

# ARBITRATION IN SLOVAKIA

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## 1. Historical background and legislative framework

- 1.1.1 The history of arbitration in the Slovak Republic dates back to the Austro-Hungarian monarchy in 1911. During this period, arbitration was regulated by the Civil Dispute Code, Act No.I/1911 (**1911 Civil Dispute Code**), which was in force until 1950. The advantage of the 1911 Civil Dispute Code was its broad scope of application, which enabled parties to refer *inter alia* both property and employment disputes to arbitration. Subsequently, at the end of Second World War and with the rise of socialism, a new regulation emerged in the form of the Civil Procedure Act no. 142/1950 Coll., which contained detailed provisions on arbitration.<sup>1</sup>
- 1.1.2 Until 1989, arbitration in former Czechoslovakia was divided into:
- arbitration regarding international disputes, which was regulated by Act No. 98/1963 Coll. (**1963 Czechoslovakian Arbitration Act**); and
  - arbitration regarding the domestic affairs of state owned entities, which was regulated by Act No.121/1962 Coll. Domestic entities that were not state owned did not have recourse to arbitration for their domestic disputes from 1963 until 1994.
- 1.1.3 Following the establishment of the Slovak Republic on 1 January 1993, arbitral proceedings were still regulated by the 1963 Czechoslovakian Arbitration Act, which prohibited domestic arbitration for entities that were not state owned. The entry into force of Act No. 218/1996 Coll. on Arbitration (**1996 Slovakian Arbitration Act**) re-introduced the possibility for parties to resolve domestic disputes by way of arbitration. However, contrary to the legislators' expectations, the 1996 Slovakian Arbitration Act did not cause a significant increase in the number of domestic arbitral proceedings.
- 1.1.4 The 1996 Slovakian Arbitration Act was replaced by Act No. 244/2002 Coll. on Arbitration, which entered into force on 1 July 2002 (**Slovakian Arbitration Act**). The Slovakian Arbitration Act has subsequently been amended twice.<sup>2</sup>
- 1.1.5 Arbitral proceedings in Slovakia can be conducted under the auspices of an arbitral institution, which administers the arbitration (i.e. the arbitral institution undertakes tasks such as transmitting correspondence between the parties and the arbitral tribunal, appointing arbitrators in cases where the parties are unable to agree upon such appointments and fixing arbitrators' fees). Alternatively, arbitral proceedings may be conducted on an ad hoc basis, in which the parties administer the arbitral proceedings themselves.

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<sup>1</sup> Civil Procedure Act (No.142/1950 Coll.), s 648–654.

<sup>2</sup> As of 1 January 2006 by Act No. 521/2005 Coll. and as of 5 March 2009 by Act No. 71/2009 Coll.

## 2. Scope of application and general provisions of the Slovakian Arbitration Act

### 2.1 Subject matter

2.1.1 The Slovakian Arbitration Act governs the resolution of proprietary disputes arising out of commercial or civil relationships, both at a domestic and international level, when the seat of arbitration is Slovakia.<sup>3</sup> The term “proprietary dispute” means any dispute in which the subject matter is capable of evaluation in monetary terms.

### 2.2 Structure of the law

2.2.1 The Slovakian Arbitration Act reflects the course of the arbitral proceedings and is formed of nine parts, as follows:

- (i) Part One: basic provisions, including the subject matter and scope of the arbitral proceedings;<sup>4</sup>
- (ii) Part Two: the arbitration agreement;<sup>5</sup>
- (iii) Part Three: provisions relating to arbitrators and the arbitral tribunal, notably the conditions for performing the function of an arbitrator, the constitution of an arbitral tribunal, opposing the appointment of an arbitrator and termination of the function of an arbitrator;<sup>6</sup>
- (iv) Part Four: the establishment of the permanent court of arbitration;<sup>7</sup>
- (v) Part Five: the procedure for, and course of, the arbitral proceedings;<sup>8</sup>
- (vi) Part Six: the content and effects of the arbitral tribunal’s decisions and awards;<sup>9</sup>
- (vii) Part Seven: challenging and cancellation of awards;<sup>10</sup>
- (viii) Part Eight: the recognition and enforcement of awards;<sup>11</sup> and
- (ix) Part Nine: transitional and final provisions.<sup>12</sup>

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<sup>3</sup> Slovakian Arbitration Act, s 1(1).

<sup>4</sup> *Ibid*, s 1–2.

<sup>5</sup> *Ibid*, s 3–5.

<sup>6</sup> *Ibid*, s 6–11.

<sup>7</sup> *Ibid*, s 12–15.

<sup>8</sup> *Ibid*, s 16–30.

<sup>9</sup> *Ibid*, s 31–39.

<sup>10</sup> *Ibid*, s 40–43.

<sup>11</sup> *Ibid*, s 44–50.

<sup>12</sup> *Ibid*, s 51–56.

## 2.3 General principles

- 2.3.1 The Slovakian Arbitration Act is based on the Model Law (1985)<sup>13</sup> and implements all of the principles contained therein, as well as the basic principles contained in the Code of Civil Procedure of the Slovak Republic<sup>14</sup> (**Slovakian CCP**), the New York Convention<sup>15</sup> and the 1961 European Convention.

