



Arbitration Guide
IBA Arbitration Committee

**CZECH
REPUBLIC**
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I. Background

- (i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

Arbitration is considered an alternative to court proceedings and is used in both business-to-business and business-to-consumer contexts. Its use is prevalent in more sophisticated business transactions. The principal advantage is that arbitration generally takes less time than ordinary court proceedings.

- (ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?**

Most arbitration is institutional and domestic. The most commonly used institution is the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic (the 'Arbitration Court'). The 2015 Rules of the Arbitration Court apply to both domestic and international disputes. The court has separate rules for consumer disputes and on-line arbitration. The court also operates as the dispute resolution provider for .eu domain names. There are also arbitration courts attached to the commodity and stock exchanges. Arbitration under the rules of the ICC, LCIA and VIAC is also used, especially in large domestic disputes or international disputes involving Czech and foreign entities.

- (iii) What types of disputes are typically arbitrated?**

Arbitration is mostly used in complex transactions in areas such as construction, M&A, energy and to some extent in banking. It is also widely used in international disputes.

- (iv) How long do arbitral proceedings usually last in your country?**

The length of proceedings can vary considerably. Commercial arbitrations usually take about a year (not including post-arbitration proceedings such as an action to set aside). The 2015 Rules of the Arbitration Court offer two-month or four-month fast-track arbitration for a 75 or 50 per cent respective increase of the normal administrative fees.

- (v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

Foreign nationals may act as counsel in arbitrations seated in the Czech Republic. However, for legal counsel who repeatedly represent clients in arbitrations in the Czech Republic, the Act No. 85/1996 on the Legal Profession would arguably

apply, requiring admission to the bar in the Czech Republic or another EU member state.

Foreign nationals may also serve as arbitrators if they have full legal capacity under the law of their nationality. Unlike Czech judges, foreign judges may serve as arbitrators.

II. Arbitration Laws

- (i) **What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

The main governing law is the Act No. 216/1994 on Arbitral Proceedings and on Execution of Arbitral Awards as amended (the 'Arbitration Act'). It applies to both domestic and international arbitrations based on arbitration agreements concluded after 1 January 1995. (For arbitration agreements concluded before this date, the old 1963 Arbitration Act applies.) The Arbitration Act is not based on the UNCITRAL Model Law. Some provisions are similar but there are many differences as well (among others, arbitrators cannot issue interim measures, the number of arbitrators must be odd, etc.).

The Civil Procedure Code (Act No. 99/1963 as amended) comes into play in cases where state courts intervene in support of arbitration (appointment of arbitrators, assistance with taking of evidence) or in their control role (setting-aside proceedings). The Arbitration Act also provides that the Civil Procedure Code has a supplemental role in governing arbitral proceedings when the Arbitration Act is silent, subject to the applicable institutional arbitration rules (eg Rules of the Arbitration Court). In practice, as a result of the supplemental role of the Civil Procedure Code, typical arbitral proceedings in the Czech Republic are more influenced by civil procedure rules than is common in major arbitration jurisdictions.

The recognition and enforcement of foreign awards is governed by the New York Convention if an award was issued in a contracting state to the said convention. In other cases, the Act No. 91/2012 on Private International Law (the 'PIL Act'), which entered into force on 1 January 2014, applies. The PIL Act also governs other issues arising in disputes with an international element such as choice of law questions. (Note that the former Private International Law Act No. 97/1963 continues to apply to most legal acts before 1 January 2014.)

- (ii) **Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

No, the Arbitration Act does not have different provisions for domestic and international arbitration.

- (iii) **What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

The 1958 New York Convention came into force in the former Czechoslovakia on 10 October 1959, and in the Czech Republic (its successor state) on 1 January 1993. The reciprocity reservation under Art. I(3) of the convention applies. The former Czechoslovakia ratified the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards on 18 September 1931 and the Czech Republic on 9 February 1996. The 1961 European Convention on International Commercial Arbitration came into force in the former Czechoslovakia on 11 February 1964, and in the Czech Republic on 1 January 1993. The 1965 Washington Convention came into force in the Czech Republic on 22 April 1994. The 1994 Energy Charter Treaty came into force in the Czech Republic on 16 April 1998.

