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IBA ARBITRATION COMMITTEE

Arbitration Guide

MONTENEGRO

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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 as a method of dispute resolution has not yet fully taken root in Montenegro. The Chamber of Commerce of Montenegro continuously works on promoting arbitration agreements both among business entities and state bodies and institutions. In August 2015, the Montenegrin Arbitration Law ('MAL') entered into force, and in the same year, the Arbitration Rules before the Arbitral Court of the Chamber of Commerce of Montenegro ('Arbitration Rules') were adopted, last revised in December 2023.

The main advantages of arbitration include confidentiality and the broad possibility of recognition and enforcement of arbitral awards. Other perceived advantages of arbitration are high autonomy of the parties in regulating issues related to the arbitration proceedings, simplicity of the procedure and cost-effectiveness.

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

Institutional arbitrations are led more commonly than ad hoc arbitrations. Also, international arbitrations are more frequent than the domestic ones. The most commonly used institutions and rules are the Arbitral Court of the Chamber of Commerce of Montenegro, VIAC Rules, UNCITRAL Rules and ICC Rules.

(iii) What types of disputes are typically arbitrated?

Contractual disputes arising out of commercial agreements are typically arbitrated.

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

The formal requirement set by the Arbitration Rules of the Arbitral Court of the Chamber of Commerce of Montenegro is that the arbitral tribunal shall render the arbitral award within six months as of the date the case is submitted to the arbitral tribunal.

In order to achieve greater efficiency, special rules for expedited arbitration proceedings, which the parties can agree upon, are also provided. The key characteristic of expedited proceedings is that there is a limited number of submissions that parties can make (after the submission of the statement of defence, the parties shall, as a rule, be entitled to submit one further written submission; any counterclaim or claim for the purpose of a set-off shall already be raised in the statement of defence), the time limits set by the arbitral tribunal for submitting written submissions shall, as a rule, not be longer than 15 days, all written communications and notifications are sent electronically and after the oral hearing has been held, no further written submissions shall be made.

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

There are no restrictions in respect of foreign nationals acting as counsel or arbitrators in arbitrations in the Montenegrin jurisdiction.

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 Montenegro are regulated by the MAL, adopted in 2015, which is based on the UNCITRAL Model Law.

The MAL applies in the same manner to both domestic and international arbitration proceedings.

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

There is no distinction between domestic and international arbitrations within the MAL or Arbitration Rules.

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

Montenegro ratified the New York Convention in 2006, while the Washington Convention was ratified in 2013.

- (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 MAL provides that in the absence of a choice of substantive law by the parties, the arbitral tribunal will apply conflict of law rules it deems applicable, ie the substantive law to which they refer (two-tier approach). The Arbitration Rules provide that the arbitral tribunal will apply substantive law it considers appropriate (single-tier approach).

The arbitral tribunal decides based on the principles of fairness (*ex aequo et bono*) only if expressly authorised by the parties. In deciding, the arbitral tribunal will act in accordance with the provisions of the arbitration agreement and will take into account the business customs relevant to the transaction in connection with which the dispute subject to arbitration arose.

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 and meet the formal requirements specified in the MAL. Such an agreement may take the form of a standalone agreement, or an arbitration clause incorporated into a contract between the parties concerning a legal transaction between them.

The MAL stipulates that an arbitration agreement has been concluded in writing if:

- It is contained in documents signed by the parties or has been reached through an exchange of messages via communication methods that provide a written record of the parties' agreement, regardless whether those messages have been signed by the parties;

- Following an orally concluded arbitration agreement, one party sends a written notice to the other party referring to the previously concluded oral agreement, and the other party does not object to the contents of the received notice in a timely manner; this constitutes acceptance of the offer according to common business practice;
- The parties make a reference in a written contract to another document containing an arbitration agreement (such as general terms of business, general terms for the conclusion of a legal transaction, the text of another agreement, etc), provided that the purpose of such reference is to incorporate the arbitration agreement into the main contract;
- A bill of lading expressly refers to an arbitration clause in a charter party; or
- The claimant initiates arbitral proceedings in writing, and the respondent expressly accepts arbitration and agrees to it in writing or in a statement made on the record at the hearing or participates in arbitral proceedings without denying the existence of the arbitration agreement or objecting to the jurisdiction of the arbitral tribunal before raising issues related to the substance of the dispute.