# 3. The arbitration agreement

## 3.1 Definitions

- 3.1.1 The Slovakian Arbitration Act defines an arbitration agreement as an agreement between contracting parties that all or some disputes which have arisen or may arise between them in a specific contractual or legal relationship shall be resolved through arbitration.<sup>16</sup>

## 3.2 Formal requirements

- 3.2.1 The Slovakian Arbitration Act stipulates that an arbitration agreement must be in writing in order to be valid.<sup>17</sup>
- 3.2.2 The arbitration agreement shall be deemed to be in written form if it is:
- contained within a document that has been signed by the parties;
  - contained in letters that have been exchanged by the parties; or
  - agreed via fax or another telecommunication device that enables the content of the arbitration agreement and the identity of the person agreeing to it to be recorded.<sup>18</sup>
- 3.2.3 An arbitration agreement may be contained in a stand alone agreement or in an arbitration clause in a contract.
- 3.2.4 If the agreement was not originally made in writing, the parties can remedy the situation before the commencement of the arbitral proceedings by drafting a written statement that records the agreement. This written statement must be in the form of minutes that have been signed in the presence of one of the arbitrators

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<sup>13</sup> CMS Guide to Arbitration, vol II, appendix 2.1.

<sup>14</sup> Act No. 99/1963 Coll.

<sup>15</sup> CMS Guide to Arbitration, vol II, appendix 1.1.

<sup>16</sup> Slovakian Arbitration Act, s 3(1).

<sup>17</sup> *Ibid.*, s 4(2).

<sup>18</sup> *Ibid.*

who will be hearing the dispute.<sup>19</sup> If there is no written arbitration agreement and one party commences arbitral proceedings, then unless the respondent expressly declares in presence of one of the arbitrators that it submits to the jurisdiction of the arbitral tribunal, the arbitral tribunal will not have jurisdiction. Failure by the respondent to object to the jurisdiction of the arbitral tribunal will not automatically confer jurisdiction on the arbitral tribunal. If the arbitral tribunal proceeds with the arbitration without the respondent's declaration, the decision of the tribunal may be challenged. If a party commences arbitral proceedings even though there is no written arbitration agreement such proceedings shall be stayed due to the lack of jurisdiction of the arbitral tribunal.

- 3.2.5 A validly executed arbitration agreement is binding upon its signatories. It may be replaced or supplemented only in accordance with its provisions or by agreement between the parties. Any modification to the arbitration agreement must be made in writing.
- 3.2.6 Unless otherwise provided in the arbitration agreement, it will also be binding upon the legal successors of the parties.<sup>20</sup>

### **3.3 Special tests and requirements of the jurisdiction**

- 3.3.1 The parties are free to choose the law that governs the arbitration agreement. The parties can agree that the arbitration clause within a contract shall have a different applicable law to that which governs the contract as a whole.<sup>21</sup>
- 3.3.2 Arbitration can only be used to resolve disputes that are capable of settlement. A dispute is capable of settlement where the substantive law does not dictate a particular way of settlement of rights and, therefore, allows the parties to settle the matter through agreement.
- 3.3.3 The following disputes cannot be resolved by arbitration:
  - disputes regarding the creation, change and extinction of title and other rights to real property;
  - disputes regarding personal status;
  - disputes regarding the enforcement of decisions; and
  - disputes arising out of bankruptcy or a restructuring procedure.<sup>22</sup>

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<sup>19</sup> *Ibid*, s 4(3).

<sup>20</sup> *Ibid*, s 3(2).

<sup>21</sup> *Ibid*, s 5(1).

<sup>22</sup> *Ibid*, s 1(3).



### 3.4 Separability

- 3.4.1 In keeping with the principle of separability, an arbitration clause that is part of an otherwise invalid contract shall only be considered invalid itself if its validity is expressly pre-conditioned on the validity of the underlying contract.<sup>23</sup>
- 3.4.2 Unless the parties agree otherwise, unilateral termination of an agreement containing an arbitration clause does not affect the validity or binding nature of the arbitration clause.<sup>24</sup>

### 3.5 Legal consequences of a binding arbitration agreement

- 3.5.1 A binding arbitration agreement has the effect that the courts shall have no jurisdiction to decide the dispute unless such matter is determined otherwise by the arbitral tribunal.<sup>25</sup>
- 3.5.2 An effective ruling from the arbitral tribunal that it lacks the jurisdiction to decide the dispute will establish the court's jurisdiction to hear the dispute.

## 4. Composition of the arbitral tribunal

### 4.1 The constitution of the arbitral tribunal

- 4.1.1 The arbitral tribunal must be composed of an odd number of arbitrators.<sup>26</sup> If the parties fail to agree upon the number of arbitrators, three arbitrators shall be appointed.<sup>27</sup> If the parties agree upon an even number of arbitrators such agreement shall be invalid and it shall be deemed that the parties did not agree upon the number of arbitrators.
- 4.1.2 The parties may either agree upon the identity of the arbitrator(s) themselves, or request a court or arbitral institution to appoint the arbitrator(s).<sup>28</sup> If the parties have agreed to appoint three arbitrators but cannot agree upon the identity of these arbitrators, each party shall appoint one arbitrator. The two arbitrators that have been appointed by the parties shall then appoint a third arbitrator, who will be the chair of the arbitral tribunal. If either party fails to appoint an arbitrator then, upon the request of either party, the arbitrator shall be appointed by the

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<sup>23</sup> *Ibid.*, s 5(2).

