Wolf Theiss is one of the biggest and most respected law firms in Central and Eastern and Southeastern Europe (CEE/SEE). Since starting out in Vienna over 50 years ago, we have grown to a team of several hundred people, with offices throughout the region. During that time, we have worked on many cases that have broken new ground.

We concentrate our energies on a unique part of the world: the complex, fast-moving markets of the CEE/SEE regions. This is a fascinating area, influenced by a variety of cultural, political and economic trends. We enjoy analysing and reflecting on those changes, drawing on our experiences working on a wide range of domestic and cross-border cases.

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The Wolf Theiss Guide to: Dispute Resolution in CEE/SEE

WOLF THEISS

THE WOLF THEISS GUIDE TO:

Dispute Resolution in Central & Southeastern Europe

Litigation, Arbitration, Insolvency and Enforcement

THE WOLF THEISS GUIDE TO:

Dispute Resolution in Central & Southeastern Europe

This 2009 Wolf Theiss Guide to Dispute Resolution in Central and Southeastern Europe is intended as a practical guide to the general principles and features of the basic legislation and procedures in countries included in the publication.

While every effort has been made to ensure that the country guides were accurate when finalized, they should be used only as a general reference guide and should not be relied upon as definitive for planning or making definitive legal decisions. In these rapidly changing legal markets, the laws and regulations are frequently revised, either by amended legislation or by administrative interpretation.

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Content

The Wolf Theiss Guide to: Dispute Resolution in CEE/SEE

1. Introduction

Wolf Theiss is one of the leading law firms in Central and Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 50 years ago. Our team now brings together over 320 lawyers from a diverse range of backgrounds, working in offices in 12 countries throughout the CEE/SEE region.

Over 80 % of our work involves cross-border representation of international clients. Our full range of services covers: Banking & Finance; Competition & Antitrust; Corporate/ Mergers & Acquisitions; Dispute Resolution; Employment Law; Energy; Infrastructure & Projects; Intellectual Property & Information Technology; Real Estate; Regulatory & Procurement; and Tax.

We have concentrated our energies on a unique part of the world: the complex, fast-developing markets of the CEE/SEE region. Through our international network of offices, we work closely with our clients to help them solve problems and create opportunities.

Our Dispute Resolution team has established a reputation as an international powerhouse in the areas of litigation, arbitration, mediation and other alternative dispute resolution methods. We put it down to one thing: passion. Each case we tackle matters to us personally. Our team is made up of the very best specialists in the field, with extensive knowledge and experience of all fields of business law and commercial litigation. It means we are well placed to undertake even the biggest and most complex cases – as we have proven many times in recent years. In addition to providing 'classic' litigation before state courts and authorities, we also represent clients and act as arbitrators in national and international arbitration proceedings. Our team is also highly experienced when it comes to advising on alternative methods of dispute resolution – mediation in particular. The ultimate aim is to act as a strategic partner to our clients, treating their business interests with as much urgency and thoroughness as if they were our own.

Our clients come from many walks of life – automotive, banking, construction, consulting, cosmetic, energy, healthcare, insurance, IT, media & telecommunications, pharmaceuticals, retail and beyond. We enjoy thinking strategically about the issues they face, and working towards tailored solutions that make economic sense for them.

The Wolf Theiss Guide to Dispute Resolution in the CEE/SEE provides a brief overview of the applicable laws in each of the countries where Wolf Theiss has offices, as well as Kosovo. The individual country reports reflect the current status of the legal system, recent legislative developments and other useful information about that country's legal system. The guide provides a basic overview of the dispute resolution process in the country as well as the applicable time limits, court fees, etc.

Talk to us … We start each assignment by listening to you and understanding what it is you want to achieve. Then we find the quickest and most effective route to reach that goal.

We hope that the Wolf Theiss Guide to Dispute Resolution will be useful to you. If you have any questions, please feel free to contact me.

Bettina Knoetzl
Head of Dispute Resolution Practice Group

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SPECIAL THANKS

We would like to give special thanks Kip Dillihay II for coordinating and editing this publication and Juergen Heimhofer for the publications production and design. Also, thank you to all the individuals at Wolf Theiss that assisted in the preparation of this publication. Their continued efforts to ensure the successful completion and continued updating of this guide is very much appreciated!

2. ALBANIA

By Mariola Saliu and Enyal Shuke,
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The information contained in this article on dispute resolution in Albania was correct as of 1 April 2009.

If you have any questions about the content of the article or would like further information about dispute resolution in Albania, please contact

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2.1 Legal System

The Albanian legal system is based on codified principles of civil law. Judicial precedents are taken into consideration by courts but without having a binding effect.

2.2 Litigation

Civil and commercial disputes are decided by ordinary courts.

The Albanian court system is composed of District Courts, Courts of Appeal and the High Court.

In District Courts there are special to decide on:

- Administrative disputes;
- Commercial disputes; and,
- Disputes related to children and family.

Cases in District Courts are heard by a single judge or a panel composed three judges. The matters that are exclusively heard by a court of three judges are:

- Claims valued at more than LEK 10 million (approximately Euro 78,000);
- Claims on objections to administrative acts valued at more than LEK 10 million (approximately Euro 78,000);
- Claims on declaring a person as missing or deceased; and,
- Claims on removal or limiting the capacity to act of a person.

In the Courts of Appeal cases are heard by a panel composed of three judges, while the High Court decides in panels composed of five judges. In the High Court associated colleges also hear cases with the participation of all judges.

In certain cases courts may grant interim measures.

The Albanian court system is rather efficient, despite the fact that no precise timeframe is provided for the rendering of judgments. The timeframe is generally allowed to be reasonably defined by the judges.

Decisions by the first instance courts (i.e. District Courts) may be appealed to the Courts of Appeal. As a general principle all decisions issued by a court of first instance may be challenged in the Courts of Appeal, except for those cases when appeal is excluded by law. An appeal request may be denied only when the appeal is presented after the deadline provided by law; or the appeal is made against a decision where an appeal is not permitted; or, the appeal is made by an individual that is not legally entitled to file an appeal.

The Appeals Court may, examine upon the request of the parties, facts and other legal aspects examined by the court of first instance court and may allow the presentation of new evidence in support of the appeal.

After considering the case the Court of Appeal decides: (i) to uphold and leave in effect the decision of the first instance court; (ii) to change the decision; (iii) to revoke the decision and terminate the

case; or, (iv) to revoke the decision and to send the case for retrial in the first instance court.

Decisions issued by the Court of Appeals may be challenged to the High Court only when: (i) the law has violated or been applied incorrectly; (ii) there are grave violations of procedural norms (i.e., Art. 467 of Civil Procedure Code); (iii) decisive proof or evidence requested by the parties during trial has not been provided; (iv) the reasoning of the decision is clearly illogical; or, (v) the provisions on jurisdiction and authority have been violated.

Litigation costs are mainly composed of court and attorney‘s fees, expenses for expert opinions and expenses for witness (including remuneration for any business days missed) and translation costs. The fees, expenses and remunerations for witnesses and translators are defined by the Council of Ministers.

The court and attorney‘s fees awarded to the plaintiff shall be charged to the defendant if the claim has been accepted by the court. However, if a party is exempted by the court, in relation to the awarding of court fees, the fees shall be charged to the other party only if the claim has been accepted by the court. The defendant shall generally have the right to require awarding of the court fees in proportion with the refused part of the claim. The defendant shall have the right to require awarding of the court fees, even if the case is ceased.

Irrevocable decisions of the court can be enforced by obtaining an instrument of immediate enforceability (IEI). The IEI gives its holder the right to have an enforcement order issued by the competent court and the execution carried out immediately by the bailiffs’ office.

There is also a Constitutional Court, which is regulated as an independent body subject only to Constitutional provisions and which is not a part of the ordinary court system. The Constitutional Court assures respect for the Constitutional provisions and gives the final interpretation of these provisions.

According to the Code of Civil Procedure as a general principle, any dispute (civil or other nature as prescribed by this code and other applicable laws) falls under the jurisdiction of the Albanian Courts. No other institute is allowed to accept for judgment a civil dispute that is in the process of being heard by the Albanian courts. In this respect, any agreement that provides differently is deemed invalid.

The submission to the competence to a foreign court shall be allowed only when the trial is related to obligations between (i) two foreign citizens; or, (ii) one foreign citizen and an Albanian citizen that does not live/reside in Albania; and, the parties have stipulated their submission in a written agreement.

In Albania, the Court does not interrupt or suspend its judgment over a dispute if the dispute, or some other matter related to the dispute, is the subject of examination of a foreign court.

2.3 Insolvency

Insolvency proceedings in Albania aim to provide an economic and financial solution to the debtor by means of a judicial procedure for the repayment of debts. The insolvency proceedings can be in the form of a business reorganization plan, bankruptcy or a judicial liquidation. However, the judicial liquidation procedure shall not take place if the appropriate efforts for business reorganization or debts repayment are not undertaken.

The business organization plan aims to create appropriate conditions for the organization and continuity of the debtor business. This plan may provide for the sale of the whole or a part of the business activity, or other appropriate solutions.

The competent court for all forms of bankruptcy proceedings is the District Court where the debtor is resident or the entity has its legal seat. Bankruptcy proceedings must be instituted whenever the debtor is incapable of meeting its financial obligations within due time. In the case of legal entities, bankruptcy proceedings must be opened even in the circumstances where the entity is over-indebted.

Insolvency proceedings concluded outside the territory of the Republic of Albania shall apply to a debtor‘s property located inside the territory of the Republic of Albania without a mutual agreement, only if:

- The insolvency proceedings is not contrary to Albania legislation; and,
- The insolvency proceedings do not affect the principles of the Albanian legislation, specially the provisions of the Albanian Constitution.

2.4 Arbitration

The Albanian Code of Civil Procedure contains provisions for the regulation of arbitration procedures when the parties are resident or have the legal seats of their companies inside the territory of the Republic of Albania and when the seat of the arbitral tribunal is inside this territory.

Commencement of the arbitration procedure can only be based on an arbitration agreement that includes a clause specifying that disputes between the parties to the arbitration agreement will settle any disputes that may arise by means of arbitration.

Arbitrators are appointed by the court if the parties fail to do so. The arbitral tribunal shall be composed of one or more odd number of arbitrators.

Arbitral awards are enforceable like court decisions. The courts may set aside arbitral awards only under a few conditions, in particular in a case of invalid constitution of the arbitral tribunal, declaration without any reason by the arbitral tribunal of its jurisdiction or lack of jurisdiction, lack of impartiality and independence of one or more arbitrators, or infringement of Albanian public order.

2.5 Enforcement of Foreign Judgments and Arbitral Awards

Albania is not a party to any multilateral conventions on jurisdiction and enforcement of foreign judgments. In the absence of bilateral or multilateral jurisdiction and enforcement of foreign judgments agreements, the provisions of the Code of Civil Procedure apply.

As a general principle, foreign judgments are recognizable and applicable in the Republic of Albania in accordance with the rules provided by the Code of Civil Procedure.

Where the Republic of Albania entered into a special treaty with a foreign state, the treaty applies.

The foreign judgment is enforceable after its recognition by a decision of the Appeal Court. A foreign judgment shall not be enforced in the Republic of Albania when:

- According to the mandatory provisions the dispute is subject to the judgment of the Albanian court and not of a foreign court;
- There are procedural violations of the defendant‘s right of a fair trial and its right to be heard;
- The Albanian court has given a different judgment on the same dispute, between the same parties, for the same cause;
- The same dispute is under examination before an Albanian court;
- The foreign judgment became irrevocable in violation with the legislation on which it is based; or,
- It is in violation with the basic principles of the Albanian legislation (Public Order Exception).

Albania is a Contracting State to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the „New York Convention“). The New York Convention provides that each Contracting State shall recognize both written arbitration agreements and arbitral awards rendered in the Contracting State other than the one where recognition and enforcement is sought. The enforcement of foreign arbitral awards can be refused if:

- The arbitration agreement is not valid under the chosen applicable law;
- The parties to such agreement are under some incapacity (as per the law applicable to them);
- The award goes beyond the scope of the arbitration agreement;
- The arbitral tribunal or the arbitral procedure was not in conformity with the arbitration agreement or, in the absence of such agreement, in conformity with the law of the country where the arbitration took place;
- The award is not yet binding, or it has been set aside or suspended;
- The subject cannot be resolved by arbitration under the law of the country where the recognition and enforcement is sought; or,
- The recognition and enforcement of the award would be contrary to public order of the country where the recognition and enforcement is sought.

Albania is a party to the European Convention of 1961 on International Commercial Arbitration.

The Wolf Theiss Guide to: Dispute Resolution in Albania

3. AUSTRIA

By Bettina Knötzl, Eva Fischer, Eva Spiegel, O. Kip Dillihay II and Philip Marsch
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The information contained in this article on dispute resolution in Austria was correct as of 1 April 2009.

If you have any questions about the content of the article or would like further information about dispute resolution in Austria, please contact

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3.1 Legal System

The Austrian legal system is based on codified principles of civil law. Judicial precedents are not binding, but are strongly taken into consideration by courts and the parties in dispute.

In Austria, all courts are federal courts. Austria's court system is composed of District Courts *(Bezirksgerichte),* Regional Courts, Courts of Appeal *(Oberlandesgericht)* and the Austrian Supreme Court *(Oberster Gerichtshof)*. In addition to the general court system, there are specialized courts that rule on specific subject matter. For example, the Commercial Court *(Handelsgericht)* decides commercial law disputes, and the Labor Court *(Arbeits und Sozialgericht)* handles labor and employment law disputes.

Generally, minor cases, i.e. cases valued up to EUR 10,000, are heard before the District Courts, in the first instance, and the Regional Courts act as the appellate court. Major cases, i.e. cases valued above EUR 10,000 are heard before the Regional Courts, in the first instance, and appeals are decided by the Courts of Appeal, in the second instance.

District Courts handle the following types of matters:

- Civil cases concerning claims for alimony and child support
- All civil cases concerning disturbance of possession of property, easements, lease or tenancy relationships; and,
- Disputes over the establishment or contestation of paternity.

Currently, there are 151 District Courts established in Austria.

The Labor Court and a Social Court have the position of a Regional Court have jurisdiction to rule only matters expressly provided by law, since the law determines the presumption of jurisdiction of courts of ordinary jurisdiction. Currently there are 18 Regional Courts in Austria.

The Courts for commercial matters are competent to decide on matters concerning the judicial protection of the rights and legal interests of physical persons and legal entities. The, including claims in excess of EUR 10,000. However, the majority of cases are in disputes arising out of or in connection with a commercial relationship between the parties.

