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The International Comparative Legal Guide to:

International Arbitration 2019

16th Edition

A practical cross-border insight into international arbitration work

Published by Global Legal Group, in association with CDR, with contributions from:

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Contributing Editors
Steven Finizio and Charlie Caher, Wilmer Cutler Pickering Hale and Dorr LLP

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Caroline Collingwood
Rachel Williams

CEO
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Group Consulting Editor
Alan Falach

Publisher
Rory Smith

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
August 2019

ISBN 978-1-912509-95-9
ISSN 1741-4970

Strategic Partners

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North Macedonia

Ivan Debarliev

Vladimir Boshnjakovski

Debarliev, Dameski & Kelesoska
Attorneys at Law

1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

In the Republic of North Macedonia, international trade arbitration is governed by the Law on International Trade Arbitration, while domestic arbitration is governed by Heading XIII of the Law on Litigation. Under both laws, the single mandatory requirement of an arbitration agreement is to be in a written form. One implicit criterion is for the parties, which conclude the arbitration agreement, to have the necessary legal capacity and authorisation.

The arbitration agreement in both international and domestic context can: (i) be included in the underlying contract; (ii) represent a stand-alone arbitration agreement; and (iii) be included in any other type of memorialisation. The latter point is possible because written form is not limited to paper form or signed documents. Namely, exchange of letters, telegrams, telex, telegrams, telefax, or other means of communication which yield written evidence of an agreement – regardless of whether it is signed or not – may be the basis for constituting a valid arbitration agreement. One additional way of implicitly creating an arbitration agreement is by an exchange of suit and response in which one party asserts the existence of an arbitration agreement and the other party does not object.

The Law on International Trade Arbitration goes a step further, in comparison to the provisions in the Law on Litigation, by explicitly stating that the arbitration agreement can be included in a separate document, such as general terms and conditions or a text of another agreement, if the underlining contract refers to this document.

1.2 What other elements ought to be incorporated in an arbitration agreement?

Beyond stating that all or particular disputes arising from a specific legal relation between the parties are subject to an arbitration, the arbitration agreement or clause does not need to incorporate any other formal elements. In order to avoid any potential disagreements, however, it is especially recommended to specify the arbitration institution that will have jurisdiction in cases of institutional arbitration or particular rules of arbitration in the cases of *ad hoc* arbitration.

The Law on International Trade and other relevant laws specify default rules on other relevant issues, such as number and method of selection of arbitrators, language, applicable rules, delivery and evidence providing. The parties can of course modify these provisions as it suits their needs.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The courts of the Republic of North Macedonia respect arbitration agreements. If a party challenges the jurisdiction of a court due to the existence of an arbitral tribunal, on the basis of Article 8 of the Law on International Trade Arbitration, the court will declare itself as incompetent, will nullify all undertaken acts and will dismiss the claim. Exceptions are cases where the court finds that the arbitration agreement is null and void or it is impossible to fulfil, as well as if the dispute at hand is in the exclusive jurisdiction of the local courts.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

The Law on International Trade Arbitration governs all aspects of international trade arbitration, including matters such as declining jurisdiction by a court when a valid arbitration agreement exists.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

No. International arbitration is governed by the Law on International Trade Arbitration, while domestic arbitration is governed under Heading XIII of the Law on Litigation.

The key difference is that in cases of domestic arbitration, only institutional arbitration institutions may be chosen; whole *ad hoc* arbitration is excluded. Another difference is in the default provisions on applicable law (see the answer to question 4.1). There are some differences in relation to default rules in the laws, where one noticeable difference is the longer period of 30 days to appoint an arbitrator in international arbitration, as opposed to 15 days in domestic arbitration. Most other differences of default rules relate to the wording, while substantially they are same.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The Law on International Trade Arbitration is based upon the

UNCITRAL Model Law, but these two acts are not fully harmonised. Generally, the two acts are based on the same principles and there are no fundamental differences. However, the Model Law deals with the issues in more detail than the Law on International Trade Arbitration.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

The mandatory rules governing international arbitration in the Republic of North Macedonia are few and limited. They are contained in the Law on International Trade Arbitration.

In general, the parties are free to determine the rules of procedure. However, there are some fundamental provisions which the parties' disposition cannot change. First of all, the right of equal treatment in the procedure cannot be deviated from. Similarly, the arbitral court must enable each party to represent its claims as well as to give its views on the opponents' claims.

