Arbitration Guide
IBA Arbitration Committee

CROATIA

(Updated January 2018)

Lucia Močibob
Mario Vrdoljak
Dalibor Valinčić

Wolf Theiss
Ivana Lučića 2a/19
Zagreb
Croatia

dalibor.valincic@wolftheiss.com
luka.tadic-colic@wolftheiss.com

TABLE OF CONTENTS

I. Background

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

State court litigation is still the predominant means of resolving disputes in Croatia. Arbitration is mostly used for settlement of commercial disputes, in particular international disputes. Popularity of arbitration is, however, growing significantly.

The main advantages of arbitration seen by the users in Croatia are the higher level of professionalism of arbitral tribunals, speed, flexibility of proceedings and neutrality. Costs are perceived as the main disadvantage. This applies especially to small and medium size enterprises. Arbitration is mainly seen as a dispute resolution method for larger companies.

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

Institutional arbitration in Croatia is the predominant form of arbitration and, as mentioned above, it is more frequently used in international disputes.

There is one major arbitration institution in Croatia, the Permanent Arbitration Court at the Croatian Chamber of Economy (PAC-CCE). Arbitrations administered by the PAC-CCE are governed by the PAC-CCE Rules of International Arbitration (the 'Zagreb Rules') which adhere largely to the provisions of the UNCITRAL Arbitration Rules.

(iii) What types of disputes are typically arbitrated?

Typically, arbitration is used for resolving construction disputes in the wider sense, including also infrastructure projects, disputes among shareholders in joint ventures, post – M&A disputes and different forms of sale and purchase agreements.

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

The usual duration of arbitration proceedings is between one to three years. The Zagreb Rules require that the arbitration proceedings are concluded within one year, with the possibility of extension due to valid reasons.

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

The Croatian Arbitration Act (the 'Arbitration Act') provides an explicit rule that nationality is irrelevant for appointment as an arbitrator, but the parties can agree otherwise.

In arbitration proceedings conducted under the Zagreb Rules there are no restrictions on the nationality of arbitrators or counsel. However, in case the arbitrators are appointed by the appointing authority, the latter will consider appointing an arbitrator who does not have the same nationality as the parties.

According to the Croatian Attorneys' Act, parties may be represented in international arbitrations by foreign attorneys registered with their local bars.

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?

Arbitration proceedings in Croatia are governed by the Croatian Arbitration Act which is based on the UNCITRAL Model Law. The Arbitration Act considers that any arbitration seated in Croatia is a domestic arbitration. The Arbitration Act applies, as such, also to disputes with an international element – *i.e.* those where at least one of the parties is a foreign person or a foreign legal entity – if the seat is in Croatia. The Arbitration Act also contains rules on recognition and enforcement of foreign arbitral awards.

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

Croatian law distinguishes between domestic arbitration and foreign arbitration, depending on the seat of arbitration. It further distinguishes between arbitration with or without an international element. The parties may choose foreign arbitration, *i.e.*, arbitration having its seat outside Croatia, only if at least one party is domiciled in or established under the laws of a foreign country, unless it is provided by law that such a dispute may be subject only to the jurisdiction of a court in the Republic of Croatia.

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

Croatia is party to the New York Convention, the Washington Convention, the European Convention on International Commercial Arbitration, the Geneva Convention on the Execution of Foreign Arbitral Awards, the Geneva Protocol on Arbitration Clauses and the the Energy Charter Treaty.

(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?

Yes. Under the Arbitration Act, the arbitral tribunal decides on the merits of the dispute applying the law chosen by the parties. If the parties fail to decide on the applicable law, the arbitral tribunal applies the law which it considers to be most closely connected with the dispute.

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?