At the top of the judicial hierarchy is the Austrian Supreme Court. It functions primarily as a court of cassation. It is a court of appellate jurisdiction in criminal and civil cases, in commercial lawsuits, in cases of administrative review and in labor and social security disputes. It is the court of the third instance in almost all the cases within its jurisdiction. The grounds of appeal to the Supreme Court are limited to issues of substantive law and to the most severe breaches of procedure.

3.2 Litigation

The Austrian court system is rather efficient. Civil proceedings are commenced by the filing of a complaint with the competent court. The complaint must contain allegations of the facts on which the claim is based and offer evidence in support of those facts on which the claim is based. Under Austrian law, the claimant must also include the relief or remedy sought in the matter.

Remedies which the claimant may request include the following:

- Performance of an obligation, aimed at holding the defendant liable to pay a certain sum of money, to deliver or surrender moveable property, to pay damages or to cease and desist (i.e., acts of unfair competition);
- Declaratory decision, which are judgments deciding on the existence or non-existence of a legal relationship or right, including the authenticity of a document; or,
- For creating, amending or cancelling a legal relationship.

After filing the complaint, the court will consider whether it has jurisdiction over the claim and if the court has jurisdiction over the dispute the court will then serve the complaint on the defendant along with a request for the defendant to submit a statement of defense within a specified period of time. The defendant‘s statement of defense must include an explanation of the facts and evidence on which the defendant will rely including the judgment sought in response to the complaint, such as dismissal of the complaint in whole or in part.

Once the defendant submits his statement of defense, the court will then initiate the trial proceedings which typically consist of several oral hearings. In Austria, jury trials do not exist and the trial is held and decided upon before a Judge or panel of Judges depending on the type and stage of the proceeding.

Trials also serve the important purpose of allowing the presentation and gathering of evidence. Evidence presented by either party during the proceedings may include documents, witnesses, expert witnesses (normally submit a written opinion but may be questioned upon the request of any party), and testimony of the parties involved in the dispute. The witnesses are questioned by the Judge followed by cross-examination by the individual parties‘ attorneys. After the hearings and taking of evidence has been concluded the Judge will close the proceedings and issue a judgment, usually in writing.

In simple cases, a first instance judgment may be rendered within one year. According to statistics provided by the Austrian Ministry of Justice, first instance proceedings pending before a district court take on average nine months; at regional courts, the average time is 15 months. In appellate proceedings, evidence is generally not re-examined and new evidence or new allegations are not admitted during the appellate proceedings. Appellate proceedings may take between six months and one year. The Supreme Court renders its judgment usually within a year.

Interim remedies may also be requested by a party. A court may order a preliminary injunction, in order to secure money claims, either before or during litigation proceedings. In order to have a request for a preliminary injunction granted the court must have a sufficient reason to believe that (i) the defendant will prevent or endanger the enforcement of a potential judgment by destroying, concealing or transferring his assets; or, (ii) that the judgment otherwise would have to be enforced in a non-EU member state. Potential preliminary injunctions may include an order for the freezing of bank accounts or attachment of the defendant‘s assets, including real estate, and the court may even extend an injunction to order that a third party not pay accounts receivable to the defendant.

The final judgment issued by the court will also include an order specifying which party has to bear the costs of the proceedings. The litigation costs are mainly composed of court and attorneys‘ fees, expenses for expert opinions and travel expenses for witnesses. Generally, litigation

costs are awarded against the losing party who must reimburse the winning party. However, if either party prevails with a portion of their claim the cost are divided on a pro-rata basis.

In Austria, contingency fees that entitle the attorney to a certain percentage of the amount obtained by the claimant are prohibited. The calculation of legal fees will be based on the Austrian Act on Attorneys‘ Tariffs.

The quota litis, i.e. the participation of the lawyer in the recovery, is prohibited in Austria.

3.3 Insolvency

Insolvency proceedings are conducted by the bankruptcy court, which is a special unit within each court of first instance *(Gerichtshof 1. Instanz),* with the exception of insolvency proceedings of private individuals, which are conducted before the district court *(Bezirksgericht).* A regional exception exists for Vienna where the competent bankruptcy court is the Commercial Court of Vienna *(Handelsgericht Wien).*

Austrian insolvency laws distinguish in essence between two types of insolvency proceedings:

- Bankruptcy proceedings *(Konkursverfahren);* and,
- Voluntary composition proceedings *(Ausgleichsverfahren);*

While bankruptcy proceedings usually lead to a realisation or winding-up of the debtor‘s estate and the distribution of the proceeds of its assets among its creditors, the aim of composition proceedings is to enable the debtor to continue its business and to be discharged from its debts *(Restschuldbefreiung).*

Further, the Austria Business Reorganisation Act *(Unternehmensreorganisationsgesetz)* provides for a type of proceedings which are not technically insolvency proceedings but should enable the debtor to reorganize its business.

Precondition for the opening of insolvency (bankruptcy or composition) proceedings is that the debtor is illiquid or in case the debtor is a corporate entity either over-indebted in terms of insolvency laws. Illiquidity *(Zahlungsunfähigkeit)* means that the debtor is unable to pay its debts in due time and is not in a position to acquire the necessary funds to satisfy its due liabilities within a reasonable period of time. If a corporate entity‘s liabilities exceed its assets and the company has a negative prospect, the company is considered to be over-indebted in terms of insolvency law *(insolvenzrechtliche Überschuldung).*

Either the debtor itself or its creditors have the right to file a petition for bankruptcy, a petition for the commencement of composition proceedings can only be filed by the debtor. However, once it is apparent that the criteria for commencing bankruptcy proceedings are fulfilled, the debtor is obliged to apply for the opening of bankruptcy or composition proceedings without culpable delay, and in any case no later than within 60 days.

The purpose of bankruptcy proceedings is to determine the value of the debtor‘s estate *(Konkursmasse)* and to distribute the proceeds of the debtor‘s assets among its creditors. Creditors have to file their bankruptcy claim within a deadline set by the bankruptcy court. If a creditor fails to meet this deadline, a further creditors’ hearing may be scheduled at the expense of the

creditor who failed to meet the deadline. If a creditor fails to file a claim at all, it will be unable to participate in the distribution of proceeds from the sale of the debtor's estate. Rights of secured creditors remain in principle unaffected. After liquidation and distribution of the debtor's estate the proceeds are distributed, and the bankruptcy proceedings will be terminated by a court order. However, termination of the bankruptcy proceedings does not have the effect of discharging the unsatisfied claims of creditors which have not been satisfied in full. Creditors with remaining claims which have been verified by the receiver or by a court order may enforce their rights against the debtor with respect to the unsettled portion of their claim for a period of 30 years, if the debtor, within such period, comes into possession of any assets. In the case of a corporate debtor, however, bankruptcy usually leads to the ultimate dissolution of the company, thus preventing later recourse to the debtor for payment of outstanding amounts.

Composition proceedings enable the illiquid or over-indebted debtor to continue its business and to be discharged from its debts *(Restschuldbefreiung)* by paying a certain part of the debts. The debtor must offer a minimum payment of 40 % of the debts within a period of two years to its unsecured creditors. Rights of secured creditors remain unaffected. The debtor's composition plan *(Ausgleichsvorschlag)* has to be approved by the majority of its (unsecured) creditors and the bankruptcy court.

A special form of composition proceedings is provided in the course of bankruptcy proceedings: a bankrupt estate is given the possibility to turn the bankruptcy proceedings into a so called "forced composition" *(Zwangsausgleich)* and to continue business. By a forced composition the debtor can be discharged from its debts by paying a minimum quota of 20 % to its unsecured creditors within a period of two years.

Since 1995, a special insolvency regime has applied to natural persons (entrepreneurs and private individuals). This had become necessary since natural persons facing financial difficulties were often unable to meet the requirements of a forced settlement and were thus denied the benefit of discharging any claims that exceeded the settlement quota *(Restschuldbefreiung).* At the same time, bankruptcy proceedings did not offer a satisfactory solution to solving their debt problems since creditors would be able to enforce their rights with respect to unsettled claims against the debtor for a period of 30 years.

In both bankruptcy and settlement proceedings, the costs of the proceedings rank as priority claims. In effect, the unsecured creditors bear the costs of the proceedings. In order to open bankruptcy proceedings, there must be sufficient assets to cover the costs of the proceedings, i.e. to cover at least the costs for commencing the proceedings, including the receiver's remuneration. The court-appointed bankruptcy receiver *(Masseverwalter)* is entitled to remuneration and to compensation for any incurred expenses. The receiver's remuneration is regulated by a special law, and amounts to a minimum of EUR 2,000. The remaining amount of the receiver's remuneration is calculated on a percentage basis, depending on the amount of the proceeds that the receiver could realize from liquidating the debtor's assets.

3.4 Arbitration

Vienna, Austria's capital city, is a major European arbitration center with the International Arbitral Center of the Federal Economic Chamber being the most important arbitration institution in Austria, and arguably all of Europe, especially regarding disputes relating to Central and Eastern Europe. Internationally, dispute resolution through arbitration has several advantages,

especially because the settlement of disputes through arbitration allows for expeditious proceedings and the international treaties Austria has signed which make arbitration awards issued in Austria enforceable in almost any jurisdiction.

Arbitration in Austria is governed by Chapter 6, Part 4 of the Austria Code of Civil Procedure *(Zivilprozessordnung)*, which defines the limits of arbitration including the validity of arbitration agreements and the minimum standards that must be observed for a fair trail. On 1 July 2006 the new Austrian Arbitration Act became effective, replacing the previous arbitration act which had been effective since 1895. Although Austria already has an important role as a seat for arbitration proceedings affecting Central and Eastern Europe, a major goal of the new arbitration act was to implement the UNCITRAL Model Law, which continues to develop the highest international standards and will improve Austria's standing as the most attractive place for arbitration in Europe.

Generally, an arbitration agreement may be concluded between different parties in both present and future civil matters. Exceptions include:

- Marital and family matters;
- Disputes on the termination of contracts regarding the lease of apartments;
- Claims for the contribution of the share capital of a limited liability company; and,
- Employment law disputes, except disputes arising from employment contracts for managing directors of limited liability companies and stock corporations.

In order to be valid and legally binding the arbitration agreement must be concluded in writing between the parties, and the writing must provide the parties indication to solve any disputes, arising out of the party's contractual relationship, through arbitration. In addition to being in writing the arbitration agreement must contain the names of the parties, the subject matter of the agreement must be definite or definable. Also, the arbitration agreement may contain provisions regarding the arbitral procedure or refer to the Rules of a particular arbitral institution such as the VIAC, ICC or LCIA.

The arbitrators may be freely chosen by the parties involved in the dispute; however, judges must not accept appointments as an arbitrator. If the parties have not previously stipulated in the arbitration agreement the arbitrators that will preside over the arbitration, each party is allowed to appoint one arbitrator with those two arbitrators appointing the third arbitrator who serves as the chairman of the arbitral tribunal. If, however, the parties fail to appoint an arbitrator or the arbitrators fail to appoint a chairman, the court is competent to appoint the arbitrators.

Unless the parties have stipulated otherwise, the arbitrators will rule by a majority vote and will issue the award, which must:

- Be in writing;
- Signed by at least a majority of the arbitrators; and,
- Should contain the date and place of the rendering of the award.

There is also a specialized arbitral panel that was established by the Vienna Stock and Commodity Exchange which is a permanent arbitration panel that has exclusive jurisdiction over disputes arising from exchange transactions. Disputes between members of the Vienna Stock and Commodity Exchange and disputes concerning merchandise contracts related to the Vienna Stock

and Commodity Exchange fall with the exclusive jurisdiction of this specialized arbitral panel.

Overall, Austrian courts have a very friendly attitude towards arbitration; consequently, Austrian business are generally willing to conclude an arbitration agreement, especially in the context of international business transactions.

3.5 Enforcement of Foreign Judgments and Arbitral Awards

The enforcement of foreign judgments (i.e., non-EU judgments) in Austria is contingent on the issuance of a declaration of enforceability by the competent Austrian court. The enforcement proceedings are governed by the Austrian Enforcement Act (*Exekutionsordnung*).

By virtue of its membership in the European Union, the procedure for the enforcement of EU judgments in Austria is subject to a standardized and simplified procedure, which is governed by Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

As a general rule, a judgment rendered in a member state of the European Union is recognized in any other member state without any special procedure. Notwithstanding a number of limited grounds on which recognition of a foreign judgment can be denied. These exceptions include cases in which the recognition of a given judgment is manifestly contrary to the public policy of the *member state in which recognition is sought, or when the judgment was rendered in violation of* due process. Other grounds for the denial of recognition are, inter alia, if the decision is "irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought" or if the judgment is "irreconcilable with an earlier judgment given in another Member State or in a third state involving the same cause of action and between the same parties", provided that the earlier judgment can be enforced in the state in which recognition is sought.

According to the Austrian Supreme Court, the requirement that the foreign judgment be enforceable in the state of origin does not imply a requirement that the title indeed could be executed in the country in which it was rendered, but rather that such judgment is only formally enforceable.

Specifically, in order to determine the authenticity of judgment that are sought to be enforced in a given member state, the party seeking recognition must provide a copy of the judgment, which should be accompanied by a Certificate of Authenticity issued by either the court that rendered the decision in the country of origin or another competent institution. The translation of judgments and accompanying documents is not mandatory according to Art. 55 of Council Regulation (EC) 44/2001. However, the court may still order the party to produce a (certified) translation of the judgment and the accompanying documents. Thus, in order to avoid such a delay, attaching a certified translation is highly recommended.

With respect to judgments of foreign/Non-EU-member states, the requirement to have the *judgment declared enforceable can turn out to be a rather cumbersome procedure, depending on* the origin of the judgment. If reciprocity cannot be established (meaning that the foreign state does not enforce Austrian judgments), success is unlikely.

Any decision by a foreign, non-EU, court must be declared enforceable by an Austrian court in order for the decision to be enforceable in Austria. The general requirements for the issuance of a declaration of enforceability are that:

- The foreign judgment is enforceable in the state in which it was rendered; and,
- Reciprocity with the state of origin is established by bilateral treaties or other instruments.
-

The party must request the declaration of enforceability from the competent district court, i.e. in general, the district court of the opposing party's domicile. Also, the party is required to enclose certified copies of *all* relevant documents with such request.
However, even if the requirements for enforceability are met, the declaration of enforceability may still be refused if:

- Pursuant to Austrian rules on jurisdiction, the foreign court could, under no circumstances, had jurisdiction over the legal matter;
- The opposing party was not properly served with the document that initiated the foreign proceedings; or,
- The opposing party could not properly participate in the foreign proceedings due to irregularities in the proceedings.
- The judgment/award violates very basic principles of Austrian law (ordre public).
-

The court issues its decision without hearing the opponent. However, the opponent (as well as the requesting party, if enforceability was refused) may file an appeal against the decision within one month.