- (iv) **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?**

The Arbitration Act only states that arbitrators apply substantive applicable law and can decide *ex aequo et bono* only pursuant to an express agreement of the parties. The PIL Act expressly states that the applicable law is the substantive law chosen by the parties and if such choice was not made, the conflict of laws provisions of the PIL Act are to be applied, subject to applicable European law (eg Rome I Regulation No. 593/2008 on the law applicable to contractual obligations) and international conventions.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

An arbitration agreement must be in writing. The Arbitration Act permits the conclusion of an arbitration agreement by electronic means when the content of the agreement and the parties to it can be clearly determined. The Arbitration Act states that an arbitration agreement can be part of general terms and conditions governing the main contract except in cases of consumer disputes. When an arbitral agreement is part of the general terms and conditions, the Arbitration Act requires that the main contract must be concluded in a way that makes clear that the other party agreed with the arbitration agreement. The Arbitration Act contains more detailed formal requirements for arbitration agreements concluded with consumers. In international disputes, the PIL Act states that the formal

requirements of the place of the conclusion of an arbitration agreement must be satisfied.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

Czech courts generally enforce arbitration agreements without any complications. An arbitral agreement will not be enforced if the subject matter of the dispute is non-arbitrable under Czech law. (For a more detailed discussion of arbitrability see Section IV(i) below.) The PIL Act states that arbitrability is considered in light of Czech law. It then states that other requirements are considered under the law of the seat of arbitration. Therefore, if arbitration takes place in the Czech Republic, courts will not enforce an arbitral agreement if it is not valid or is non-existent pursuant to the Arbitration Act and Czech contract law.

- (iii) **Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are enforceable. They might appear in some complex commercial transactions but there are not common. Multi-tier clauses usually refer to negotiation rather than to mediation prior the start of arbitration.

- (iv) **What are the requirements for a valid multi-party arbitration agreement?**

The Arbitration Act is silent on multi-party arbitration agreements but there are no reasons why they should not be valid. The Arbitration Act does not discuss the appointment of arbitrators in cases of multiple claimants or defendants. In multi-party disputes, it is recommended to choose institutional arbitration as the arbitration rules of the various institutions usually address appointment procedure in multi-party disputes. For example, the 2015 Rules of the Arbitration Court provide that if multiple claimants or defendants cannot agree on a single arbitrator, the president of the Arbitration Court will appoint one.

- (v) **Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

The Arbitration Act does not discuss such situation. Arbitration clauses conferring on one of the parties a unilateral right to arbitrate are not recommended as it is not certain that they would be upheld by the Czech state courts. They were held unenforceable in other civil law jurisdictions (eg Bulgaria, Germany and Russia).

- (vi) **May arbitration agreements bind non-signatories? If so, under what circumstances?**

The Arbitration Act allows an arbitration agreement to bind non-signatories only in case of legal succession except when the parties agree otherwise. A parent company or subsidiary that did not sign an arbitration agreement is not bound by it.

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Only property disputes, which could be otherwise heard by Czech courts, can be submitted to arbitration. Property disputes can be broadly defined as disputes concerning property rights that can be valued in monetary terms. Property disputes include for example money claims as well as disputes over the existence of pecuniary obligations. By contrast, disputes related to family law are not arbitrable. Insolvency disputes are also outside the scope of arbitration. The final decision on arbitrability belongs to state courts. Arbitrability is a matter of jurisdiction.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If court proceedings are initiated despite an arbitration agreement, the party insisting on an arbitration agreement must raise the objection at its first procedural action in the proceedings; otherwise the objection is considered waived. If the court finds the arbitration agreement valid, it will refer the parties to arbitration and terminate the court proceedings. For statute of limitations purposes, if the court declines jurisdiction and arbitration is started within 30 days from the issuance of the court decision, the action is deemed to be filed at the date of the original court filing.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

The Arbitration Act contains the principle of competence-competence (ie arbitrators decide their own jurisdiction). The law also provides that the parties

must raise an objection to the arbitral tribunal's jurisdiction in their first action in the proceedings; otherwise the objection is waived. (This requirement does not apply to consumer disputes.)