The arbitration agreement must be in writing. An arbitration agreement is deemed to satisfy the written form requirement if it is contained in documents signed by the parties or in an exchange of letters, telex, faxes, telegrams or other means of communication which provide a record of the agreement, irrespective of whether these are signed by the parties or not. Also, it is considered that an arbitration agreement is concluded in writing if:

- it is contained in one party's offer, provided that no objection was raised against such offer, and provided that such failure to object, according to usages in the particular business, may be considered to constitute acceptance of the offer;

- if, after an orally concluded arbitration agreement, a party communicates to the other a written communication, relying on the arbitration agreement concluded earlier in the oral form, and the other party fails to object, and such failure, according to usages in the particular business, may be considered to constitute acceptance of the offer.

The reference in a contract to a document containing an arbitration clause (*i.e.* general terms of a contract, text of another agreement, etc.) constitutes an arbitration agreement provided that the reference is such as to make that clause part of the contract. Also, issuance of a bill of lading, if the latter contains an express reference to an arbitration clause in a charter party, will constitute a valid arbitration agreement.

In consumer contracts, an arbitration agreement must be contained in a separate document signed by both parties comprising no agreements other than the reference to arbitration. This requirement is deemed to be waived if the agreement was drawn up by a notary public.

Other that the usual points in arbitration agreements, *e.g.*, reference to procedural rules, seat or language, it is recommended to include instructions on how the parties will be served in arbitration because Croatian courts do not grant assistance in service of documents.

(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?

The approach of the courts towards the enforcement of arbitration agreements is mostly arbitration friendly. According to the Arbitration Act, if the parties have agreed to submit a dispute to arbitration, upon the respondent's objection, the state court before which the same dispute was brought will deny jurisdiction, annul all actions taken in the proceedings and reject the statement of claim, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

The validity of an arbitration agreement can be challenged under the rules of contract law, such as fraud, duress, etc. However, any such defect must relate specifically and precisely to the agreement to arbitrate independently from the principal agreement. The fact that a principal agreement is invalid will not necessarily invalidate the arbitration agreement.

(iii) Are multi-tier clauses (e.g. 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?

Although multi-tiered dispute resolution clauses are used in practice, there is no publicly available case law dealing directly with the enforcement of such clauses. To the best of our knowledge, there are no precedents by which a court or an arbitral tribunal (i) found that the prior stages would constitute 'conditions precedent' to initiating arbitration, refusing to allow arbitration to proceed either by way of rejecting the claim or by staying the proceedings, or (ii) held that the prior steps are irrelevant for initiating arbitration and continuing the proceedings notwithstanding the fact that the prior steps agreed to in the clause were not undertaken.

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

Multi-party arbitration agreements fall under the same validity conditions as arbitration agreements (please see Section III, Point (i) above).

In cases of several claimants or respondents, the Zagreb Rules provide that they have to previously agree on the appointment of the same arbitrator. If they fail to do so, the arbitrator will be appointed by the appointing authority agreed on by the parties, and in default of such agreement, the president of the Arbitration Court will chose the relevant arbitrator from the list of arbitrators.

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

There are no specific provisions in the Arbitration Act referring to one party's unilateral right to arbitrate. In that sense, one party's unilateral right to arbitration should be enforceable as long as there is an agreement between the parties to that effect.

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

In general, arbitration agreements only bind signatories. However, in accordance with the Croatian Companies Act and the Obligations Act, non-signatories may be, in circumstances such as succession or contractual assignment, bound by an arbitration agreement. There is, however, no case law confirming or denying this.

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?

In domestic arbitration (seated in Croatia) parties have a rather wide discretion on which disputes may be subject to arbitration. All claims that the parties may freely dispose of can be submitted to arbitration. Public law disputes, such as disputes involving criminal, administrative or family law matters, certain types of claims related to insolvency proceedings, antitrust disputes that are conducted before the Croatian Competition Agency are not arbitrable.

If the parties decide to seat the arbitration outside Croatia, then exclusive jurisdiction of Croatian courts will limit the arbitrability. Those are disputes such as disputes over ownership and other real estate property rights, or disputes related to insolvency proceedings.

Both the arbitration tribunal and the court can decide whether the dispute is capable of being submitted to arbitration. The courts usually decide on that matter as a part of enforcement of the award or within proceedings for setting aside of the award.

