CIVIL LITIGATION - BULGARIA

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

According to the Bulgarian Civil Procedure Code, court proceedings shall be conducted in the Bulgarian language. Where any persons participating in the case have no command of the Bulgarian language, the court shall appoint an oral interpreter with the assistance of whom such persons shall perform the court procedural steps and shall be provided with an explanation of the steps taken by the court. Where a deaf or a mute person participates in the case, a sign-language interpreter shall be appointed thereto.

Any document presented in any language other than Bulgarian shall be accompanied by an accurate translation into the Bulgarian language, authenticated by the party. If the court is unable to verify the accuracy of the translation on its own or if the accuracy of the translation is contested, the court shall appoint an expert witness to perform verification.

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

An injunction may be granted to secure all types of action. Even before the action is brought, an interim measures may be granted and an injunction may be sought from the generically competent court exercising jurisdiction over the permanent address of the plaintiff or over the location of the respective immovable which is to serve as security. In this case, the court shall set a time limit for bringing of the action which may not be longer than one month. Unless proof of bringing an action within the time limit set is presented, the court shall dissolve the injunction *ex officio.*

An injunction securing the action shall be granted where, without such an injunction, it will be impossible or difficult for the plaintiff to realize the rights under the judgment and if:

1. the action is supported by convincing written evidence, or

2. a bond is furnished in an amount determined by the court according to Articles 180 and 181 of the Bulgarian Obligations and Contracts Act.

The amount of the bond shall be determined on the basis of the amount of the direct and immediate damages which the respondent will incur if the injunction is unfounded.

There is no a mandatory rule under the Bulgarian legislation for a written warning letter to be sent to the debtor before issuing a court claim. Such warning letter may have the meaning of an official invitation to the debtor to pay and respectfully if not - to put him in delay.

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

Stamp duties on the price of action and court costs shall be collected upon conduct of the case. Where the action is unappraisable, the amount of the stamp duty shall be determined by the court. Where the subject matter of the case is a right of ownership or other rights in rem to an immovable, the amount of the stamp duty shall be determined on one-fourth of the price of action.

In cumulatively joined actions brought by a single petition, stamp duty shall be collected for each action. In alternatively or eventually joined actions brought by a single petition against a single person, stamp duty shall be collected for a single action. In alternatively or eventually joined actions brought by a single petition against multiple persons, stamp duty shall be collected for the actions against each person.

The Bulgarian Civil Procedure Code provided for simple and proportionate stamp duties. Simple duties shall be determined on the basis of the material, technical and administrative expenses required for the proceeding. Proportionate taxes shall be determined on the basis of the proprietary interest.

The stamp duty shall be collected upon presentation of a motion for protection or facilitation and upon the issuing of the document for which duty is paid, according to a rate schedule adopted by the Council of Ministers.

The fees paid by the plaintiff, the costs of the proceeding and the fees for one lawyer, if any, shall

be paid by the respondent commensurate to the portion of the action granted.

If the fees for a lawyer paid by the party are excessive considering the actual legal and factual complexity of the case, the court, acting on a motion by the opposing party, may award a lower amount of the costs in this part, but not less than the minimum amount set according to the Bar Act and Ordinance No. 1 dated 9 July 2004 regarding the minimum amounts of lawyers' fees.

Upon conclusion of the case by a settlement, half of the stamp duty deposited shall be refunded to the plaintiff. The costs of the proceeding and of the settlement shall be borne by the parties who incurred the said costs, unless otherwise agreed.

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?

Bulgarian law does not provide for disclosure of documents. Civil Procedural Code stipulates that each party shall be obligated to establish the facts upon which the demands or oppositions thereof are founded and respectfully allows each party to submit any evidence, including documents they have in support of their statements. The evidential value of documents shall be determined conforming to the law which was in force at the time and in the place where the said documents were drafted. The court shall evaluate the evidential value of the document which contains any crossings, deletions, insertions between the lines and other apparent blemishes, considering all circumstances of the respective court case.

