

VIAC CAN Newsletter for the CEE region

ARBITRATION IN SLOVENIA IN A NUTSHELL

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Despite a long tradition of arbitration in Slovenia, litigation before state courts is still a prevailing method of dispute resolution. Nevertheless, Slovenia has a modern and pro-arbitration oriented legal framework, which enables arbitration to evolve as a preferred option for resolving (at least commercial) disputes in Slovenia.

1. Where are the arbitration provisions included: Civil Code, Arbitration Act? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)? When were the arbitration provisions last amended / updated?

In 2008, Slovenia adopted a new Arbitration Act (ZArbit), which, with minor deviations, is based on the UNCITRAL Model Law and also takes into account the latest amendments to the 2006 Model Law.

2. What are the main requirements for a valid arbitration clause?

The Arbitration Act provides formal requirements of an arbitration agreement. Thus, as a rule an arbitration agreement must be in writing. However, if the arbitration agreement is contained in correspondence between the contracting parties and the information contained therein is accessible for subsequent reference (e.g. emails, WhatsApp Communication, SMS or other means of communication), it is deemed that the arbitration agreement is concluded in writing. Also, a reference in a contract to any other document containing an arbitration clause constitutes a valid arbitration agreement, provided that the reference is sufficient to make that clause part of the contract. An arbitration agreement may also be deemed to exist if the claimant submits a request for arbitration and the respondent fails to object to the competence of the arbitral tribunal in its statement of defence (or earlier).

3. Do the national arbitration rules have any particularities (e.g. mandatory provisions) that should be mentioned or emphasised?

According to the Arbitration Act parties have extensive autonomy in determining the rules of procedure, with a small number of mandatory provisions. However, the statutory provisions on judicial review of arbitral awards are mandatory. The parties cannot exclude or narrow them by agreement between the parties, nor can the limits of judicial review be extended. The parties cannot agree to narrower or broader grounds for challenging an arbitral award, nor can the parties waive in advance the right to challenge, and, on the other hand, they cannot agree that the arbitral award will not have the effect of *res judicata* on the parties.

4. Is an arbitral award immediately enforceable if the place of jurisdiction is in that country? What about foreign arbitral awards? How long does it usually take to enforce a foreign award?

No, domestic arbitral awards are not immediately enforceable. The Arbitration Act introduced a special procedure for the enforcement of domestic arbitral awards. Therefore, enforceability of domestic arbitral awards is subject to prior decision on the enforceability by the competent court (i.e., District Court in Ljubljana). The application for the enforcement may be rejected only on a very limited grounds (i.e. if the subject matter is not arbitrable or if it is against public policy).

Enforcement of foreign arbitral awards is not regulated in the Arbitration Act, which directly refers in this respect to the regulation in the New York Convention. Also, foreign arbitral awards have binding effect only when the District Court in Ljubljana recognizes them.

In practice it (generally) takes up to three months to enforce a foreign arbitral award in Slovenia.

5. What court decides on an annulment claim and how many instances are there? How broad are the grounds for annulment? What is the success rate of annulment claims?

Adjudication on an annulment claim is in exclusive competence of the District Court in Ljubljana, whose decision may be appealed with the Supreme Court whereas any extraordinary measures are excluded. Grounds for annulment of the award are limited to:

- invalidity of arbitration agreement or incapacity of parties to conclude an arbitration agreement;
- breach of the right to be heard, e.g. party was not given proper notice of the appointment of an arbitration or of the arbitral proceeding;
- award deals with a dispute not covered by the arbitration agreement or deals with issues outside its scope (in such case award can be partially annulled)
- improper composition or non-compliance of procedure with the agreement of the parties;
- inarbitrability of the subject matter (*ex officio ground for annulment*);
- award violates public policy (*ex officio ground for annulment*).
- additional grounds for annulment in cases of labour or consumer arbitration proceedings.

Due to the limited grounds for annulment to mostly procedural matters and review of the merits reserved to the inarbitrability or violation of public policy, the success rate of annulment claims is low.

6. What national arbitration institution is the most important, and which foreign arbitral institution is the preferred institution?

The most important national arbitration is the Ljubljana Arbitration Centre at the Chamber of Commerce and Industry of Slovenia (LAC), which operates autonomously and independently while providing arbitral platform for resolution of both domestic and international disputes pursuant to the Ljubljana arbitration rules (LAR).

Preferred foreign arbitration institutions are either Vienna Arbitration Centre (VIAC) or ICC International Court of Arbitration, however in recent years we acknowledge that parties (domestic and foreign) increasingly choose VIAC as the preferred foreign arbitration institution.