The lack of arbitrability is deemed to be 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 the parties have agreed to submit a dispute to arbitration, upon the respondent's objection, the court before which the same matter between the same parties was brought will deny its jurisdiction to hear the dispute, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. The respondent may raise the objection no later than at the preparatory hearing, and if no preparatory hearing is held, then at the main hearing before the end of the presentation of the statement of defense.

If a dispute for which arbitration has been agreed upon has been brought before a court, arbitration proceedings may nevertheless be commenced or continued if they were already commenced and an award may be made while the issue is still pending before the court.

(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 arbitral tribunal may rule on its own jurisdiction. For that purpose, *competence-competence* is applicable in Croatia.

Pursuant to the Arbitration Act, the plea that the arbitral tribunal does not have jurisdiction can be raised no later than the submission of the statement of defense in which the respondent raised issues related to the substance of the dispute. The arbitral tribunal may rule on a plea as a preliminary question or in an award on the merits:

- If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request the court to revise the tribunal's decision. While such request is pending, the arbitral tribunal may continue the arbitral proceedings and render an award;

- If the arbitral tribunal rules on that matter with an award on the merits then the party may file an application for setting aside the arbitral award.

V. Selection of Arbitrators

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

The parties are free to agree on the procedure for appointing the arbitrator(s). Accordingly, any applicable institutional rules agreed on by the parties which prescribe a procedure and time limit for the appointment of the arbitral tribunal will override the Arbitration Act. If there is no agreement between the parties as to the appointment procedure, the default procedure of the Arbitration Act will apply:

- If the arbitral tribunal is to consist of a sole arbitrator, the parties will jointly appoint the arbitrator (there is no provision as to the deadline for this appointment);

- If the arbitral tribunal is to consist of three arbitrators, each party will appoint one arbitrator no later than 30 days after service of a request in writing by either party to do so and the two arbitrators so appointed will then appoint a third arbitrator as the Chairman of the arbitral tribunal;

- Nevertheless, any party to the arbitration agreement may, upon notice to the other parties or the failure of the other party to act within the given timeframe, request an appointing authority to appoint the missing arbitrator(s). If the parties fail to agree upon the appointing authority, this role will be performed by the Chief Judge of the Zagreb Commercial Court for commercial disputes, and the Zagreb County Court for non-commercial disputes.

If the parties chose the Zagreb Rules to govern the arbitration procedure, the Secretariat of the Arbitration Court will take over the responsibilities of appointing authority.

(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?

When a potential candidate is approached in connection with his or her possible appointment as an arbitrator, he or she is requested to disclose any circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, must without delay disclose any such circumstances to the parties unless they have been previously informed of them.

An arbitrator may be challenged if existing circumstances give rise to justifiable doubts as to his/her independence or impartiality. A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for

reasons that occurred after the appointment, or for reasons of which it becomes aware after the appointment has been made.

Unless the parties have agreed otherwise, the challenging party may, within 30 days after having received the notice on rejection of the challenge from the tribunal, or if the arbitral tribunal does not decide on the challenge within 30 days after the challenge was made, request the appointing authority to decide upon the challenge. While such request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the proceedings and render an award.

For arbitration proceedings conducted under the Zagreb Rules, if there are circumstances which justifiably bring into question the independence and impartiality of an arbitrator, the President of the Arbitration Court will remove him/her at the request of one of the parties. A party may seek the removal of an arbitrator appointed by the challenging party or in whose appointment it participated only if the reason for the removal and the party's knowledge of it occurred after the arbitrator was appointed.

(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?

Under the Arbitration Act, there are no limitations as to who may serve as an arbitrator, unless any particular requirements have been agreed upon by the parties. However, sitting judges of state courts can only be appointed as chairmen or as sole arbitrators.

The ethical duties of arbitrators in general consist of their obligation to disclose any circumstances likely to give rise to doubt as to their impartiality or independence. An arbitrator has a duty to conduct the proceedings expeditiously and with due care.

(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 are usually taken into consideration.

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?