The Bulgarian Civil Procedure Code distinguishes between official and private documents. An official document, issued by an official within the official responsibilities thereof in the established form and according to the established procedure, shall constitute evidence of the statements made before the said official and of the steps performed by and before the said official. Officially authenticated duplicate copies or excerpts of official documents shall have the same evidential value as the originals. Private documents, signed by the persons who issued the said documents, shall constitute evidence that the statements contained therein were made by the said persons.

An electronic document may be presented reproduced on a paper-based data medium in the form of a duplicate copy authenticated by the party. Upon request, the party shall be obligated to present the document on an electronic data medium. If the court does not have at its disposal technical means and experts making it possible to reproduce the electronic document and to duly verify the electronic signature in the courtroom in the presence of the persons who appeared, electronic copies of the document shall furthermore be presented to each of the parties to the case. In such case, the truthfulness of the electronic document may be contested during the next court hearing.

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?

According to the Bulgarian civil procedural rules a witness shall be obligated to appear before court in order to give testimony orally. If there is an important reason, the examination of the witness may be conducted even before the day assigned for the hearing, as well as outside the premises of the court. The parties shall be summoned for any such examination.

Testimony shall be admitted in all cases except where:

1. legal transactions, for the validity whereof a law requires a written instrument, have to be established;

2. the content of an official document has to be denied;

3. circumstances have to be established, for the proving whereof a law requires a written instrument, as well as for establishment of contracts to a value exceeding BGN 5,000, except where concluded between spouses or lineal relatives, collateral relatives up to the fourth degree of consanguinity and affines up to the second degree of affinity;

4. obligations, established by a written instrument, have to be extinguished;

5. written accords have to be established, wherein the party moving for the witnesses has participated, or such accords have to be modified or repudiated;

6. the content of a private document originating from the party has to be denied.

In the cases referred to in Items 3, 4, 5 and 6 above, testimony shall be admitted solely with the express consent of the parties.

In the cases where the law requires a written document, testimony shall be admitted if it is proved that the document has been lost or destroyed not through the fault of the party.

Testimony shall furthermore be admitted where the party seeks to prove that the consent expressed in the document is simulated, and then if there is written evidence in the case originating from the other party or attesting statements of the other party before a state body, which lend probability to the allegation of the party that the consent is simulated.

According to the Bulgarian Civil Procedure Code no one has the right to refuse to testify, except:

1. the attorneys of the parties to the same case and the persons who were mediators in the same dispute;

2. the lineal relatives to the parties, the siblings and the affines in the first degree of affinity, the spouse and the former spouse, as well as the *de facto* cohabitee with a party.

Any witness, who refuses to give testimony or to answer particular questions, shall be obligated to state the reasons for this in writing and to attest the said reasons before the court hearing whereat the said witness is to be examined, or orally before the court. Any witness, who has failed to comply with the legally stated obligation thereof and has so delayed the proving:

1. shall reimburse the parties for the costs incurred as a result of non-compliance with the said obligation;

2. shall forfeit the entitlement to claim remuneration.

A witness shall be entitled to remuneration and to costs for appearance in court, if claimed by the said witness before the end of the court hearing. The remuneration and the costs shall be paid from the deposit made by the party who asked for the respective witness.

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)?

There are no mandatory rules in the Bulgarian legislation regarding how or who namely to conduct settlement discussions. The parties may reach out-of-court settlement and to withdraw the claims or to withhold them. They may also achieve a court settlement during a court hearing. A memorandum shall be drawn up on any such settlement which does not conflict with the law and with *bona mores*, and the said memorandum shall be approved by the judge and shall be signed thereby and by the parties or their representatives. The court settlement shall have the relevance of an effective judgment and shall not be subject of appeal before a superior court instance. Where the settlement refers to only part of the dispute, the court shall proceed with examination of the case in respect of the unsettled part.

A popular mediation center in Bulgaria is the Mediation Center with the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry. The said Center provides mediation services under the Bulgarian Mediation Act.

7. How can foreign judgments be enforced?

With regard to the recognition and enforcement of the foreign court judgments we should made a difference between the judgments issued in a country – member of the European Union or in a country outside the EU. The regime shall be different.