<sup>24</sup> *Ibid.*, s 5(3).

<sup>25</sup> *Ibid.*, s 2(1).

<sup>26</sup> *Ibid.*, s 7(2).

<sup>27</sup> *Ibid.*, s 7(3).

<sup>28</sup> *Ibid.*, s 8(1).

relevant appointing authority or court upon the request of either party.<sup>29</sup> There is no specific regulation affecting the appointment of the arbitral tribunal if there are more than two parties.

- 4.1.3 If the parties have agreed to appoint a sole arbitrator, but cannot agree upon the identity of such arbitrator, then the arbitrator will be appointed by the relevant appointing authority or court upon the request of either party.<sup>30</sup>

## **4.2 The procedure for challenging and substituting arbitrators**

- 4.2.1 The Slovakian Arbitration Act requires all arbitrators to disclose (in their written letter accepting appointment as an arbitrator) all facts and circumstances that could, in the opinion of the parties, compromise the arbitrator's independence or impartiality.<sup>31</sup>

- 4.2.2 If, upon consideration of the facts disclosed in the arbitrator's letter of acceptance, the parties do not challenge an arbitrator's appointment within 15 days, the grounds for challenging that arbitrator's appointment in the future will be limited to facts revealed after the arbitrator's appointment. An arbitrator is required to disclose to the parties any potentially compromising facts or circumstances that may arise during the arbitration.<sup>32</sup>

- 4.2.3 The parties may agree upon the procedure for challenging an arbitrator. In the absence of any such agreement, the arbitral tribunal is allowed, in the case of a challenge, to continue with the arbitral proceedings whilst considering the challenge. However, it must not issue an award during this period.<sup>33</sup> Unless otherwise agreed, a challenge shall be decided by the arbitral tribunal or a third party that has been nominated by the parties. The ruling on a challenge cannot be appealed.<sup>34</sup>

- 4.2.4 When an arbitrator ceases to hold office (e.g. due to their resignation, removal or death), a replacement arbitrator is appointed in accordance with the procedure agreed by the parties. In the absence of any agreement between the parties on this issue, the parties must follow the same procedure as that adopted for the appointment of the original arbitrator(s), as set out in section 4.1 above.<sup>35</sup>

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<sup>29</sup> *Ibid.*, s 8(2).

<sup>30</sup> *Ibid.*, s 8(2).

<sup>31</sup> *Ibid.*, s 9(1).

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*, s 9(3).

<sup>34</sup> *Ibid.*, s 9(5).

<sup>35</sup> *Ibid.*, s 11(2).

### 4.3 Responsibility of the arbitrators

4.3.1 The Slovakian Arbitration Act does not contain any express provisions regulating the legal liability of arbitrators. As a result, this issue is governed by the general principles of liability under Slovakian law, which are set out in section 4.5 below.

### 4.4 Arbitration fees

4.4.1 The Slovakian Arbitration Act neither regulates the fees for the arbitral procedure nor the entitlement of the arbitrators to fees.

4.4.2 The arbitration fees of each arbitral institution are regulated by its internal rules, which are typically binding upon the parties to institutional arbitral proceedings.

### 4.5 Arbitrator immunity

4.5.1 Arbitrators do not enjoy immunity under Slovakian law. Arbitrators can be liable for any damage caused by the exercise of their function as arbitrator. Arbitrators can also face criminal sanctions if they make a decision without the prior consent of any supervisory authority.

## 5. Jurisdiction of the arbitral tribunal

### 5.1 Competence to rule on jurisdiction

5.1.1 The arbitral tribunal is competent to rule upon its own jurisdiction, including challenges to the validity or existence of the arbitration agreement.<sup>36</sup>

5.1.2 Should the arbitral tribunal conclude that it does not have jurisdiction to hear the dispute, it shall terminate the arbitral proceedings.<sup>37</sup>

5.1.3 Any challenge to the arbitral tribunal's jurisdiction must, at the latest, be raised by a party when taking the first step in the arbitral proceedings on the merits of the claim (usually when filing the statement of defence), unless the application is based on the dispute being non-arbitrable. In that case, the arbitral tribunal's jurisdiction can be challenged at any stage of the arbitral proceedings.<sup>38</sup>

### 5.2 Power to order interim measures

5.2.1 During the arbitral proceedings the parties must turn to the arbitral tribunal to order interim measures in relation to the dispute.

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<sup>36</sup> *Ibid.*, s 21(1).

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, s 21(2).

- 5.2.2 Once constituted, the arbitral tribunal can issue any interim measures that it deems to be necessary to protect the subject matter of the dispute and to preserve the integrity of the arbitral proceedings.<sup>39</sup>
- 5.2.3 The arbitral tribunal may require that the party seeking interim measures provides security in exchange for any interim measures that are granted.
- 5.2.4 Prior to the constitution of the arbitral tribunal and after the termination of the arbitral proceedings, interim measures must be sought from the Slovakian courts. An application to the Slovakian courts may be required in order to enforce any interim measures granted by an arbitral tribunal.