(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?

Parties are advised to include one of the standard arbitration clauses in their agreement. As a reason for setting aside the award, the MAL recognises the situation when arbitration agreement has not been concluded or is not valid under the law the parties agreed on or under the law of Montenegro in case parties have not agreed differently.

(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 not commonly used. The court practice is short of cases regulating this situation.

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

Multi-party arbitration agreements are not regulated either by the MAL or by the Arbitration Rules.

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

An agreement conferring unilateral right to arbitrate on one of the parties is not enforceable.

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

Neither MAL nor the Arbitration Rules regulate this situation. We are not aware of any case where this situation has been discussed.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The court practice in Montenegro is short of such cases.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

The MAL stipulates that in absence of the agreement between the parties, the place where the award had been rendered is considered as a seat of arbitration. The Arbitration Rules stipulate that in absence of the agreement between the parties, the seat of arbitration is in Podgorica. Examinations shall be conducted where the seat of arbitration is, while the arbitral tribunal can deliberate wherever it deems appropriate.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

Blockchain and NFT-related disputes typically involve commercial transactions, contractual agreements, intellectual property or ownership issues. Given their commercial nature, these disputes are generally considered arbitrable in Montenegro. Legislation does not explicitly exclude blockchain or NFT disputes from arbitration.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

The court practice is short of such cases.

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?

The arbitral tribunal decides on its jurisdiction (competence-competence) and on all objections relating to the existence or validity of the arbitration agreement, including whether a dispute could be referred to arbitration. The lack of arbitrability should be considered as a matter of jurisdiction.

Montenegrin legislation does not provide a *numerus clausus* list of matters that are not arbitrable. The matter is arbitrable unless otherwise prescribed in another law.

Some of the non-arbitrable disputes recognised in court practice would be the following:

- Disputes arising within or in relation to the insolvency proceedings;
- Disputes related to property rights or lease of real estate located in Montenegro;
- Certain corporate disputes – eg disputes about withdrawal of share capital and restitution of part of share capital; and
- Disputes about registration or validity of a patent, trademark, industrial design or similar rights to be deposited or registered, ie disputes that may affect third-party interests.

(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 previously concluded an arbitration agreement, upon objection by a party, the court to which the claim has been submitted in the same dispute, between the same parties, shall decline jurisdiction, set aside the proceedings conducted in the case and dismiss the claim, unless it finds that the arbitration agreement is not valid, has expired, or cannot be implemented.

The parties are eligible to an objection not later than in the response to the claim. The parties do waive their right to arbitrate by participating in court proceedings.

(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 MAL prescribes that the arbitral tribunal is competent to decide on its own jurisdiction (the principle of competence-competence). The arbitral tribunal shall have regard to its own jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement.

The objection that the arbitral tribunal lacks jurisdiction must be raised by the defendant not later than with the submission of the response to the claim. The arbitral tribunal may decide on the objection as a preliminary question or in the arbitral award.

If the arbitral tribunal decides on jurisdictional objections as a preliminary question, each party may, within 30 days as of the date of receipt of the decision, request from the court to decide on the matter. There is no appeal against the court's decision.

V. Selection of Arbitrators

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

The arbitrators, as well as their number, shall be decided by the parties by mutual agreement within 30 days as of the date when one party invites the other party to jointly appoint an arbitrator.

If the parties do not mutually appoint a sole arbitrator, the appointment shall be made by a legal entity or an individual designated by the parties by agreement. If no such designation has been made by the parties or if the appointing authority fails to appoint a sole arbitrator, the decision on the appointment shall be made by the court.

Arbitration may be conducted by a sole arbitrator or a panel of arbitrators, and if a panel is provided for, the number of arbitrators must be odd. If the parties do not determine the number of arbitrators, the arbitral tribunal shall consist of three arbitrators. The presiding arbitrator of the arbitral tribunal shall be chosen by the appointed arbitrators within 30 days as of the date of their appointment.