Unless otherwise agreed by the parties, an arbitral tribunal may, upon a request by a party, order such interim or protective measures (against the other party(ies) to the arbitration agreement) as the arbitral tribunal may consider necessary in respect of the subject matter of the proceedings. The party that has requested such measures may also apply to the competent national court for the enforcement of such measures.

The Zagreb Rules lists examples of interim measures that may be ordered by an arbitral tribunal, such as:

- ordering certain actions to maintain or establish a certain status quo for the duration of arbitration proceedings;
- forbidding a party to take certain actions;
- allowing one of the parties to take certain actions in order to preserve the current status quo or reinstate an earlier state of affairs, depending on the issue in dispute;
- ordering the seizure of certain items and entrusting them to the custody of the applicant or third party;
- regulating relations between the parties on a temporary basis;
- ordering a party to post bond as a precondition to order or not to order another interim measure, or as a means of increasing the efficiency of other measures ordered or as a security out of which the applicant could recover his or her claim, including costs; and
- ordering and carrying out securing of evidence.

According to the Arbitration Act, an interim measure is given in the form of an order, while pursuant to the Zagreb Rules they are issued in the form of an award.

(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?

A party to arbitral proceedings may apply to a court for granting interim measures for protection of its claim. The Arbitration Act expressly states that it is not incompatible with an arbitration agreement for a party to request from a court and for a court to grant, before or during arbitral proceedings, an interim measure for protection of claim. The granting of interim measures by a state court is governed by Croatian enforcement laws. The court ordered provisional relief will remain in force even after constitution of the arbitral tribunal.

(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?

Under the Arbitration Act, the arbitral tribunal or a party with the approval of the arbitral tribunal may request assistance from a competent court in taking evidence which the arbitral tribunal itself could not take. The arbitrators are entitled to participate in the procedure of taking evidence before a commissioned judge and put questions to persons being examined.

VII. Disclosure/Discovery

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

Croatian procedural law in general does not recognize discovery procedure or disclosure of documents. As a consequence, an arbitral tribunal seated in Croatia does not have statutory power to compel the parties to comply with such an order. As a consequence, the parties in general bear a burden of identifying and collecting evidence in support of their cases.

In specific circumstances this issue can be dealt with shifting the burden of proof or drawing adverse inferences against a party that is intentionally withholding relevant documentation. However, application for such remedies depends on the creativity of a tribunal and it has rather limited practical effects.

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

Not applicable.

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

No.

VIII. Confidentiality

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

The Arbitration Act prescribes that, unless the parties agree otherwise, the arbitration proceedings are confidential. Under the Zagreb Rules, exclusion of the public is also prescribed. Save for the aforementioned, neither the Arbitration Act nor the Zagreb Rules provide further specific rules governing confidentiality issues.

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

Neither the Arbitration Act nor the Zagreb Rules contain specific provisions on protection of trade secrets and confidential information.

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

Neither the Arbitration Act nor the Zagreb Rules contain specific provisions on 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?

The IBA Rules on the Taking of Evidence in International Arbitration are sometimes taken into consideration, but one could not say that is a standard in arbitrations in Croatia.

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

The Arbitration Act provides the arbitrator only with the general obligation to conduct arbitration proceedings in due time and undertake measures on time in order to avoid any delay of proceedings. The parties have to be treated equally and they have the right to respond to the claims and allegations of their opponent.

(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?

Witnesses are generally heard at hearings without taking an oath. If the witnesses agree, they can be heard outside the hearings. The arbitral tribunal may request that witnesses answer the questions in writing.

Pursuant to the Zagreb Rules, parties are free to agree on the rules regarding witness testimony. In the absence of such rules, the arbitral tribunal is free to determine which rules will be applied.

Cross examinations coupled with written witness statements are slowly becoming a more frequent feature of arbitration proceedings. Arbitrators do question witnesses, but usually only after the parties' counsel.

(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 no specific rules on who can or cannot appear as a witness. Witnesses are examined without taking an oath.

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

Neither the Arbitration Act nor the Zagreb Rules provide relevant specific provisions.