Once the declaration of enforceability has become effective, the foreign judgment may be considered equal to domestic enforceable titles.

As regards the enforcement of foreign awards, Austria is a member of the 1958 New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards, with the reservation that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting State and the 1961 European Convention on International Commercial Arbitration.

4. BOSNIA AND HERZEGOVINA

By Naida Custovic and Andrea Zubovic
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The information contained in this article on dispute resolution in Bosnia and Herzegovina was correct as of 1 April 2009.

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The Wolf Theiss Guide to: Dispute Resolution in Bosnia and Herzegovina

4.1 Legal System

The state of Bosnia and Herzegovina *(BiH)* consists of two entities – Federation of Bosnia and Herzegovina *(FBiH)* and the Republika Srpska *(RS)*, and a special autonomous district under direct sovereignty of the state – the Brčko District. The entities have their own set of relatively distinct laws, but some matters are regulated by national laws which apply to both entities.

Court organization, jurisdiction, financing of courts and other related issues in BiH are regulated on the entity level, in FBiH by the Law on Courts in FBiH *(Zakon o sudovima u Federaciji Bosne i Hercegovine)* and in RS by the Law on Courts of RS *(Zakon o sudovima Republike Srpske)*.

In 1998 BiH began with a reform of its judicial system which is still ongoing. Although a significant progress has been made since then, the reform process and implementation of the new laws has been generally slow and inconsistent, mainly due to the high number of unresolved cases and inadequate training and education of judges in the new procedural legislation. Consequently, court practices and procedures tend to vary significantly from court to court and from one judge to another.

The FBiH Court structure consists of the Municipal Courts *(Općinski sudovi)*, Cantonal Courts *(Kantonalni sudovi)* and the FBiH Supreme Court *(Vrhovni sud FBiH)*. All civil and commercial disputes, as well as bankruptcy proceedings, enforcement proceedings and the registration of companies, including all related issues, are within the competence of the Municipal Courts. However, it should be noted that commercial disputes can be brought up only before Municipal Courts which have a commercial division. Within the meaning of the Law on Courts in FBiH, a commercial dispute is considered to be any dispute between business companies and/or entrepreneurs related to the trade of goods, services, securities, real estates etc., disputes related to ships and sailing (except passenger transport), aircrafts and air traffic (except passenger transport), industrial property and copyrights, trusts and commercial offences.

Appeals against judgments by the Municipal Courts may be filed with the competent Cantonal Court. Aside from appeals, Cantonal Courts are first instance courts in criminal matters related to major crimes. In addition, the Cantonal Courts have exclusive competence to resolve jurisdiction conflicts between the Municipal Courts and are the courts of first instance for the recognition of foreign judgments.

The FBiH Supreme Court is the highest appeals court and has exclusive competence to hear appeals from judgments of the Cantonal Courts. The FBiH Supreme Court also resolves jurisdictional conflicts between lower courts from different Cantons in FBiH.

The RS Court structure is almost identical to the structure in FBiH. In RS there are 19 Basic Courts *(Osnovni sudovi)* which have authority similar to that of the Municipal Courts in FBiH. Five of these Basic Courts have a special commercial division. Appeals against awards of the Basic Courts may be filed with the competent District Court *(Okružni sudovi)*. The District Courts are also the courts of first instance for the recognition of foreign judgments. The highest appeals court in RS is the Supreme Court *(Vrhovni sud RS)*, with essentially the same competence as the FBiH Supreme Court.

Both entities have Constitutional Courts, the competency of which is to uphold the respective entity constitutions.

The BiH judicial system consists of the following state-level judicial institutions: the Court of BiH *(Sud BiH)* and the Constitutional Court of BiH *(Ustavni sud BiH)*. The Court of BiH has three divisions: Criminal Division, Administrative Division and Appellate Division, and is, inter alia, competent for prosecution of war crimes, organized crime and violations of election laws. The Constitutional Court of BiH is competent to support and protect the Constitution of BiH, which includes human rights cases when the case alleges a violation due to a judgment or decision of any judicial institution in BiH.

4.2 Litigation

The FBiH Civil Procedure Act *(Zakon o parničnom postupku FBiH)* and RS Civil Procedure Act *(Zakon o parničnom postupku RS)*, were enacted in 2003 with aims to accelerate and simplify litigation civil proceedings and enhance the efficiency of BiH Courts. The Acts, to a large extent, correspond to each other, but in practice the courts may slightly differ in the manner in which the various provisions are applied. The litigation process begins with the filing of a lawsuit. The defending party has the right to respond to allegations set forth in the lawsuit. All communications between the parties are generally made through the court in written form, apart from direct oral communications during the court hearings.

Generally, the litigation process entails two hearings: a preparatory hearing *(pripremno ročište)*, and a main hearing *(glavna rasprava)*, after which the court renders its judgment. An unsatisfied party may file an appeal against the award by the court of first instance to the competent Cantonal Court in FBiH or District Court in RS, but only for one of the reasons provided for in the relevant code of civil procedure. Judgments by the Appeals Courts may be challenged before the relevant Supreme Court for a limited number of reasons set forth in the respective civil procedure codes and only if the amount in dispute exceeds BAM 10,000 (approx. EUR 5,000).

Although the FBiH Civil Procedure Act and RS Civil Procedure Act provide for relatively expedited court proceedings, in practice litigation may last several years, due to the backlog of cases before courts throughout BiH.

Litigation costs typically include court fees, attorneys' fees, remuneration for experts and witnesses, translation expenses, etc., which may in the aggregate be substantial, depending on the amount in dispute. The losing party is obligated to reimburse all costs of the proceedings to the winning party at the conclusion of the proceedings.

4.3 Insolvency

In BiH, bankruptcy proceedings are regulated by the FBiH Bankruptcy Act *(Zakon o stečajnom postupku FBiH)*, and the RS Bankruptcy Act *(Zakon o stečajnom postupku RS)*. The Acts are generally consistent and provide for a rather creditors-friendly insolvency system.

Under BiH bankruptcy system, a company is deemed insolvent and is obligated to undergo a bankruptcy procedure if the company is unable to meet any one of its outstanding debts, within the period defined in the bankruptcy acts. Consequently, this could mean that a company that is capable of paying some of its debts, but not all, may be considered to be insolvent. In FBiH, a company must undergo bankruptcy proceedings if it has been incapable of paying its debts (i.e., legally insolvent) for a period of thirty (30) days. In the RS, the insolvency period is sixty (60) days. In addition, the FBiH and RS bankruptcy acts require compulsory filing for bankruptcy in certain defined cases.

The bankruptcy procedure is under the jurisdiction of the Municipal Courts in FBiH, and the Basic Courts in RS. Bankruptcy proceedings are controlled by a single Bankruptcy Judge *(stečajni sudija)*. The bankruptcy procedure begins with filing of a petition by the company or any of its creditors. In FBiH, a company engaged in production of weapons and military equipment can be "pushed" into bankruptcy only upon approval of the FBiH Ministry of Energy, Mining and Industry. The approval shall be deemed granted if the competent ministry is silent for more than thirty (30) days. If the ministry denies its approval the FBiH will jointly and severally with the company be liable for the company's debts. In RS, for initiating a bankruptcy procedure against a company in which the state owns a majority of the share capital and which is either (i) in the process of restructuring conducted by the RS Direction for Privatization or (ii) until the process of the privatization sale, that has already been initiated, is completed and all deadlines for fulfillment of the buyer's contractual obligations have expired, approval of the RS Government is required. The approval shall be deemed granted if the RS Government is silent for more than thirty (30) days.

After the petition for bankruptcy has been filed with the court, the Bankruptcy Judge will initiate the preliminary bankruptcy procedure and appoint a Preliminary Bankruptcy Administrator *(Privremeni stečajni upravnik)* who will audit company's business records and determine if the reasons for bankruptcy exist. In the event the preliminary bankruptcy administrator determines the company is insolvent and should undergo bankruptcy proceedings the bankruptcy Judge will commence with the bankruptcy procedure, appoint a Bankruptcy Administrator *(Stečajni upravnik)*, and set out dates for notification of claims and court hearings. All creditors must announce their claims within the period of time that is stipulated.

After the Bankruptcy Judge initiates the proceedings all rights and responsibilities of the company's management are transferred to the Bankruptcy Administrator by the force of law. All court and arbitration proceedings related to the company's property and assets are suspended thereafter, and can be continued only in certain cases as set out in the bankruptcy laws. Opening of the bankruptcy procedure must be notified to the court registers and the words "in bankruptcy" *(u stečaju)* will be added to the company's name. In RS, a decision to commence the bankruptcy proceedings will also be delivered to the relevant stock exchange if the company is listed.

After appointment, the Bankruptcy Administrator is obliged to draft lists of company's assets and company's creditors. Pursuant to the claims of the creditors, the Administrator then classifies the claims into Payment Orders or Ranks *(Isplatni redovi)*.

A competent assessor must assess company's assets. Assessed value is always lower than the real market value which is the reason it is rarely possible to repay and satisfy the full amount of debts through bankruptcy proceedings.

Under the BiH bankruptcy system creditors are entitled to decide on the settlement of their claims, i.e. if they will undergo procedure of asset sale and liquidation or they will opt for the reorganization of the company. Reorganization of the company is an important novelty in BiH bankruptcy system which has provided a possibility of better settlement of claims in a long term. At the same time the insolvent company gets an opportunity to continue with business activities and overcome difficulties.

Reorganization plan may be drafted and submitted to the Bankruptcy Court by the insolvent company before commencement of the bankruptcy procedure or the Bankruptcy Administrator upon the request of creditors. If the creditors and the insolvent company adopt the Plan bankruptcy

proceedings will be suspended and the company will continue with business under the supervision of Bankruptcy Administrator, creditors and Bankruptcy Court.

Petitioners for a bankruptcy are usually required to deposit, in advance, a certain amount of money to cover the costs of the bankruptcy procedure (approx. BAM 5,000, or EUR 2,500). The deposit will be later remunerated out of the Bankruptcy Estate including all other expenses of the procedure.

Bankruptcy procedure for banks is somewhat different from the general bankruptcy procedure and it is regulated by the FBiH and RS laws on banks. The procedure is administered and supervised by the FBiH and RS banking regulators and agencies.

4.4 Arbitration

Both the FBiH and RS Civil Procedure Acts allow parties to settle disputes through arbitration. However, in practice this method of dispute settlement is rarely used in BiH.

Arbitration may be initiated only on the basis of a written agreement signed by both parties. Normally, in the agreement, the parties set forth the applicable rules and law that will govern the proceedings and the arbitration agreement may also include the method for selecting the arbitrators. An arbitration award has the same legal validity and force as a court judgment and is therefore binding and enforceable. It can be challenged only in certain situations prescribed by law.

The parties may choose arbitration to resolve a single dispute or as a method for resolving all disputes which may arise from the contractual legal relationship between the parties.

4.5 Enforcement of Foreign Judgments and Arbitral Awards

A foreign court judgment can be enforced in BiH only after it has been recognized by the competent BiH courts. BiH courts will recognize a foreign judgment if the following conditions are satisfied:

- The foreign judgment is legally valid and enforceable in the foreign state where the judgment was rendered.
- The party against which the judgment was rendered had the right to participate in the proceedings.
- There is reciprocity of recognition between BiH and the foreign state that rendered the judgment.
- The subject matter of the foreign judgment is not under the exclusive competence of BiH Courts.

Existence of reciprocity is presumed, until proven otherwise, but in the event of a doubt, the court will request clarification from the Ministry of Justice (this is common under current court practice). Also, the foreign award must not contradict the BiH Constitution, the FBiH Constitution or RS Constitution and/or public order.

A foreign arbitral award must also be recognized by the competent BiH courts before it can be enforced in BiH. The following preconditions must be met for the recognition:

- Subject matter of the foreign arbitral award is not exempted from arbitration according to the BiH law;
- Subject matter of the foreign arbitral award is not in exclusive competency of the BiH courts or other authorities;
- The foreign arbitral award does not contravene principles set forth in the BiH Constitution, the FBiH Constitution or RS Constitution and/or public order;
- Reciprocity of recognition exists between BiH and the country of origin of the foreign arbitral award;
- The relevant parties have concluded a written agreement on arbitration and such agreement is valid and binding;
- The party against which the arbitral award has been rendered was duly informed on appointment of arbitration judges and arbitration and there were no obstacles for such party to participate in the arbitration procedure;
- The composition of arbitration panel and arbitration procedure were in line with the provisions of the agreement on arbitration and arbitration rules;
- The arbitration has not exceeded its authorizations determined by the arbitration agreement;
- The foreign arbitral award is final and enforceable; and,
- The foreign arbitral award is not ambiguous or inconsistent.

BiH is a party to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958. Therefore, an arbitral award rendered in other contracting countries parties to the Convention would, in general, be enforceable in BiH. However, BiH has made a reservation that it will apply the New York Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the law of BiH and only of awards made in the territory of another contracting state on the basis of reciprocity. Despite the fact that the reciprocity between contracting states of the New York Convention is presumed, it cannot be ruled out that an FBiH court will ask for a proof of such reciprocity. It should be noted that there is very limited legal practice in this regard.

BiH is also a party to bilateral agreements with various countries that regulate mutual relationships of BiH and the respective country in relation to provision of legal aid, civil and criminal proceedings, etc.

5. BULGARIA

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The information contained in this article on dispute resolution in Bulgaria was correct as of 1 April 2009.

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5.1 Legal System

Bulgaria is a parliamentary republic form of government that operates within the limits of the division of powers between the legislative, executive and judicial branches that is specified by the Constitution that was adopted in 1991. Also, by virtue of being an EU member state, since 1 January 2007, Bulgaria is subject to the various EU Treaties, and must comply with EC Regulations, and national implementation of EC Directives.

The Bulgarian court system consists of District Courts, Regional Courts, Courts of Appeal, the Supreme Court of Cassation and the Supreme Administrative Court. A Constitutional Court rules on interpretation of the Constitution and the legality of the laws passed by the parliament (the "National Assembly").

Litigation in civil and commercial cases is governed by the Civil Procedure Code (promulgated in State Gazette Issue No. 59/20.07.2007, in force as of 01.03.2008). Administrative disputes are handled according to the Administrative Procedure Code (promulgated in State Gazette issue No. 30/11.04.2006, as amended). The competence of Bulgarian Courts over disputes with an international element in addition to, the recognition and enforcement of foreign decisions, and other acts are regulated by the International Private Law Code (promulgated in State Gazette Issue No. 42/17.05.2005, as amended).

5.2 Litigation

The Bulgarian Regional Courts and District Courts decide in both civil and criminal cases. The jurisdiction of the courts is determined by the individual courts on the basis of the territorial location of the dispute and type of claim.