(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?

Under the Arbitration Rules, upon nomination, the arbitrator must submit a signed declaration to the secretariat, confirming acceptance, availability, impartiality and independence. This declaration should disclose any circumstances that may raise justifiable doubts about their impartiality or independence. The secretariat will then send copies of the declaration to the parties and the other arbitrators, setting a deadline for any comments.

Under MAL, if the parties do not agree on challenging an arbitrator or if the request for challenging an arbitrator is rejected, the challenging party may submit such a request to the court, within 30 days as of the date of receipt of the decision rejecting the challenge. The decision by the court on the request for challenging an arbitrator shall be subject to no appeal. The arbitral tribunal may continue the arbitral proceedings and render the award even if the procedure upon the request for challenging an arbitrator is pending.

(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?

The ethical principles and rules of conduct for arbitrators are regulated by the Code of Ethics for Arbitrators, which applies to the proceedings before the Arbitral Court of the Chamber of Commerce of Montenegro.

An arbitrator may accept appointment only if he/she is capable of fulfilling his/her duty impartially and within a reasonable time frame. An arbitrator may accept appointment only if he/she possesses the necessary knowledge of the law applicable to the proceedings and the law governing the merits of the dispute, and only if he/she is proficient in the language of the arbitration.

After the conclusion of the arbitration proceedings, the arbitrator and persons related to him/her must not advise or represent any of the parties to the dispute in legal matters related in any way to the subject matter of the arbitration proceedings.

(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?

Yes, there are. An arbitrator must be independent of the parties to the proceedings. Before accepting the appointment, the arbitrator is obliged to inform the parties of the circumstances that may raise doubts about their impartiality, including:

- if he/she is currently employed or has been employed by one of the parties;
- if he/she has performed any tasks or received any instructions from any of the parties;
- if he/she has any confidential information concerning the subject matter of the dispute, obtained from sources outside the arbitration proceedings;
- if he/she has a direct or indirect financial interest related to the resolution of the dispute.

If the arbitrator suspects that circumstances have arisen subsequently that may affect his/her independence, he/she is obliged to immediately suspend work on the case. If the arbitrator believes that he/she is unable to decide impartially in the proceedings, he/she must not accept the appointment, even if both parties agree to the appointment.

VI. Interim Measures and Emergency Arbitration

(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?

If the parties have not otherwise agreed, the arbitral tribunal may, at the request of a party, order interim measures. Interim measures are issued in the form of a decision or in another form. Before rendering a final arbitral award, the arbitral tribunal may, by interim measure, order a party to:

- preserve or restore the status quo pending determination of the dispute;
- take action that would prevent or refrain from taking action that is likely to cause current or future harm or prejudice to the arbitral proceedings;
- preserve assets out of which a subsequent award may be satisfied;
- preserve evidence that may be relevant and material to the resolution of the dispute.

The arbitral tribunal may modify, suspend or terminate interim measures at the request of any party. In exceptional circumstances, the arbitral tribunal may, on its own initiative and after prior notice to the parties, modify, suspend or terminate interim measures.

The party requesting the issuance of interim measures is responsible for all costs and damages caused to the other party as a result of such measures if the arbitral tribunal later determines that the issuance of interim measures was unnecessary.

A provisional measure issued by an arbitral tribunal, regardless of the state in which the provisional measure was issued, shall be recognised and enforced based on a court decision. Before which recognition or enforcement of the provisional measure is sought, the court may, if it deems necessary, order the party seeking such recognition or enforcement to provide appropriate security, if the arbitral tribunal has not already ruled on security or when it is necessary to protect the rights of third parties.

When determining interim measures in arbitral proceedings, the court shall act in accordance with the rules of enforcement and security procedures, regardless whether the seat of the arbitral tribunal is located in Montenegro, taking into account the specifics of international arbitration.

(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?