There are other rules that do not regulate the proceedings directly, but which still cannot be derogated. One of these is the right of a party to seek interim measures from the court, during or before the start of an arbitration procedure. In addition, the parties may not limit the right of any party to challenge the award.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

The general rule is that the parties may refer disputes concerning rights, with which they can freely dispose, to arbitration. These are mostly rights deriving from commercial or private interests. However, this general rule is limited to issues over which the laws do not prescribe exclusive jurisdiction of domestic courts.

The bulk of the cases that cannot be subject to an arbitration are enumerated in the Law on International Private Law. These are disputes regarding: (i) establishment, termination and status changes of legal entities; (ii) validity of information recorded in public registries; (iii) registration and validity of rights of industrial property; (iv) approval of and conducting enforcement procedures; (v) real estate; (vi) marital disputes, where the sued partner has citizenship and residence in the state; and (vii) parental rights of children who have citizenship and residence in the state. Some additional limitations can be found in the Law on Litigation. These concern disputes over: (i) property and usage rights of vessels and flying objects registered in the state; and (ii) core bankruptcy issues.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

Yes. In accordance with Article 16 of the Law on International Trade Arbitration, the arbitral court may make decisions on its own jurisdiction. The arbitration court may even decide about any objection on the validity and existence of an arbitration agreement. Furthermore, the arbitration clauses are severable from the rest of the contract, i.e. any invalidity of the contract itself will not mean an invalidity of the arbitration clause. However, if a suit is brought to a local court and this court finds the arbitration agreement to be null and void, then the court will establish jurisdiction over the dispute.

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

If one party challenges the jurisdiction of the court on the basis of the existence of a valid and enforceable arbitration agreement, the court will declare itself as incompetent, will nullify all undertaken acts and will dismiss the claim. The challenger must submit its objections with the written response to the claim, without having to enter into substantial or other procedural matters. This issue will then be resolved prior to entering the discussion on other matters.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

The national court can decide on the validity or competence of an arbitral tribunal upon an objection of a party about the validity or the existence of an arbitral agreement. Any ruling of a court regarding the arbitration agreement can be appealed to the appellate court. If other substantial or value criteria are met, the decision can even be submitted to the supreme court for a revision.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

The national laws do not stipulate situations, when it is allowed for an arbitral tribunal to assume jurisdiction over subjects which are not party to an arbitration agreement. Even if the arbitration tribunal decides to establish jurisdiction based on the freedom to decide about competence, still the lack of a valid arbitration agreement will represent a ground to challenge the recognition and enforcement of the decision in front of the local courts.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Provisions placing procedural limitation periods for the commencement of arbitration are not existent in the legal system of the Republic of North Macedonia. Any time limitation of the right to initiate arbitration would derive from the material statutory limitations and will depend on the nature of the particular legal relation.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

The effects of an opening of an insolvency procedure over the arbitration agreement or ongoing arbitration proceedings are not clearly dealt with in the local laws. Therefore, this is an open question for both theory and court practice.

One view is that the initiation of an insolvency procedure leads to an absolute "attrational jurisdiction", which means that all disputes,

initiated before or after the opening of the insolvency procedure, must be settled by the court competent for conducting the insolvency procedure. Under this view, the court has exclusive jurisdiction in all matters involving the bankruptcy debtor. Another view is that the "attrational jurisdiction" is limited to core bankruptcy issues and disputes over which local courts have jurisdiction. Under this view, any arbitration agreement survives the start of the bankruptcy procedure.

Court decisions incorporating both views can be found in practice.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

In practice most contract or stand-alone arbitration agreements contain a choice of law clause. When no such choice has been made, there will be a difference between domestic and international arbitration. While in the latter, the arbitration court will apply the law with which the dispute is most closely connected, the domestic arbitration tribunal will determine the applicable laws based on the local rules on conflict of laws.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

The local law does not stipulate any restrictions on the choice of laws or law rules in commercial relations between parties. However, local laws will have mandatory application in cases of employment, consumer protection, real state, statutory issues of companies and other fields listed in the Law on Private International Law.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

The law does not specify directly which rules govern the formation, validity and legality of arbitration agreements. However, if the arbitration is held in the Republic of North Macedonia, the local mandatory rules will pose the framework in which the arbitration must be conducted. Therefore, they will govern the arbitration agreement.