## 6. Conduct of proceedings

### 6.1 Commencement of arbitration

- 6.1.1 The general principle regarding the commencement of arbitration is that the claim must be delivered to the designated person or authority.<sup>40</sup> Institutional arbitral proceedings usually commence on the date on which the claim is filed with the competent arbitral institution. Ad hoc arbitral proceedings commence on the date on which the claim is received by the other party or filed with one of the arbitrators. Commencement of the arbitral proceedings by filing a claim with the arbitrator is possible if the parties have already identified the arbitrator(s).
- 6.1.2 Unless the parties agree otherwise, the arbitral tribunal is entitled to require that the claimant pays an advance towards the arbitrators' estimated fees, failing which the arbitral tribunal will stay the arbitral proceedings.<sup>41</sup> Unless otherwise agreed by the parties, the arbitral tribunal is entitled to claim an advance towards the arbitrators' estimated fees from the claimant only.

### 6.2 General procedural principles

- 6.2.1 The provisions of the Slovakian Arbitration Act and the Slovakian CCP reflect the fundamental principles typically found in arbitration legislation across the world, including:

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<sup>39</sup> *Ibid.*, s 22.

<sup>40</sup> *Ibid.*, s 16(1).

<sup>41</sup> *Ibid.*, s 18(6).

- equal treatment of the parties;<sup>42</sup>
- party autonomy; and
- non-intervention by local courts.

### **6.3 Seat, place of hearings and language of arbitration**

6.3.1 The seat of arbitration is usually selected by the parties. In the absence of agreement between the parties, the arbitral tribunal will determine the seat of arbitration, taking into account the nature of the dispute and the interests of the parties.<sup>43</sup>

6.3.2 Unless otherwise agreed by the parties, the arbitral tribunal may organise hearings and perform its functions at a venue other than the seat of arbitration.

6.3.3 In the absence of an agreement between the parties, the language of the arbitration will be determined by the arbitral tribunal.<sup>44</sup> There is no general rule that domestic arbitral proceedings must be conducted in Slovakia. The efficiency of the arbitral process is the most important consideration when deciding upon the language to be used. The chosen language will apply to all written statements of case, hearings, the award and all other documents issued by the arbitral tribunal. The arbitral tribunal may further rule that any document that is written in a different language must be accompanied by an official translation into the language of the arbitration. There is no statutory restriction for the arbitral tribunal to specify more than one official language to be used in conducting the proceedings.

### **6.4 Multi-party issues**

6.4.1 The Slovakian Arbitration Act itself does not contain provisions on intervention and joinder in cases of multi-party issues. However, these issues are regulated by the Slovakian CCP, which is applied to arbitral proceedings by the Slovakian Arbitration Act.<sup>45</sup> Third parties may intervene or join the proceedings as either claimant or respondent or through becoming a subsidiary party to one of the parties. A third party may only intervene as claimant or respondent upon the proposal of one of the parties or if it is a successor of one of the parties, and with the consent of the arbitral tribunal.<sup>46</sup> The arbitral tribunal may join two or more

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<sup>42</sup> *Ibid*, s 17.

<sup>43</sup> *Ibid*, s 23(1).

<sup>44</sup> *Ibid*, s 24.

<sup>45</sup> *Ibid*, s 51.

<sup>46</sup> Slovakian CCP, s. 92, 93.

arbitral proceedings started before the same tribunal, involving the same parties or claims arising out of the same transaction or event.<sup>47</sup>

## **6.5 Oral hearings and written proceedings**

6.5.1 The parties are free to agree whether the proceedings should be conducted purely on the basis of documents (i.e. inviting the arbitral tribunal to render its award on the basis of written submissions only), or with the benefit of oral hearings before the arbitral tribunal.<sup>48</sup> Unless the parties expressly agree to hold an oral hearing, there is no general rule that there will be one. However, in the absence of agreement between the parties, the arbitral tribunal shall decide upon whether an oral hearing is required. If the arbitral tribunal considers that an oral hearing is necessary, the general rule is that such a hearing will be held in private (unlike in national court proceedings), unless the parties agree otherwise.<sup>49</sup>

6.5.2 The Slovakian Arbitration Act obliges the parties to assist the arbitral tribunal in resolving the dispute.<sup>50</sup> In keeping with this obligation, parties are required to attend oral hearings either personally or through a representative. The parties are also required to file all written submissions and other documents on time, although the arbitral tribunal has the power to grant extensions of time in appropriate cases.

6.5.3 A formal notice of any oral hearing must be served on all parties in advance of such hearing. A party that is a not resident in Slovakia is entitled to a notice period of 30 days prior to any oral hearing.<sup>51</sup>

## **6.6 Default by one of the parties**

6.6.1 Should a party not participate in the arbitral proceedings, or fail to participate adequately, there are different consequences depending on the type of default.<sup>52</sup>

6.6.2 If the claim fails to meet the basic statutory requirements and is not amended within a time period granted for this purpose, the arbitral tribunal shall stay the arbitral proceedings.