Courts may grant provisional relief in support of arbitration. Such measures may be requested before or during arbitral proceedings. Provisional relief will remain in force after the constitution of the arbitral tribunal.

Provisional relief may be granted if the applicant has made the existence of the claim probable and there is a risk that, without such a relief, the opposing party will prevent or significantly hinder the collection of the claim by alienating, concealing or otherwise disposing of their assets or funds. The applicant does not need to prove the risk if they make it probable that the proposed relief would cause only insignificant harm to the opposing party. It is presumed that the risk exists if the claim is to be enforced abroad.

The courts may, at the request of the applicant, order provisional relief even if the existence of the claim and the risk have not been made probable, provided that the applicant deposits an amount determined by the court as security for the damage that could be caused to the opposing party by the ordering and enforcement of the provisional relief.

(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?

The court is competent to provide assistance to the arbitral tribunal, such as deciding on the appointment of arbitrators, objections to the jurisdiction of the arbitral tribunal, the delivery of the decision, deciding on the action for setting aside the arbitral award, and the request for recognition of a foreign arbitral award or interim measure.

(iv) Are decisions by emergency arbitrators enforceable in your country?

Yes, they are enforceable.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

If the parties have agreed to arbitrate a particular dispute, upon objection by a party, the court to which the claim has been submitted declines the jurisdiction, sets aside the proceedings conducted in the case and dismisses the claim, unless it finds that the arbitration agreement is not valid, has expired or cannot be performed. The objection may be raised by a party not later than in the response to the claim. The MAL expressly stipulates that in matters relating to arbitration, no court shall intervene except where so provided in the law.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

The MAL provides that legal assistance in taking evidence and service of a foreign arbitral award may be provided by a competent court. The competent court shall be the court with subject matter jurisdiction for the provision of the requested legal assistance.

VII. Disclosure/Discovery

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

The general obligation of a party is to present the evidence that supports its case. The arbitral tribunal shall assess the permissibility, relevance, importance and plausibility of each piece of evidence. During the proceedings, the arbitral tribunal may ask the party to submit the following within a certain deadline:

- List of presented evidence and facts supported by such evidence;
- Submissions, documents or other evidence, the arbitral tribunal considers to be relevant for rendering of the arbitral award.

The arbitral tribunal has the discretion to decide on requests for production of documents and tribunals are likely to consult the IBA Rules on the Taking of Evidence in International Arbitration to determine the materiality and relevance of evidence, and scope and extent of document production.

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

There are no limits; all issues related to the scope of disclosure or discovery will be decided by the arbitral tribunal at its absolute discretion.

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

There are no special rules for handling electronically stored information.

VIII. Confidentiality

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

Yes, they are, unless the parties agree otherwise. The Arbitration Rules provide that if the parties have not expressly agreed otherwise, the arbitral tribunal, arbitrators and emergency arbitrator are obliged to maintain the confidentiality of the proceedings, the arbitral award, decisions and other rulings of the arbitral tribunal. This obligation also applies to experts appointed by the arbitral tribunal and members of the Presidency and the Secretariat.

If the parties have not expressly agreed otherwise, they are obliged to maintain the confidentiality of the arbitral awards, decisions and other rulings of the arbitral tribunal, as well as all the documents submitted by either party in the proceedings that are not publicly available, except to the extent and scope in which a party is required to disclose them or disclosure is necessary to protect or enforce its rights or to execute or set aside an arbitral award before a regular court.

Deliberations of the arbitral tribunal are confidential. The arbitral tribunal may publish the arbitral award, decisions and other rulings of the arbitral tribunal and the arbitral tribunal in professional publications, in an anonymous form that does not allow the identification of the parties and other individuals, unless any party objects in writing within 60 days of their issuance.

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

There is no provision regulating this issue.

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

There is no provision regulating this issue.

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?

Commonly, the parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings. Commonly, rules are generally adopted.