The procedure regarding recognition and enforcement of judgments issued by foreign countries – members of the EU is with compliance to the Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition of judgments in civil and commercial matters. About the rest of the cases the mandatory provisions of the Bulgarian Code on International Civil Law shall be applicable. According to the Bulgarian court

practice the main objections which the court shall consider as admissible and respect shall be that the judgment is in a contradiction to the Bulgarian *public order* (the so called *supra-mandatory* provisions). The theory and the court practice consider that the meaning of *"public order"* shall include the main principles and values of our domestic legal system, both mandatory material provisions and procedural provisions. In particular, in the said meaning shall be included also the so called *bona mores.* If the text of the foreign judgment or the way obtaining it shall be found inadmissible to the Bulgarian *public order,* the consequence shall be denial of the recognition and enforcement. The Bulgarian court practice points out that the most common breaches of the procedure or incorporated in the judgment are the violations of defendant's right to have a litigant in the civil procedure, breaches to the principle of the equality of the parties involved in the procedure, etc.

ARBITRATION - BULGARIA

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

Mediation clauses in commercial contracts are binding between the parties and their negligence by a party shall cause the responsibility of the offended party. However the breach of the contractual obligation for mediation shall not lead to the inadmissibility of the claim filed at the court.

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

According to the Bulgarian Mediation Act, mediation is an alternative method to resolve legal and non-legal disputes. Mediation is a voluntary and confidential procedure for out-of-court resolution of disputes, whereby a third party mediator assists the disputants in reaching a settlement.

The procedure shall be implemented by one or more mediators selected by the parties. The disputants shall participate in the procedure personally or through their representatives. The authorization shall be made in writing. Lawyers as well as other specialists may likewise participate in the mediation procedure.

Prior to conduct of the procedure, the mediator shall inform the parties of the essence of mediation and of the consequences thereof and shall require the written or oral consent of the said parties to participate. In the course of the procedure the essence of the dispute shall be clarified, the mutually acceptable options of solutions shall be specified and the possible framework of an agreement shall be outlined.

The form and content of the agreement shall be determined by the parties. The form may be oral, written, or written with notarization. The agreement shall be binding solely on the disputants and may not be held adverse to any persons who did not participate in the procedure.

The Bulgarian Mediation act provides for nullity of an agreement which contradicts or evades the law, as well as an agreement which is in conflict with the morals *(bona mores).*

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

Yes, arbitration clauses in commercial contracts are binding and enforceable. According to the Bulgarian Civil Procedure Code (CPC), the parties to a property dispute may agree that the said dispute be settled by an arbitration court, unless the said dispute has as its subject matter any rights in rem or possession of a corporeal immovable, maintenance obligations or rights under an employment relationship.

According to the Bulgarian Law on International Commercial Arbitration (LICA), an arbitration agreement shall mean consent of the parties to submit to arbitration the resolution of all or certain disputes which may arise or have arisen between them in connection with a specific contractual or non- contractual legal relation. This may be an arbitration clause in a contract or a separate agreement. The said legal act provides that the arbitration agreement shall be in writing. An agreement shall be deemed of being in writing if contained in a document signed by the parties or in

the exchange of letters, telex messages, telegrams or other means of communication. An arbitration agreement shall be deemed to exist also when the respondent in writing or by a statement, recorded in the minutes of the arbitration hearing, accepts the dispute to be heard by an Arbitral Tribunal or when the respondent participates in arbitration proceedings without challenging the jurisdiction of the Arbitral Tribunal.

An arbitration agreement, included in a contract, shall be independent of its other provisions. The voidance of a contract shall not mean *ipso facto* invalidity of the arbitration agreement contained therein.

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

Although the Bulgarian legal system admits both kinds of arbitration, the preferable one is the institutional arbitration.

The parties may include in their contracts a clause for *ad hoc* arbitration, assisted by the Court of Arbitration at the BCCI. In this case the Court of Arbitration shall observe its Rules concerning *ad hoc* arbitration as well as the UNCITRAL Arbitration Rules.

5. Which arbitration institutes are most popular?

The most popular institutional arbitration is the Arbitration Court at the Bulgarian Chamber of Commerce and Industry (Arbitration Court at the BCCI). There exist also other arbitration courts such as the Arbitration Court at the Commercial Banks Association, the Arbitration Court at the Bulgarian Stock Exchange, the Arbitration Court at the Bulgarian Industrial Association, etc.