If the respondent objects to the arbitral tribunal's jurisdiction in a state court after an arbitration has started, the state court will stay its proceedings until the arbitral tribunal decides on its jurisdiction. If, however, an objection to the arbitral tribunal's jurisdiction is filed in a state court before the start of the arbitration, the state court will decide if there is a valid arbitral agreement.

The 2015 Rules of the Arbitration Court also provide that the arbitral tribunal decides its own jurisdiction. However, if the arbitrators decide they lack jurisdiction, within 15 days the parties can request the board of the Arbitration Court to review the arbitrators' decision. If the board finds that the arbitral tribunal has jurisdiction, the arbitral tribunal is bound by the board's ruling and must continue the proceedings.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

The Arbitration Act states that the parties can agree on the number and appointment procedure for arbitrators in their arbitral agreement or in the arbitration rules they chose. However, the number of arbitrators must be odd. The default procedure under the Arbitration Act is an arbitral tribunal composed of three arbitrators; each party selects one arbitrator and the two arbitrators select the chairman. If a party does not choose its arbitrator within 30 days or if the two co-arbitrators cannot agree within the same period on the chairman, the respective arbitrator is appointed at the request of a party or any arbitrator by a state court. If an arbitrator resigns or can no longer fulfil his duties, a state court appoints a new arbitrator unless the parties agreed otherwise. Under the 2015 Rules of the Arbitration Court, the appointing authority is the president of the Arbitration Court.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

An arbitrator is disqualified from the proceedings if there is a reason to doubt his impartiality, taking into account his relationship to the subject matter of the dispute, the parties or their representatives. An arbitrator to be appointed or nominated must disclose to the parties or to the court all the circumstances which could raise justified doubts about his impartiality and for which he could be disqualified. (There are more detailed disclosure requirements applying in consumer disputes.) If such circumstances arise or are discovered later in the proceedings, the arbitrator must resign. If he does not resign and the parties do not

agree on his resignation, a party can apply to a state court to disqualify the respective arbitrator. Under the 2015 Rules of the Arbitration Court, the two remaining arbitrators decide on any challenge. If they cannot agree or two arbitrators are challenged, the board of the Arbitration Court decides on the challenge.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Czech nationals can serve as arbitrators if they are at least 18 years old, enjoy legal capacity and have a clean criminal record. In the case of foreign nationals, the only requirement for serving as an arbitrator is to have full legal capacity under the law of their nationality. There is not any official code of ethics for arbitrators. In arbitrations under the auspices of the Arbitration Court only arbitrators registered on its list of arbitrators can serve as arbitrators (though the board of the Arbitration Court may register a co-arbitrator on an ad hoc basis only for the given dispute). The Ministry of Justice maintains a list of arbitrators who can serve in consumer disputes.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

No, there are no specific rules or codes of conduct concerning conflicts of interest for arbitrators. The IBA Guidelines on Conflicts of Interest in International Arbitration are not followed.

VI. Interim Measures

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

In arbitrations seated in the Czech Republic, arbitrators cannot order interim measures.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

The Arbitration Act states that if enforcement of an arbitral award is endangered, a state court on a request of any party can order interim measures before the start or during the arbitral proceedings.

- (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

State courts will provide evidentiary assistance to an arbitral tribunal upon request in cases in which the arbitral tribunal does not have the power to order the required action. For example, arbitral tribunals do not have the power under the Arbitration Act to compel a witness to appear or order document production from the parties or third parties. In such cases, the tribunal must request assistance from a state court. The costs of the state court related to such assistance are to be paid by the arbitral institution or the arbitral tribunal (and ultimately by the parties).