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

The arbitral tribunal is obliged to allow each party to present its views and evidence, and to comment on the actions and proposals of the opposing party. If one of the parties requests an oral hearing, the arbitral tribunal will hold a hearing, unless the parties have agreed to exclude an oral hearing. Parties must be promptly informed of any oral hearing, as well as of any arbitral tribunal meeting held to inspect goods, other items, or documents. All submissions, documents, and other information submitted by one party to the arbitral tribunal are communicated to the other party. Once the case is submitted to it, the arbitral tribunal promptly defines the procedural timetable in consultation with the parties.

(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?

The use of witness statements with cross-examinations are common, including oral direct examinations.

The arbitral tribunal shall determine the manner and order of hearing witnesses by the parties. The arbitral tribunal may decide that witnesses appointed by the parties shall not be present during the testimony of other witnesses or experts. The arbitral tribunal may order witness testimony to be provided by means of telecommunication.

After consulting with the parties, the arbitral tribunal may order that the testimony shall be submitted in writing and signed, prior to the oral hearing and within a time period determined by the arbitral tribunal.

Every witness whose testimony a party relies on shall attend the hearings for questioning (also by arbitrators) unless the arbitral tribunal decides otherwise in exceptional circumstances.

(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 arbitration-specific rules regarding who can appear as a witness. The general rules of the Civil Procedure Act will apply *mutatis mutandis*. A person cannot be questioned as a witness if he or she is under a confidentiality undertaking – one cannot witness upon a fact he/she found out as a proxy, religious confessor, or as an attorney, doctor, or other when performing his/her duty in case a duty of confidentiality exists; he or she would incriminate himself or herself or a close relative; or he or she is under a confidentiality undertaking for state, professional or military secret and no waiver was granted in that respect. The legal instruments of oath or affirmation are not recognised in Montenegro.

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

There is no such difference.

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

Experts are usually asked to present their opinion in writing. If presented during an oral hearing, expert testimony is presented orally or via telecommunication.

Experts should be impartial and independent of the parties and should have no interest in how the case is finally decided.

(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?

It is not common for the arbitral tribunals to appoint experts beside those that may have been appointed by the parties; however, this is regulated in a manner that in the absence of an agreement by the parties, the arbitral tribunal can:

- Appoint one or more experts from whom it will request a report and opinion on designated issues.
- Require a party to provide the expert with all relevant information, submit important documents, goods, or other items, and grant the expert access to documents, goods and other items.

Unless the parties have agreed otherwise, the expert is obliged, if requested by a party or deemed necessary by the arbitral tribunal, to participate in an oral hearing after submitting a written or oral report and opinion. During the hearing, the parties have the opportunity to question the expert or bring in other experts to discuss disputed issues. The arbitral tribunal may order the questioning of experts through telecommunication means (audio or video conference). There are no requirements for the experts to be chosen from a particular list.

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

Hot tubbing is not commonly 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?

The arbitral tribunal can propose a candidate for the position of administrative secretary of the arbitral tribunal to the Arbitral Court at any time during the proceedings. The appointment is subject to the approval of the parties.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

The ethical principles and rules of conduct for arbitrators are regulated by the Code of Ethics for Arbitrators, which applies to proceedings before the Arbitral Court of the Chamber of Commerce of Montenegro.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

The arbitral tribunal, after its constitution and after giving the parties an opportunity to comment in writing within a reasonable timeframe, may take all necessary measures to avoid conflicts of interest arising from changes in party representation. These measures may include the exclusion of new party representatives from full or partial participation in the arbitration proceedings. At any time after the commencement of the arbitration, the arbitral tribunal and the secretariat may request proof of any party representative's authority.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

No rules have been adopted as regards remote hearings and no court decisions have been issued with this regard.

X. Awards

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

The arbitral award is made in writing and must be signed by the members of the arbitral tribunal or the sole arbitrator. It is sufficient for the majority of the members of the arbitral tribunal to sign the arbitral award, stating the reasons for the missing signatures of the other members. The arbitral award must state the reasons it is based on, unless the parties have agreed that no reasons are to be stated or the award is based on a settlement, and it must include the date and place of its issuance. In the arbitral award, the costs of arbitration should also be finally determined. A signed copy of the award shall be delivered to each party. There are no statutory limitations on the types of permissible relief.

