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IBA ARBITRATION COMMITTEE

Arbitration Guide

SLOVENIA

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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?

The use of arbitration is not prevalent in Slovenia. Most parties still resolve their disputes before the competent courts. However, there is a gradual trend towards more arbitration proceedings. Arbitration is particularly interesting when the parties are from different jurisdictions and the value of the subject matter at issue is high.

The main advantages of arbitration, as seen by the parties, are the speed and flexibility of the procedure and the possibility to choose the arbitrators. The costs of the proceedings are seen as the main disadvantage of the arbitration.

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

In Slovenia, the most common form of arbitration is institutional domestic arbitration whereas ad hoc and international arbitrations are less common. The central and most well-known arbitration body in Slovenia is the Ljubljana Arbitration Centre (LAC) at the Chamber of Commerce and Industry of Slovenia, which has been in operation since 1928. Therefore, the most used rules are The Arbitration Rules of the Ljubljana Arbitration Centre at the Chamber of Commerce and Industry of Slovenia (LAC Arbitration Rules), which, while not binding to all arbitrations, represent a good insight into how domestic institutional arbitration is mainly conducted in Slovenia.

(iii) What types of disputes are typically arbitrated?

The typically arbitrated disputes are those pertaining to energy, intellectual property, construction law, M&A, contract law, international sales, real estate and corporate law.

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

Domestic institutional arbitral proceedings in Slovenia usually last between six and nine months from date of the preliminary request for arbitration.

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

There is a statutory prohibition that the nationality of the arbitrator must not represent a restriction to their appointment, however, the parties are free to agree otherwise and set nationality requirements and/or restrictions to the appointment of the arbitrators.

As for the choice of representative, the parties are free to choose any individual to represent them as counsel, either from Slovenia or a foreign national, who has the legal capacity to enter into transactions. Furthermore, the parties may also choose Slovenian or foreign law firms to represent them in arbitrations. The rules on choice of counsel are mandatory and cannot be derogated from by an agreement of the parties.

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 with the seat of arbitration in the Republic of Slovenia are governed by the Arbitration Act of 2008 (Arbitration Act). These kinds of arbitration proceedings are defined by the Arbitration Act as domestic arbitration and the Arbitration Act applies to them irrespective of the nationality of the parties, that is, there is no other law for arbitration proceedings in which the parties are not exclusively from Slovenia. The provisions of the Arbitration Act establish a comprehensive structure of domestic arbitration proceedings, whereas certain essential provisions apply even to arbitration proceedings where the seat of arbitration is outside of the Republic of Slovenia, that is, foreign arbitration.

The Arbitration Act is based on the UNCITRAL Model Law on International Commercial Arbitration, as amended in 2006 and has transposed the provisions of the Model Law into Slovenian legislation with some deviations. Furthermore, Article 2(1) of the Arbitration Act specifically provides that when interpreting the provisions of the Arbitration Act, account shall be taken of the need to promote the uniform application of the UNCITRAL Model Law on International Commercial Arbitration and of the principle of good faith and fair dealing. Therefore, the UNCITRAL Model Law has a strong impact on the interpretation and use of the provisions of the Arbitration Act.

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

No, the Arbitration Act does not distinguish between domestic and international arbitration in terms of whether the arbitration concerns purely domestic or international issues. The distinction is made on the level of domestic-foreign arbitration with respect to whether the seat of arbitration is in the Republic of Slovenia or a foreign country. For domestic arbitrations (with seat of arbitration in Republic of Slovenia), the Arbitration Act applies irrespective of the nationality of the parties.

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

In 1992, Slovenia became a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC) by succession. Since the entry into force of the Arbitration Act, the only reservation to the NYC is that retroactive application of the NYC to arbitral awards issued before 6 July 1992 is excluded. Application of the 'more-favourable-right provision' set forth by paragraph 5 of Article VII of the NYC is also excluded by direct reference of the Arbitration Act to the NYC. In addition to the NYC, Slovenia has also ratified the 1961 European Convention on International Commercial Arbitration and the 1965 Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention), which provide a more favourable regime of recognition of arbitration awards. Additionally, Slovenia succeeded the 1960 Agreement on Mutual Recognition and Enforcement of Arbitral Awards and Settlements in commercial matters between the Federal People's Republic of Yugoslavia and the Republic of Austria.

(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, the Arbitration Act provides in Article 32 that the tribunal determines the applicable law primarily on the basis of the choice of the parties, whereas the choice of the law or legal system of a particular state constitutes direct evidence of the substantive law of that state, without conflict of laws rules, unless the parties expressly agree otherwise. The parties need not necessarily agree on the law of a certain state, but may choose legal rules such as UNIDROIT or PECL.

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?

Yes, there are legal requirements for the validity of an arbitration agreement relating to both form and content of arbitration agreements and they are determined in Articles 4 and 10 of the Arbitration Act. There are requirements for the validity of arbitration agreements pertaining to the content, which are the unambiguous exclusion of court jurisdiction in favour of arbitration and the arbitrability of the dispute, whereas the requirement pertaining to the form is that an arbitration agreement must be in writing.

Regarding the first substantive requirement (unambiguous exclusion of court jurisdiction in favour of arbitration), Article 10(1) of the Arbitration Act provides that an arbitration agreement is 'an agreement of the parties to submit to arbitration all or certain disputes that have arisen or may arise between them in connection with a particular contractual or non-contractual legal relationship'. The settled judicial practice is that the agreement of the parties must clearly and unambiguously determine the binding nature of the arbitral award and exclude court jurisdiction. This is perhaps the most important thing to keep in mind when drafting an arbitration agreement. If the arbitration agreement even mentions any potential court proceedings, it could be deemed that the arbitration agreement has not been validly concluded.

Regarding the second substantive requirement (arbitrability of the dispute), Article 4(1) of the Arbitration Act provides that any pecuniary claim may be subject to an arbitration agreement, which means that all such disputes are arbitrable. According to the case law, the pecuniary nature is interpreted broadly and includes most or all disputes that could be validly settled under Slovenian law, such as disputes arising from concession agreements. On the other hand, disputes concerning the status and exclusion of a company member are not subject to settlement and therefore not arbitrable. The same applies to disputes concerning marital and family relations. Therefore, the lack of arbitrability is mostly present where the law provides for (mandatory) exclusive court jurisdiction.