It is not clear what the stance of the courts would be in relation to the applicable law on arbitration agreements.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

The parties are free to both choose the arbitrators and the manner and criteria of selecting the arbitrators.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

If the parties' chosen method for selecting arbitrators fails, they can turn to the national court to appoint an arbitrator. Namely, in all situations where there are insurmountable issues regarding the appointment of the arbitrators, upon the request of one of the parties the court will appoint an arbitrator. When selecting the arbitrators, the court must take into account: (i) the qualifications that are required by the arbitration agreement with the arbitration agreement; and (ii) everything else that will secure the impartiality and independence of the arbitrator. When the court selects an individual arbitrator or the third arbitrator, it should select an arbitrator that has a citizenship different from that of the parties.

Against this decision of the court, an appeal is not allowed.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

The court can intervene in the selection of arbitrators in a couple of situations. In such situation the competent court will be the Basic Court Skopje I, while the decision will be made by the court's president or a judge appointed by the president.

First of all, the court can select arbitrator/s in the following situations: (i) the agreed procedure for arbitrator/s appointment fails; (ii) the arbitration panel is to be comprised of three arbitrators and one of the parties does not appoint an arbitrator within the agreed or statutory period of 30 days of receiving the other party's request to do so; (iii) the arbitration is to be conducted by one arbitrator and the parties cannot agree on his/her appointment; (iv) one of the parties does not respect the agreed rules of appointment; (v) the parties or the arbitrators selected by the parties cannot reach an agreement in accordance with the agreed procedure; and (vi) a third party, including an arbitration institution, does not fulfil the role that was allotted to it by the rules of the agreed procedure.

Another point of allowed intervention is the challenge of arbitrators. Namely, if the parties have not agreed on a procedure for challenge or the agreed procedure fails, the party which made the challenge can ask the court to dismiss the arbitrator if there are justifiable grounds to question his/her impartiality and independence, or if the arbitrator lacks some of the qualifications made necessary by the arbitration agreement.

The third kind of case where intervention is possible is when a party disputes the jurisdiction of an arbitration court to settle a dispute, using the agreed or institutional appeal mechanisms whose outcome is to confirm the jurisdiction of the arbitration court. Then, the party could demand that the court decides on the question.

An appeal procedure for any of the decisions of the court in the enumerated cases is not available.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

The Law on International Trade Arbitration obliges every arbitrator to disclose all the circumstances that might give grounds to doubt his/her impartiality and independence. This disclosing obligation continues to exist in the course of the whole arbitration procedure if at any moment such circumstances arise.

The Rulebook of the Permanent Chosen Court – Arbitration in the Economic Chamber of Macedonia imposes the same obligation of disclosure set by the law, but it goes a step further by listing situations that in particular must be disclosed. These are: (i) if he had carried out any tasks or orders for any of the parties; (ii) if he has a direct or indirect financial interest in connection to the resolution

of the matter; (iii) if he has any confidential information concerning the subject matter of the dispute, which he had discovered from sources outside the arbitration proceedings; and (iv) if he has at his disposal other information which is important to preserve the external appearance of impartiality. In addition to making these disclosures, the arbitrator under these rules must write and sign a statement of independence.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

There are no mandatory rules prescribed by the law in relation to the procedure of the arbitration. The parties have the freedom to regulate the procedure as they prefer. They could create their own rules, choose model rules or rules of an arbitration institution. Exceptions to this freedom are basic principles, such as equality of the parties and the right to present its arguments and proofs.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

There are no mandatory procedural steps for arbitration, but the Law on International Trade Arbitration sets default rules that are applicable if the parties have not agreed otherwise. In cases where no rules have been chosen or prescribed by the parties, the basic rule is that the arbitrator may conduct the arbitration procedure in a manner that is deemed most appropriate, if this is not contrary to the law.

The law also sets default rules on the place of arbitration, initiation of the arbitration, language of the arbitration, suits and responses, oral and written delivery, consequences of failure by the parties to undertake certain actions, expert witnesses and ways of rendering the decision.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

The conduct of counsel during international trade arbitration procedures is not regulated in our jurisdiction.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

There are a couple of statutory duties that the national law imposes on arbitrators. One of the key such duties is the obligation to inform the parties about any circumstances that might compromise the arbitrators' independence and impartiality, as described in the answer to question 5.4. The arbitrators must also apply the applicable material law that was chosen by the parties, if this has been done.