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

Arbitrators are generally free to award punitive or exemplary damages, interest or compound interest if specified by the underlying agreement, the applicable substantive law, and the statement of claim. However, if in a specific case, it could be considered that the effect of punitive or exemplary damages or compound interest offends the public order of Montenegro, such provisions could be excluded from application.

(iii) Are interim or partial awards enforceable?

Interim or partial awards may be enforceable if they satisfy the validity criteria for final awards.

(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?

Arbitrators may issue dissenting opinions to the award. The MAL does not contain specific rules on the form and content of such opinions.

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

Awards by consent are permitted if the content of the parties' settlement is not contrary to the public order of Montenegro. If requested by the parties, the arbitral tribunal will record the settlement agreement as an arbitration award based on the settlement. This award will explicitly state that it arises from a settlement.

Arbitral proceedings may also be terminated by the decision of the arbitral tribunal when:

- The claimant withdraws the claim, unless the respondent objects and the arbitral tribunal considers that the respondent has a legitimate legal interest in a final arbitral award being issued;
- The parties reach a mutual agreement to terminate the proceedings;
- The arbitral tribunal determines that continuing the arbitral proceedings has become unnecessary or impossible;
- The arbitral proceedings have been discontinued in accordance with this law;

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

The arbitral tribunal shall, at the request of a party:

- Make any necessary linguistic and technical corrections to the issued award;
- Provide a specific interpretation of the award.

Also, the arbitral tribunal may itself correct any linguistic or technical error within 30 days from the date of the award's issuance. The decision concerning corrections, interpretations and supplements shall be an integral part of the relevant arbitral award.

XI. Costs

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

When deciding on the costs of the proceedings, the principle of the success of the party in the proceedings should be taken into account, along with other relevant circumstances, unless the parties have agreed otherwise. The parties are jointly and severally liable to the arbitrators and the arbitral tribunal for the costs of the arbitration.

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

The costs of arbitration proceedings typically consist of fees for the arbitral tribunal, institutional administrative expenses, costs and expenses of the arbitral tribunal, as well as other reasonable costs incurred by the parties due to the proceedings, including legal counsels and experts' fees and similar expenses.

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

The arbitral tribunal has jurisdiction to decide on its own costs and expenses. However, in the event that the arbitral tribunal determines the amount of their costs and fees, their decision is not binding on the parties if they do not accept it. In such cases, the decision on the costs and fees of the arbitrator, upon the proposal of the arbitrator or a party, is made by the arbitral institution or appointing authority, and this decision is enforceable.

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

In addition to the general principle of cost allocation proportionate to the success in the dispute and the possibility of parties reaching an agreement on this issue, the arbitral tribunal also has the discretionary power to decide differently, taking into account 'other relevant circumstances', depending on each specific situation.

(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 tribunal's decision on costs. Only the entities listed in section XI(iii) have such powers.

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?

An arbitration award can only be challenged through an application to set aside the award. No other legal remedies are available.

An arbitration award can be set aside if the party filing the application proves that:

- The arbitration agreement was not concluded or is invalid under the law chosen by the parties or under Montenegrin law, if the parties did not choose a different law.
- A party to the proceedings lacked the capacity to enter into the arbitration agreement, could not be a party to the dispute, or was not duly represented.
- The party was not properly notified of the initiation of the arbitration proceedings or was otherwise unlawfully prevented from presenting their case before the arbitral tribunal.
- The award concerns a dispute that is not covered by the arbitration agreement or contains decisions on matters exceeding the scope of the arbitration agreement. In such cases, only the part of the award concerning matters not subject to arbitration can be set aside, provided this part can be separated from the award concerning matters subject to arbitration.
- The composition of the arbitral tribunal or the arbitral proceedings did not comply with this law, or the agreement permitted by the parties, and this could have affected the content of the award.
- The award is not reasoned or not signed.

The court will also set aside the arbitration award if it finds that:

- The subject matter of the dispute cannot be resolved by arbitration under Montenegrin law.
- The award is contrary to Montenegrin public order.