6.6.3 If any of the parties fail to attend the oral hearing or fail to produce evidence despite being duly informed about the date, time and place of the proceedings, the arbitral tribunal shall be entitled to issue an award based on the available evidence.

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<sup>47</sup> *Ibid*, s. 112.

<sup>48</sup> Slovakian Arbitration Act, s 26(1).

<sup>49</sup> *Ibid*, s 26(2).

<sup>50</sup> *Ibid*, s 26(4).

<sup>51</sup> *Ibid*, s 26(5).

<sup>52</sup> *Ibid*, s 30.

6.6.4 If the respondent fails to file its written statement of defence within the stated time period, the continuance of the arbitral proceedings shall not be affected. Such a failure by the respondent shall not be deemed as an acknowledgment of the claimant's statement of claim.<sup>53</sup>

## 6.7 Evidence generally

6.7.1 The arbitral tribunal can only use evidence that was presented by the parties as the basis for its decision.<sup>54</sup> Such evidence can include oral evidence, documentary evidence and expert opinions. The arbitral tribunal determines for itself, in the exercise of its discretion, what weight to attach to the evidence submitted by the parties.

6.7.2 The parties usually attach the documents that they intend to rely upon as documentary evidence to their written submissions. Nevertheless, the arbitral tribunal has the power to order the parties either of its own motion or on the application of one of the parties to produce additional documentary evidence if it believes that such documents might assist in resolving the issues in dispute.

## 6.8 Appointment of experts

6.8.1 The arbitral tribunal may appoint experts in the arbitral proceedings to provide an opinion on issues that require certain expertise.<sup>55</sup> The arbitral tribunal shall provide the expert with questions that it requires to be answered within the expert opinion.<sup>56</sup> The arbitral tribunal can also invite the parties to provide their own questions to be posed to the expert(s).

6.8.2 The parties may be ordered by the arbitral tribunal to provide any information or documents that are necessary for the preparation of the expert opinion.<sup>57</sup>

## 6.9 Confidentiality

6.9.1 Arbitrators are bound by a duty of confidentiality, which survives the termination of the arbitral proceedings. An arbitrator may only be released from his or her confidentiality obligation with the consent of the parties or under certain statutory exceptions.<sup>58</sup> The parties are not bound by such duty of confidentiality.

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<sup>53</sup> *Ibid.*, s 30(2).

<sup>54</sup> *Ibid.*, s 27(1).

<sup>55</sup> *Ibid.*, s 28(1).

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*, s 28(2).

<sup>58</sup> *Ibid.*, s 8(4).

## **6.10 Court assistance in taking evidence**

- 6.10.1 The arbitral tribunal is entitled to seek the assistance of the local courts to obtain evidence (e.g. to compel third parties to provide oral or documentary evidence).
- 6.10.2 The assistance of the local court in such cases may be sought if it is not possible for the arbitral tribunal to obtain evidence, or if obtaining the evidence by the arbitral tribunal would be more expensive or difficult than by involving the local court.<sup>59</sup>

# 7. Making of the award and termination of proceedings

## **7.1 Choice of law**

- 7.1.1 In the event that a dispute contains an international element, the arbitral tribunal must render its decision on the issues in dispute in accordance with the law agreed by the parties.<sup>60</sup> Unless otherwise agreed, the parties' agreement on the governing law refers only to the substantive law of the chosen state and not to its conflict of law rules. In the absence of an agreement between the parties on the governing law, the arbitral tribunal shall apply the law determined by the Slovakian conflict of law rules.<sup>61</sup>
- 7.1.2 Slovakian law will always govern domestic arbitral proceedings.<sup>62</sup> Domestic parties are not allowed to choose foreign law to govern their dispute. However, in all cases, the arbitral tribunal can take into account the relevant customs and trade usages.<sup>63</sup>
- 7.1.3 If the parties agree, the arbitral tribunal can also decide a dispute *ex aequo et bono*.

## **7.2 Timing, form, content and notification of the award**

- 7.2.1 The Slovakian Arbitration Act does not stipulate a time period for the rendering of an award.
- 7.2.2 An award must be made in writing and be signed by a majority of the arbitral tribunal.<sup>64</sup> The award must also contain:

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<sup>59</sup> *Ibid.*, s 27(3).

<sup>60</sup> *Ibid.*, s 5(1) and 31(1).

<sup>61</sup> *Ibid.*, s 31(1).

<sup>62</sup> *Ibid.*, s 31(2).

<sup>63</sup> *Ibid.*, s 31(3)–(4).

<sup>64</sup> *Ibid.*, s 34(1).



- the name of the arbitral institution (if any);
- the names of the arbitrators;
- the names of the parties and their representatives;
- the seat of arbitration;
- the date of the award;
- the decision of the arbitral tribunal on the issues in dispute;
- the reasons upon which the award is based (unless the parties have agreed that no grounds need to be included in the award or the award is based on a settlement agreement); and
- instructions to the parties on how to challenge the award.<sup>65</sup>

7.2.3 Any arbitrator may attach a dissenting opinion to the award which explains his or her reasons for disagreeing with the decision of the majority. In the event that a majority decision cannot be reached due to the absence of an arbitrator, the chair has a casting vote.