Regional Courts have jurisdiction to decide criminal matters, except criminal matters that require a trial before a District Court. Normally, criminal matters that require a trial before the District Court are more serious criminal offences such as murder, rape, robbery, etc.

District Courts can be both first and second instance courts. As first instance courts, District Courts have subject matter over claims related to the following:

- Paternity or Maternity and Adoption;
- Deprivation of legal capacity;
- Commercial disputes pursuant to the Commercial Act, as well as privatization contracts, contract for public procurements or concession agreements, pool agreements, decisions on coordinated practices, concentration of business activity, unfair competition, monopolies or dominant market position.
- Real estate claims exceeding BGN 50,000 (approx. EUR 25,000);
- Civil claims exceeding BGN 25,000 (approx. EUR 12,500), except for claims related to child support, labor disputes and for receivables from deficiency in accounts acts issued by the Administration; and,
- Entries in the Commercial Registry which are inadmissible or null and void pursuant to the applicable statutory provisions.

District Courts are also competent to hear appeals from the Regional Courts.

There are twenty-eight (28) District and Administrative Courts, including the Sofia Municipal Court and the Sofia Administrative Court which, by statute, have special subject matter jurisdiction over specific types of cases. Also, there are five (5) Courts of Appeal which decide civil and criminal cases as a court of second instance from decisions of the District Courts.

With the exception of administrative matters, the Supreme Court acts as a court of cassation and exercises supreme judicial oversight regarding the unfair or inaccurate application of the law by all courts. The decisions and decrees issued by the Supreme Court of Cassation and the Supreme Administrative Court are binding on all other courts.
Administrative Courts are competent to hear all cases concerning:

- Issues involving amendments, terminations or declarations of invalidity of administrative acts;
- Declarations of invalidity of agreements concerning administrative cases;
- Protections against unjustified actions and/or omissions of the Administration;
- Protections prohibiting unlawful compulsory enforcement of administrative acts;
- Indemnity for damages deriving from unlawful acts or omissions committed by administrative bodies and/or officials;
- Indemnity for damages from compulsory enforcement;
- Declarations of invalidity or cancellation of decisions of the Administrative Courts; and,
- Declarations regarding administrative decisions based on false, or irrelevant, information.

The Supreme Administrative Court is competent as the court of first instance to hear claims based on certain actions specified by law, and is competent to hear appeals of decisions made by the Administrative Courts and the three-member panel of the Supreme Administrative Court. The Supreme Administrative Court exercises supreme judicial oversight over the application of the law in administrative matters.

Generally, the Bulgarian Supreme Administrative Court is competent to hear the following matters:

- Appeals against secondary legislation except for those made by the Municipal Councils;
- Appeals of administrative acts by the Council of Ministers, the Prime Minister, the Deputy Prime Ministers or other Ministers;
- Appeals of decisions made by the Supreme Judicial Council;
- Appeals from administrative actions of bodies associated with the Bulgarian National Bank;
- Complaints and appeals of court decisions rendered by courts of first instance;
- Private complaints of rulings and orders of the Administrative Courts; and,
- Claims for cancellation of acts made in administrative court cases.

5.3 Insolvency

Insolvency law is governed by the Bulgarian Commercial Act (adopted in State Gazette Issue No. 48/18.06.1991, as amended). The law allows for reorganizations, maximization of asset recovery, and fair and equal distribution of the debtors assets to creditors. Jurisdiction for insolvency proceedings is with the District Court where the debtor maintains its registered address.

Insolvency law applies to all business entities, with the exception of public monopolies and state-owned companies. Also, a special set of laws regulate the banking and insurance companies, and in these cases, the provisions of the Commercial Act are valid only where the special laws do not apply.

Both a debtor and a creditor may initiate insolvency proceedings. However, it is also important to understand that at any point during the insolvency proceedings the debtor is allowed to enter into an agreement with all of the accepted creditors for the settlement of the debts.

Generally, a debtor is required to file for bankruptcy within thirty (30) days after becoming insolvent. A debtor is considered to be insolvent when the debtor is unable to meet its outstanding financial obligations and liabilities in a commercial context, or public duty owed to the State or Municipality related to the debtors trade or business activities, including any liability deriving from those activities. If the court determines that the criteria for insolvency are met, the court will then appoint an interim trustee that is responsible for representing and managing the company, recording assets, identifying any potential creditors, convening a meeting of the creditors within one month, and preparing a financial recovery plan.

Although the court appoints an interim trustee, at the first meeting of the creditors, involved in the bankruptcy, it is required that a designate trustee be appointed; generally, this action normally confirms the trustee that has been appointed by the court.

Creditors must file outstanding debt claims within one month after the start of bankruptcy proceedings, and the trustee must compile a list of debts within fourteen (14) days from the date when the insolvency proceedings were initiated. However, a two-month grace period is allowed for the additional filing of claims, subject to certain restrictions.

A reorganization plan or, in the event of liquidation, a distribution plan must be proposed no later than the date on which the court approves the list of debts. Once the plan is presented, the court has seven (7) days to accept or reject the plan. In the event, the statutory requirements are not met the petitioner is allowed to modify the plan within seven (7) days.

The Insolvency laws set forth the following priority ranking for claims made by the creditors: Debts secured by a pledge or mortgage, or freezing order pursuant to the Special Pledges Act *(Zakon za Osobenite Zalozi)* include the following:

- Debts subject to foreclosure rights;
- Insolvency costs;
- Amounts owed to employees;
- Social security obligations;
- Tax, duties and amounts owed to public authorities;
- Newly incurred debts;
- Unsecured debts; or,
- Other liabilities.

A reorganization plan is considered to be accepted once the plan has been approved by a majority of each of the classes of the creditors involved in the proceedings. After the plan is accepted by the creditors the court will then confirm and officially accept the plan. If a partial payment of debts is proposed, the same procedure is followed; however, the plan must be accepted by at least two classes of the creditors involved in the insolvency proceedings. Upon the approval of

the reorganization plan the court will then terminate the insolvency proceedings and a judicially appointed supervisor will oversee the implementation of the plan.

If an agreement cannot be reached on a reorganization plan the court may order the liquidation of the business assets.

5.4 Arbitration

Arbitration of commercial and civil disputes is regulated by the Foreign Commercial Arbitration Act (promulgated in State Gazette in Issue No. 60/5.08.1988, as amended), and applies to all commercial disputes with the exception of disputes relating to real estate or employment law, which fall within the subject matter jurisdiction of Bulgarian Courts.

The parties to a dispute or potential dispute can agree to settle their disputes through arbitration by signing an arbitration agreement. The arbitration agreement must be in writing or evidenced through a written communication between the parties. The arbitration agreement may be included in a contract between the parties; however, the arbitration agreement included in a contract shall be considered independent of the other terms of the contract.

If a dispute is subject to an arbitration agreement a court is obliged to terminate proceedings if a party invokes the arbitration clause within the time limits set forth for the party to reply to the statement of claims.

The Arbitration Court/tribunal may consist of one or more arbitrators, as determined by the parties, but must be an odd number of arbitrators. The parties may agree upon the procedure for selecting the arbitrators for the arbitration tribunal, and the arbitral procedures to be followed, and may select the location of the arbitral hearing and settling of the dispute including the language or languages of the arbitral proceedings.

An arbitration decision and/or award, is binding and enforceable and is not subject to appeal. Once the arbitral award is rendered a Writ for execution of arbitration awards are issued by the Sofia Muncipal Court.

5.5 Enforcement of Foreign Judgments and Arbitral Awards

Pursuant to the provisions of the Bulgarian Civil Procedural Code certain foreign court judgments and arbitration awards can be enforced in Bulgaria.

The law distinguishes between enforcement of decisions and acts issued by competent foreign authorities of the other EU Member States, and the decisions and acts issued by competent authorities of other foreign countries (Third Country Decisions).

Decisions or other acts, issued by courts in EU Member States are recognized and directly enforceable through the foreign court ruling, without any additional court proceedings in Bulgaria. Court decisions and/or acts made by foreign courts, in other EU Member States, are recognized directly by the respective Bulgarian authority upon the presentation of the decision fact.

The request for recognition must be made by the interested party to the District Court, located in the jurisdiction of the party‘s registered permanent address, and the Court will then decide upon the recognition of the foreign court decisions and/or acts. Following, the Courts formal recognition, the foreign judgment has the same effect as a domestic decision rendered by a Bulgarian court; therefore, the award may also be subject to appeal before the Bulgarian Supreme Court of Cassation.

The recognition of a Third Country Decision is performed by the authority before which the request for recognition is submitted. A dispute regarding the conditions for the recognition of a Third Country Decision can be filed with the Sofia Municipal Court.

Generally, Third Country Decisions are recognized by the Bulgarian Courts provided the following conditions are met:

- The foreign court or body is competent according to the provisions of Bulgarian law;
- The defendant was served with a copy of the claim, and the parties involved were properly summoned, and the main principles of Bulgarian law regarding the parties rights to defend the claims have not been violated;
- There is no final decision or pending litigation before a Bulgarian Court between the same parties that is based on the same grounds and for the same claim; and,
- The recognition or enforcement of the Third Country Decision does not contradict Bulgarian public order.

For the admission and enforcement of a Third Country Decision a claim must be filed at the Sofia Municipal Court along with a copy of the Third Country Decision, certified by the respective foreign court, and a certificate from the same court that the decision is final and has entered into force.

6. CROATIA

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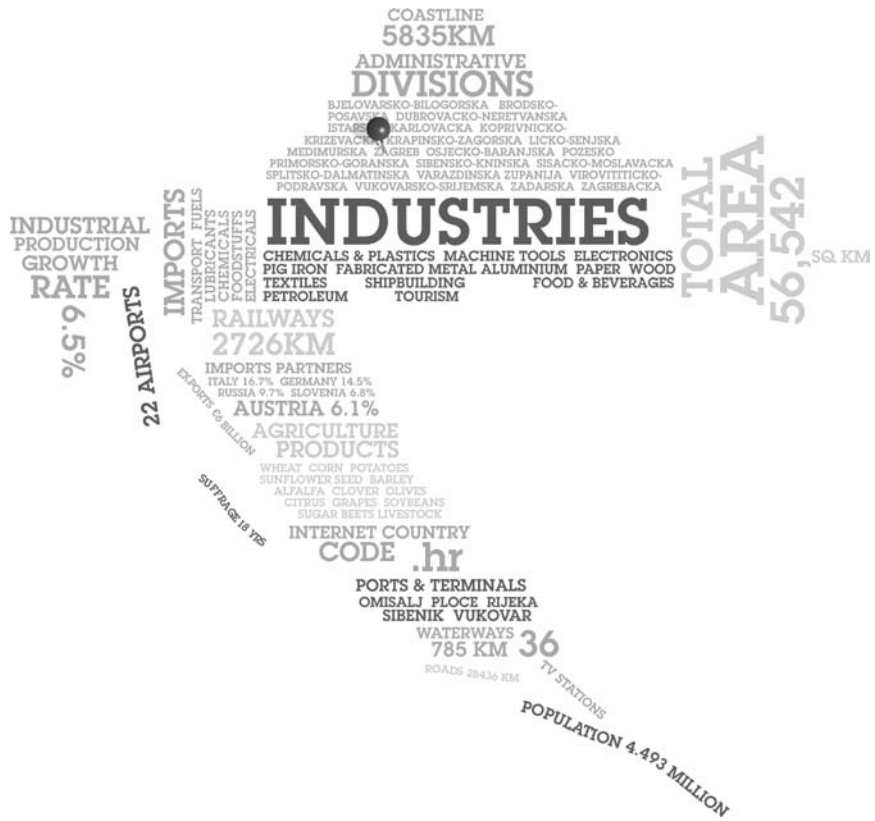

The information contained in this article on dispute resolution in Crotia was correct as of 1 April 2009.

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6.1 Legal System

The Croatian legal system is founded on the principle of separation of powers between the legislative, administrative and judicial power. An independent and impartial judiciary exercises the judicial power, bound by the Constitution and the laws passed by the Parliament, including international agreements ratified by the Parliament that are published in the Official Gazette of Croatia *(Narodne novine)*, which form part of the Croatian legal order and take precedence over nationally enacted laws. Croatia is a civil law country where court decisions are generally not considered as precedents, although lower courts tend to follow the opinions and decisions of the higher courts.

In general, a distinction can be made between courts of general jurisdiction and specialized courts which have exclusive jurisdiction over certain subject matter. The courts of general jurisdiction include the Municipal Courts (as of 25 March 2008, there are 107), the County Courts (21), and the Supreme Court. The specialized courts include Commercial Courts (13), the High Commercial Court (1), Misdemeanor Courts (25), the High Misdemeanor Court (1), and the Administrative Court (1).

Also, there is the Constitutional Court which is technically not a part of the judiciary but a special body established by the Croatian Constitution that is competent for constitutional review of Acts of Parliament and individual constitutional complaints against public authorities.

6.2 Litigation

The litigation in Croatia follows an adversarial procedure, where the parties must actively participate in establishing the facts of the case; otherwise, the court may dismiss the claim because the party has not sufficiently met the required burden of proof according to the procedural rules. The only exception where the trial judge establishes facts based on the judges own motion is when the parties' dispositions violate the mandatory rules of law or standards of public moral. Nonetheless, judges have a very active role in the litigation process. Thus, lay-witnesses, expert witnesses and the parties are primarily questioned by the judge during the evidence gathering procedure, while attorneys may only pose additional questions and follow-up remarks. The result is that the emphasis is placed on the procedure and exchange of written briefs between the parties prior to any hearing, rather than conducting extensive and time consuming hearings before the court.

The litigation procedure commences when the claimant submits a statement of claim to the court. However, only upon effective service of the statement of claim has been made on the defendant does the claim become effective. The defendant has a duty to file a statement of defense within the time-limit granted by the court which may range from a minimum of fifteen (15) to a maximum of thirty (30) days. In the event the defendant does not file the statement of defense or fails to appear before the court for the first hearing, the court may enter a judgment by default against the defendant. However, in practice a judgment by default is rare, since one of the requirements is that the courts find the claimant's claims are well-founded from the facts supporting evidence.

All decisions of a court of first instance may be appealed before a court of second instance. Also, the law allows for two extraordinary legal remedies against final decisions: (i) a review of the second instance court decision in matters where the amount in dispute exceeds HRK 100,000, approximately EUR 13,700 (in case of High Commercial Court decision HRK 500,000,

approximately EUR 68,495); and, (ii) reopening the first instance court proceedings in matters concerning serious violations by the participants, or discovery of new facts and/or evidence which may led to a different decision.