An application to set aside an arbitration award can be filed within three months as of the date the award was delivered to the party. Challenge proceedings before the state courts usually finish within six to nine months.

The court may stay enforcement upon the challenging party's request if it is shown that the challenging party would likely suffer irreparable or difficult-to-repair harm from the enforcement, and if a first-instance decision has been made in favour of the challenging party's request to set aside the arbitral award on which the enforcement is based. Such a stay of enforcement will be conditioned upon the posting of security.

(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 file an application to set aside the 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?

Arbitration awards may not be appealed. The only remedy is setting aside the 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?

The court to which an application to set aside an arbitration award is submitted may, at the request of one party, return the matter to the arbitral tribunal for reconsideration.

(v) Is there a specialist arbitration court in your jurisdiction?

There is no specialist arbitration court in our jurisdiction. In the proceedings related to challenging an arbitration award, the competent court is the general court of jurisdiction – the Commercial Court of Montenegro.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

Arbitrators in Montenegro have the authority to apply the law they deem appropriate to the merits of the dispute. This authority includes the power to amend or replace a wrongly invoked law if it is necessary to resolve the dispute correctly. The principle of 'iura novit arbiter' supports the arbitrator's duty to apply the correct legal norms, even if the parties have not specifically referenced them. This cannot be a basis for set aside of the award.

XIII. Arbitrator Liability

- (i) **Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?**

No, the arbitration law in our jurisdiction does not expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate.

- (ii) **Does this immunity, if any, extend to criminal liability?**

No, it does not extend to criminal liability.

XIV. 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?**

The competent court for the recognition and enforcement of arbitration awards is the Commercial Court of Montenegro. The process of recognition and enforcement is initiated by a motion, and the party must attach the following documents to it:

- The original arbitration award or a certified copy of it;
- The arbitration agreement or a document of its acceptance, either in the original or a certified copy;
- A certified translation of the foreign arbitration award and the arbitration agreement into Montenegrin or the language officially used by the competent court.

A foreign arbitration award shall be recognised and enforced in Montenegro unless the court, upon objection by the opposing party, establishes that:

- The award has not yet become binding for the parties; or
- The court of the state in which or under whose law it was made has set it aside or has suspended its effectiveness.

The recognition and enforcement of a foreign arbitration award can be refused, upon request of the party against whom it is sought, only if that party proves that:

- The arbitration agreement is invalid under the law chosen by the parties or under the law of the country where the award was made.
- The party was not properly notified of the appointment of the arbitrator or the arbitration proceedings or was otherwise unable to present its case.
- The award concerns a dispute not covered by the arbitration agreement or the award exceeds the scope of the agreement. In such cases, a partial refusal of recognition and enforcement is possible, provided the part of the award exceeding the scope of the agreement can be separated from the rest of the award.
- The arbitral tribunal or the arbitration proceeding did not comply with the arbitration agreement or, in the absence of such agreement, with the law of the place of arbitration.

- The award has not yet become binding on the parties, or the award has been set aside or suspended by the court of the state in which or under whose law it was made.

The court will refuse recognition and enforcement of the arbitration award if it finds that:

- Under Montenegrin law, the subject matter of the dispute cannot be resolved by arbitration.
- The effects of the arbitration award are contrary to Montenegrin public order.

The court is obligated to allow the opposing party to respond to the motion for recognition of a foreign arbitration award, both in the recognition proceedings and on the merits of the case. The court is obligated to allow the opposing party to respond to the motion for enforcement of the arbitration award unless doing so would jeopardise the successful realisation of the requested enforcement..

(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?

An enforcement proceeding is carried out by the competent public enforcement officer in Montenegro. The procedure for execution of enforcement depends on which object, ie, the debtor's property, is proposed as the subject on which the execution is carried out.

A party or participant in the proceedings who believes that irregularities occurred during the execution of enforcement may submit a request to rectify these irregularities to the state court. The request with evidence must be submitted within three days of becoming aware of the irregularities, but not later than 15 days as of the completion of the enforcement. Submitting the request does not suspend the enforcement process.