VII. Disclosure/Discovery

- (i) **What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

The Arbitration Act states that an arbitral tribunal can examine witnesses, experts and parties only if they voluntarily appear. The arbitral tribunal can only examine evidence provided to it voluntarily. Each party introduces evidence to prove its claims. To obtain document production from another party, the arbitral tribunal must apply to the state court; therefore, it is rarely used.

- (ii) **What, if any, limits are there on the permissible scope of disclosure or discovery?**

Any disclosure is limited to what the parties voluntarily produce. To compel any document production, the arbitral tribunal must seek assistance from state courts (see Section VI(iii) above).

- (iii) **Are there special rules for handling electronically stored information?**

No, there are not special rules for handling electronically stored information.

VIII. Confidentiality

- (i) **Are arbitrations confidential? What are the rules regarding confidentiality?**

The Arbitration Act states that arbitral proceedings are always not public. It further imposes a duty of confidentiality on arbitrators encompassing all information they learned when exercising their function. The parties can agree to relieve arbitrators of their duty of confidentiality. A state court can relieve arbitrators of their duty of confidentiality only upon a showing of compelling reasons.

- (ii) **Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

The Arbitration Act does not contain provisions as to the arbitral tribunal's power to protect trade secrets and confidential information.

- (iii) **Are there any provisions in your arbitration law as to rules of privilege?**

The Arbitration Act does not contain provisions as to rules of privilege.

IX. Evidence and Hearings

- (i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

It is not common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration (the 'IBA Rules') to govern arbitration proceedings. The IBA Rules are not applied, nor is guidance from them sought. This lack of use might be explained by the fact that the IBA Rules remain generally unknown.

- (ii) **Are there any limits to arbitral tribunals' discretion to govern the hearings?**

The Arbitration Act states that the parties can agree on how arbitral proceedings are conducted including by adopting arbitration rules. The parties could therefore theoretically agree to limit the arbitral tribunal's discretion with respect to the conduct of the hearings. If the parties do not agree on an arbitral procedure, then the Arbitration Act states that arbitrators may conduct the proceedings in a manner they consider appropriate, subject to the principle of equality of the parties. The Arbitration Act requires a hearing unless otherwise agreed by the parties. The Arbitration Act does not specifically address a procedure to follow during hearings; however, the arbitral tribunal's discretion is surely limited by compliance with the principle of equality of parties and the right to be heard.

- (iii) **How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

Written witness statements are not used in court proceedings. They can be used in arbitral proceedings but it is not common. The normal practice is for witnesses to appear at a hearing. Cross examination and direct examination, in the common-law sense, are not common. Arbitrators usually question witnesses, while also allowing the parties to ask witnesses questions.

- (iv) **Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

There are not any particular rules on who can or cannot appear as a witness in an arbitration. There are not any mandatory rules on oath or affirmation in arbitral proceedings.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?**

The testimony of a witness specially connected with one of the parties is possible but in practice arbitrators tend to give it less weight.

- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Expert testimony is presented as a written report and the expert also appears at the hearing where he can be questioned by the arbitrators and parties. The Act No. 36/1967 on experts and interpreters requires each court-appointed expert to be impartial; otherwise he can be disqualified by the court that appointed him.

- (vii) **Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

Court-appointed experts come from a list of experts of the particular regional court or from expert and science institutions and universities. Arbitral tribunals do not have the power to appoint experts from the court list, but they can ask state courts to make such appointment. Expert reports introduced by the parties are considered normal evidence. With the parties' agreement to cover the costs, an arbitral tribunal could also appoint an expert who is not on the court list. The expert reports based on the arbitral tribunal's appointment are given more weight than reports introduced by the parties.

- (viii) **Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

Witness conferencing is not used. There are no specific legal provisions in this respect.

- (ix) **Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

No, there are not any rules or requirements as to the use of arbitral secretaries. Their use is not common.