7.2.4 To avoid acting in excess of jurisdiction (and thereby potentially jeopardising the enforceability of the award), the arbitral tribunal must limit the scope of the award to the issues submitted to arbitration by the parties.

7.2.5 The award should contain a ruling on costs and should determine which party is obliged to pay such costs. Where the award imposes an obligation to perform an act, the arbitral tribunal shall specify a period for the performing of such act.<sup>66</sup>

7.2.6 The award must either be announced orally to the parties or it must be served on the parties.<sup>67</sup>

### **7.3 Settlement**

7.3.1 During the arbitral proceedings the parties may settle the dispute by mutual agreement. The parties may request the court to record their settlement in the form of an award.

7.3.2 Upon settlement by the parties, the arbitral tribunal shall terminate the proceedings.<sup>68</sup>

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<sup>65</sup> *Ibid*, s 34(2).

<sup>66</sup> *Ibid*, s 34(4).

<sup>67</sup> *Ibid*, s 34(3).

<sup>68</sup> *Ibid*, s 33(1). See further section 7.5 below.

#### **7.4 Power to award interest and costs**

- 7.4.1 There is no express provision in the Slovakian Arbitration Act concerning the issue of whether or not an arbitral tribunal can award interest or costs.
- 7.4.2 However, it is generally accepted that arbitral tribunals have the power to award interest, provided that such power is envisaged by the law governing the dispute. Default interest may be awarded either on a contractual basis (if so provided in the contract between the parties) or on a statutory basis.<sup>69</sup>
- 7.4.3 It is also generally accepted that the arbitral tribunal shall have the power to award the costs of the arbitral proceedings. The cost of legal representation in the arbitral proceedings is statutorily regulated.<sup>70</sup> This also applies to international arbitral proceedings.

#### **7.5 Termination of the proceedings**

- 7.5.1 The arbitral proceedings shall be terminated either by the issuance of an award, or by an order on the discontinuance of the arbitral proceedings, in the event that no award is to be issued (e.g. if the arbitral tribunal declines jurisdiction over the dispute, or if the parties conclude a settlement). The provisions governing the contents of the award (as set out in paragraph 7.2.2 above) apply equally to any resolution on discontinuance.<sup>71</sup>

#### **7.6 Effect of the award**

- 7.6.1 If the award is not subject to review, or if the time limit for lodging an application for the review of the award has expired, the award acquires the force of *res judicata*. Once an award has been properly served, it is binding on the parties in the same way as a national court decision.<sup>72</sup>

#### **7.7 Correction, clarification and issue of a supplemental award**

- 7.7.1 The arbitral tribunal (of its own motion or upon the request of a party) may correct any clerical, typographical, computational or other similar errors in the award within 30 days of the date of the award.<sup>73</sup> The non-requesting party does not need to be made aware of such request. If a party has made the request and the arbitral tribunal considers the request to be justified, it shall issue a corrected award within 30 days of receipt of the party's request.

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<sup>69</sup> Civil Code (Act No. 40/1964), s 517; and Commercial Code (Act No. 513/1991), s 369.

<sup>70</sup> Regulation of the Slovak Ministry of Justice No. 655/2004 Coll., s. 18(1), 19(3).

<sup>71</sup> Slovakian Arbitration Act, s 38(2).

<sup>72</sup> *Ibid*, s 35.

<sup>73</sup> *Ibid*, s 36(1).

- 7.7.2 Each party may likewise request the arbitral tribunal to provide an interpretation of a specific point or part of the award within 30 days of receipt of the award.<sup>74</sup> However, if the arbitral tribunal considers such a request to be justified, there is no set period for the arbitral tribunal to provide the interpretation of the award.
- 7.7.3 In addition, within 15 days of delivery of the award, each party may request an additional award on claims that had been submitted to the arbitral tribunal but omitted from the award.<sup>75</sup> The arbitral tribunal may deny such a request if it considers that it is not justified. The non-requesting party does not need to be made aware of such request. The arbitral tribunal shall, however, issue a decision about such request (either by issuing a supplemental award or by issuing a resolution denying the request).

## 8. Role of the courts

### 8.1 Jurisdiction of the courts

- 8.1.1 The Slovakian Arbitration Act specifies certain circumstances in which the Slovakian courts have the power to intervene in arbitral proceedings. In particular, the courts have jurisdiction to support the arbitral process by appointing arbitrators, granting interim measures<sup>76</sup> and assisting with the gathering of evidence. In addition, the courts play a crucial role in hearing applications relating to challenging and enforcing awards.<sup>77</sup>

### 8.2 Stay of court proceedings

- 8.2.1 A court is required to stay proceedings as soon as it becomes aware of the existence of a binding arbitration agreement. It can be made aware through an application by the respondent contesting the court's jurisdiction, which must be made, at the latest, when the respondent first contests the merits of the claim.
- 8.2.2 If both parties declare that they do not wish for the dispute to be resolved by arbitration, the court may proceed to hear the case.<sup>78</sup>
- 8.2.3 The court will also accept jurisdiction to hear a case if it establishes under Slovakian law that:

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<sup>74</sup> *Ibid*, s 36(2).

