LITIGATION ARD QUESTIONNAIRE

CIVIL LITIGATION

1. In what language(s) may court proceedings be conducted? What arrangements can be made for translation/interpreter services?

Court proceedings in the Slovak Republic are conducted in the Slovak language. However, parties have the right to use their mother tongue in the proceeding. For this purpose, the court is obliged to provide an interpreter, which shall be chosen from the list of interpreters and translators maintained by the Ministry of Justice. Alternatively, the translation may be provided by another person capable of communicating in both Slovak and the other language of concern, under the condition that this person gives the oath to the court. The costs connected with the use of the party‘s mother tongue in the proceeding shall be borne by the state.
The documents submitted to the court shall be in Slovak or Czech. Documents in other languages shall be translated by the official translator from the list of interpreters and translators.

2. What types of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Slovak Civil Procedure Code regulating the civil court proceeding recognizes three (3) pre-action measures: 1) conciliation proceeding, 2) preliminary injunction proceeding and 3) securing evidence.

In the second case, the court may order a preliminary injunction before the initiation of the proceeding on the merits if 1) the situation of the parties shall be temporarily regulated, or 2) there are grounds for a concern that the enforcement of the court decision may be endangered. The preliminary injunction proceeding is usually initiated by the party; however, under certain conditions, also ex officio proceeding is possible.

The scope of the obligations to be laid down by the preliminary injunction is not precisely determined by the Civil Procedure Code and the court may order the party to do something, to abstain from doing something, or to suffer something to be done. The limitation of the defendant´s rights suggested by the plaintiff’s motion shall be proportionate. Besides other formal and material conditions, the plaintiff has to present relevant evidence proving the danger of directly threatening damage.

Preliminary injunction proceeding is ex parte procedure, i.e. that the other party will not be notified about the filed application. The law does not prescribe an obligation to send a warning letter before filing any petition to the court. Thus it is not compulsory to engage in the conciliation negotiations/proceedings before filing the motion to the court, or to notify the other party about such motion.

With regard to the third pre-action measure, the court acting on a motion may secure evidence prior to hearing the case on the merits, if it fears that it would be impossible or very difficult to take evidence at a later date. When applying for securing the evidence, the court shall be provided with significant evidence that the above mentioned conditions are fulfilled.

3. What are the costs of civil and commercial proceedings? Who bears the costs?

The costs of proceeding consist of 1) legal fees, 2) court fees and 3) expenses of the parties and the state incurred during the proceeding.

There is a general rule that the losing party bears these costs of the proceeding incurred by the winning party and the state. The maximum amount of the legal (attorney's) fees to be awarded by the court is set by the decree of the Ministry of Justice and depends on the amount of the legal actions undertaken by the attorney. The client and the attorney may conclude an agreement enumerating the legal fees differently; however, these might not be reimbursed in full. The limits restraining the agreement on legal fees are laid down in the mentioned decree of the Ministry of Justice.

The court fees are 6% of the value of the subject of the proceeding. These fees apply for both filling the motion and also for the appeal. The winning party is entitled to be reimbursed by the losing party.

The costs of proceeding to be reimbursed by the losing party may also include the expenses incurred to the state such as interpreter's and translator's fees, experts' fees and costs of taking evidence.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

The institute of documents' disclosure does not exist in Slovak law. The parties trying to secure the document for the purposes of civil or commercial proceeding may initiate pre-trial ex parte procedure called "securing evidence". Based on such motion, the court may issue an order for securing the documents before the filling the motion on the merits.

During the proceeding, the court may request the entity that possesses a document needed as evidence to submit such document. The parties are not obliged to share documents and the duty to submit a private document imposed by the court may be hardly enforced.

The parties are allowed to communicate with the court electronically, but such petitions shall be complemented in writing. Electronic disclosure of documents is not used.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?

Every natural person that has been served the summons is obliged to appear in the court and to give witness testimony. If the witness does not obey the summons, the court may impose a sanction against him/her.

As to the process of witness evidence, the witness is usually asked by the presiding judge to coherently describe all he/she knows about the object of the proceeding. Consequently, the presiding judge, other members of the senate, parties and experts may ask questions. This cross-examination is supervised by the judge, who can prohibit inappropriate question. If there are serious obstacles for the summons of the witness or it appears to be contrary to the principle of economy of the proceeding, the court may order the witness examination at other court, e.g. at the place of witness's residency. In such case the judicial clerk asks the witness questions specified in the list prepared by the competent court. The parties may participate at this examination and they also may ask additional questions.

The witness may give evidence also before the trial in the "securing evidence" procedure initiated by the party.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e: may not be disclosed to the court)?