Regarding the formal requirement (arbitration agreement must be in writing), it should be noted that the Arbitration Act itself provides that it could be a separate agreement or a part of the substantive agreement and the conclusion of such agreement can take many forms, such as a document signed by the parties, or by exchange of letters, facsimiles, telegrams, emails or other means of communication or storage of data that provide a record of the arbitration agreement and is accessible and suitable for later use. This requirement is also fulfilled by reference to the general terms and conditions, or by reference to a document sent by one party. The content of such document is deemed a contract according to settled commercial practice if one party does not object in due time. There are also some important exceptions to the written form requirement, including if there was no prior written agreement and the claimant brings an action before the arbitral tribunal and the defendant does not object to the jurisdiction of the arbitral tribunal later than in its statement of defence, the arbitration agreement is deemed to have been validly concluded.

(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?

According to the case law of the Slovenian courts, the agreement of the parties must clearly and unambiguously provide for the binding nature of the arbitral award in order to be considered an arbitration agreement. If the arbitration agreement is sufficiently precise in terms of exclusion of court jurisdiction in favour of arbitration, the courts are keen on enforcing arbitration agreements. However, pathological arbitration clauses that are too vague or ambiguous in terms of exclusion of court jurisdiction will not be enforced.

Similarly, an arbitration agreement will not be enforced if an action is brought before the court in a matter which is the subject-matter of an arbitration agreement and the defendant does not object to the jurisdiction of the court in the statement of defence at the latest.

(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, while not very frequent, are present in Slovenia. They are generally enforceable. Specifically, if a multi-tier clause stipulates mediation as a prerequisite to arbitration and the parties have explicitly committed not to initiate arbitration proceedings regarding an existing or future dispute until a specified period of time has elapsed or a specific event has occurred, the arbitral tribunal must dismiss the claim upon defendant's objection, unless the claimant can demonstrate that severe and irreparable consequences would otherwise ensue.

The imminent expiration of a statute of limitations or a preclusive period is not considered a valid reason for immediate intervention by the arbitral tribunal. Article 17 of the Mediation in Civil and Commercial Matters Act (ZMCGZ) provides a special regime for protecting time limits during the mediation process, ensuring that the agreed-upon steps in the multi-tier clause are respected.

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

The legal requirements for a valid multi-party arbitration agreement are the same as those for a bilateral arbitration agreement and must be met in relation to all signatories to the agreement. In practice, however, specialised legal advice is recommended. Standard arbitration clauses, including those from arbitral institutions like the LAC, are typically designed for agreement between two parties.

For multi-party arbitration agreements, several additional issues need to be addressed, such as the appointment of arbitrators, intervention, joinder and similar procedural aspects. Properly drafting these agreements ensures that all parties' rights and obligations are clearly defined, thereby increasing the likelihood of a smooth and efficient arbitration process.

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

The enforceability of such an agreement in Slovenia is questionable. The Arbitration Act does not explicitly prohibit unilateral arbitration agreements and there is no case law directly addressing this issue. However, general principles under the Arbitration Act require that the arbitration agreement must i) exclude court jurisdiction and ii) be binding regarding the tribunal's award to be valid.

According to case law, a fundamental element of an arbitration agreement is the exclusion of the court's jurisdiction to decide on the disputes (see, for example, *VSK Sklep Cpg 79/2020, VSL Sklep I Cp 2444/2014*). The arbitration clause must unequivocally transfer jurisdiction to resolve specific disputes to arbitration, clearly specifying that such disputes will be finally resolved by arbitration and that the parties waive the jurisdiction of the courts (see, for example, *VSRS Sklep Dsp 4/2018*). If one party has the right to arbitrate while the other party retains the option to file an action in court, it is questionable whether court jurisdiction has been effectively excluded. Consequently, such an arbitration agreement could be deemed invalid or unenforceable.

However, limited literature on the subject suggests that Slovenian law does not inherently deny the validity of asymmetric agreements on dispute resolution. The validity of such agreements would therefore be assessed by a court or arbitral tribunal based on the general principles of civil law and the arbitration procedure (see, for example, Božič, T., A., The asymmetry of the arbitration clause as a reason for the (in)validity of the arbitration agreement, Slovenian Arbitration Practice, V/3).

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

In principle, arbitration agreements do not bind third parties who did not agree to the agreement. However, tacit agreement is possible; an arbitration agreement is considered valid if the claimant initiates arbitration and the defendant does not object to the tribunal's jurisdiction by the time of their statement of defence.

Generally, when multiple parties are involved in a contractual relationship, the arbitration agreement is binding only on those of them who agreed to it. Nevertheless, arbitration practice recognises certain exceptions where the effects of an

arbitration agreement can extend to third parties. These exceptions include the oversight of legal personality, surety and bank guarantees, legal succession etc.

In Slovenia, these exceptions are applied restrictively to avoid violating third parties' right of access to the courts, as guaranteed by Article 23 of the Constitution of the Republic of Slovenia and Article 6(1) of the European Convention on Human Rights. For instance, in a highly criticised decision (*VSRS Sklep Cpg 2/2009*), the Supreme Court of Slovenia held that a guarantor who signed an annex to the contract between the creditor and debtor did not become a party to the contract and thus the arbitration agreement in the contract did not apply to the guarantor.

On the other hand, Slovenian courts have held that both universal (eg, *VSL Sklep I Cpg 1859/2014*) and singular legal successors (eg, *VSL Sklep II Cpg 266/2010*) are bound by arbitration agreements. However, the doctrine of related companies has not been incorporated into Slovenian legal practice.

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

There are no explicit rules in the Arbitration Act that provide how the courts should determine the law governing the arbitration agreement. On the other hand, the Arbitration Act provides in Article 32 that the tribunal determines the applicable law primarily on the basis of the choice of the parties, whereas the choice of the law or legal system of a particular state constitutes direct evidence of the substantive law of that state, without conflict of laws rules, unless the parties expressly agree otherwise.

This provision would likely be analogously applied by the courts, so for example if the parties have based the arbitration agreement on provisions on the legal order of a particular state or if it refers to a law of a particular state it will be deemed that the parties have chosen the law of that state.

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

The distinction between the seat of the arbitration and the venue of meetings is made at the statutory level, as the Arbitration Act provides that the tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

However, it does not follow from the publicly available case law that the distinction between the seat (or legal place) of the arbitration and the venue of meetings/hearings has been particularly challenging, as there are no available decisions on this topic.