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

Under the Arbitration Act, unless otherwise agreed on by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert will, after delivery of their written or oral report, participate in a hearing where the parties will have the opportunity to put forward questions to the expert. Provisions on the independence and impartiality of arbitrators apply in the same manner to the expert witnesses.

(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?

The arbitral tribunal has the authority to appoint experts at its discretion. The evidence provided by the expert appointed by the arbitral tribunal should be considered to have the same weight as the evidence provided by the party-appointed experts. It is very common that tribunals appoint experts besides or even instead of party appointed experts. There is no obligation to appoint an expert from a particular list, however the parties may agree otherwise.

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

Witness conferencing is very rarely used.

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

There are no particular rules governing the involvement of arbitral secretaries and they are still rarely used.

On the more general side, in case of application of the Zagreb Rules before the PAC-CCE, the Arbitration Court Secretary will be in charge of administering the

arbitration proceedings. In that sense, the Arbitration Court Secretary administers the constitution of the tribunal, prepares the work of the presidency and chairman of the tribunal and executes their decisions.

X. Awards

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

The award must be made in writing. The award must state the reasons on which it is based, unless (i) the parties have agreed that reasons are not required, or (ii) if the award is given on the basis of a settlement. It should also contain the date of the award and the seat of the arbitration.

Also, the award must be signed by all of the arbitrators. In cases of more than one arbitrator, where one arbitrator fails to sign the award, the majority of arbitrators (including the chair) will sign the award and note the reason for the missing signature(s) on the award. Each party has the right to receive a copy of the award signed by the arbitrators.

There are no limitations on the types of permissible relief.

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

The Arbitration Act has no provisions on the types of remedies sought in arbitral proceedings. The remedies are in general governed by the substantive law chosen by the parties, and there are no strict limits on the types of remedies sought in arbitration. Croatian law does not recognize concepts of punitive or exemplary damages.

(iii) Are interim or partial awards enforceable?

Interim or partial awards are in general enforceable.

(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 possible, but Croatian arbitration law does not provide for any rules governing dissenting arbitrator opinions.

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

The parties may conclude a settlement during the arbitral proceedings and may choose between two options, namely (i) they may request that the arbitral tribunal terminate the proceedings, or (ii) render an award on the agreed terms (which has the same effect as an award on the merits of the case). In the latter case, the arbitral tribunal must verify that the content of the settlement is in accordance with Croatian public policy.

In addition to the settlement and the award, arbitration proceedings may be terminated by an order of the arbitral tribunal when:

- the claimant withdraws the claim, unless the respondent contests the withdrawal and the tribunal finds that the respondent has a legal interest in having the matter resolved by a final award;
- the parties decide to terminate the proceedings; or
- the arbitral tribunal finds it is unnecessary or impossible to carry on with the proceedings for any other important reason.

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

The arbitrators may correct clerical mistakes, computational, typographical or similar errors, either on their own initiative or at the request of any of the parties within 30 days of receipt of the award (unless otherwise agreed by the parties).

Interpretations or corrections are considered to be part of the award itself.

Furthermore, if they so agree, each party can request an interpretation of the award (or specific parts of it) by the arbitrators within 30 days of receipt of the award. On the other hand, if the parties do not agree otherwise, each of them can request the issuance of an additional award within 30 days of receipt of the award concerning asserted claims not yet decided by the award. In both cases, the other party must be notified of any such request by the requesting party.

XI. Costs

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

The arbitral tribunal decides which party will bear the costs of arbitration. In most cases, the unsuccessful party will bear the costs. However, the arbitral tribunal decides on the costs of arbitration according to its free evaluation, taking into account all aspects of the case. Therefore, it is possible and it sometimes happens

that the successful party bears the costs or does not get reimbursed for costs of its legal representation.

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

Costs that are typically awarded are: (i) arbitrators' fees and expenses, (ii) administrative fees, (iii) attorneys' fees, (iv) costs incurred by the parties and (v) witnesses costs.