Slovak law does not provide specific rules on settlement discussions. The negotiations are often conducted orally, but if the risk of court proceeding emerges, the written form is more usual, as it may serve as an evidence. A number of entities is often represented at the negotiations by the attorneys or other representatives.

If the negotiations take place after the initiation of court proceeding, the parties may commonly ask the court to stay the proceeding or also to elaborate the court settlement between the parties. In such case, the court shall return the part of the paid court fees.

The settlement correspondence is not privileged and if the parties do not conclude the non-disclosure agreement with this respect, it may be disclosed to the court or third parties.

7. How can foreign judgments be enforced?

Different approach shall be taken by Slovak authority with respect to the enforcement of foreign judgment from 1) EU member states and 2) non EU states.

In the Slovak Republic, as it is a member state of the European Union, it is possible to enforce judgments awarded by the courts of other EU member state according to the unified procedures laid down in EU legislation, e.g. in the following EU regulations:

- Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I),
- Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims,
- Regulation (EC) No 1896/2006 creating a European order for payment procedure,
- Regulation (EC) 861/2007 establishing a European Small Claims Procedure.

In general, the judgments falling within the scope of these regulations can be enforced in the Slovak Republic after the submission of application by the interested party and fulfillment of formal requirements.

The enforcement of foreign judgments issued in non EU states is effected by the bilateral agreement of such state with the Slovak Republic. If such agreement does not exist, the process of recognition and enforcement of foreign judgments is governed by the Slovak Act on Private International Law and Rules of International Procedure. Foreign judgments shall have legal effect in the Slovak Republic if they have been recognized by the Slovak authorities.

Foreign decisions in non-family matters may be recognized by the Slovak court by issuing a mandate for their execution to the executor. Foreign decision recognized by a Slovak court shall have equal legal effects as a decision rendered by a Slovak court and may be enforced in the same manner.

ARBITRATION

1. Are mediation clauses in commercial contracts binding and enforceable?

Mediation clauses in the commercial contracts are binding for the parties according to their terms. Upon agreement of all parties the mediation clause may apply also on their legal successors.

Mediation in the Slovak Republic is governed by the act No. 420/2004 Coll. on mediation (Mediation Act). However, neither this act nor other piece of Slovak legislation allows enforcement of the mediation clause. Mediation may be always terminated by simple written notice of one of the parties.

2. What is the procedure for mediation? Is it a popular method for resolving commercial disputes?

The procedure of mediation is regulated by the Mediation Act. The mediation begins by conclusion of the agreement on commencement of mediation between a mediator and the parties and its registration at the Notarial Central Register of documents. Mediation is terminated by the conclusion of an agreement, or written notice on termination delivered by the mediator or party to the mediation proceeding.

Mediation is not commonly used institute in Slovak Republic and if parties seek out-of-court settlement, arbitration is generally preferred.

3. Are arbitration clauses in commercial contracts binding and enforceable?

Arbitration clauses in commercial contracts are binding and enforceable. The parties may contest the validity of arbitration clause at the civil court. The arbitration clause is considered as an independent agreement and it remains valid even if the contract itself is declared void.

If party to the arbitration clause tries the case at the civil court, the other party may file an objection on competency of the civil court not later than during his/her first act on the merits. In such case the court may not continue to proceed and shall stay the proceeding.

Arbitration judgments became recently under strict scrutiny of the Slovak courts. Latest judicial decisions declared several arbitration clauses absolutely invalid due to the violation of legislation on

consumers' rights protection. Due to the consumers' protection, the civil courts often refuse granting the mandate for the execution of the arbitration judgments.

4. What type of arbitration is commonly used for resolving commercial disputes: ad hoc arbitration or institutional arbitration?

Ad hoc arbitration is a very rarely used institute in the Slovak Republic. Institutional arbitration is generally preferred, as most of the arbitration disputes are solved in arbitration centers.

5. Which arbitration institutes are most popular?

There is a large number of arbitration centers in the Slovak Republic. However, one of the most popular venues remains the Court of Arbitration of the Slovak Chamber of Commerce and Industry located in Bratislava.

6. What influence can the parties have on the identity of the arbitrator(s)?

The parties have crucial involvement in the process of arbitrator's appointment. The parties may either agree upon the identity of the arbitrator(s) themselves, or determine the procedure of his/her appointment. If the arbitrator or procedure of his/her appointment is not agreed, a court or arbitral institution may appoint the arbitrator(s).

