e50, plus 10 Bulgarian lev for the enforcement order. Half of these charges are collected for an appeal. The court charges for issuance of an enforcement order on a domestic award are 0.2 per cent of the sum awarded but not less than e50. The minimum attorneys’ fees amount to 2 per cent of the awarded sum.

# Tomov & Tomov

**Lazar Tomov**  
**Sylvia Steeva**

**l.tomov@tomov.com**  
**s.steeva@tomov.com**

4, Svetoslav Terter street  
Sofia 1124  
Bulgaria

Tel: +359 2 843 76 62  
www.tomov.com

---

**Other****44 Judicial system influence**

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

The provisions for collecting of evidence under the Civil Procedure Code often influence Bulgarian arbitrators. This means preference for documents over witness testimony, tribunal-appointed expert witnesses over party appointed expert witnesses, direct examination of witnesses over written statements by them, and limited orders for production of well identified and clearly relevant documents over US-style discovery.

**45 Regulation of activities**

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

Citizens of the European Union, Switzerland, the US, Canada, Australia and most Latin American states do not need a visa. Foreign attorneys participating in international arbitration do not need a work permit and are not subject to the rules of the Bulgarian Bar Council. Rules relating to direct and indirect taxes change frequently and should be checked beforehand.

**GETTING THE DEAL THROUGH®**

**Annual volumes published on:**

- Air Transport
- Anti-Corruption Regulation
- Arbitration
- Banking Regulation
- Cartel Regulation
- Construction
- Copyright
- Corporate Governance
- Dispute Resolution
- Dominance
- e-Commerce
- Electricity Regulation
- Environment
- Franchise
- Gas Regulation
- Insurance & Reinsurance
- Intellectual Property & Antitrust
- Labour & Employment
- Merger Control
- Mergers & Acquisitions
- Mining
- Oil Regulation
- Patents
- Pharmaceutical Antitrust
- Private Antitrust Litigation
- Private Equity
- Product Liability
- Product Recall
- Project Finance
- Public Procurement
- Real Estate
- Restructuring & Insolvency
- Right of Publicity
- Securities Finance
- Shipping
- Tax on Inbound Investment
- Telecoms and Media
- Trademarks
- Vertical Agreements

**For more information or to purchase books, please visit:**  
[www.GettingTheDealThrough.com](http://www.GettingTheDealThrough.com)



Strategic research partners of the ABA International section



THE QUEEN'S AWARDS  
FOR ENTERPRISE  
2006



The Official Research Partner of the International Bar Association