The court has some duties in relation to the rendering of the decision, from which the court may not deviate regardless of the disposition of the parties. Namely, if the parties decide to close the dispute with a settlement, the arbitral court must respect their will, unless it deems that this kind of settlement would be against the public order of the Republic of North Macedonia. In addition, the law obliges the arbitrators to make the decision in a written form, whereby the decision must be signed by the arbitrator or the majority of the arbitrators.

The most important power of the arbitration court is to decide about its jurisdiction and competence as described in the answer to question 3.2. Another power of the arbitration court is in making corrections of the decisions regarding calculating, writing, or any other mistake with a similar nature contained in the decision, within 30 days of its making of the decision. Further, the court has a free hand in determining the amount of the costs if the arbitration and the allotment of the burden of their payment, but he must take into consideration the outcome of the dispute.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

Given the fact that arbitration is a non-judicial alternative to dispute resolution, any person which the party deems appropriate can appear as a representative in the procedure, i.e. there are no professional requirements. Therefore, not only foreign lawyers but also individuals without any formal qualifications can appear as representatives in the arbitration procedure. The same applies for arbitrators.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There are no rules in this jurisdiction about the immunity of arbitrators. In addition, there is no practice whatsoever in regards to this point.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The national courts have very limited jurisdiction over procedural issues during the arbitration. These are the cases discussed in the answer of question 5.3, i.e. certain cases of the appointment of arbitrators, challenging of arbitrators and matters concerning the jurisdiction of the arbitration to solve the dispute.

In addition to the already discussed powers, upon the request of the arbitration panel or one of the parties the national court can assist in the obtaining of evidence, which the arbitration court cannot acquire on its own. Similarly, the national court, upon the request of a party, can enforce an interim measure ordered by the arbitration court if the other party refuses to respect it voluntarily.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

Under the Law on International Trade Arbitration, if nothing else

has been agreed, the arbitral court upon the request of any of the parties may order any preliminary or interim measure that it deems necessary, taking into consideration the matter of the particular case and its circumstance. Furthermore, the arbitral court may order a party to give an appropriate security in relation to the ordered measure.

It should be noted that, although the arbitral court has the power to order interim measures, it does not have to power to enforce them. Therefore, if a party does not respect a measure ordered by an arbitration court, then the party which has requested such a measure may turn to the national court for its enforcement.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

It is not considered as contrary or incompatible with the arbitration agreement for a party to request the national court to grant it preliminary or interim measures, before or even during the course of the arbitration procedure. The conditions for granting such measures, their content and the procedure of granting is governed by the special Law on Securing of Claims.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

There is no practice regarding interim relief in the context of arbitration proceedings.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

The Republic of North Macedonia does not recognise the anti-suit injunction as part of its legal system.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

The Law on International Trade Arbitration does not limit the types of security measures that could be imposed; therefore, it is possible for a court to order security for costs. The national courts, on the other hand, are limited in this regard. Namely, they are only allowed to order security costs in procedures when one of the parties is a foreign person (*cautio iudicatum solvi*).

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

There is no practice regarding the enforcement of preliminary relief and interim measures ordered by tribunals in our or other jurisdictions.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

There are no specific rules of evidence contained in the Law on International Trade Arbitration. The Law gives freedom to the parties to select or determine the rules of evidence; however, in the absence thereof, the arbitration court is free to conduct the evidentiary procedure in any way it deems would be most appropriate, unless if this is against the law, i.e. it treats the parties unequally or restricts the right of any party to submit its arguments and proofs. Furthermore, the arbitration tribunal has the authorisation to decide on the admissibility, relevance and power of the evidence submitted to it.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

The arbitration tribunal has the right to decide on disclosure, discovery and attendance of witnesses; however, it does not have the power to enforce such decisions. The enforcement of such measures would have to be conducted with the assistance of the national court, which may provide legal assistance upon the request of the arbitration court or the parties.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

As stated above, the national court can provide assistance if it is asked to do so by the arbitration court or one of the parties. However, this assistance will be provided within the parameters of the evidentiary rules of the Law on Litigation.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

There are no specific rules or regulations for delivering written or oral witness testimony in arbitration procedures. Any such rules would be determined by the potential choice of rules by the parties, while in the absence of such choice the arbitration court will conduct the production of testimony in the manner it deems most appropriate. This includes the submitting of written testimony, which although is not a practice in the local courts, is not prohibited in the arbitration procedures. Cross-examination is also allowed if this is stipulated by the chosen rules or absent chosen rules and is deemed appropriate by the arbitration court.