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

If an arbitrator has determined the amount of his/her expenses and fees, his/her decision does not bind the parties unless they accept it. If the parties do not accept this decision, the expenses and fees will be determined, upon request of an arbitrator or of a party, by the appointing authority. The decision made by the appointing authority is directly enforceable.

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

The arbitral tribunal may apportion the costs between the parties based on its discretionary decision.

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

Courts do not have the power to review the arbitral 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?

Arbitral awards may only be challenged before the competent court, by filing a claim to set aside the award.

There are limited grounds for challenging an award, which in general follow the grounds for refusing recognition and enforcement under the New York Convention. The Arbitration Act distinguishes between the grounds which must be proven by the requesting party and grounds which the court has to take into

consideration even if a party has not raised them. The grounds to be proven by a party are:

- no arbitration agreement has been concluded, or the agreement is invalid;
- the parties to the arbitration agreement were under some incapacity, or were not adequately represented;
- a party was not given proper notice of the commencement of the arbitration proceedings, or was unable to present its case due to reasons beyond its control;
- the award concerns a dispute not contemplated by, or not falling within the terms of the arbitration agreement, or contains issues beyond the scope of the arbitration agreement;
- the composition of the arbitral authority or the arbitral procedure was not in accordance with the law, or the agreement of the parties;
- the award does not adequately or appropriately state the reasoning (unless this has been waived by the parties), or the award is not signed.

The grounds reviewed *ex officio* by the court are:

- the subject-matter of the dispute is not arbitrable under the laws of the Republic of Croatia; or,
- the award violates the public policy of the Republic of Croatia.

If expressly agreed by the parties in the arbitration agreement, the award may be challenged if a party learns of new facts or is able to produce new evidence that would lead to a more favorable outcome for the party concerned had they been presented during the proceedings. This applies solely if the party was unable to present these facts or the evidence in previous proceedings for reasons beyond its control.

The application to set aside the award must be filed within three months of receipt of the award or subsequent additional award.

The challenge procedure usually takes approximately three years and it does not automatically stay the enforcement proceedings. However, when deciding on enforcement of an award, the court can, if it considers it appropriate, stay the enforcement until the termination of the proceedings for setting aside, and may, upon request of the party seeking enforcement, condition the termination with appropriate security given by the other party.

(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?

The 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.

(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?

The court, when asked to set aside an award, may, where appropriate and if so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings, or to take such other actions as in the arbitral tribunal's opinion could eliminate the grounds for its setting aside.

Also, the Arbitration Act provides for the possibility of the arbitral tribunal to reconsider a case even after the state court has rendered a decision on setting aide of the award. Namely, if it finds it possible and appropriate, after setting aside an award, the court may refer the case to the arbitral tribunal for reconsideration. This can be done by the court only on the basis of a party request.

According to legal theory, the decision on setting aside the award has the effect of bringing the procedure to the phase before the award has been passed, that is, it should be deemed that the award was never brought about. In that sense, a new arbitration on the basis of the same arbitration agreement is possible.

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?

When deciding on the recognition and enforcement of the award, the procedure for domestic awards differs from the one prescribed for foreign awards.

Enforcement of a domestic award can only be denied in cases of non-arbitrability of the matter in dispute or breach of public policy (please see Section XI, Point (i) above).

The parties may oppose recognition and enforcement of a foreign award and the court will not grant the recognition and enforcement if there are grounds for setting aside of the award or if:

- the court finds that the award is not yet binding on the parties; or
- the court at the place of arbitration or in the country whose law applies to the dispute has set aside the award or delayed its entry into effect.

Courts have discretionary power to stay enforcement of an award if immediate enforcement, until the defenses raised by the party opposing the enforcement are decided upon, would cause irreparable harm.

The competent court for recognition and enforcement of awards in non-commercial disputes is the County Court in Zagreb or, in case of commercial disputes, the Commercial Court in Zagreb.