Commercial Courts hear the following disputes:

- Disputes arising from commercial agreements or liability for damage in relation to a commercial agreement between parties in the performance of economic activities;
- Corporate disputes arising from the establishment of a company, the company's operations including the termination of operations, the transfer of shares, shareholder relations, shareholder-management relations, piercing the corporate veil, liability of managers of a company, etc.;
- Disputes involving a party involved in bankruptcy proceedings, except for disputes falling within the exclusive jurisdiction of Municipal Courts; and,
- Unfair Competition related disputes.

Although there are thirteen (13) Commercial Courts in Croatia, in certain specialized situations the competence to hear a particular matter may be restricted to one of the four (4) Commercial Courts located in Osijek, Rijeka, Split and Zagreb. These specialized Commercial Courts possess special competence over disputes involving matters:

- Regarding ships and navigation by the sea and/or inland waterways, except for passenger transports;
- Regarding aircrafts and air navigation and aviation, except for passenger transports; or,
- Intellectual Property disputes.

Generally, other than the matters previously discussed, all other disputes fall within the competence of the Municipal Courts. Also, certain disputes are under the exclusive jurisdiction of the Municipal Courts, such as labor disputes, family law disputes, trespass etc.

Litigation costs mainly include court fees, attorney's fees and expenses for expert witness and opinions. Normally, costs are awarded against the losing party in accordance with the rules of civil procedure. In some situations the court may award cost against one party, or a party's representative, if that party was at fault in causing a delay to a hearing or the proceedings have to be postponed because an attorney was unprepared.

Court fees are rather moderate, which allows litigation to be accessible to all individuals. Generally, court fees range from HRK 100 (approximately EUR 14) for amounts in dispute up to HRK 3,000 (approximately EUR 411), to the highest fee of HRK 5,000 (approximately EUR 685), for amounts in dispute exceeding HRK 465,000 (approximately EUR 63,700).

The attorney's fees are prescribed by the Croatian Bar's Tariff and may range from HRK 250 (approximately EUR 35) for a brief or a hearing in a case with an amount in dispute up to HRK 2,500 (approximately EUR 343), up to the highest fee of HRK 100,000 (approximately EUR 13,700) for a brief or a hearing in a case with an amount in dispute of HRK 22,500,000 (approximately EUR 3,082,192) or more. The fees can be decreased for less demanding briefs or hearings, and can be increased for appeals, extraordinary legal remedies and arbitration proceedings. Although in practice the attorney and the client may agree upon higher fees, only the fees that are in accordance with the Bar's Tariff will be recognized before the

court for the purpose of reimbursement.

6.3 Insolvency

Croatian bankruptcy law mirrors the German insolvency law *(Insolvenzordnung)*. According to Croatian law, only legal persons may, in principle, become bankrupt. This means that ordinary citizens/consumers may not become subject to bankruptcy proceedings. The only exception where natural persons may become subject to bankruptcy proceedings are those natural persons that are sole traders *(trgovci pojedinici; Einzelkaufleute)*, or craftsmen *(obrtnici; Gewerbetreibende)*.

Generally, bankruptcy proceedings must be initiated in the event of, (i) insolvency, or (ii) over-indebtedness. In the event the bankruptcy involves a legal entity, such as a corporation, the management is obliged to apply for the initiation of bankruptcy proceedings within twenty-one (21) days of the insolvency or over-indebtedness occurring, or being discovered. An individual debtor may initiate bankruptcy proceedings in the event of imminent insolvency, when the debtor is able to prove it will most likely not be able to fulfill its current financial obligations.

A debtor is deemed to be insolvent, if the debtor's principal bank account has been blocked, and there is no record that liabilities could have been settled by the bank over a period of sixty days (60) days, or longer. This can apply even if the debtor possessed the financial means available, through other bank accounts held by the debtor.

A debtor is considered over-indebted, if the debtor's liabilities exceed its assets, unless there are circumstances or options available, such as reorganization plans, or other available financial resources that clearly indicate the debtor will be able to fulfill the financial obligations owed to creditors.

Bankruptcy proceedings are conducted exclusively by the Croatian Commercial Courts. The competence of an individual Commercial Court's for companies registered in Croatia is determined according to the location of the company's registered seat.

With respect to bankruptcies involving an international element, the law prescribes the exclusive competence of the Croatian Commercial Courts for all debtors having their principal place of business *(središte poslovnog djelovanja)* in Croatia, which may differ from their registered seat. Thus, a foreign court may be competent for bankruptcy proceedings of a company registered with the Croatian register of companies if the company has its principal place of business outside Croatia and vice versa, unless the law of the state where the company has its principal place of business does not apply the principal place of business concept.

Upon receiving an application for bankruptcy, the court sets the date for a hearing. The court may also appoint a temporary receiver, order an expert opinion or impose preliminary measures of protection or injunctions as the court determines is necessary. At the hearing, the court will determine whether one of the two reasons for opening bankruptcy proceedings exists, and, if so, grant the application and commence main bankruptcy proceedings, including appointing a permanent receiver. The decision may be appealed before the High Commercial Court; however, other than an appeal to the High Commercial Court there are no other extraordinary legal remedies available against the final decisions on whether or not to institute the bankruptcy proceedings.

Following the courts decision to initiate bankruptcy proceedings, the time-limit for creditors to

make claims over the debtor's property begins to run. The creditors are allowed to make claims within a time-limit set by court that ranges from a minimum of (15) days to a maximum of one month beginning on the 9th day following publication of the decision in the Official Gazette of Croatia *(Narodne novine)*. However, this requirement normally does not apply to property owners that have been included in the debtor's non-exempt assets by mistake, or creditors with claims secured by a mortgage or similar lien over the debtor's property *(razlučni i izlučni vjerovnici; Absonderungs- und Aussonderungsgläubiger)*. Nonetheless, since third parties may acquire property rights over the debtor's property, and become a bona fide purchaser of the property it is recommended that any claims related to the debtors assets are made.

After expiration of the time-limit for notification of creditor's claims, the court holds a hearing for determination of the validity of each claim. If a claim is contested by the receiver, the creditor may only file a lawsuit against the debtor. If a claim is confirmed by the receiver and is contested by another creditor, the other creditor may file a lawsuit against the creditor that brought the initial, contested claim.

Following the hearing, the court holds a subsequent hearing where the creditors make a determination regarding the method of any further proceedings.

Under Croatian law, there are three types of bankruptcy proceedings: (i) Bankruptcy leading to liquidation; (ii) Reorganization through an insolvency plan; and, (iii) Personal administration. The method of mandatory settlement (prisilna nagodba; Ausgleich) was abandoned by the introduction of the new bankruptcy law in 1997.

In the first type of bankruptcy proceeding, the debtor's non-exempt assets are collected, sold, and the proceeds distributed amongst creditors. Once the process is completed a notification is delivered to the corresponding commercial registrar in order to remove the debtor from the register. Consequently, by removing the debtor from the register, a legal entity will cease to exist while, on the other hand, a natural person simply loses the capacity of a sole trader or a craftsman.

The second type of proceeding is a reorganization bankruptcy where a debtor reorganizes/ restructures their assets and debts through an insolvency plan. The plan must be approved by the creditors and the bankruptcy judge. Also, the plan and may involve the liquidation of some or all of the debtor's assets.

The third type of bankruptcy is a personal administration proceeding where the debtor continues to administer and dispose of its assets under the supervision of a court appointed commissioner.

6.4 Arbitration

In 2001, the Croatian arbitration law adopted the majority of the solutions from 1958 New York Convention, pertaining to the recognition and enforcement of arbitral awards, and 1985 UNCITRAL Model Law.

Croatian law distinguishes between domestic arbitration and foreign arbitration, depending upon the place of arbitration. The parties may generally submit to arbitration all disputes involving rights which the party may freely dispose of. This excludes e.g. family law disputes and all other disputes involving mandatory rules of law. In foreign arbitrations, apart from the disposability

of rights requirement above, the parties may not submit disputes that fall within the exclusive competence of Croatian Courts, such as disputes involving real estate located within the territorial limits of Croatia.

There is only one major arbitration institution in Croatia, the Permanent Arbitration Court of the Croatian Chamber of Commerce (PAC-CCC) which has activities dating back to 1853. The Permanent Arbitration Court of the Croatian Chamber of Commerce has established Rules of International Arbitration (Zagreb Rules), which adhere largely to the provisions of the UNCITRAL Arbitration Rules.

In case a dispute is between two Croatian parties, the law mandates that parties may only use a domestic arbitration to settle the dispute; however, parties may agree to settle the dispute through foreign arbitral proceedings, outside of Croatia, only if there is an international element to the dispute. Under Croatian law, the latter requirement is met if dispute involves at least one foreign party.

The statutory term "domestic arbitration" caused confusion in practice regarding the possibility of having arbitration between two Croatian parties before international arbitration institutions, such as the International Court of Arbitration of the ICC. Some judges interpreted the term so as to allow arbitration only before the Permanent Arbitration Court of the Croatian Chamber of Commerce, but upon a proper construction of the law defining the domestic arbitration as arbitration having the place of the arbitration in Croatia, it is evident that a domestic arbitration may be conducted by an international arbitration institution while only the place of arbitration must be in Croatia (e.g. an arbitration in accordance with the ICC Rules with the place of arbitration in Zagreb).

Under Croatian law, the arbitration agreement may be entered into as a separate document or in the form of an arbitration clause included in the underlying contract between the parties, but in both cases it must be in a written form. The written form requirement may be satisfied even by exchanging letters, faxes, and telegrams or by other means of communication providing there is a written record of the agreement. Most importantly, there is no requirement that the writing contain the parties' signature. In addition, the law provides that the written form requirement of the arbitration agreement is satisfied in the following cases as well:

- A party offers to another party in writing, or a third party offers to both parties in writing to enter into an arbitration agreement and neither party objects to the offer, the silence of the other party may be considered as acceptance if this would be in accordance with the regularly accepted trading practices;
- A party makes a written notification to another party referring to an arbitration agreement concluded orally and the other party does not timely object to the contents of the notification, which may be considered as a confirmation of the received notification in accordance with regularly accepted trading practice;
- The reference in a contract to any document containing an arbitration clause, provided that the reference is such as to make that clause part of the contract;
- The reference in a bill of lading to a shipping contract that contains an arbitration clause; and,
- The arbitration agreement is contained in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by the other.

If the parties fail to select the applicable law for the arbitration agreement, the validity of that agreement is assessed in light of the law applicable to the subject-matter of the dispute; or, alternatively Croatian law.

The parties may freely designate the law applicable to the subject-matter of their dispute(s). Failing such designation, the arbitrators may apply the law deemed to be in the closest connection with the dispute. The arbitral tribunal may decide ex aequo et bono, or as amiable compositeur only if the parties have expressly authorized the arbitrators to do so.

Croatian arbitral awards have the legal effects equal to effects of a final judgment, unless the parties have expressly agreed that the award may be contested before an arbitral tribunal of a higher instance.

As regards the enforcement of domestic awards, the court may deny enforcement upon the court's own motion, only if:

- The subject-matter of the dispute is non-arbitral, i.e. not capable of settlement by arbitration under the laws of the Republic of Croatia; or,
- The award violates the public policy of the Republic of Croatia.

In case of a foreign award, the court may refuse recognition and enforcement upon its own motion in the two situations stated above, or upon objection of the party against whom it is invoked, if that party proves any of the following:

- No arbitration agreement has been concluded, or that the agreement is not valid;
- The parties to the arbitration agreement were under some incapacity, or were not adequately represented;
- The party against whom the award is invoked was not given proper notice of the commencement of the arbitration proceedings, or was unable to present a case due to some illegal actions on the part of the other party, witness or arbitrator;
- The award concerns a dispute not contemplated by, or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement;
- The composition of the arbitral authority or the arbitral procedure was not in accordance with the law, or the agreement of the parties, and consequently may have influenced the contents of the award;
- The award does not adequately or appropriately state the reasons and justifications for issuance of the award, and the requirement to provide sufficient justifications for issuing an award has not been waived by the parties, or the award is not signed by the arbitrators; or,
- The award has not yet become binding upon the parties, or has been set-aside or suspended by a competent legal authority of the country in which or under the laws of which the award was rendered.

6.5 Enforcement of Foreign Judgments and Arbitral Awards

Croatia is party to the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards (by succession of ex-Yugoslavia, as of 8 October 1991); and, the European Convention of 1961 on International Commercial Arbitration (by succession of ex-Yugoslavia, as of 8 October 1991), and the Washington Convention of 1966 on the Settlement of Investment Disputes between States and Nationals of other States (in force as of 22 October 1998).
By incorporating the rules of 1958 New York Convention into Croatia's arbitration laws, Croatia has extended a favorable treatment to all awards, even those from countries that have not ratified the New York Convention.

Foreign judgments are subject to different provisions and must satisfy more stringent requirements. The recognition and enforcement of foreign judgments may be refused if:

- The judgment is not accompanied with a valid confirmation of the judgment's finality and legal enforceability issued by the foreign court or other competent foreign body;
- The subject-matter of the foreign judgment falls within the exclusive competence of Croatian courts or other Croatian public authority;
- The same subject-matter has previously been resolved through a decision of a Croatian Court or other Croatian public authority, or another foreign judgment involving the same subject-matter has previously been recognized in Croatia;
- The judgment is contrary to the Croatian Constitution;
- There is no reciprocity between Croatia and the foreign state issuing the judgment; however, reciprocity is presumed unless the contrary is proved, and in the event of doubt regarding the existence of reciprocity, the Court must seek an official notice from the Croatian Ministry of Justice; or,
- The party against whom the judgment is being enforced proves that they were unable to present a case due to a procedural irregularity, such as improper service of documents, summons, etc.

The recognition and enforcement of foreign judgment proceedings are conducted by the Municipal and Commercial Courts, depending upon the subject-matter of the judgment.

Currently, there are sixteen (16) bilateral agreements regulating and simplifying the recognition and enforcement of foreign judgments, with Algeria, Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, France, Greece, Hungary, Iraq, Macedonia, Mongolia, Poland, Romania, Russia, Slovenia and Turkey, and one bilateral agreement regulating and simplifying the recognition and enforcement of foreign arbitral awards with Austria.

7. CZECH REPUBLIC

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The information contained in this article on dispute resolution in the Czech Republic was correct as of 1 April 2009.

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7.1 Legal System

The Czech legal system is based on codified principles of civil law. Although, judicial precedents are non-binding the Supreme Court of the Czech Republic regularly comments on case decisions, in an effort to provide guidance and establish uniformity among the lower courts.

7.2 Litigation

The Czech Court system is composed of District Courts, Regional Courts, two High Courts and two Supreme Courts that operate independently from each other. The first is the Supreme Court of the Czech Republic that is responsible for the civil, criminal and commercial matters, and the second high court is the Supreme Administrative Court of the Czech Republic that is responsible for administrative matters (including taxes).