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

Yes, blockchain- and NFT-related disputes are arbitrable in Slovenia. Most of these disputes are likely to be of a monetary nature and can be settled, thereby meeting the criteria for arbitrability.

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

Yes, according to Article 11(2) of the Arbitration Act, if a lawsuit is filed in court for a matter covered by an arbitration agreement, the court must, upon the defendant's objection, declare itself without jurisdiction, annul the actions taken in the procedure and dismiss the lawsuit. This is unless the court finds that the arbitration agreement does not exist, is void, has ceased to be valid, or cannot be fulfilled.

Therefore, a court can find an arbitration agreement inoperable. This determination depends on the specific circumstances of the case. However, if the defendant does not object to the court's jurisdiction in their statement of defence, it is considered that the defendant has waived their objection. In such cases, the matter will be resolved by the court despite the existence of a valid arbitration agreement between the parties.

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?

Yes, there are types of disputes that may not be arbitrated. According to Article 4(1) of the Arbitration Act, any pecuniary claim may be subject to an arbitration agreement, which means that all such disputes are arbitrable. The pecuniary nature of the claim is interpreted broadly. Other non-pecuniary claims may be subject to arbitration agreements only if the parties can settle them. Courts in Slovenia have ruled that a dispute over the exclusion of a member of a limited liability company is a dispute concerning the status of the company member, which is not subject to settlement and is therefore not arbitrable. Disputes concerning marital and family relationships are also not arbitrable. Thus, the lack of arbitrability will generally be present in cases where the law itself prescribes exclusive court jurisdiction without the possibility of deviation.

The decision on the arbitrability of the dispute can be made by arbitrators or courts. Under Article 19(1) of the Arbitration Act, the 'tribunal may rule on its own jurisdiction, including objections relating to the existence or validity of the arbitration agreement.' Nonetheless, pursuant to Article 11(1) of the Arbitration Act, if an action has been filed before a court, the court may also find that the arbitration agreement is non-existent or null and void, which would be the case if there was a lack of arbitrability of the dispute.

Considering the wording of Articles 11(1) and 19(1) of the Arbitration Act it seems that the lack of arbitrability is a matter of jurisdiction (competence), since both Articles refer to this notion jointly with the question of lack of arbitrability and validity of the arbitration agreement.

(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?

Upon the objection made by the defendant, the court annuls the actions performed in the proceedings and dismisses the action, unless it finds that the arbitration agreement does not exist, is null and void, has lapsed or cannot be enforced. Such an objection may only be made in the statement of defence at the latest. If the defendant does not object the jurisdiction of the court due to existing arbitration agreement by then, it is deemed that the defendant has waived its right to exclude court jurisdiction under the arbitration agreement and the court will have jurisdiction over the dispute.

(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?

Yes, the principle of competence-competence is applicable in Slovenia and the arbitrators can decide on their own jurisdiction, including objections relating to the existence or validity of the arbitration agreement. An arbitration clause contained in a contract is deemed to form an independent part of such contract. A decision of the tribunal that the contract is null and void does not by itself invalidate the arbitration clause.

The courts may exercise some control over the tribunal's jurisdiction, but are unable to prevent the initiation, conduct or completion of the arbitration proceedings. Namely, if action is brought before the court in a matter which is the subject-matter of an arbitration agreement, the court may find that the arbitration agreement does not exist, is null and void, has ceased to have effect, or is incapable of being performed and may continue court proceedings. Similarly, pending the constitution of the tribunal, an action may be brought before the court for a declaration that the arbitration proceedings are admissible or inadmissible, in particular on the grounds non-existence, nullity and inoperability of the arbitration agreement. Nonetheless, if such court proceedings have been instituted, the arbitration proceedings may nevertheless be commenced or continued, and the tribunal may render an award while the court proceedings are still pending.

V. Selection of Arbitrators

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

The appointment of arbitrators is primarily in the hands of the parties to the arbitration. Pursuant to the Arbitration Act, it is up to the parties to determine the number of arbitrators and the procedure of their appointment. Pursuant to Article 13(2) of the Arbitration Act, if the parties do not specify the number of arbitrators, the tribunal consists of three arbitrators.

In the case of three arbitrators, each party appoints one arbitrator, and the so appointed arbitrators appoint a third arbitrator; if one party fails to do so within 30 days of receiving the request of the other party to appoint an arbitrator, or if the arbitrators do not agree to appoint a third arbitrator within 30 days of their appointment, the arbitrator is appointed by the court at the request of the party. If there is a sole arbitrator, the court appoints an arbitrator at the request of a party.

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

An arbitrator may be challenged only if there are circumstances that raise reasonable doubts about the arbitrator's independence and impartiality, or if the arbitrator does not possess the qualifications agreed between the parties. A party may challenge an arbitrator whom it has appointed or in whose appointment it has participated, only on the grounds of which it became aware after the appointment.

It is principally on the parties to agree on the procedure for the replacement of the arbitrator. In the absence of such an agreement, the party challenging the arbitrator must send a reasoned written challenge to the arbitration tribunal within 15 days of learning of the composition of the arbitration tribunal or of any of the circumstances casting reasonable doubt on the arbitrator's independence and impartiality or lack of agreed qualifications. If the arbitrator whose replacement is requested does not resign, or if the other party does not agree with the challenge, the tribunal as a whole, including the arbitrator who is challenged, shall decide on the request for replacement. If a party fails with its request for challenge, it may, within 30 days of being informed of the decision, request that the court decide on the challenge. There is no appeal against the court's decision. Pending the decision of the court, the tribunal, including the arbitrator whose withdrawal is sought, may continue the arbitral proceedings and issue an arbitral award.

(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?

There are no statutory limitations as to who can serve as an arbitrator, but the parties may set limitations or qualifications by themselves. However, an arbitrator must, pursuant to Article 15 of the Arbitration Act, disclose any circumstances that may give rise to justifiable doubts about their impartiality or independence. If such circumstances exist, the arbitrator can be challenged.

While there are no explicit provisions regarding ethical duties of arbitrators in the Arbitration Act, the LAC Arbitrator's Guidelines have certain provisions regarding ethical conduct of arbitrators and also includes an explicit reference to IBA Guidelines on Conflicts of Interest in International Arbitration, which include an additional reference to the 1987 Rules of Ethics for International Arbitrators. These will be the most common sources of guidelines for ethical duties.