X. Awards

- (i) **Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

An arbitral award must be adopted by the majority of arbitrators, issued in writing and signed by at least the majority of arbitrators. The operative part of the award must be definite. Awards must contain the reasoning unless otherwise agreed by the parties. If arbitrators order relief not requested by one of the parties or order a party to do something which is impossible or illegal under Czech law, it is a ground to set aside the award.

- (ii) **Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

In arbitrations seated in the Czech Republic, arbitrators could arguably award punitive or exemplary damages if the applicable law would allow it. However, there is no case law on whether such award would be upheld in setting-aside proceedings. A 2014 decision of the Czech Supreme Court opened the possibility for the recognition of a foreign award awarding punitive damages if such damages are proportional.

Interest is governed by substantive applicable law. Under Czech law, arbitrators can award interest on the claim. An award of compound interest is also possible.

- (iii) **Are interim or partial awards enforceable?**

The Arbitration Act does not discuss types of awards. Interim and partial awards are possible but not commonly used.

- (iv) **Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

Dissenting opinions are allowed but not common. The Arbitration Act does not particularly mention them. If an award was not reached unanimously, the 2015 Rules of the Arbitration Court require non-public minutes of voting that are accessible by the board of the Arbitration Court but not by the parties.

- (v) **Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

The Arbitration Act expressly allows awards by consent but it does not discuss them in further detail. Arbitral proceedings are terminated by an award or by a resolution. The Arbitration Act states that if arbitrators find that they lack jurisdiction, their decision is in the form of a resolution. Such resolution could be also used, for example, when the case is withdrawn before an award is rendered. The formal requirements for resolutions are the same as for arbitral awards (see Section X(i) above).

- (vi) **What powers, if any, do arbitrators have to correct or interpret an award?**

Typographical errors, calculation errors and other obvious errors in an arbitral award may be corrected by the arbitrators or by the permanent arbitral institutions at any time upon application by any party. Such correction must be made in the same manner as an arbitral award (ie in writing, decided and signed by the majority of arbitrators and delivered to the parties).

XI. Costs

- (i) **Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

The costs of arbitration are usually borne by the losing party, or by both parties in proportion to their success in the proceedings.

- (ii) **What are the elements of costs that are typically awarded?**

Administrative costs (the arbitrators' fees, the institution's fees and other specific costs incurred by arbitrators) are typically awarded. The parties will bear their own legal costs. Sometimes a partial recovery of legal costs is awarded. In the latter case, the amount of recovered legal costs is usually calculated in arbitration according to the Decree No. 484/2000, which is used to calculate recovery of legal costs in judicial proceedings. The parties may adopt arbitration rules with different provisions on how legal costs should be reimbursed.

- (iii) **Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

The Arbitration Act does not discuss the tribunal's power to decide on its own costs. The costs and expenses of the arbitral tribunal are usually governed by the applicable arbitration rules.

- (iv) **Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

Arbitral tribunals have the discretion to apportion the costs between the parties; the costs are usually split in proportion to the parties' relative success in the proceedings.

- (v) **Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

Courts review an arbitral award if an action to set aside the award or an action to enforce the award is launched. The Arbitration Act does not contain a specific ground allowing courts to review the tribunal's decision on costs.

XII. Challenges to Awards

- (i) **How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

A party can bring a challenge to an arbitral award in a state court within three months of its receipt of the award. The grounds for setting aside are: (i) the subject matter of the dispute is not arbitrable; (ii) the arbitration agreement is invalid for other reasons, has been terminated or does not cover the dispute at hand; (iii) the tribunal included an arbitrator who was not authorised by the arbitral agreement or otherwise did not have the capacity to act as arbitrator; (iv) the arbitral award was not approved by the majority of the arbitrators; (v) there was a violation of the right to be heard; (vi) the arbitral award orders relief not requested by one of the parties or orders a party to do something which is impossible or illegal under Czech law; and (vii) there are grounds to request the reopening of proceedings under the Civil Procedure Code (eg discovery of new evidence which could lead to a materially better outcome for one of the parties). There are additional grounds applicable only in arbitrations with consumers. The Arbitration Act expressly states that grounds (ii) and (iii) will be rejected by the court if the party had an opportunity to raise them during the arbitral proceedings but did not do so.