Each court handles civil (including labor), commercial and criminal matters. In general, the cases are first heard before the District Court and the Regional Court serves as an Appellate Court. However, in certain situations the Regional Courts may act as a court of the first-instance (especially some commercial disputes), in which case any appeal would be decided by the High Courts. Administrative proceedings are carried out by the Regional and the Supreme Administrative Court. Currently, there are 86 District Courts and 8 Regional Courts established in the Czech Republic.

If necessary, it may be possible, in some cases to request the District, Regional, or the Supreme Court or the Supreme Administrative Court to grant interim measures of protection.

Currently, legal proceedings in the Czech Court system are generally viewed as being rather slow. Depending on the complexity of the case, a dispute may take anywhere from a few months to a couple of years before finally being settled.

Disputes involving a claim of the right for payment of a certain amount usually take a shorter period of time. For example, the court may decide to make a judgment without examining the defendant (without a hearing), based strictly upon the application for a payment order. The court may issue the payment order if the exercised right follows from the facts stated by the claimant; however, an explicit demand of the claimant is not required, and the payment order has the same effect as a final judgment in the matter. The court may also issue an order to pay a bill (cheque) without a hearing if the claimant submits an original copy of a bill of exchange, or cheque, whose authenticity is uncontested.

Generally, in the Czech legal system the only legal remedy against a judgment by a court of first-instance is to make an appeal. The devolutionary effect of the appeal applies under Czech law. This means that the contested decision of a lower-level court will be resolved by the appellant court; however, reconsideration is possible, and certain appellant decisions can be resolved by the first instance court.

Generally, a party may appeal most decisions of the first-instance. On appeal a party my challenge any procedural irregularities or the erroneous application of substantive law, and in some situations it may be possible to offer new facts and evidence in support of the appeal.
The court of second instance will either deny or proceed with the appeal. If the appeal proceeds, the court may supplement the issues of fact and review the factual and legal aspects of the

case which had been considered by the court of first instance. The court is not restricted by the submission of the appellant, nor is the court bound by the reasoning stated for the appeal. The court is only bound by the scope of the appeal. According to the rules of appellate procedure, after reconsidering the relevant facts the court will either (i) affirm the first-instance judgment; or, (ii) overrule the judgment and change the ruling. Furthermore, the appeal court can annul or vacate the previous decision, and remand the matter to the court of first-instance or terminate the proceeding.

In addition to the instrument of appeal set forth above, which is an ordinary legal remedy, Czech law enables the use of extraordinary legal remedies under a strictly defined set of conditions related to the recourse, or the rule of revision pertaining to legal aspects), the petition for retrial (dealing with factual aspects), and the petition for nullity (dealing with procedure aspects). In general, the court fee is calculated based on a percentage of the claim the fee is equal to an amount of 4 % the total value of the claim, which must be a minimum of CK 600 (approx. EUR 24).

Litigation costs mainly consist of court costs, attorneys‘ fees, expenses for expert opinions, evidence and language translations/interpretations which are normally paid by the unsuccessful party.

Any individual that receives a valid judgment and is entitled to request performance of a judgment from another person may, in the absence of voluntary execution or performance within the period specified in the judgment may file a petition for enforcement of the judgment. The execution can be carried out on the basis of a court order with a court or with private (self-employed) judicial executor. There are also several pecuniary forms of judicial enforcement including: wage deductions, claim order, an order to pay from an account at a specified financial institution, the sale of assets, a sale of enterprise, or a judicial lien. Also, there are non-monetary forms of enforcement that include: benefit-eviction, subject removal, subject separation and specific performance.

7.3 Insolvency

The new Czech Republic Insolvency Act became effective on 1 January 2008, and applies to all actions instituted after 1 January 2008. According to the new insolvency laws, a debtor is bankrupt if it has payable financial liabilities and it is in arrears more than 30 days and is has been unable to satisfy these obligation. An entrepreneur or other legal entity is considered bankrupt if it has become over-indebted and the debtor‘s liabilities exceed the debtor‘s assets. In all situations, the new Insolvency Act requires a plurality of creditors.

The application for the adjudication of insolvency may be filed by the debtor or by any of its creditors. The new Insolvency Act incorporates several new forms of solutions to insolvency, including: (i) bankruptcy (ii) reorganization; (iii) debt relief or discharge from debts (by a payment plan or a garnishment); and, (iii) the special form of insolvency-solution (e.g. insolvency of the financial institutions). In addition to the new forms of solutions to insolvency, the new Insolvency Act implements the use of the new Insolvency Register, which is a public register that contains a list of debtors and receivers and the subject matter (e.g., documents, deeds, etc.) related to each particular insolvency cases.

The Insolvency Courts are not separate courts; instead, the Bankruptcy Courts are specialized departments within the Regional Courts. The role of the insolvency Courts is to supervise and approve any measures undertaken by the receiver and the creditors. The ultimate aim of the

bankruptcy is to achieve a proportional satisfaction of the creditors from the debtor‘s property belonging to the bankruptcy estate. However, the reorganization serves to the sequent satisfaction of the creditors at [by] preservation of business of debtor‘s enterprise.

7.4 Arbitration

Pursuant to the Czech Arbitration Act the parties may conclude an arbitration agreement that governs any or all disputes between them arising from their contractual relationship. In the agreement the parties may whether the arbitration shall be decided by one or more arbitrators, or by an established arbitral institution. The parties may also specify in their agreement what procedural rule, or substantive law will apply to the resolution of the dispute.

The parties may agree to arbitrate disputes that have already arisen (compromise or submission agreement), or disputes that may arise in the future. However, in order for an arbitration agreement to be valid it must be concluded in writing between the parties.

In arbitration proceedings, a decision can be issued only in property disputes except: (i) those disputes linked to the enforcement of decision; and, (ii) disputes arising within the course of insolvency or settlement proceeding.

Generally, arbitration awards are enforceable by the courts and the private (self-employed) judicial executors in the same manner as the court judgments.

Arbitration awards may be challenged in the courts. The valid grounds for setting aside an arbitral award include the following: (i) the award has been issued in a case in which no valid arbitration agreement has been concluded (lack of jurisdiction); (ii) the arbitration agreement is not valid for other reasons, has been terminated or does not concern the appropriate subject matter at dispute (lack of competence); (iii) an arbitrator participated in the arbitration proceedings whose appointment was neither based on the arbitration agreement nor on any agreement between the parties, or the individual appointed as arbitrator did not possess the legal capacity to act as an arbitrator; (iv) the award was not adopted by a majority of the arbitrators; (v) a party was not given the opportunity to plead its case before the arbitration tribunal; (vi) the award obligated a party to an action that was not requested by the other party, or to an action which is not permitted under domestic law; or (vii) it is determined that reasons exists which provide a sufficient justification for reopening the case.

Since, setting aside an arbitral award is an exceptional remedy; the grounds are usually interpreted strictly and restrictively limited to the grounds specified above. However, there is one exception where a party may request a set-aside and have the case reopened based on a violation of formal procedural grounds. Setting aside an arbitral award is so unique that even an erroneous application of a rule of substantive law will not provide sufficient grounds for setting aside an award.

Under certain circumstances (as described in (i), (iv) and (iv) above), a party may request the court to stay the execution proceedings even if the award has not been challenged.

7.5 Enforcement of Foreign Judgments and Arbitral Awards

Council Regulation 44/2001 deals with the recognition and enforcement of judicial decisions in civil and commercial matters. According to this regulation, decisions issued by the court of any EU Member State shall be recognized by other EU Member States without a special procedure. Czech judicial decisions dealing with civil and commercial matters that were issued prior to entry into the EU and decisions given in connection with the proceedings initiated before the entry in the EU can not normally be enforced in all the EU Member States.

Furthermore, since the 21 October 2005 enactment of EC Regulation No. 805/2004 of the European Parliament, any European Enforcement Order for an uncontested claim is valid in the Czech Republic. Pursuant to the Czech Act on International Private and Procedural Law, the provisions of the Act shall apply unless an international treaty or European law binding for the Czech Republic stipulates otherwise. Pursuant to the Czech Act on International Private and Procedural Law, decisions of foreign authorities, as well as foreign judicial settlements and foreign notary deeds shall be effective in the Czech Republic, if they are final and conclusive and it is confirmed by the foreign authority and recognized by Czech authorities. However, foreign decisions shall neither be recognized nor enforced if:

- The foreign decision impedes the exclusive jurisdiction of Czech Courts, or if the proceedings could not have been conducted under the authority of the foreign state; if provisions concerning the competence of Czech Courts have been applied to the consideration of jurisdiction of the foreign authority;
- In the same case, a final and conclusive decision has been issued by Czech authorities, or a final and conclusive decision of an authority of a third state has been recognized in the Czech Republic;
- The authority of the foreign state failed to allow the party against whom the judgment or award is to be enforced, to participate in the proceedings, especially if the participant was not personally served with notice of the lawsuit or the writ of summons;
- Recognition of the foreign award would violate Czech public order; or,
- Reciprocity of the award is not guaranteed; or reciprocity is not required because the foreign decision is not directed against a Czech citizen or a Czech legal entity, or if a Czech legal entity has agreed in writing that the foreign court has competence (property disputes).

Pursuant to the Czech Act on Arbitration, arbitral awards issued abroad shall be recognized and enforced by Czech Courts in the Czech Republic if reciprocity is guaranteed. Recognition of a foreign arbitration award does not require a special decision. The courts may decline to recognize and enforce a foreign arbitration award only under a few conditions based on the petition of party obliged by award.

The Czech Republic is party to the New York Convention of 1958 on the Recognition and Enforcement of Arbitral Awards.

The Czech Republic is member of the European Convention 1961 on International Commercial Arbitration.

The Wolf Theiss Guide to: Dispute Resolution in the Czech Republic

8. HUNGARY

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The information contained in this article on dispute resolution in Hungary was correct as of 1 April 2009.

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8.1 Legal System

Hungary has traditionally been referred to as a “continental” legal system, in which the main source of law are acts adopted by the Parliament, rather than case precedents made by the courts. The major governing principals of the Hungarian legal system are set forth in the Constitution (Act No. XX. of 1949 on the Constitution of the Republic of Hungary).

Since it came into force in 1949 the Constitution has gone through several significant amendments. The original version adopted in 1949 was based on the grounds of a socialist regime, which had to be amended and changed significantly upon its collapse. The current Constitution reflects a democratic basis of government. As member of the European Union Hungary faces the continuing obligation to ensure all the Hungarian laws are in accordance with acquis communautaire.

Act No. III. of 1952 on Civil Procedure contains the relevant procedural rules for civil court proceedings. Court decisions are generally not deemed as case precedents. Furthermore, it is the Supreme Court‘s responsibility to lay down uniform guidelines for the lower courts. As part of this function, the Supreme Court shall adopt harmonized decisions and publish all rulings. A harmonization procedure shall be conducted if (i) a harmonized decision is required in a matter of doctrine to achieve improvements in precedent cases, or for the approximation of sentencing policies; or (ii) a panel of the Supreme Court intends to deviate in a legal issue from the decision adopted by another adjudication panel of the Supreme Court.

8.2 Litigation

The Hungarian judicial system is divided into two levels of ordinary jurisdiction (i.e. Local Courts and District Courts) that rule in both civil and criminal law matters.

The Local and District Courts are organized hierarchically, with the Local Courts being the lower court possessing jurisdiction over matters of lower importance.

District Courts are superior to the Local Courts and have jurisdiction to decide matters of greater importance in the first instance, in addition to serving as a court of second instance in connection with decisions of the Local Court at the first instance. Any matter that does not fall under any other court’s specific jurisdiction is within the scope of the Local Courts.

District Courts have jurisdiction as first instance courts in matters with the value exceeding HUF 5,000,000 (approx. EUR 19,500), and several other cases, which are generally of a relatively high importance (e.g. IP/IT related matters; international transportation law related matters; matters connected to administrative authorities; press rectification matters; and, corporate matters). Also, the District Courts serve as both Labor Courts and Commercial Courts. Labor Courts were set up in order to rule in labor law related matters; whereas, the District Courts, as Commercial Courts, are in charge of the registration of business legal entities, and to perform the mandatory supervision of those business entities.

Currently, there are no specialized administrative courts in Hungary; therefore, decisions of administrative authorities are appealed to the District Courts. Recently, five territorial courts have been established, which operate as Courts of Appeal *(Ítél tábla).* The recent establishment of the five territorial Courts of Appeal, which act as second instance courts, was intended to reduce the

volume of the cases submitted to the Supreme Court.

Additionally, Hungary has a Constitutional Court, which is not incorporated in the hierarchically organization of the court system. The Constitutional Court is responsible for interpreting the provisions of the Constitution and supervising the continued conformity of laws adopted under the Constitution.

Generally, the ordinary remedy available to a party in the first instance is to appeal the first instance ruling to a court of second instance (ordinary remedy). However, under Hungarian law there is no ordinary remedy for the second instance court's decision. According to Hungarian Law, to review a second instance court decision, the contesting party must file an application request for an extraordinary remedy *(felülvizsgálati kérelem)* with the Supreme Court. The Supreme Court is the highest Court in Hungary. The Supreme Court is mainly responsible for judging extraordinary legal remedies *(felülvizsgálati kérelem).* In order for the Supreme Court to grant an extraordinary remedy the party must claim that a serious breach of law has been committed, or the proper procedural rules have been violated.

Theoretically, the courts have thirty (30) days to review and analyze submissions received; however, in practice it may take a longer period of time for the court to respond or to act. As a general rule, court hearings have to take place on a 4 months' basis, meaning that in between two consecutive court hearings a period of maximum 4 months shall elapse.

Litigation costs mainly consist of court costs, attorneys' fees, expenses for expert opinions, evidence and language translations/interpreters. Generally, the court fees of contentious civil procedures equals to 6% of the claim disputed; however, it must be a minimum of HUF 7,000 (approx. EUR 28,00) and must not exceed a maximum amount equal to HUF 900,000 (approx. EUR 3,400).

8.3 Insolvency

The Act No. XLIX. of 1991 governs bankruptcy and insolvency proceeding. Under Hungarian Law bankruptcy and insolvency proceedings are so called non-contentious proceedings *(nemperes eljárás)* that are conducted by the relevant District Court, which has jurisdiction over the case based on the location of the registered seat of the legal entity being insolvent.

Insolvency proceedings are intended to provide satisfaction to the creditors of an insolvent debtor upon the dissolution and termination of the entity's corporate existence without a legal successor. Claims are satisfied by liquidating the insolvent legal entity's assets, and paying up the debts owed to creditors in the order set forth by law until either the insolvent entities assets have been exhausted or all debts have been satisfied.