(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 specific rules concerning conflicts of interest for arbitrators. Arbitrators must disclose any circumstances likely to give rise to justifiable doubts about their impartiality and independence, as specified in Article 15 of the Arbitration Act. Additionally, LAC Arbitrator's Guidelines recommend that arbitrators be guided by the IBA Guidelines on Conflicts of Interest in International Arbitration.

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?

Yes, arbitrators can issue interim measures. They can issue any interim measure they consider appropriate concerning the subject matter of the dispute, including measures granted before the defendant is given an opportunity to present its case in urgent situations. These measures are binding but not directly enforceable by courts unless recognised by a court.

Types of interim measures include, but are not limited to, preserving evidence, maintaining or restoring the status quo, and preventing harm to the arbitration process. The tribunal's decision on interim measures can be issued in the form of an order or an award.

Interim measures issued by arbitrators are enforceable in courts, provided the court recognises the measure according to Article 43 of the Law on Arbitration of Slovenia.

(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?

Yes, courts will grant provisional relief in support of arbitrations. Courts can grant interim measures before or during arbitration proceedings if requested by a party. This applies even after the constitution of the arbitral tribunal. Such court-ordered provisional relief remains in force following the 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?

The arbitral tribunal or one of the parties with the tribunal's permission, may request the court to assist in taking evidence or performing other actions that the arbitration itself is not entitled to perform. Therefore, court involvement in taking of evidence requires the tribunal's consent. If the court grants the request, it takes evidence or performs other actions in accordance with its procedural rules. Arbitrators may be present during the presentation of evidence and may ask questions.

The court provides legal assistance to the arbitration only for actions that the arbitration itself could not perform, not for those that would merely be more convenient or simpler for the court to handle in a certain location.

Furthermore, the existence of an arbitration agreement does not prevent the court, at the request of the parties, from issuing a provisional security measure before or during the arbitration proceedings related to the subject matter of the arbitration. This applies even if the arbitration proceedings are taking place abroad.

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

The emergency arbitrator is not explicitly mentioned in the Arbitration Act. As a result, it appears that the general rules for tribunals and arbitrators would apply to the emergency arbitrator. The LAC Arbitration Rules do, however, provide for the possibility of an emergency arbitrator. The emergency arbitrator has the power to issue interim measures. If an urgent temporary measure is required that cannot wait for the constitution of a tribunal under the LAC Arbitration Rules, Emergency Arbitrator Proceedings may be commenced. Decisions by emergency arbitrators will thus be enforceable.

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

As to anti-suit injunctions, national courts do not have the power to order an anti-suit injunction. The courts, however, have the power to decide on whether an arbitral tribunal has jurisdiction, subject to any party of the arbitral proceedings having challenged the arbitral tribunal's decision on their jurisdiction. The Slovenian legislative arbitration system is, therefore, based on the tribunal first determining its jurisdiction and only thereafter does it allow courts to step in to review (on limited grounds) the decision made by the tribunal.

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

Yes, the courts are specifically empowered by Article 1(2) of the Arbitration Act to provide assistance in aid of foreign-seated arbitrations. However, similar to domestic arbitrations, courts only provide legal assistance for actions that the arbitration itself cannot perform, not for those that would merely be more convenient or simpler for the court to handle in a certain location.

Courts are not obligated to grant requests for legal assistance if they deem such assistance unnecessary. Additionally, any assistance provided is subject to the court's procedural rules, which may differ from the applicable arbitration rules, particularly regarding the disclosure of documents.

VII. Disclosure/Discovery

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

Disclosure is not specifically regulated in the Arbitration Act. The parties are free to agree on the procedural rules within the limits of the Arbitration Act and in accordance with the principles of good faith and fairness, equality of the parties and the right to be heard. Since there are no mandatory legal provisions regarding discovery or disclosure in arbitration, the parties can regulate this aspect as they see fit.

However, the Arbitration Act places special emphasis on disclosure in relation to appointed experts. Unless the parties agree otherwise, the tribunal may require a party to provide the tribunal-appointed expert with all necessary information and to produce or allow access to and inspection of relevant documents, goods, or other objects to facilitate the expert's work.

If there is no agreement between the parties, the arbitration tribunal may, within the legal limits, conduct the proceedings as it deems appropriate. Therefore, the tribunal could, on its own accord, order disclosure or discovery.

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

While there are no specific rules on the permissible scope of disclosure in the Arbitration Act, common objections to requests for disclosure can be found in Article 9 of the IBA Rules on the Taking of Evidence in International Arbitration. These include objections based on legal impediment or privilege under legal or ethical rules, grounds of commercial or technical confidentiality and grounds of special political or institutional sensitivity, among others.

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

There are no special rules for handling electronically stored information in the Arbitration Act.

VIII. Confidentiality

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

In practice, arbitrations in Slovenia are generally confidential. While the Arbitration Act does not explicitly mandate confidentiality, the LAC Arbitration Rules provide that, unless otherwise agreed by the parties, the parties, the LAC, the arbitrators, the emergency arbitrators, the tribunal secretary and the tribunal-appointed experts must maintain the confidentiality of the proceedings, the award, orders and other decisions of the tribunal.

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

There are no specific provisions in the Arbitration Act or the Trade Secrets Act regarding the arbitral tribunal's power to protect trade secrets and confidential information. However, the Trade Secrets Act does specifically regulate confidentiality in court proceedings.

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

There are no such provisions in the Arbitration Act.

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?

In purely domestic arbitrations (ie, between two or more parties from Slovenia) the adoption of IBA Rules on the Taking of Evidence in International Arbitration is less likely, whereas in arbitrations where the parties originate from different countries/jurisdictions, the adoption of these rules is more likely, since each party will be less inclined to accept any national rules.

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

The first and foremost limitation to arbitral tribunals' discretion is the agreement of the parties, since the parties have the right to determine the rules of the procedure according to their own liking. Nonetheless, in practice, the parties will rarely agree on every single aspect of the procedure and the discretion of the tribunal will be, in such cases, limited only by the mandatory provisions of the Arbitration Act or the institutional rules under which it operates, if applicable.

(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 Arbitration Act allows parties to decide how witness testimonies will be presented. In the absence of an agreement between the parties, the tribunal determines whether the arbitration will be conducted in writing or orally. However, at the request of a party, the tribunal will hold a main hearing at the appropriate stage of the proceedings unless the parties agree otherwise.