<sup>75</sup> Slovakian CCP, s 166.

<sup>76</sup> See section 8.4 below.

<sup>77</sup> Slovakian Arbitration Act, parts seven and eight.

<sup>78</sup> *Ibid*, s 2(1).

- the case is non-arbitrable;
- the arbitration agreement is invalid, inoperative or incapable of being performed;
- the claim falls outside of the jurisdiction of the arbitral tribunal; or
- the relevant arbitral institution has refused to deal with the case.<sup>79</sup>

8.2.4 Where arbitral proceedings are filed on the same issue within 30 days of an order staying the court proceedings, the legal effect of the original action shall remain unaffected (i.e. the claim is deemed to have been issued on the date of commencement of the court proceedings for the purposes of calculating the relevant limitation periods).<sup>80</sup>

8.2.5 If court proceedings are started after the commencement of arbitral proceedings and a challenge is raised as to the existence, validity or scope of the arbitration agreement, the court must stay such proceedings until the arbitral tribunal has ruled upon its own jurisdiction. If the arbitral tribunal decides that it has jurisdiction, the court must refuse jurisdiction.<sup>81</sup> The parties may later challenge the arbitral tribunal's assumption of jurisdiction by applying to the court to set aside the award for lack of jurisdiction.

### **8.3 Preliminary rulings on jurisdiction**

8.3.1 The courts do not have the power to make preliminary rulings on jurisdiction. The challenge of the jurisdiction of the arbitral tribunal shall be made within the arbitral proceedings (see paragraph 8.2.5 above). If the arbitral tribunal wrongly decides that it does have jurisdiction to hear the dispute, this may be a basis for challenging the award.

### **8.4 Interim protective measures**

8.4.1 In certain circumstances the Slovakian courts have jurisdiction to grant interim measures in support of arbitral proceedings. The local courts can grant interim measures, at the request of one of the parties, if the arbitral tribunal has not yet been constituted or, post-issuance of the award, to counter any threats to the enforcement of the award.

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<sup>79</sup> Slovakian CCP, s. 106(1).

<sup>80</sup> *Ibid.*, s. 106(2).

<sup>81</sup> *Ibid.*, s. 8, s. 104.

## 8.5 Obtaining evidence and other court assistance

8.5.1 As set out in section 6.10 above, the competent court has jurisdiction to obtain evidence upon the application of the arbitral tribunal.<sup>82</sup> The arbitral tribunal may require that the party seeking evidence provides an advance to the competent court regarding any associated fees.

# 9. Challenging and appealing an award through the courts

## 9.1 Jurisdiction of the courts

9.1.1 The Slovakian Arbitration Act provides the parties with a statutory basis to challenge the award.<sup>83</sup> The national courts have jurisdiction to decide on such a challenge.

9.1.2 The court's power to set aside an award cannot be excluded by agreement between the parties (except with respect to grounds relating to the re-opening of the case).

9.1.3 If the court sets aside an award on the basis of the arbitral tribunal's lack of jurisdiction or as a result of the invalidity of the arbitration agreement the court will assume jurisdiction and render a judgment on the subject matter of the dispute. In all other cases, the arbitration agreement remains valid and the dispute shall be submitted to a new arbitral tribunal.<sup>84</sup>

## 9.2 Appeals

9.2.1 The Slovakian Arbitration Act contains the following grounds for challenging an award that has been rendered in Slovakia:

- the subject matter of the dispute was not arbitrable;
- the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement and the party challenging the award objected to this fact before the arbitral tribunal;
- the award addressed issues that had already been determined by a previous court or arbitral tribunal;

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<sup>82</sup> Slovakian Arbitration Act, s 27(3).

<sup>83</sup> *Ibid*, part seven.

<sup>84</sup> *Ibid*, s 43(2).

- the arbitration agreement is invalid;
- a party to the arbitration was unable to present its case (e.g. was not duly represented);
- the award was rendered by an arbitrator who had been removed for bias;
- the principle of equality of the parties was violated;
- there are compelling reasons for re-opening the case (e.g. new evidence has emerged which casts serious doubt upon the correctness of the arbitral tribunal's decision); and
- the award was obtained by fraud or other criminal conduct.<sup>85</sup>

### 9.3 Applications to set aside an award

9.3.1 A party seeking to challenge an award before the Slovakian courts must do so within 30 days of being served with the award.<sup>86</sup> In the case of a challenge based on the alleged existence of compelling reasons for re-opening the case, a party has 30 days from the date upon which it became aware of the facts justifying such a challenge. However, there is a long stop of three years from the date upon which the award was rendered.<sup>87</sup>

9.3.2 The filing of an application to set aside an award does not have the automatic effect of staying the enforcement of the award. However, the court may stay the enforcement of the award upon the application of a party if it considers that immediate enforcement of the award could cause serious prejudice to that party.

## 10. Recognition and enforcement of awards

### 10.1 Domestic awards

10.1.1 A domestic award (i.e. an award issued within the territory of the Slovak Republic) that is not subject to review acquires the force of *res judicata* when served on the parties. After the expiration of the voluntary performance period set out in the award, a domestic award is enforceable in accordance with the provisions of the Slovakian CCP and Act no. 233/1995 Coll. on Court Executors and Execution Activities (**Slovakian Enforcement Act**). The enforcement of a domestic award is subject to the same conditions as court decisions.