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

LICA envisages that the Arbitral Tribunal may consist of one or more arbitrators whose number shall be determined by the parties. When their number is not determined by the parties, the arbitrators shall be three. An arbitrator may also be a person who is not a citizen of the Republic of Bulgaria.

The parties may agree on the procedure for composition of the Arbitral Tribunal. Failing such agreement on the procedure:

1. if the tribunal is of three arbitrators, each of the parties shall appoint one arbitrator and the two shall appoint the third arbitrator;
2. if a party fails to appoint an arbitrator within 30 days from the receipt of the request of the other party to do so, or if the two arbitrators fail to reach agreement on the third arbitrator within 30 days from their appointment, the President of the BCCI shall appoint the third arbitrator;
3. if the Arbitral Tribunal is of a sole arbitrator and the parties fail to agree on his/her appointment, the latter shall be appointed on the request of one of the parties by the same body under the above item.

When a person is nominated for arbitrator, he/she shall disclose all circumstances which may give raise to reasonable doubts of his/her impartiality or independence. The arbitrator shall have this obligation after his/her appointment as well.

By virtue of an agreement of the parties thereto the dispute may be heard and resolved by a sole arbitrator, appointed by both parties from the list of arbitrators. If the parties are unable to reach agreement on the choice of an arbitrator, the arbitrator shall be appointed by the President of the Court of Arbitration.

7. In what language is an arbitration proceedings conducted?

The parties may agree on the language or languages to be used during the arbitration proceedings. Failing such agreement, the language or languages shall be determined by the Arbitral Tribunal. Usually the language of the arbitration procedure shall be Bulgarian.

The Arbitral Tribunal may order each piece of written evidence to be accompanied by a translation into the language or languages agreed on by the parties or determined by the Arbitral Tribunal. The latter shall appoint an interpreter for the party having no command of Bulgarian.

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

Each of the parties to an arbitration agreement may request from the State Court to order an injunction granting interim provisional measures of the claim before or during the arbitration proceedings. The general prerequisites and limitations of the interim measures shall be as specified in the CPC (please, see point 2, Part Civil Litigation).

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

Calculation and distribution of the arbitration charges and covering of the expenses of the Arbitration Court at the BCCI shall be effective in compliance with the Tariff of the same court, which Tariff shall be an integral part of the Rules of the Court.

The claimant shall pay in advance approximately 4–4,5% of the claims' price as an arbitration fee at the time of filing the request for arbitration. The Secretary of the Court may order the claimant to pay some deposit for future expenses related to collection of evidences.

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

Bulgarian law does not provide for disclosure of documents. CPC, as well as LICA, stipulates that each party shall be obligated to establish the facts upon which the demands or oppositions thereof are founded and respectfully allows each party to submit any evidence, including documents they have in support of their statements.

All documents on which the respective party shall ground her/his statement shall be submitted with copies corresponding to the number of other parties and one additional copy for the Court of Arbitration. If possible, the party shall provide all documents on the case on electronic device too. The documents shall be submitted in the language in which the contract was concluded or in the language which the parties used in their correspondence between each other or in the Bulgarian language. The translation of these papers shall be done on the order of the Secretary for the account of the party submitting the papers. In case papers are submitted in a language, the translation from which is connected with difficulties, the Secretary of the Court may order the respective party to submit the said papers translated into English, French, German, Russian, Italian or Spanish. If the party fails to submit a translation within the prescribed time limit no further proceedings shall be undertaken.

LICA envisages that the Arbitral Tribunal may ask the parties to submit additional evidence; may appoint experts or request from organizations or physical persons to submit certificates or any other documents in their possession when necessary for assessing the truth of the case. The parties shall be duly notified about any pieces of evidence collected *ex officio* and shall be given adequate time for presentation of their opinions and for submission of counter evidence.

The Arbitral Tribunal may, upon a request of any of the parties or on its own initiative, order the experts after the submission of their opinions to attend the hearing in order to give clarifications. The interested party shall submit and enclose in due order, all evidence used to form expert opinions, unless both parties agree otherwise.

The Arbitral Tribunal may delegate to one of its members to collect evidence abroad, while the party requesting the evidence shall advance the expenses thereof.