Counsel experienced in international arbitration proceedings often insist on procedural rules that include the use of witness statements with cross-examination. The LAC Arbitration Rules, for example, specifically provide that an individual testimony may be submitted in the form of a signed written statement and that any witness, on whose testimony a party seeks to rely, shall attend a hearing for examination unless otherwise determined by the arbitral tribunal. Oral direct examination is typically limited. Arbitrators commonly question witnesses to clarify and supplement the testimonies provided.

(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 formal rules on who can or cannot appear as a witness in arbitration and there are no mandatory rules on oath or affirmation in Slovenia, although the parties may agree on such rules. However, caution is recommended to prevent possible violations of procedural public policy. For example, according to the rules of civil procedure, anyone who violates the duty to protect official or military secrecy with their testimony may not be heard as a witness until the competent authority releases them from this duty. Although there is no case law on this subject yet, acting contrary to this prohibition could potentially violate Slovenian procedural public policy.

(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?

In arbitration, there are no specific 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. However, it should be noted that Slovenian law generally recognises certain privileged witnesses in civil procedure, such as legal representatives, priests and doctors who are professionally bound to confidentiality. These witnesses are entitled to refuse to testify. Failure to respect this privilege in arbitration could be considered a violation of moral rules and, therefore, contrary to the public policy of Slovenia.

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

Expert testimony is typically presented in the form of a written expert report, followed by the examination and cross-examination of the expert witness at a hearing. While there are no formal requirements regarding the independence and/or impartiality of expert witnesses, in the context of international arbitration, the main principles from Article 5(2) of the IBA Rules on the Taking of Evidence in International Arbitration are likely to apply unless excluded by the parties and the tribunal.

(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 very common for the arbitral tribunals to appoint experts in addition to those appointed by the parties, although it occasionally happens, particularly when the reports by the party-appointed experts are difficult to reconcile. For example, the LAC Arbitration Rules expressly allow the arbitral tribunal to appoint its own expert after prior consultation with the parties. In such cases, the arbitral tribunal may order the parties to submit relevant information to the expert and to produce or provide access to documents, goods, or other objects for inspection.

Upon receipt of the tribunal-appointed expert's report, the parties have an opportunity to submit written comments. The tribunal-appointed expert is typically examined at a hearing. The evidence provided by the tribunal-appointed expert is generally considered more impartial, balanced and objective.

There is no requirement that experts be selected from a particular list.

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

Yes, witness conferencing, also known as 'hot-tubbing,' is occasionally used. The handling of witness conferencing varies depending on the parties involved, their counsel and the tribunal's prior experience with this method.

Typically, the parties try to agree on a list of issues for the witness conferencing or submit their respective proposed issues to the tribunal for determination. The witness conferencing then occurs as a discussion between the parties' expert witnesses regarding the agreed or tribunal-determined issues. The process is guided by the tribunal to ensure a structured and productive dialogue.

(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 Arbitration Act does not provide any specific rules or requirements as to the use of secretaries to the tribunal. According to Article 21(3) of the LAC Arbitration Rules, the tribunal may propose the appointment of a particular candidate as the administrative secretary at any stage of the proceedings, subject to the consent of the parties involved. The process for appointing a secretary is similar to that of appointing arbitrators. Consequently, the decision is at the discretion of the tribunal and the parties, often contingent upon the complexity of the case. In practice, a secretary to the tribunal is typically present in international arbitrations and has become a standard component in more significant cases. This is particularly common when arbitrators are attorneys by profession, where an associate from the law firm may serve as the secretary, or when they are full-time professional arbitrators, who generally have permanent associates. On the other hand, it is less likely for a tribunal to employ a secretary in cases that are purely domestic in terms of involving Slovenian parties.

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

Yes, the Code of Professional Ethics for Lawyers of the Slovenian Bar Association applies to Slovenian counsel. Additionally, the LAC has issued Arbitrator's Guidelines, which address issues of impartiality, independence and availability. These guidelines also reference the IBA Guidelines on Conflicts of Interest in International Arbitration for guidance on disclosure related to independence and impartiality.

Furthermore, the LAC guidelines emphasise that arbitrators must be available throughout the course of the proceedings and consider their availability as a fundamental ethical duty. This requirement is integral to their professional conduct towards the parties to ensure proceedings are conducted without undue delay.

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

No, the rules of local arbitral institutions in Slovenia have not implemented provisions empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons, as seen, for example, in the Tribunal's ruling in the case of HEP v. Slovenia (ICSID Case No. ARB/05/24).

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

In accordance with the Arbitration Act, the tribunal may hold hearings of parties, witnesses and experts outside the place of arbitration, unless otherwise agreed by the parties to the arbitration. The LAC Arbitration Rules offer more flexibility to the tribunal in the use of telecommunication means for conducting the oral hearing and examining witnesses and experts. There have been no court decisions on this matter.

X. Awards

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

In Slovenia, an arbitral award must be issued in writing and must signed by the arbitrator. If there is more than one arbitrator, the majority of the tribunal members' signatures are sufficient if it is indicated why the individual arbitrator(s) failed to sign the award. The award must state the reasons on which it is based, unless the parties have agreed that no reasons are necessary or unless it is a decision based on a settlement. The award must also include the date of the award and the seat of the arbitration. The award must be delivered to all parties of the arbitration.

The Arbitration Act does not provide any limitations on the types of possible relief. The award can take many forms but must not be in violation of the public policy in Slovenia (see Sections XII. (i) and XIV. (i) below).

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

The answer to the question completely depends on the applicable substantive law, since there are no limitations in the Arbitration Act. Under Slovenian law, punitive damages are restricted only to a handful of situations and their scope is severely limited. Exemplary damages are not allowed under Slovenian law. Awarding interest is generally allowed under Slovenian law, whereas awarding compound interest is restricted only in regard to default interest.

(iii) Are interim or partial awards enforceable?

The enforceability of interim or partial award will depend on their substance. According to the case-law of the Supreme Court, if the interim award only includes a decision on the merits of the claim for damages and does not order anything, such an award does not have the effect of enforceability. On the other hand, if the partial award orders the defendant to pay a certain amount, it would be 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?

There are no rules in the Arbitration Act pertaining to dissenting opinions. Since the parties are allowed to agree on the rules of the procedure, they may exclude the publication of dissenting opinions. Under the LAC Rules, the deliberations of the tribunal are confidential, therefore the dissenting opinions must be written in such a way as to preserve the confidentiality of the deliberations.