Bankruptcy proceedings occur when a debtor, upon its executive officer's filing requests relief from its financial obligations in an attempt to reach a settlement agreement, which is an agreement between a debtor and its creditors for the adjustment, or discharge of an obligation of the debtor.

The debtor shall request the creditors' consent for a moratorium to allow the debtor time to repay the debts, to reorganize and vitalize the debtor legal entity. The period of such moratorium must be a minimum of sixty (60) and maximum of one hundred twenty (120) days. In the event that

the creditor's grant consent to the debtor's moratorium request and accept the reorganization plan of the insolvent legal entity, the debtor must attempt to implement the reorganization plan within the time period of the moratorium. If the reorganization plan is successful the debtor will continue to exist as a valid legal entity. However, if the debtor fails to satisfy the debts owed to the creditor within the time allowed for the moratorium, the proceeding will then turn into an insolvency proceeding.

8.4 Arbitration

According to Act No. LXXI. of 1994 on Arbitration, disputes may be settled through arbitration if: (i) at least one of the parties is engaged in business activities and the respective legal dispute arises out of, or in connection with the business related activity thereof; provided that, (ii) the parties may dispose of the subject matter through settlement proceedings; and, (iii) settlement of disputes relating to the underlying contract was stipulated in a writing in the form of an arbitration agreement (an arbitration agreement may be in the form of an arbitration clause included in the contract, or in the form of a separate agreement between the parties, but both forms must be in writing). In the event that Hungarian Law prohibits the subject matter involved in the dispute for being settled through arbitration, the dispute should then be referred to the relevant court, or other authorities that has jurisdiction to settle the respective dispute. In an arbitration agreement the parties may stipulate the governing law that will be applied by the arbitration court, or tribunal. However, the stipulation of the law applicable to a particular proceeding only extends to the substantive law of the stipulated jurisdiction; consequently, the stipulation does not apply to the procedural laws that will govern the arbitral proceedings.

Hungarian arbitral judgments have the same effect as a final and binding court judgment. Arbitral judgments may only be challenged by requesting nullification of the arbitral award before the competent District Court; however, a nullification request must refer to a particular violation of a procedural rule, or it is to state another particular ground that presents a sufficient basis for nullification of the award.

The same rules apply to the enforcement of a judgment of an arbitral tribunal. However, Hungarian Courts shall refuse to execute the judgment of an arbitral tribunal if: (i) the subject-matter of the dispute is not subject to arbitration according to Hungarian law; or, (ii) the judgment is contrary to Hungarian public order.

8.5 Enforcement of Foreign Judgments and Arbitral Awards

Decisions of foreign courts and other foreign authorities concerning matters not within the exclusive jurisdiction of Hungarian entities shall be recognized and enforced in Hungary provided that: (i) the jurisdiction of the foreign court, or foreign authority is legitimate under the rules of the foreign jurisdiction and in accordance with Hungarian law; (ii) the decision is considered as a final and binding judgment according to the law of the foreign state, in which the award was rendered; (iii) there is reciprocity between Hungary and the state of the foreign court, or foreign authority; and, (iv) none of the grounds for denial exists.

However, a foreign decision or foreign award shall not be recognized, if:

- Recognition of the foreign award would violate Hungarian public order;
- The party against whom the decision was not allowed to attend the proceedings, either in person or by proxy, because the subpoena, statement of claim or other document which formed the basis for the proceeding was not properly served upon the individual or in a timely manner upon the individual;
- The foreign decision was based on the findings of a procedure that seriously violates the basic principles of Hungarian law;
- The prerequisites for litigation of the same rights which formed the same factual basis of the dispute between the same parties could have been brought before a Hungarian Court or similar Hungarian entity, and the basis materialized prior to the initiation of the foreign proceeding; or,
- A Hungarian Court, or similar Hungarian entity, has previously resolved the matter by issuing a final and conclusive judgment concerning the same rights from the same factual basis giving rise to the dispute between the same parties.

Hungary is a party to the New York Convention of 1958 on the enforcement of foreign arbitral awards, which has been in force since 3 June 1962. Further, Hungary is a party to the Brussels Convention since its accession to the European Union on 1 May 2004.

The Wolf Theiss Guide to: Dispute Resolution in Hungary

9. KOSOVO

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The information contained in this article on dispute resolution in Kosovo was correct as of 1 April 2009.

If you have any questions about the content of the article or would like further information about dispute resolution in Kosovo, please contact

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9.1 Legal System

Kosovo legal order is based on the principle of separation of powers, whereby the judiciary is governed by the Kosovo Judicial Council, subject to the check-and-balance mechanisms. This principle is enshrined in Kosovo‘s new Constitution, which came into effect on 15 June 2008.

The Constitution is based on the Comprehensive Proposal for a Status Settlement for Kosovo, submitted by United Nations Special Envoy for the resolution of Kosovo‘s status (the “Ahtisaari Plan”), which provides for supervised independence, overseen by two newly introduced international mechanisms, namely European Union Rule of Law Mission in Kosovo (EULEX), and the International Civilian Office (ICO). The Ahtisaari Plan provides a number of overriding protections for Kosovo‘s minorities and authorizes EULEX to assist Kosovo authorities in the rule of law area, with a particular focus on police, judiciary and customs. In this respect, EULEX retains limited executive powers, in particular to investigate, prosecute and adjudicate serious and sensitive criminal offences in cooperation with the Kosovo justice institutions. The ICO, on the other hand, is responsible for supervising the implementation of the Ahtisaari Plan.

Kosovo‘s legal system is based on the continental law tradition, whereby court decisions are generally not considered as precedents, although lowers courts tend to follow the opinions and rulings of higher courts.

In light of Kosovo‘s recent declaration of independence, the applicable law in Kosovo stems from four different sources with the following order of precedence:

- Laws passed by the Kosovo Assembly enacted on 15 June 2008 and thereafter;
- Regulations enacted by the United Nations Interim Administration in Kosovo (UNMIK) between 10 June 1999 and 14 June 2008;
- Laws dated prior to 22 March 1989, enacted before the abolishment of Kosovo‘s autonomy within the Socialist Federal Republic of Yugoslavia; and,
- Laws dated between 22 March 1989 and 10 June 1999, enacted after the abolishment of Kosovo‘s autonomy, provided that they are not discriminatory and are required to fill a legal gap.

Kosovo‘s court system is comprised of regular courts, which include 25 Municipal Courts, 5 District Courts, a Commercial Court and the Supreme Court (the latter two being seated in Prishtina). In order to ensure minorities‘ effective access to the court system, the Municipal Courts of Prishtina and Ferizaj have their branches in Gracanica and Shtrpce, two municipalities with a predominant minority population. The new Constitution provides for the establishment of a Constitutional Court, which is responsible for ensuring the constitutionality of Acts of public authorities and for hearing individual complaints regarding the violation of constitutional provisions by public authorities.

Besides their criminal and wide civil jurisdiction involving family and inheritance law, Municipal Courts hear cases pertaining to property disputes, labor disputes, housing relations etc. Furthermore, they are vested with the authority for the execution of non-monetary judgments and also have jurisdiction over uncontested cases, e.g. declaration of a missing person as legally deceased.

The civil jurisdiction of District Courts is limited to disputes over parenthood, validity and/or an-

nulment marriage and alimony (only when connected with the validity and/or annulment of marriage). Furthermore, District Courts hear all the appeals from the Municipal Courts and, in the first instance, have jurisdiction over a limited number of cases, such as copyright infringements. District Courts have exclusive jurisdiction for the recognition and enforcement of foreign court judgments as well as issuance of protective remedies against illegal action, pursuant to the Law on Administrative Disputes (Article 70).

The Commercial Court, which hierarchically is equal to a District Court, is competent for the adjudication of all cases between legal entities, namely business organizations as well as a limited number of economic offences. Decisions of the Commercial Court can be appealed to the Supreme Court.

Civil Procedure Code provides that first instance cases as well as extraordinary appeals for the Repetition of the Proceedings are adjudicated by a single judge, while second instance cases and the extraordinary appeals for Revision are handled by a panel of three judges. Cases involving the determination of the territorial jurisdiction of the court as well as resolution of jurisdictional disputes between lower courts are also heard by a panel of three judges.

The non-regular court system consists of 25 Municipal Courts for Minor Offences and the High Court for Minor Offences. The competence of these courts includes general minor administrative violations, i.e. violations of sanitary standards, as well as violation of traffic safety laws and public order rules. Minor offences are tried by a single judge. The maximum sentences that can be imposed by Municipal Courts for Minor Offences are an imprisonment term of up to 60 days and fines ranging from EUR 2,556 for physical persons to EUR 102,258 for legal entities.

In addition to the aforementioned courts, Kosovo has two additional adjuratory bodies, which have a limited exclusive jurisdiction. Namely, with regard to property disputes, UNMIK Regulation 1999/23 has transferred the following three categories of cases from the regular courts to the Housing and Property Claims Commission:

- Cases relating to property rights lost through discriminatory laws following the rescinding of Kosovo's autonomous status on 22 March 1989;
- Cases arising from informal property transactions during the aforementioned period; and,
- Cases arising from interference with property rights through illegal occupancy.

Furthermore, following the commencement of the privatization process in Kosovo in June 2002, UNMIK has established a Special Chamber of the Supreme Court to adjudicate claims and counterclaims relating to the decisions or actions of the Kosovo Trust Agency, and its legal successor Privatization Agency of Kosovo. The Special Chamber was also given power to refer claims for determination to another court having appropriate jurisdiction, to hear appeals from such court, and to remove proceedings pending in another court for determination by the Special Chamber.

9.2 Litigation

Civil proceedings in Kosovo are governed by the new Civil Procedure Code, which was enacted on 30 June 2008. According to this code, civil litigation is based on an adversarial model, whereby the process is driven by the actions of the parties. Namely, representatives of the parties are responsible for presenting their claims and counter claims as well as examination of witnesses and experts. In this respect, while the Court is allowed to examine the witnesses and experts

at all times, judges' questions are usually supplementary and they intervene only to ensure the observance of mandatory provisions of the code. Namely, while the presentation of claims is in the discretion of the parties, the court can prevent the parties from freely disposing with their claims and counterclaims in cases when the parties are seeking to present claims and counterclaims that they are not entitled to due to violation of public order, applicable law or general rules of moral.

The litigation process begins with the filing of the statement of claim by the Claimant. However, the claim becomes legally effective only upon its service to the Respondent. Prior to the commencement of the main hearing, the Court is required to hold a preparatory hearing, which is scheduled at least thirty (30) days after the receipt of the statement of defense by the Respondent. During the preparatory hearing the Court determines the object of the dispute and the evidence that will be admitted in support of parties' claims and counterclaims.

The Claimant is entitled to seek an injunction order to secure its claim in cases when:

- The existence of claim is made believable by the Claimant; and,
- There is a risk that if the injunction is not ordered the opposing party will hinder or will make it considerably difficult for the Claimant's ability to realize its claim, particularly by disposing of or concealing his/her property. In these types of cases an injunction order is imposed only if the Claimant provides for a guarantee (the amount and the form of which is determined by the court) to secure the potential damages caused to opposing party by the unwarranted imposition of the order. The injunction order can be sought prior to the filing of the claim as well as during the time period after the conclusion of the proceedings and until the entry into effect of the judgment. In cases when the injunction is sought prior to the filing of the claim, the Claimant is required to file the lawsuit during a time period of not less than thirty (30) days.

Civil procedure code enables the parties to file a request for securing a piece of evidence, which contributes to either the clarification or resolution of the dispute, provided that there is a danger that such evidence will not be available later. The request for securing evidence can be filed during the main hearing as well as prior to the commencement of the proceedings.

The main hearing commence with the opening statements of the parties and are followed by the presentation of evidence and examination of witnesses and experts by each party. The examination of witnesses and experts commences with a direct examination, to be followed by cross-examination. The court may allow the parties to do re-direct examination if that is necessary. The proceedings are concluded by parties' closing statements and their respective rebuttals, if necessary.

The appellate procedure includes regular remedies and extraordinary legal remedies. A regular appeal can be filed for the following reasons:

- Violation of the provisions of Civil Procedure Code;
- Inaccurate or incomplete determination of the factual situation; and,
- Wrongful application of the substantive law.

Extraordinary legal remedies, which include Revision, Repetition of the Proceedings, and Request for the Protection of Legality, can be exercised only in cases that meet a set of stringent

requirements. By way of example, Revision, which can be filed for procedural and substantive law violations made by the second instance court, is only allowed for general civil cases in which the amount in dispute exceeds EUR 3,000 and commercial disputes only if the amount in dispute exceeds EUR 10,000. The request for the Repetition of the Proceedings can only be filed in cases when there are grave breaches of due process, such as the failure of the court to properly summon the parties, a judgment that is based on perjury, a judgment that is based on the criminal offence of the judge etc. The request for the Protection of Legality, which can only be filed by the Chief Public Prosecutor of Kosovo can be filed only in cases that have been decided upon by a final judgment and in which the grave breaches of procedural and substantive law have not been challenged by the parties through regular or extraordinary legal remedies.

It should be noted that the Civil Procedure Code provides for special provisions regarding cases dealing with the labor disputes, obstruction of possession, commercial disputes, and payment order procedure as well as for disputes of minor value.

Court expenses in Kosovo are rather low, which results in a very high number of litigation cases. By way of example, for cases in which the amount in dispute is more than EUR 10,000 the court fees are as follows: EUR 50 and 0.5 % of the amount in dispute, the total fee not exceeding EUR 500. According to Civil Procedure Code the losing party is required to reimburse the opposing party for all of its court expenses.

Kosovo courts suffer from a high degree of inefficiency due to the low number of judges and a considerable backlog of cases. Consequently, while court proceedings are relatively swift once they commence, it usually takes a considerable time before cases‘ turn for review comes (unless urgent preliminary measures are sought). By way of example, in 2008 the Commercial Court had 588 unresolved cases from 2007 and received 1484 new cases. Out of a total of 2072 cases, the Commercial Court was able to resolve only 783 cases in 2008.

9.3 Insolvency

Insolvency proceedings for business organizations, such as general partnership, limited partnerships, limited liability companies and joint stock companies, are governed by the law on the liquidation and reorganization of legal entities through bankruptcy proceedings, which was enacted on 13 March 2003. This law does not cover physical persons, sole proprietorships, insurance companies, financial institutions, publically owned enterprises, and socially owned enterprises that have not yet been transformed into business organizations.

According to this law a debtor can submit a bankruptcy petition to a court if:

- The debtor has failed to pay a debt that is at least sixty (60) days overdue;
- The total amount of the overdue debt exceeds EUR 5,000; and,
- The debtor does not usually pay its debts in a timely manner.