The request for the recognition or enforcement of an arbitral award must be supported by the original or a certified copy of the arbitral award and by the original or a certified copy of the arbitration agreement, along with certified translations into Croatian of documents in foreign languages. The court may request an explanation from the arbitral tribunal, the parties or persons with whom the award has been deposed.

(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?

Domestic awards do not need to undergo the exequatur procedure; instead, enforcement can be initiated directly.

In respect of foreign awards, it is necessary to obtain an exequatur before the enforcement procedure. However, the recognition and the enforcement can be conducted simultaneously in one procedure whereas the recognition will be solved as a preliminary question and have effect only in the case at hand. After the decision on the enforcement is rendered, depending of the relief granted in the award, an adequate enforcement will be conducted (the procedure differs for money claims, real estate, etc.).

After the decision on the enforcement has been rendered, a party may file an appeal with the court. The appeal does not stay the enforcement.

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

After the passing of the award, the parties may request conservatory measures on the basis of the Croatian Enforcement Act. The prerequisites for a conservatory

measure to be ordered depend on the type and subject matter of the measure. Generally, for monetary claims, a conservatory measure will be ordered if the applicant presents an arguable case that its claim is founded and that there is a material threat of frustration of enforcement of the award by dissipation of assets by the opponent. The conservatory measures can be ordered in the form of prohibition of the disposal of assets, prohibition of undertaking of certain activities, deposit of cash, etc..

(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?

Croatian courts have traditionally been enforcement friendly and there were very few examples of denial of enforcements. However, foreign awards set aside by the courts at the place of arbitration are unlikely be recognized in Croatia, provided that the opposing party has brought this to the attention of the court.

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

It usually takes from one to six months until a decision on recognition and enforcement is rendered in the first instance. In case of an appeal, the procedure may additionally take from four months to one year.

The duration of enforcement proceedings depends mainly on whether the debtor has enforceable assets and whether enforcement measures are opposed by the debtor.

XIV. Sovereign Immunity

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

Foreigners and foreign states and international organizations can assert immunity from jurisdiction in civil court proceedings in Croatia, in accordance with the rules of international law.

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

Enforcement of an award against the Republic of Croatia in Croatia is not generally subject to any special rules. However, enforcement of an award over the assets of another state located in Croatia is subject to prior approval of the Minister of Justice made in accordance with the previously obtained opinion of

the Minister of Foreign and European Affairs, unless the debtor state agreed to the enforcement proceedings.

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?

Yes, Croatia is a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. Croatia is also a party to the Energy Charter Treaty.

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

Croatia has 59 signed bilateral investment treaties with other countries.

XVI. Resources

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

With regards to regulations, the main documents to consult are the Arbitration Act and the Zagreb Rules. In addition, there is the commentary on Croatian arbitration law, *Croatian Law on Arbitration: Commentary about the Law on arbitration and other sources of Croatian arbitration law* (2007), written by law professors Siniša Triva and Alan Uzelac.

(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?

The Permanent Court of Arbitration at the Croatian Chamber of Economy organizes the annual international conference Croatian Arbitration Days each December where trends in arbitration, challenges for the parties and quality of the arbitration service are discussed.

XVII. Trends and Developments

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

Arbitration is often considered as an alternative in international disputes. However, in relations involving exclusively Croatian entities, parties still mainly rely on court proceedings.

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

In the recent year, mediation has been highly promoted in Croatia both by state courts and by the newly formed mediation centers. It is mainly used in civil, commercial, labor and family disputes. It is common for parties to a dispute to engage in mediation, however, mediation rarely results in an agreement between the parties.

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

In 2017, the Croatian Parliament enacted the Act on Alternative Consumer Dispute Resolution, implementing the relevant EU legislation and introducing alternative methods on out-of-court resolutions of contractual disputes between consumers and traders. Under this new Act, consumers can initiate proceedings before the Court of Honour at the CCE against all traders having their seat in Croatia for violation of public morals and good business practices, even if such disputes contain cross-border elements.

The initial reaction of traders shows a general aversion towards this alternative dispute resolution platform and it remains to be seen how these legal developments will affect contractual disputes between consumers and traders.