The duration of challenge proceedings may vary significantly from a few months to a year at the first instance. The first instance decision can be appealed and the appeal might take another year. In some circumstances, an additional extraordinary appeal to the Supreme Court is available (eg in case of a new issue of high importance). An appeal to the Supreme Court can add another two years of proceedings.

The challenge proceedings do not stay the enforcement proceedings. However, the court can stay the execution of the arbitral award based upon an application of the party against which the enforcement is sought if there is a risk of serious harm of the rights of that party by an immediate execution of the award or if the action to set aside seems to be well grounded.

- (ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

No, parties cannot waive the right to challenge an arbitration award.

- (iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

No, arbitral awards cannot be appealed in state courts. However, the Arbitration Act allows parties to agree in their arbitration agreement on an appeal to a second arbitral tribunal, which can confirm or modify the initial award. A party must commence such an appeal within 30 days from the reception of the initial award.

- (iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

No, state courts cannot remand an award to the tribunal.

XIII. Recognition and Enforcement of Awards

- (i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

In cases where the parties did not agree on a review by another tribunal or where the time to file a request for such review expired, a domestic arbitral award is enforceable. An action to enforce is filed at a state court. If the party against which the court ordered the execution of the arbitral award did not file an application for the setting aside of the arbitral award, it may still file an application to vacate the court's order to execute the arbitral award if (i) the subject matter of the dispute is not arbitrable; (ii) the arbitral award was not approved by the majority of the arbitrators; (iii) the arbitral tribunal orders relief not requested by one of the parties or orders a party to do something which is impossible or illegal under Czech law; (iv) the party, who must have a legal representative, did not have a representative in the proceedings or the party's representative performed acts not later approved by the party; and (v) the person who represented the party in the arbitral proceedings was not empowered to do so and his actions were not later approved by the party.

If an application is filed to vacate the court's order to execute the arbitral award, the court that ordered the execution of the arbitral award suspends the proceedings on the execution of the arbitral award and orders the party to file an application for the setting aside of the arbitral award with the competent court within 30 days. If no such application is filed within the required time period, the court recommences the proceedings on the execution of the arbitral award.

In cases of foreign awards issued in a contracting state to the New York Convention, the convention governs the recognition and enforcement proceedings. Foreign awards issued in countries which are not parties to the New York Convention are enforced on the basis of reciprocity. If the reciprocity condition is satisfied, a Czech court refuses to enforce a foreign award only if (i) the award is not effective and enforceable under the law of the country where it was issued; (ii) the award was annulled under the law of the country where it was issued; (iii) the award suffers from one of the defects which are grounds to set aside domestic awards (see Section XII(i) above); or (iv) the award is contrary to public policy.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Enforcement of an award might be conducted through state courts or through private licensed court executors. In both scenarios, a court must approve the enforcement of the award. In the first scenario, the court will decide against which assets the award will be executed. In the second, the court confirms the appointment of a private executor. The second procedure is usually more cost efficient and faster. However, the second procedure (ie private licensed court executors) is not available for enforcement of foreign awards.

(iii) Are conservatory measures available pending enforcement of the award?

Interim measures are available pending the enforcement of the award pursuant to the provisions of the Civil Procedure Code.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Courts generally enforce arbitral awards without complications. The PIL Act states that awards annulled under the law of the country where they were issued will not be enforced.

- (v) **How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

The duration of enforcement varies greatly. Enforcement through private executors is generally faster than through state courts. The statute of limitations for enforcement of arbitral awards is ten years.