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

Yes, awards by consent are permitted. Pursuant to Article 34 of the Arbitration Act, if the parties settle during the arbitration, the tribunal terminates the arbitration. At the request of the parties, the settlement is recorded in the form of an award, unless the content of the settlement is contrary to the public policy of the Republic of Slovenia. An award based on a settlement must meet all requirements of an award and has the same effect as any other arbitral award on the merits.

The proceedings may also be terminated if the claimant fails to file the statement of claim within the time limit determined by the parties or the tribunal without good cause and unless the parties have agreed otherwise.

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

The Arbitration Act allows for some amendments or corrections of the award. Any party may request the arbitral tribunal: (i) to correct in the award any typographical or clerical errors, errors in computation or any errors of similar nature; (ii) if so agreed by the parties, to give an interpretation of a specific point or part of the award; and (iii) to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. The arbitral tribunal may also correct any such error in the award on its own initiative within 30 days of the date of the award, which may be extended.

XI. Costs

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

Pursuant to the Arbitration Act, the tribunal has the discretion to decide on the question of costs, including their allocation if the parties have not agreed otherwise. Therefore, it is not necessarily the unsuccessful party who bears the costs. Similarly, under the LAC Rules, the outcome of the case is one of the relevant criteria but the tribunal shall also take into account each party's contribution to the efficiency and expeditiousness of the proceedings and other relevant circumstances.

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

Typically awarded costs are i) costs of the arbitration and ii) costs incurred by the parties.

Costs of arbitration typically consist of:

- the fees of the arbitral tribunal;
- administrative fee of the arbitration institution, if applicable; and,
- the expenses of the arbitral tribunal and, if applicable, for any administrative secretary of the arbitral tribunal; and,
- the expenses of the arbitration institution.

Cost incurred by the parties typically consist of:

- costs of legal representation;
- expert costs and expenses;
- expenses related to the other forms of evidence taking; and,
- travel expenses.

When deciding on awarding the costs incurred by the parties, the tribunal shall typically consider the outcome of the case, each party's contribution to the efficiency and expeditiousness of the proceedings and other relevant circumstances.

(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.

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

The arbitral tribunal has the discretion to apportion the costs between the parties, taking into consideration the circumstances of the case and the outcome of the proceedings. The arbitral tribunal can therefore take into account many different factors.

(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 in isolation. Awards may only be challenged as a whole and only on the relevant grounds specified in the Arbitration Act.

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?

The Arbitration Act does not envisage an appeal against an arbitral award, but a party may file an annulment action before the competent court with respect to an arbitral award on the basis of the limited reasons within three months from receiving the award.

These reasons are: (i) a party to the arbitration agreement was not (legally) capable of concluding an arbitration agreement or the arbitration agreement is not valid under the governing law; (ii) it was not given a proper notice of the arbitrator's appointment or of the arbitral proceedings or its right to be heard has been violated in another manner; (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or (iv) the composition of the tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a mandatory provision of the Arbitration Act, or, failing such agreement, was not in accordance with the Arbitration Act.

In addition to the above, that court may also annul the arbitral award on its own motion if it finds that, (i) the subject matter of the dispute is not arbitrable; or (ii) the award violates public policy of the Republic of Slovenia.

There are no publicly available data on the average duration of challenge proceedings, since there is no separate statistical category for them. The duration of the procedure will therefore mostly depend on the complexity of the proceedings.

Since all the above reasons represent a reason for refusal of declaration of enforceability, they also represent an effective objection of the party in the proceedings for declaration of enforceability (exequatur), unless a court has already finally rejected the action for annulment on the same grounds that are invoked as an objection in the proceedings for declaration of enforceability.

(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?

According to Article 40(1) of the Arbitration Act, the parties cannot waive the right to challenge an arbitration award in advance, such as by some form of agreement.

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

Under the Arbitration Act, appealing an arbitral award is not permitted. Although it is not common practice, there is nothing in the Arbitration Act that prevents parties from exercising their right to determine the rules of procedure so that they agree that the arbitration would include an appellate procedure with a tribunal of second instance.

(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?

There is a limited possibility of a court to remand an award to the tribunal, if the proceedings for annulment of the arbitral award have been initiated. The court may, at the request of a party and if it deems it appropriate, stay the proceedings for annulment of the award for a specified period of time and allow the tribunal to reopen the arbitration proceedings or to take such other measures as, in the opinion of the tribunal, may remove the grounds for setting aside. In such cases the tribunal will have relatively wide discretion to address and correct the grounds for annulment.

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

According to Article 9 of the Arbitration Act, the District Court in Ljubljana holds exclusive jurisdiction as the court of first instance for matters concerning: (i) admissibility or inadmissibility of the arbitration proceedings, (ii) the appointment of an arbitrator, (iii) the removal of the arbitrator, (iv) termination of the term of office of the arbitrator, (v) the powers of the arbitration panel, (vi) annulment of the arbitral award, as well as (vii) declaring the enforceability of domestic arbitral awards (Article 41) and recognising foreign arbitral awards. Appeals against judgments issued by the District Court in Ljubljana are decided by the Supreme Court of the Republic of Slovenia. Extraordinary legal remedies are not permitted.

(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?

Although there is no specific provision to this effect, neither in the Slovenian Arbitration Act nor in the relevant case law, the principle of *iura novit curia* is a generally accepted principle in Slovenian civil procedure. The courts are therefore likely to accept the principle of *iura novit arbiter.* To the extent that the arbitral tribunal's application of this principle does not violate the parties' effective right to be heard and the principle of due process, we do not see that the amendment of the award aimed at replacing a wrongly invoked law or the law not invoked by the parties could be considered as a possible basis for setting aside 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?

The Arbitration Act in Slovenia does not have any provisions on the immunity of arbitrators or regarding arbitrators' liability for damages. It is likely that arbitrators may be liable for damages arising of intentional and grossly negligent behaviour, although there is no publicly available case law on the subject.

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

Similarly, criminal liability is also not excluded, and arbitrators may be criminally liable. Although, in practice it is unlikely that criminal sanctions would be brought against an arbitrator.

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?

Under Slovenian law, the recognition and enforcement of arbitral awards follow a two-stage procedure: (i) exequatur (*priznanje - razglasitev odločbe za izvršljivo*) and (ii) enforcement (*izvršitev odločbe*). This procedure varies based on whether the award is domestic or foreign, determined by the seat of arbitration.