The witnesses in arbitration procedures are not required to be sworn in before being examined.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

The Law on Advocacy obliges the lawyers to confidentiality, in

regards to their relation to the party they represent. However, this Law is only applicable to lawyers. In-house counsel are not regarded as lawyers under the local law. Therefore, it is not clear to what extent the communication and relationship between a party and in-house lawyer would be covered with statutory confidentiality.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contain reasons or that the arbitrators sign every page?

The arbitration award must be made in writing. In order for the award to be valid, it must be signed by the individual arbitrator conducting the procedure or by all of the arbitrators if there are more than one. However, in the latter case, the award will be deemed valid even if it is not signed by all of the arbitrators, but only by a majority of them. In such cases the reasons for the absence of any signatures must be stated in the decision. There is no need to sign every page of the decision. Another mandatory element is to list the time and place of making the arbitration award.

The Law on International Trade Arbitration also gives rules on the explanatory note. Namely, it is mandatory to state the reasons for making the arbitration award, unless it was expressly agreed between the parties for the award not to include any explanatory note.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

The arbitration tribunal may amend a calculating and writing mistake or any other reason of a similar nature on its own initiative within 30 days of the making of the award. This power of the tribunal cannot be derogated with an agreement of the parties.

In addition, any of the parties may require the court to correct the above stated types of mistakes or require an additional interpretation of the arbitration award. These types of requests may be brought to the arbitral tribunal within 30 days of the receiving of the award by the parties. Note that this right of the parties may be excluded with an agreement.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

The Law on International Trade Arbitration incorporates the same reasons for challenging an arbitral award as those stated in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. As in the Convention, the Law divides the grounds for challenging into two groups.

The first group includes *ex parte challenges* that must be raised by the concerned party before the court may decide on the issue. These include: (i) lack of a party's legal capacity to conclude an arbitration agreement; (ii) inexistence or invalidity of the arbitration agreement; (iii) a party was not properly informed about the initiation of the arbitration and the appointment of the arbitrator, or in another illegal way its rights to represent its claims and arguments was infringed; (iv) the arbitration award is about an issue which was not covered by the arbitration agreement; and (v) the composition of the arbitral court 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 on International Trade Arbitration.

The second group consists of *ex officio challenges*, whose existence the court may establish without any objection of a party. There are two points in this group: (i) the matter of the dispute is not suitable for settling under the laws of the Republic of North Macedonia; and (ii) the arbitral award is contrary to the *Ordre Public* of the Republic of North Macedonia.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

The parties may not exclude the basis of challenging the arbitral award set by the Law on International Trade Arbitration.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

The parties may not expand the scope of an appeal about an arbitral award.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

The procedure for appealing an arbitral award in front of a national court is in the form of a suit for annulling the arbitral court decision. This suit must be submitted to the court within three months as of the day when the party received the arbitral court decision. The procedure will be conducted as a litigation under the provisions of the Law on Litigation. Upon a request of a party, the national court may postpone the procedure for annulment and give the arbitral court the possibility to continue the arbitration procedure or undertake actions that could eliminate the reasons for annulment.

Note that this is only applicable when the decision was made on the territory of the Republic of North Macedonia, i.e. under the Law on International Trade Arbitration. Foreign arbitral awards may be challenged in the local courts only during the procedure for recognition and enforcement of foreign arbitral awards in the form of an objection.

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

As of 1994, the Republic of North Macedonia is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, by a way of succession from Yugoslavia, which acceded to the Convention back in 1982. The Republic of North Macedonia also inherited three reservations entered by Yugoslavia. However, in 2009 it revoked two of the three reservations. The reservation still remaining concerns the reciprocity of application and states that the Republic of North Macedonia "*will apply the Convention on a reciprocal basis only to those arbitral awards, which were adopted on the territory of the other State Party to the Convention*".

Bearing in mind that according to the constitution of the Republic of North Macedonia, international agreements ratified in accordance with the constitution are a part of the internal legal order and cannot be changed with a law, means that the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards will be directly applicable in the domestic legal order. In addition, the Law on International Trade Arbitration itself explicitly states that the recognition and enforcement of foreign arbitration decisions will be done in accordance with the provisions of the Convention.

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Aside from the Energy Charter Treaty and the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, the Republic of North Macedonia has not signed or ratified any other regional or global conventions that might concern arbitration in any way whatsoever.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

The national courts are friendly towards the recognition and enforcement of arbitration awards and the basis for challenging the decision are very limited.