XIV. Sovereign Immunity

- (i) **Do state parties enjoy immunities in your jurisdiction? Under what conditions?**

Sovereign immunity is governed by the Act No. 91/2012 on Private International Law. Foreign states and their property enjoy immunity of jurisdiction and immunity of execution when acting to pursue their governmental functions (*acta iure imperii*). These immunities do not apply in other cases (*acta iure gestionis*) to the extent international law or international agreements allow an action against the respective state at the courts of another state. The Act also expressly provides for diplomatic immunity applied in accordance with international conventions, international law and Czech law. The Czech Republic signed and ratified the 2004 UN Convention on Jurisdictional Immunities of States and Their Property, which has not entered into effect due to the insufficient number of contracting parties.

- (ii) **Are there any special rules that apply to the enforcement of an award against a state or state entity?**

Arbitral awards cannot be enforced against foreign states when their property is used to pursue governmental functions (*acta iure imperii*) or when the property is covered by diplomatic immunity. The enforcement of arbitral awards against the Czech Republic and its state organs is possible (see Act No. 219/2000 on the Czech Republic's property and its representation in legal relations).

XV. Investment Treaty Arbitration

- (i) **Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

The 1965 Washington Convention came into force in the Czech Republic on 22 April 1994. The 1994 Energy Charter Treaty came into force in the Czech Republic on 16 April 1998.

- (ii) **Has your country entered into bilateral investment treaties with other countries?**

The Czech Republic has entered into bilateral investment treaties with more than 80 countries. The Czech Republic has terminated some of them in recent years and is in the process of renegotiating others.

XVI. Resources

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

Alexander Bělohávek, *ZÁKON O ROZHODČÍM ŘÍZENÍ A O VÝKONU ROZHODČÍCH NÁLEZŮ. KOMENTÁŘ* (C.H. Beck, 2012).

Martin Maisner, Miloš Olík, Radek Pokorný, Petr Málek, Martin Janoušek, *ZÁKON O ROZHODČÍM ŘÍZENÍ A O VÝKONU ROZHODČÍCH NÁLEZŮ* (Č. 216/1994 Sb.) – *KOMENTÁŘ* (Wolters Kluwer CR, 2015).

Luděk Lisse, *PŘEHLED JUDIKATURY VE VĚCECH ROZHODČÍHO ŘÍZENÍ* (Wolters Kluwer CR, 2011).

Naděžda Rozehnalová, *ROZHODČÍ ŘÍZENÍ V MEZINÁRODNÍM OBCHODNÍM A VNITROSTÁTNÍM STYKU* (Wolters Kluwer CR, 2013).

- (ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

Investment Treaty Arbitration Conference organised by the Ministry of Finance of the Czech Republic, Prague, October each year.

XVII. Trends and Developments

- (i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

Yes, arbitration has become a real alternative to court proceedings in international and complex commercial disputes.

- (ii) **What are the trends in relation to other ADR procedures, such as mediation?**

In 2012, a new Act No. 202/2012 on Mediation (the ‘Mediation Act’) was adopted. It introduced a registration of mediators at the Ministry of Justice. To be registered, a mediator has to have a clean record, a graduate university diploma and must have passed an exam. The new law regulates formal requirements of an agreement to mediate and an agreement resulting from a successful mediation as

well as their legal effects. Mediation outside the framework of the Mediation Act is still possible; however, such mediation will not benefit from legal effects given by the new law for mediation provided by registered mediators. The adoption of the new mediation law shows a growing interest in this ADR procedure in the Czech Republic.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

In 2012, an amendment to the Arbitration Act came into force that was intended to increase the protection of consumers in arbitrations with businesses. On 1 January 2014, the new PIL Act entered into force. It reduces requirements for foreign nationals to serve as arbitrators. It also contains conflict of laws rules and governs the recognition and enforcement of awards when the New York Convention does not apply. In 2016, the Supreme Court precluded the use of private licensed court executors for enforcement of foreign awards. Given that the private executors are considered significantly more efficient than state courts, it is a major setback for creditors seeking to enforce foreign awards in the Czech Republic.