Domestic arbitral awards require a mandatory exequatur procedure. The award can only be enforced if it is declared enforceable (*izvršljiv*) by the Ljubljana District Court, which has exclusive jurisdiction. The court may reject the application for a declaration of enforceability on two grounds:

1. Violation of public policy (ordre public);
2. Violation of the limits of arbitrability.

Foreign arbitral awards also undergo a mandatory exequatur procedure. The award must first be recognised before enforcement. The NYC is directly applicable in Slovenia, meaning the grounds for opposing recognition and enforcement are those set out in the Convention.

The Ljubljana District Court, which has exclusive jurisdiction, handles the exequatur according to non-civil procedure rules. The court must allow the opposing party to make a statement before issuing a decision. Appeals against the court's decision are decided by the Supreme Court of the Republic of Slovenia. Extraordinary remedies are not permitted.

Once an award is declared enforceable or recognised through the exequatur procedure, it can be enforced by the competent Local Court, based on the debtor's domicile or the location of their assets.

For a domestic award, the applicant may seek a preliminary injunction (*predhodna odredba*) before exequatur is granted. This preliminary injunction provides the applicant with a lien or mortgage. Unlike foreign arbitral awards, a domestic award already has legal effect in Slovenia as it is considered *res iudicata*; it is merely not yet enforceable. Conversely, a foreign arbitral award cannot be enforced until it has been finally recognised, unless the court of first instance can order that its decision be directly enforceable upon application by the claimant. However, during the exequatur proceedings, the applicant may obtain an interim injunction (*začasna odredba*) such as a freezing order to secure monetary or non-monetary claims. The courts have established that, for interim injunction proceedings, it is sufficient to establish the grounds for recognition of a foreign arbitral award to a probable degree.

The conditions for obtaining an interim injunction vary depending on whether the applicant seeks to secure a monetary or non-monetary claim. For instance, to obtain an interim injunction for a monetary claim, the creditor must demonstrate the likelihood that the claim against the debtor exists or is imminent. Additionally, the creditor must show that there is a risk that the enforcement of the claim could become impossible or significantly more difficult due to the debtor's actions, such as alienation, concealment, or other disposal of assets. While a foreign arbitral award cannot be enforced before obtaining exequatur, an interim injunction can provide temporary relief and security for the claimant during the exequatur and enforcement proceedings.

(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?

Once an award has successfully gone through the exequatur procedure and the court has declared it enforceable, it can be effectively enforced. The enforcement of foreign arbitral awards is governed by the NYC, which stipulates in Article

III that Contracting States shall enforce awards according to their procedural rules. In Slovenia, the enforcement of both domestic and foreign arbitral awards is governed by the Slovenian Enforcement and Security Act. This act expressly states that a foreign arbitral award may be enforced if it has been recognised in Slovenia or if it meets the conditions set out in the Arbitration Act, a ratified international treaty, or applicable EU regulations.

To initiate enforcement, the applicant files an application with the local court that has jurisdiction over the asset subject to enforcement. The competent local court then determines the admissibility of enforcement. If deemed admissible, the local court appoints an enforcement officer (*izvršitelj*) to carry out the enforcement of the award. Thus, the award is enforced through the standard judicial enforcement procedures before the competent local court.

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

Conservatory measures are generally available to a creditor before, during and after the proceedings until the conditions for enforcement are met. As previously mentioned, a creditor may apply for a preliminary injunction (predhodna odredba) for a domestic award and an interim injunction (*začasna odredba*) for a foreign award while exequatur proceedings are still pending. Once exequatur is obtained for a foreign award, a preliminary injunction becomes available as well.

(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?

The general climate and attitude towards the enforcement of arbitral awards is currently quite favourable. An analysis of the case law of the Slovenian Supreme Court shows that about 21 per cent of publicly available decisions related to the recognition and enforcement of arbitral awards have been declared unenforceable.

Regarding the attitude of the courts towards the enforcement of foreign arbitral awards set aside by the courts at the place of arbitration, the most important decision is the decision of the Supreme Court of the Republic of Slovenia, *No. VSRS sklep Cpg 7/2014* of 7 April 2015, according to which the court would not automatically refuse to enforce foreign arbitral awards set aside by the courts at the place of arbitration if the decision to set aside is contrary to Slovenian public policy because it was made in a biased or arbitrary manner.

Article V(1)(e) of the NYC provides that recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made. In the present case, the Supreme Court also applied the European Convention on International Commercial Arbitration, which provides that subparagraph (e) of the first paragraph of Article V of the NYC applies only in specific cases of annulment, which include the invalidity of the arbitration agreement.

In this case, the Supreme Court concluded that the allegation that the Russian court that had annulled the arbitral award had acted in a biased and arbitrary manner was not concrete and that the annulment decision was therefore not contrary to Slovenian public policy. Therefore, the court did not recognise a Russian arbitral award that had been set aside.

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

According to the data of the Supreme Court, the average enforcement procedure in the local court lasts 13 months. However, the duration depends mainly on the type and complexity of the case, whether the debtor has enforceable assets and on the behaviour of the parties in the procedure (ie, if the debtor opposes the enforcement measures). The object of enforcement used for the satisfaction of a monetary claim can be all tangible property or all property or material rights of the debtor which are not exempt from enforcement or in respect of which enforcement is not restricted by law.

Under Slovenian law, all claims established by a final court judgement or by a decision of another competent authority (including an arbitration tribunal) or by a settlement before a court or other competent authority become statute-barred in ten years.

XV. Sovereign Immunity

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

The sovereign immunity defence may be successfully raised at the enforcement stage in relation to all assets that the state or state entity can prove are functional to the exercise of public powers, as well as in circumstances provided for by international law. The state parties also enjoy immunity in civil litigation proceedings before the courts for activities performed within the framework of *iure imperii*.

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

Yes, there are special rules that apply to the enforcement of an award against a state or state entity. According to Article 14 of the Enforcement and Securing of Civil Claims Act, the enforcement or securing of civil claims against the assets owned by a foreign state in the Republic of Slovenia require prior consent from the Minister of Foreign Affairs. This consent is not necessary if the foreign state has explicitly agreed to the enforcement of such claims over its assets. Although the provision does not specifically mention state bodies, other independent state authorities, or state entities, it is assumed that assets owned by state bodies (eg, central banks) would be considered state assets, making the provision applicable to potential enforcement and security measures. Conversely, no special rules apply to the enforcement of claims against state-owned entities engaged in private-law or commercial activities (*acta iure gestionis).*

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

Unlike in civil litigation proceedings, where sovereign entities may claim immunity before the courts for activities performed within the framework of *iure imperii,* there are no such immunity claims applicable in arbitration proceedings under the Slovenian Arbitration Act. Thus, sovereign entities do not enjoy the same immunity protections in arbitration as they do in traditional court 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?