The foreign arbitral award recognition is conducted under the provisions of the Law on International Private Law. This Law contains the provisions about recognition of foreign court judgments, but in practice the same provisions regulate the foreign arbitral award recognition procedure.

The initial phase of the procedure is conducted by one judge. According to the Law, if the court examines the proposal and finds no grounds for denying the recognition, it will immediately make a decision for recognition. However, in practice the court sometimes delivers the proposal to the opposite party and allows it to make a response, and only then makes the decision.

If the decision of the judge is to recognise the award, the opposing party may object to the decision within 15 days of the delivery of the decision. A panel of three judges from the same court makes a decision on the objection, whereby they may even schedule a hearing if there are any facts that need to be established. After the panel makes the decision, any of the parties might submit an appeal to the appellate court.

The court will also make a decision about the costs of recognition procedure.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

The arbitral award made under the Law on International Trade Arbitration has the same legal force as any court decision and therefore represents an executive deed. It represents a final and binding decision, i.e. a proof of *res judicata.*

In order for foreign arbitral awards to acquire this status, they need to be recognised. If a foreign arbitral award was recognised and a procedure is started for the same dispute between the parties, then the court settling the dispute can, prior to questioning, make a decision on the recognition of the judgment.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

The practice of the local courts is fairly limited in relation to the grounds of refusal to recognise and enforce arbitral awards on the grounds of public policy. Furthermore, no law enumerates particular cases or fields that are deemed to be of key importance to public policy. In general, it may be said that the local system accepts a narrow view of public policy, whereby not all arbitral decisions that are in violation of local law are deemed as against public policy, but rather only those decisions that constitute breaches of the fundamental values of the society or the key interests of the state.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

The laws of the Republic of North Macedonia do not contain any provisions on arbitration confidentiality. As a result, arbitration proceedings are never automatically confidential. However, if the parties expressly agree, the procedure may be confidential.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

There is neither regulation in the law nor legal practice concerning the disclosure of information of arbitral proceedings in other subsequent proceedings. However, if the parties would like information from one arbitration procedure to be used in any other procedure, then it is strongly recommended that they expressly establish confidentiality of the arbitration procedure and its extent.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Under the law of the Republic of North Macedonia, the legal remedies and their limits are not a question of arbitration law, but rather a question of the material law governing the particular legal relationship. Therefore, if the applicable laws allow for damages, punitive damages, or any other legal remedy, the arbitration court may freely decide in accordance with those rules. Any such decision would be recognised by the local courts, unless it is deemed that they have exclusive jurisdiction for the matter at hand or the decision goes against public order.

13.2 What, if any, interest is available, and how is the rate of interest determined?

The interest rate is a matter of applicable law and not the laws governing procedure in the Republic of North Macedonia.

However, if local laws are applicable then the interest rate in commercial cases would be the reference interest rate for Macedonian Denars or the applicable monthly Euribor rate, both increased by 10%.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

The Law on International Trade Arbitration grants the arbitral court the power to decide the extent of the costs of the procedure, including the representation costs and arbitrator's award. The decision about the allocation of the burden of the costs is made on the basis of a free evaluation of the arbitration court, while considering the circumstances of the case, but especially the outcome of the procedure. In principle, the court will make its decision guided by the "loser pays" rule.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Under the law of the Republic of North Macedonia, court or arbitration awards are not subject to taxation.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

There are no restrictions on third parties to fund claims under the laws of our jurisdiction. This does not apply to lawyers, since they are explicitly prohibited to buy out any claims that they represent or contract for a part of the award with a client they represent.

Unfortunately, there are no professional funders in our market for litigation or arbitration. Any claim funding is made on a case-by-case basis by entities who are not specialised in the field.

14 Investor State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

The Republic of North Macedonia accepted the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States on 27th October 1998, with an entry into force date on 26th November.

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

As of the time of this writing, the Republic of North Macedonia is a party to 39 Bilateral Investment Treaties. Furthermore, the Republic of North Macedonia is a party to the European Charter Treaty.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

The Republic of North Macedonia is a party to BITs that are based on various standard models of BITs. As such, the treaties do not use any specific language that would deviate from standard practice.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

The state immunity defence, when establishing jurisdiction in cases involving states, is still underdeveloped in the local court system. Courts often fail to distinguish between state immunity and diplomatic immunity and they usually limit their understanding to the latter. Usually, they will justify any decision in the light of *acta jure imperii*, for which the state enjoys immunity, and *acte jus gestionis*, for which the state is considered as any other commercial agent. However, in a case when the state has agreed to an arbitration, it is considered that such state has waived its right to immunity and therefore the court or arbitration tribunal will have no hindrance to making an award.