10.1.2 The enforcement of a domestic award commences upon the filing of an execution application (together with the award) to the executor, as well as the depositing of

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<sup>85</sup> *Ibid.*, s 40(1).

<sup>86</sup> *Ibid.*, s 41(1).

<sup>87</sup> *Ibid.*, s 41(2).

an advance towards the cost of the execution procedure.<sup>88</sup> The executor may start the execution process after having received court approval, subject to notifying both parties. The court shall issue such approval if upon inspection of the application and the award it finds that the award is enforceable.

- 10.1.3 Should the party against whom execution is sought fail to object to the execution within 14 days of the notification (e.g. for inadmissibility), or the court rejects that party's challenge, the executor will issue an execution order. Based on the execution order, the executor can enforce the award against, for example, the debtor's bank accounts, property and securities.<sup>89</sup>

## 10.2 Foreign awards

- 10.2.1 Foreign awards rendered by states that are party to the New York Convention<sup>90</sup> are, in principle, enforceable in Slovakia in the same way as domestic awards.
- 10.2.2 The Slovakian Arbitration Act sets out the conditions pursuant to which a non-New York Convention foreign award may be recognised and enforced.<sup>91</sup> The party seeking the recognition and enforcement of a foreign award must file a written petition with the court making a request for the same, accompanied by the original foreign award and the original arbitration agreement (or a copy of either document that has been certified by a notary public).<sup>92</sup> If the award or the arbitration agreement is in a foreign language, the party must also produce a translation that has been certified by an official or sworn translator, diplomat or consular agent.<sup>93</sup>
- 10.2.3 Where a party has made an application to the courts of another country to set aside an award that is the subject of a Slovakian enforcement application, the Slovakian courts may stay the enforcement of that award. A foreign award is enforceable in the Slovak Republic in the same way as a domestic award.<sup>94</sup>
- 10.2.4 The recognition and enforcement of a foreign award may only be refused if:
- one of the parties to the arbitration agreement was under some incapacity;
  - the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;

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<sup>88</sup> *Ibid*, s 29 and 36.

<sup>89</sup> Slovakian Enforcement Act, part four.

<sup>90</sup> CMS Guide to Arbitration, vol II, appendix 1.1.

<sup>91</sup> Slovakian Arbitration Act, s 46 *et seq*.

<sup>92</sup> *Ibid*, s 47(1).

<sup>93</sup> *Ibid*, s 47(2).

<sup>94</sup> *Ibid*, s 46.

- the party against whom the award was made was not given proper notice of the appointment of the arbitral tribunal or of the arbitral proceedings, or could not attend the hearing for some other serious reason;
- the award decided a dispute that had not been contemplated in the arbitration agreement, or which did not fall within the terms of the arbitration agreement;
- the subject matter of the dispute was non-arbitrable;
- the arbitral tribunal was not appointed or the arbitral proceedings were not conducted in the manner that had been agreed by the parties or, in the absence of agreement by the parties on these issues, the composition of the arbitral tribunal and the conduct of the arbitral proceedings were not in accordance with the law of the country in which the arbitral proceedings took place;
- the award has not yet become binding upon the parties or has been set aside or stayed by the court of the country where, or under the law of which, the award was made; or
- the recognition and enforcement of the award would be contrary to Slovakian public policy.<sup>95</sup>

10.2.5 Any decision refusing the recognition and enforcement of an award must be reasoned and can be appealed.<sup>96</sup>

## 11. Special provisions and considerations

### 11.1 Consumers

11.1.1 The Slovakian Arbitration Act does not contain any special provisions in relation to consumers. Disputes involving consumers are arbitrable. The arbitral tribunal shall consider the consumer protection regulations when issuing an award concerning a consumer dispute. Failing to meet this requirement may be a ground to challenge the award, causing it to be set aside. An express obligation on the arbitral tribunal in this respect was incorporated into the Slovakian Arbitration Act by the latest amendment thereto.<sup>97</sup>

### 11.2 Employment law

11.2.1 Employment matters are non-arbitrable under Slovakian law.

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<sup>95</sup> *Ibid.*, s 50(1).

<sup>96</sup> *Ibid.*, s 50(3)–(4).

<sup>97</sup> Act No. 71/2009 Coll.



## 12. Concluding thoughts and themes

- 12.1.1 One of the major and undoubtedly most essential advantages offered by arbitration is the promptness of arbitral proceedings. The resolution of disputes before national courts can be slow and unpredictable. Nevertheless, arbitration is still not accepted by the public as an equal and standard alternative to the court proceedings. However, there is an increasing tendency for parties to seek to resolve their disputes through arbitration.
- 12.1.2 The resolution of disputes by arbitration offers advantages for the parties to the arbitral proceedings, as well as for the state by relieving the national courts from having to administer additional cases. Increasing the awareness of the public about this form of dispute resolution would be beneficial for achieving the desired goal of providing the prompt protection of legal rights.

## 13. Contacts

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