Slovenia is a party to the 1965 ICSID Convention. Slovenia is also a party to the Energy Charter Treaty (ECT) and many other treaties with investment provisions (TIPs). Importantly, in November 2022, the Slovenian government decided, with the approval of the National Assembly, to withdraw from the ECT, which it believes stands in the way of a 'responsible' climate and energy policy. On 13 October 2024, the Republic of Slovenia notified the Government of the Portuguese Republic, in its capacity as the depositary of the ECT, of its withdrawal from the ECT. The withdrawal became effective on 14 October 2024. Although the withdrawing party will be released from its obligations under the ECT in relation to investments made after the withdrawal takes effect (one year from formal notification), investments made prior to that point in time may continue to be covered by the protection regime for a period of 20 years under the 'sunset provision' of the current ECT.

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

Slovenia has entered into 41 bilateral investment treaties (BITs).

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

No, there have been no recent court decisions in Slovenia related to intra-European investor-state arbitration.

XVII. Resources

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

Similar to this IBA country guide, several handbooks on international arbitration, which also cover Slovenia, are available in English. There is also a Slovenian Arbitration Act with explanatory notes, the book by Prof. L. Ude, Arbitration Law, GV Založba, Ljubljana 2004 and many articles on arbitration in Slovenia. A specialised journal in the past was Slovenian Arbitration Practice, published by the LAC. Unfortunately, this journal is no longer published.

(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?

Indeed. In the past, the LAC has organised the annual Slovenian Arbitration Conference (from 2012-2014) and later a Joint UNCITRAL-LAC Conference on Dispute Settlement (2015-2019). In recent years, various events on arbitration have been regularly organised, mainly by law firms active in arbitration or by one of the consulting firms specialising in litigation support and valuation of damages, usually in cooperation with one of the regional arbitration institutions such as the LAC or the Vienna International Arbitral Centre (VIAC).

XVIII. Trends and Developments

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

In fact, there are all the prerequisites for arbitration to become a real alternative to court proceedings in Slovenia. The Arbitration Act, which is based on the UNCITRAL Model Law, is a modern law. Case law regarding the recognition and enforcement of arbitration awards is also arbitration-friendly. Much has been written about arbitration and numerous educational events have taken place over the last 10-15 years. However, the reality is that arbitration is unfortunately not yet a real alternative to litigation. The number of disputes brought before an arbitration tribunal is still relatively low. Arbitration clauses are usually only included in international contracts such as share purchase agreements and the like. An arbitration clause in a contract between two domestic companies is still quite rare.

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

While court-connected mediation in civil and commercial matters experienced an upswing in Slovenia at the turn of the millennium, its development seems to have stagnated 20 years later. It seems that the Slovenian courts have not yet utilised the incentives provided by law to increase the use of mediation.

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

As already mentioned, the Republic of Slovenia withdrew from the ECT in October 2023. The withdrawal became effective on 14 October 2024. Slovenia will be released from its obligations under the ECT in respect of investments made

after 14 October 2024. However, investments made before that date will continue to be covered by the protection regime for a period of 20 years under the 'sunset clause' of the current ECT.

In addition, three investment treaty proceedings have been initiated against Slovenia in the last two years, one of which has been concluded and two of which are still pending. This is quite a lot, considering that previously, there were only three investment treaty arbitrations in which Slovenia was the respondent. The case of *Ascent Resources v. Slovenia* to protect investments in hydraulic fracturing in the Petišovci oil field has attracted public attention. Another case, *Towra SA-SPF v Slovenia*, was registered by ICSID at the end of 2022. Towra is claiming at least 60 million euros in damages for alleged violations of the ECT's provisions on fair and equitable treatment (ECT Article 10) and expropriation (ECT Article 13).

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

No, there are currently no plans to reform the arbitration law in Slovenia. However, the LAC Arbitration Rules are regularly updated. The latest version of these rules came into effect on 1 June 2023, replacing the previous version that was introduced on 1 January 2014.

(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?

In regard to Slovenian law, third-party litigation funding is regulated under the Collective Actions Act. To prevent conflicts of interest, claimants are required to disclose the existence of third-party funding and the source of the funds used. In the context of arbitration law, there is no specific provision regarding third-party funding. However, the LAC Arbitration Rules, effective from 1 June 2023, address third-party funding in relation to the impartiality, independence and availability of arbitrators. To aid prospective and appointing arbitrators in fulfilling their conflict of interest duties, each party must notify LAC, the tribunal and the other parties about the existence and identity of any third party with which it has entered into a financing agreement. This includes any third party that holds an economic interest in the outcome of the proceedings.

There have been no recent court decisions in Slovenia related to 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?

Indeed, Slovenia has implemented a sanctions regime. According to the Act on Restrictive Measures Implemented or Enforced by the Republic of Slovenia in Accordance with Legal Acts and Decisions Adopted within the Framework of International Organisations ('ZOUPAMO'), these measures include restrictions or obligations towards states, territorial entities, movements, international organisations and individuals. Their purpose is to establish or maintain international peace and security, ensure respect for human rights and fundamental freedoms, foster the development and strengthening of democracy and the rule of law and achieve other goals aligned with international law and EU law.

There is no specific publicly available judgment dealing directly with international economic sanctions and international public policy. However, the framework of public policy is defined by the principles of the Slovenian Constitution, fundamental principles derived from domestic law, the fundamental principles of the legal order of the Council of Europe, the European Union and international treaties that ensure a minimum level of legal protection. Not every mandatory rule constitutes public policy, but only those whose violation would jeopardise: (i) the legal and moral integrity of the national legal order, (ii) customary international law, (iii) fundamental moral principles and (iv) vital economic, political and social interests.

Although the Supreme Court of the Republic of Slovenia applies the public policy reservation with restraint and only as a last resort, when its non-application would lead to consequences intolerable for the domestic legal order, it is likely that international economic sanctions are considered part of international public policy, as they are imposed to protect vital economic, political and social interests. In Slovenia, there have been no recent court decisions regarding the impact of sanctions on international arbitration proceedings.