In regards to execution against property of states, the execution cannot be conducted without a consent of the Government of the Republic of North Macedonia on the proposal of the Ministry of Justice. This does not apply if the state explicitly acquiesces to the execution.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

Rarely is the Republic of North Macedonia chosen as a seat of arbitration. Most agreements, which include arbitration as a tool of dispute resolution, list some of the major arbitral institutions as competent for their relation. This leads to underdevelopment of the practice in this field. This nascent level of development of arbitration does not allow for any significant issues to be marked as noteworthy.

The fields of dispute that are being referred to arbitration are big construction disputes, disputes regarding international trade and even some IT disputes.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

The main efforts of the only arbitration institution in the state – the Permanent Court of Arbitration within the Chamber Commerce of Macedonia (http://arbitraza.mchamber.mk/index.aspx?lng=2) – is to raise the awareness of the benefits of arbitration. For this purpose, they regularly engage the legal and business community.

Ivan Debarliev

Debarliev, Dameski & Kelesoska
Attorneys at Law
Str. Mirche Acev 2nd / 3rd floor
1000 Skopje
North Macedonia

Tel: *+389 70 206 843*
Email: *debarliev@ddklaw.com.mk*
URL: *www.ddklaw.com.mk*

Ivan Debarliev is one of the founders and named partners in Debarliev, Dameski & Kelesoska Attorneys at Law.

He is the head of the big clients (outsourcing) department in Debarliev, Dameski & Kelesoska Attorneys at Law. Mr. Debarliev is an experienced bilingual negotiator whose mediating and analytic skills have proven invaluable in the resolving of many complex disputes. His main focus areas of expertise include corporate law litigation, arbitration, electronic communications and mergers & acquisitions.

Mr. Debarliev is a member of the Macedonian Bar Association, International Union of Lawyers (UIA) and the International Bar Association (IBA).

Vladimir Boshnjakovski

Debarliev, Dameski & Kelesoska
Attorneys at Law
Str. Mirche Acev 2nd / 3rd floor
1000 Skopje
North Macedonia

Tel: *+389 70 257 879*
Email: *boshnjakovski@ddklaw.com.mk*
URL: *www.ddklaw.com.mk*

Vladimir Boshnjakovski has been an Associate at DDK since the middle of 2016. In 2012, he graduated from the Faculty of Law Iustiniana Prima in Skopje. At the same faculty, on the cathedra for International Law, he concluded his Master's studies with a thesis on the "International Regime for Protection of Foreign Investments from Indirect Expropriation".

During his studies, he partook in many international competitions and conferences in the field of law, such as the prestigious competition in the field of international commercial arbitration – Willem C. Vis International Commercial Arbitration Moot – and a competition for the region of former Yugoslavia in the field of the European Convention for Human Rights (ECHR).

Prior to joining DDK, he developed his professional experience in an attorney's office in Skopje, the German Parliament and the Economic Chamber of Macedonia.

DDK

DEBARLIEV DAMESKI KELESOSKA
ATTORNEYS AT LAW

Debarliev, Dameski & Kelesoska, Attorneys at Law (DDK) was the first law company established in the territory of the Republic of Macedonia, distinguishing itself in the market with a clear business and corporate law orientation, complemented by an excellent network of legal experts covering the complete territory of the Republic of North Macedonia.

The quality of DDK rests mainly on the quality of its attorneys and on their accessibility and efficiency. DDK's attorneys at law share outstanding academic backgrounds, as well as a strong commitment to legal perfection.

The partners of DDK have more than 15 years' law practice experience and have exceeded clients' expectations by providing sophisticated and efficiently managed legal services. DDK offers excellent legal services to clients involved in the biggest M&A and capital market projects in Macedonia, and has been engaged as counsel in numerous successful PPP and infrastructure projects, privatisations, real estate transactions, banking, etc.

Finally, DDK is one of the rare firms in the Republic of North Macedonia which has had hands-on experience in international commercial arbitration and has also assisted global legal firms on cases of investment arbitration in proceedings, including proceedings in front of the International Center for Settlement of Investment Disputes.

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glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com