7. In what language is an arbitration proceedings conducted?

Unless agreed otherwise by the parties in the arbitration clause or before the commencement of the arbitration proceeding, the arbitration court is entitled to determine the language of the proceeding. The usual language of proceeding is Slovak. The arbitration court may also order the official translation of the documents to the agreed language of proceeding.

8 .What types of pre-arbitration measures are available and what are their limitations?

Once constituted, the arbitration court may issue a preliminary injunction that it deems as necessary for the purpose of protecting the object of the dispute. Prior to the commencement of the arbitration proceeding and after its termination, interim measures applications may be filed at the civil courts. The courts are entitled to grant the preliminary injunction upon the fulfillment of the statutory conditions specified in the Civil Procedure Code.

The scope of interim measures issued by the arbitration court is limited to the disputes, which fall under their competency. The exclusions from the arbitration courts competency, such as disputes related to the rights to real estates are set forth in the Arbitration Act.

9. What are the costs of arbitration proceedings and who bears these costs?

The costs of arbitration proceedings especially include the cash expenses of the parties, arbitration court fees and its administration costs, legal (attorney's) fees, evidence costs, witness and experts' costs.

There is no express provision in the Slovak Arbitration Act concerning the issue whether or not an arbitration court may award costs of arbitration proceeding. However, it is generally accepted that arbitration courts shall have this power and it is usually laid down in their statutes.

The arbitration courts usually determine in arbitration judgment the amount of the costs of arbitration and the party liable for their payment, and/or the allocation of costs between the parties. The costs are often to be borne by the losing party.

10. What are the basic rules of document disclosure in arbitration? Which documents do not require disclosure?

Document disclosure is not specifically governed by the Arbitration Act. The process of submission of documents is similar as in the general civil court proceeding. The parties shall enclose the documents that they intend to rely upon as documentary evidence to their written submissions. The arbitration court is entitled to carry out only the evidence suggested by the parties.

Nevertheless, the arbitration court has the power to order the parties based on the application of one of the parties to produce additional documentary evidence if it believes that such documents might assist in resolving the issues in dispute.

If the arbitration court cannot secure the evidence itself, it may seek the assistance of the local general court to obtain respective evidence (e.g. to compel third parties to provide documentary evidence).

11. What is the procedure for witness evidence in arbitration (namely, is it deposition based or witness examination or cross-examination)?

Process of taking evidence, including witness testimony is governed by the Arbitration Act. Regulation of witness evidence is similar to the one laid down in Civil Procedure Code applicable for general civil courts. In case the issue is not regulated by the Arbitration Act, the Civil Procedure Code shall apply accordingly.

With respect to these rules, witnesses shall appear personally in the hearings of the arbitration court, where the parties and arbitrators are entitled to conduct witness examination.

If the arbitration proceeding is conducted exclusively in written form, the written statement of the witness may be submitted as an evidence.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e., may not be disclosed to the Arbitrator)?

There are no concrete rules in the Slovak law regarding settlement discussions. The parties may proceed under the Mediation Act and seek for mediation or organize personal meetings together with their lawyers. Written form of the discussion conducted between the lawyers of the parties is also common.

Settlement correspondence is not privileged unless agreed otherwise between the parties. However, there is not an effective legal barrier to prevent the party from disclosing such correspondence to the arbitrator. The correspondence between the party and its counsel is strictly confidential and shall not be disclosed by any circumstances.

13. Under what circumstances can an Arbitration Award be enforced, challenged or annulled?

The enforcement of an arbitration award commences upon the filing of an execution application to the executor and is performed by the executor on the basis of a mandate granted by the civil courts. Before granting such mandate, the court reviews the arbitration award and may refuse to approve the execution. Such approach is common in disputes involving consumers.

Upon a challenge of a party, arbitration award may be reviewed by other arbitrator if agreed so in the arbitration clause. Delivered arbitration judgment, which cannot be reviewed, has the same effect as a lawful court judgment and its enforcement is subject to the same conditions as the court decisions.

The parties may seek an annulment of an arbitration award before the Slovak courts within 30 days after being served with the award only on the grounds specified in the Arbitration Act. Among these reasons are the following circumstances: the subject matter of the dispute was not arbitrable; the award addressed the issues that had already been a subject matter of a previous court or arbitration proceeding; the arbitration agreement is contested; the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement and the party challenging the award objected to this fact before the arbitration court; a party to the arbitration was not duly represented; the award was rendered by an arbitrator who has been removed for bias; the principle of equality of the parties was violated; there are compelling reasons for re-opening the case (e.g. new evidence has emerged which casts serious doubt upon the correctness of the arbitral tribunal’s decision); the award was obtained by a criminal conduct; or consumers‘ protection rights legislation was violated during the arbitration proceeding.