Additionally, the debtor has the right, for the purpose of establishing a fact related solely to the claim that is disputed between the parties, until the conclusion of the enforcement proceedings, to initiate a civil or other procedure to declare that the enforcement is inadmissible.

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

Conservatory measures are available pending the enforcement of the award.

(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?

Unchallenged arbitration awards are enforced in the same manner as state court judgments. Foreign awards set aside by the courts at the place of arbitration cannot be enforced.

If deemed necessary, the court may decide to postpone the decision on recognition and enforcement of a foreign arbitral award if the proceedings for annulment or suspension of enforcement of that award have been initiated in the state where the award was rendered or under whose law it was rendered, until the conclusion of those proceedings.

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

Montenegrin law does not explicitly provide for a time limit for seeking enforcement of an award. Enforcement is typically completed within a time period of three to eight months. However, if the enforcement process is challenging due to the debtor's lack of sufficient assets, the procedure may take longer.

XV. Sovereign Immunity

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

There are no codified rules on sovereign immunity for jurisdiction. However, the rules on the restrictive theory of sovereign immunity may be applied in Montenegro as customary public international law.

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

Enforcement cannot be determined on the property of another state in Montenegro without the prior written consent of the government authority responsible for foreign affairs unless the other state or international organisation has expressly consented in writing to the enforcement or security measure.

(iii) Are there any requirements for arbitrations involving sovereign entities?

No, there are not. Any natural or legal entity can agree to arbitration, including the state, its bodies, institutions and enterprises in which it holds ownership interests. If one party to the arbitration agreement is the state, it cannot contest the suitability for arbitration of the given dispute or its capacity to be a party in the arbitration proceedings.

XVI. 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, Montenegro ratified Washington Convention in 2013. Montenegro is also a party to the Energy Charter Treaty and the European Convention on International Commercial Arbitration.

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

Montenegro has 23 Bilateral Investment Treaties currently in force, and more than half are concluded with the EU member states.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

There is no published decision on this matter.

XVII. Resources

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

The following treatises and materials can be of importance for practitioners who want to learn more about arbitration in Montenegro:

M. Kostic-Mandic, *International Commercial Arbitration in Montenegro*, Treteyskiy sud, Saint Petersburg, no. 2/2012;

M. Kostic-Mandic, *Private International Law*, University of Montenegro Faculty of Law, 2017;

Dj. Biljana, *A Handbook of Alternative Dispute [i.e. Dispute] Resolution and Mediation: terms*, Faculty of Law of the University of Montenegro, 2013; and

Explanation of the Draft Law on Arbitration and the Basic Provisions of the Law.

(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?

Yes, the conference 'Days of Commercial Law', organised by the Chamber of Commerce of Montenegro and the Association of Lawyers of Montenegro, is regularly held, usually once a year, to discuss relevant topics related to arbitration, among other topics.

Additionally, the 'Balkan Arbitration Conference (BAC24)' took place in Podgorica in 2024.

XVIII. Trends and Developments

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

Arbitration has indeed gained prominence as a viable alternative to court proceedings in Montenegro. However, we believe that significant development and progress in this form of dispute resolution will truly be felt in the coming years.

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

There is a noticeable trend towards mediation in terms of its promotion and utilisation in Montenegro. In 2022, when the Law on Alternative Dispute Resolution came into effect, mediation was most prevalent in labour disputes and disputes concerning compensation for damages arising from insurance contracts. These cases together accounted for 57.6 per cent of the total number of cases referred to or initiated for mediation.

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

At the end of 2023, the Arbitration Rules were adopted, which certainly represents a step towards the development of arbitration in Montenegro.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

No, there are currently no official plans to reform the arbitration laws and practices in our jurisdiction.

- (v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?**

There is no specific rule in Montenegro on third-party funding.

- (vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?**

Yes, Montenegro has implemented recent sanctions against Russia. However, we are not aware of any decision regarding whether courts in our jurisdiction consider international economic sanctions as part of their international public policy or concerning the impact of sanctions on international arbitration proceedings.