The Arbitral Tribunal may set a final date for presenting and submitting evidence.

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

In contrast to the civil litigation, Bulgarian law do not envisages any mandatory rules for witnesses to be obliged to appear at an arbitration hearing and to give testimony.

Witnesses may be interrogated by the Arbitration Tribunal if brought in the hearing by the party which has listed them and pointed to the circumstances which these witnesses are expected to prove.

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 mandatory rules in the Bulgarian legislation concerning arbitration regarding how or who namely to conduct settlement discussions. The parties may reach out-of-court settlement and to withdraw the claims or to withhold them. They may also achieve an arbitration settlement during an arbitration hearing.

If the parties reach a settlement before the Arbitral Tribunal, this settlement shall be recorded in the minutes of the hearing and shall be signed by both parties and the arbitrator or arbitrators.

The parties shall be entitled to request the settlement to be reproduced in an award under agreed upon terms and conditions.

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

According to the Bulgarian law, executive grounds are the final acts of the Bulgarian courts, the judgments of the foreign courts and the arbitral awards which are recognized and their enforcement is assessed within the territory of the Republic of Bulgaria by a Bulgarian court.

In contrast to the court judgments (please, see point 7, Part Civil Litigation), the arbitral awards shall be governed by one and the same regime for recognition and enforcement nevertheless the arbitration shall take place in a country – member of the European Union (EU) or the place of arbitration shall be in a country non-member of the EU. It is envisaged in all EU Regulations concerning the recognition and enforcement that they are not applied to the arbitration awards. The arbitrations are non-state legal structures and in view of this in case of a foreign arbitration award the executive ground shall be constituted by*: (i)* a foreign arbitration award and *(ii)* a judgment (final and concluding the procedure) of the Bulgarian court which recognized the enforceability of the foreign arbitral award in Bulgaria.

The most significant international act which envisages for the recognition and enforcement of foreign arbitral awards is the Convention on the recognition and enforcement of foreign arbitral awards (issued on 10 June 1958 in New York) and called the New York Convention. The Republic of Bulgaria has been adhered to the said Convention according to the Decree No.284 dated 8 July 1961.

The Bulgarian domestic legislation provides for the regime of recognition and enforcement of foreign arbitral awards which is in compliance with the above said Convention – Law on the International Commercial Arbitration, the Code on International Civil Law, as well as the Civil Procedural Code.

Recognition and enforcement of the award shall be refused, at the request of the party against whom it is invoked, only if that party shall furnish to the competent authority where the recognition and enforcement is sought, proofs that:

1. The parties to the arbitration agreement under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
2. The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
3. The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it 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, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
4. The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
5. 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.

Recognition and enforcement of an arbitral award may also be refused if the competent authority in

the country where recognition and enforcement is sought finds that:

1. The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

2. The recognition or enforcement of the award would be contrary to the public policy *(public order)* of that country.

The arbitration award may be set aside by the Supreme Court of Cassation if the party requesting the setting aside proves any of the following grounds:

1. the party has been incapable at the conclusion of the arbitration agreement;

2. no arbitration agreement has been concluded or it has been null and void according to the law chosen by the parties and failing such a choice – according to this Law;

3. the subject of the dispute has been unarbitrable or the arbitration award has been in conflict with the *public order* of the Republic of Bulgaria;

4. the party has not been duly notified of the appointment of an arbitrator or of the arbitration proceeding or has been unable to take part in the proceeding; owing to causes beyond its control;

5. the award has resolved a dispute not provided for in the arbitration agreement or contains a ruling outside the subject of the dispute;

6. the composition of the Arbitral Tribunal or of the arbitration procedure has not been in compliance with the agreement between the parties, unless the said agreement has been in conflict with the mandatory provisions of this Law or failing such agreement – when the provisions of this Law have not been applied.

A request for setting aside may be made within 3 months from the day on which the requesting party received the award. When a request for correction, interpretation or addition to the award has been made, the term shall be effective from the day when the Arbitral Tribunal decides on that request.

With respect to the domestic arbitration awards, the Sofia City Court on a request of the interested party shall issue a writ of execution based on the arbitration award in force.