The creditor or a group of creditors can file a petition for the initiation of insolvency proceedings in cases when:

- The debtor has failed to pay its debt that is at least sixty (60) days overdue;
- The total amount of the overdue debt exceeds EUR 2,000 for each creditor;
- The debt is not contingent on a trust dispute; and,

- The debtor doesn‘t usually pay its debts in a timely manner.

Insolvency proceedings according to this law are in the exclusive jurisdiction of the Commercial Court.

Within two (2) days following the receipt of the petition for the initiation of insolvency proceedings, the court appoints the administrator and sets the date for the convocation of the first meeting of the board of creditors, which should be set not be later than fifteen (15) days after the receipt of the petition. Creditors that have more than 60 % of the secured and unsecured claims can request from the court to appoint an administrator of their choice, provided that such person meets the formal requirements set forth in the law.

The creditors are required to file their claims as soon as the petition for the initiation of proceedings is filed. If the claims are not filed in the required form, the Court informs the creditors of the formal deficiencies of their claims and gives them an aggregate deadline of up to twelve (12) days to revise the deficiencies. The debtor is required to respond to the registered claims within five (5) days after being notified by the court. If the debtor challenges the registered claim the court schedules a hearing in which the parties can present the evidence in support of their claims and counterclaims. After the resolution of all the challenges, the administrator will provide the court with the entire list of claims in the priority order set forth by the law. The court can declare null and void debtor‘s financial activities made in the period of up to one year prior to the filing of the petition for the initiation of the proceedings if they were effected, inter alia, to damage the interests of the creditors or were made after the filing of the petition for the initiation of the proceedings and prior to the appointment of the administrator.

The payments of creditors‘ claims in cases of liquidation are made in the following order or priority:

- Secured claims, without the reasonable sale costs;
- Priority claims, including the expenses of the court, administrator, administrator‘s compensation, expenses for the maintenance and protection of debtor‘s assets, reorganization expenses, financing of the reorganization, payments of the personnel salaries and expenses during the administration phase, and expenses of the board of creditors;
- Preferred claims (limited to two months salary or daily allowance per person);
- Unsecured claims; and,
- Claims of the debtor‘s owners, shareholders and founding members.

In cases when the debtor seeks the reorganization of its enterprise, the debtor is required to file a statement to that effect no later than twenty (20) days after the submission of the petition for the initiation of the proceedings. If this deadline is missed, the administrator can file debtor‘s intent to file a statement regarding its reorganization within five (5) days after the expiration of the original deadline. The reorganization plan may be challenged by the administrator, any creditor or other interested parties and unless the debtor received the approval of its reorganization plan, or breaches the terms of the reorganization plan the insolvency proceedings will continue.

The failure of the directors and officers to initiate insolvency proceedings when the conditions of the law are met exposes them to personal liability, vis-à-vis the creditors. This is in principle due to the fiduciary duties and responsibilities imposed upon corporate officers and directors to maintain an appropriate standard of fiscal responsibility and accountability, which includes

compliance with all statutory requirements concerning the financial status of the corporation.

Upon termination of the insolvency proceedings the debtor or the other legal entity is considered legally dissolved, meaning the entity no longer exists. However, in a reorganization case, upon termination of the proceedings the entity still exist and upon the conclusion of the proceedings, the company is deemed to have become financially solvent and may continue business activities without further restriction or court imposed supervision.

It should be noted that the procedures for the reorganization or liquidation of enterprises and their assets currently under the administrative authority and management of the Privatization Agency of Kosovo are governed by UNMIK Regulation 2005/48.

9.4 Arbitration

According to the new Law on Arbitration, enacted on 26 January 2007, arbitration is a recognized instrument for the resolution of both domestic and international disputes between physical persons and legal entities. UNMIK Regulation 2001/3 on Foreign Investments provides that companies under international ownership can always choose arbitration as the means for the resolution of their disputes.

In Kosovo, all disputes related to civil and economic matters may be arbitrated, but only if there is an arbitration agreement between the parties indicating consent to arbitration. The arbitration agreement must be concluded in writing; however this requirement is deemed to have been respected even if the conclusion of the arbitration agreement is recorded by means of an exchange of letters, telefaxes, telegrams or other means of telecommunication or electronic communication, by means of a bill of lading if the latter contains an express reference to an arbitration clause, or in the event of an exchange of statements of claim and defense, in which the existence of an agreement is alleged by one party and not denied by the other.

In the event a matter is pending before a court concerning a matter which is the subject of arbitration the court shall reject the matter if a party invokes the arbitration agreement in its defense.
The parties may agree on an arbitral tribunal composed of one or a panel of an odd number of arbitrators. However, in the event the parties fail to specify the number of arbitrators the number shall be three, which each party appointing one and then two appointed arbitrators will select the third.

In accordance with Article 14 of the law, the arbitral tribunal has jurisdiction to determine whether it has jurisdiction over the dispute presented to it and whether the arbitration agreement is valid. However, party may request the Court to review the decision of the arbitral tribunal regarding its jurisdiction over the dispute. Such request shall be made to the court within thirty (30) days after having received written notice of the decision. Such request shall not prevent the arbitration tribunal from continuing, where appropriate, with the arbitral proceedings and from rendering an award.

The tribunal may also issue preliminary orders that are enforceable by the court, upon the request of a party, if that party gives credible evidence that immediate or irreparable injury, loss or damage will result to the party if no preliminary order is granted. However, the arbitral tribunal may require any party to provide appropriate security in connection with such preliminary orders.

In arbitrations involving international issues, the arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the rules of private international rights. In all other cases, arbitral tribunal shall apply Kosovo law.

According to Article 36, an appeal from the arbitral award may be made by a party to the Court; however, setting aside of the award will only be granted if the Applicant proves that:

- A party to the arbitration agreement did not have the capacity to act;
- The arbitration agreement is not valid under the law determined as applicable by the parties or the arbitral tribunal or, in the absence of such determination, under the law applicable in Kosovo;
- The applicant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his/her case;
- The award deals with an issue 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,
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the provisions of this Law or a valid arbitration agreement, under the condition that such defect had an impact on the arbitral award.

The award can also be set aside if the court finds that:

- The arbitration is prohibited by law; or,
- Enforcement of the awards conflicts public policy (order public).

Unless the parties have agreed otherwise, a request for setting aside an arbitral award shall be submitted to the Court not later than ninety (90) days after the award was received by the respective party.

Otherwise, arbitral final is binding on the parties involved in the arbitration, and the arbitral decision shall have the same effect between the parties as a final and binding court decision.

9.5 Enforcement of Foreign Judgments and Arbitral Awards

Chapter 8 of Arbitration contains the provisions applicable to the Recognition and Enforcement of Awards.

According to Article 38, a domestic arbitral award rendered by an arbitral tribunal in Kosovo shall be enforced when declared enforceable by the Court.

A request to declare a domestic arbitral award enforceable shall be rejected and the award shall be set aside if the Court determines that one or more grounds for setting aside an award pursuant to Article 36, Paragraph (2), are satisfied.

Foreign awards, rendered outside of Kosovo, can be recognized and become enforceable in Kosovo by making a request for recognition and enforcement to the Commercial Court in Prishtina. The request for the recognition and enforcement of a foreign award must be accompanied by:

- The authenticated original award or a certified copy;
- The original arbitration agreement or a certified copy thereof; and,
- A certified translation of the arbitration agreement and the arbitral award into an official language of Kosovo if the award or agreement is not made in an official language of Kosovo.

Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, if that party proves that:

- A party to the arbitration agreement, under the law applicable to this agreement, did not have the capacity to act; or the arbitration agreement was not valid under the law determined as applicable by the parties or, in the absence of such determination, under the applicable law in the territory where the award was made;
- The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case;
- The award deals with an issue 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;
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the law applicable to it; and,
- The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the territory in which, or under the law of which, the award was made.

Recognition and enforcement of an arbitral award shall also be refused if the Court finds that:

- The subject matter is not capable of a settlement by arbitration under the applicable law in Kosovo; or,
- The recognition or enforcement of the award would be contrary to the public policy (ordre public) of Kosovo.

The Wolf Theiss Guide to: Dispute Resolution in Kosovo

10. ROMANIA

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The information contained in this article on dispute resolution in Romania was correct as of 1 April 2009.

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10.1 Legal System

The Romanian legal system is based on codified principle of civil law. Judicial precedents are non-binding but are taken into consideration by courts and the parties in dispute.

10.2 Litigation

The Romanian court system is composed of Local (District) Courts, County Courts, Courts of Appeals and the High Court for Cassation and Justice (HCCJ).

Cases which are tried in the first instance at the Local Courts are appealed before the County Courts and final appeals against the decision of the County Courts are judged by the Court of Appeals. A case which is initially heard by the County Courts may be appealed before the Courts of Appeals and the final appeal may be filed with the HCCJ. The final appeal must be grounded on at least one of the nine (9) grounds for appeal to the HCCJ which are stipulated in the Romanian Civil Procedure Code.

The organization of the courts of appeal, tribunals, specialized courts and courts of first instance is provided for by Law 304/2004 regarding the organization of the judicial system, which has been republished with several subsequent amendments and additions:

Courts of Appeal contain specialized sections or, depending on the case, panels for hearing civil, criminal or commercial cases, as well as other matters involving minors and family disputes, administrative or tax disputes, labor disputes and social insurance matters, and depending on the nature and number of cases, may sometimes hear matters concerning maritime or domestic waterways disputes.

Romania also has Tribunals that are courts organized at the level of each county and the city of Bucharest. The jurisdiction of each tribunal includes all first instance courts in the county or in the city of Bucharest. Tribunals have specialized sections or, depending on the case, panels for civil cases, criminal cases, commercial cases, cases involving minors and family disputes, cases of administrative and fiscal disputes, cases regarding labor disputes and social insurance, as well as, depending on the nature and number of cases, maritime and inland waterways matters. Depending on the nature and number of cases, specialized sections or panels may be set up in courts of first instance.

The Romanian legal system distinguishes between lower and higher civil courts, determining jurisdiction by a dual mechanism that takes into account the value of the claim and the particular type of case regardless of the value of the claim(s).

The first instance courts have a wide field of jurisdiction. Article 1 of the Code of Civil Procedure stipulates that courts of first instance shall hear all cases and claims, except those assigned by the law to other courts. Also, first instance courts may hear claims against decisions made by public administrative authorities acting in matters of jurisdiction and other administrative bodies with similar fields of activity, allowed by law; and any other matters assigned by law.

The competence to hear commercial and civil cases depends upon the value of the object of the dispute. The tribunal may hear the matter, as a first instance court, concerning civil cases with an amount in dispute valued over RON 500,000 (approx. EUR 140.000), and commercial cases

involving a value over RON 100,000 (approx. EUR 30.000).

There is also a set of rules that establish subject matter jurisdiction on the basis of criteria other than value. For instance, jurisdiction is assigned to the tribunal, in the matters involving private claims, such as labor and social insurance claims, intellectual and industrial property rights, adoption, administrative disputes, expropriation, redress of damages caused by judicial error, acknowledgment and the approval of enforcement of foreign court rulings including bankruptcy.

In addition to the initial and final appeal, the Romanian Civil Procedure Code enables the use of extraordinary legal remedies, which are applications that allow for annulment of a decision (grounded mostly on alleged errors of law), and the application for the revision of a decision (grounded on procedural aspects or on new facts or evidence).

Litigation costs are mainly composed of court and attorney fees, expenses for expert opinions, production of evidence and cost. Generally, the costs are paid by the unsuccessful party.

The final decisions of the courts of justice may be voluntarily executed or enforced by means of private judicial officers. However, enforcement may be challenged and/or suspended, at the request of the party opposing enforcement, based on grounds of judicially recognized irregularities.

10.3 Insolvency

In Romania, a debtor is considered to be insolvent if the debtor is not capable of satisfying the debtor‘s financial obligations. Either a natural person, specifically tradesman, acting individually or as a legal entity, may be subject to insolvency proceedings.

The judicial reorganization and bankruptcy procedure *(procedura reorganizarii judiciare si a falimentului)*, commonly referred to as insolvency proceedings are available and governed by Insolvency Law No. 85/2006.

The Insolvency Law classifies insolvency proceedings as one of the following: (a) general proceedings *(procedura generala)*; and, (b) simplified proceedings *(procedura simplificata)*.

General proceedings may encompass both reorganization and bankruptcy or separately either in the judicial reorganization, or just in the bankruptcy proceedings and apply exclusively to legal persons; whereas, simplified proceedings are confined to bankruptcy proceedings and represent a rapid, simple and efficient means of liquidating ; in case of the simplified proceedings, the debtor is directly subject of the bankruptcy proceedings, either at the same time with the commencement of the insolvency proceedings, or after a supervision period of maximum 60 days.

A petition for the initiation of insolvency proceedings can be presented in court by the debtor, a creditor, or by any other person expressly allowed to initiate the proceedings according to the law (i.e. the Ministry of Public Finances which is required to file for the opening of insolvency proceedings regarding the fiscal debts of corporate debtors).

The insolvency may be ascertained by the bankruptcy tribunal either at the request of a creditor, which may demonstrate that the debtor has an unpaid debt of more than EUR 3,000 which has been overdue for at least thirty (30) days, or at the request of the debtor.

A creditor is required to file a formal claim, referred to as a statement of debt (declaratie de creanta), within the time period set out in the judgment that initiated the insolvency proceedings. All creditors, as listed in documentation submitted by the debtor, must be informed in writing by the insolvency trustee or representative of the time limits for filing the statements of debts, appeals, preparing the claims charts and any other items related to the proceedings.

The claims are submitted with supporting documentation, a judiciary stamp and proof of payment of the judiciary stamp tax and are then registered with the court in a special insolvency registry.

The bankruptcy trustee or representative reviews the claims and either admit the claims and register the claim in a preliminary claims chart, or will reject the claim if the claim cannot be substantiated. Creditors have the right to appeal if their claimed statements of debts are rejected, in whole or in part, and if the claims are not properly registered in the preliminary claims chart. The objections must be filed in court at least ten (10) days prior to the expiration of the time period for the finalization of the claims chart set forth in the order initiating the insolvency proceedings. Unless appealed by the debtor, the bankruptcy trustee, representative, or the creditors, a claim is presumed valid and correct. The final claims chart is registered in the court registry and posted at the tribunal. In practice, this final claims chart is filed with the Tribunal‘s archive, for reference purposes. Until the closure of the proceedings, further objections may be filed only upon the discovery of manifest errors, fraud, counterfeits or previously unknown claims to property title are discovered.

Simplified insolvency proceedings apply to debtors that: (i) fall under one of the categories provided by law; and, (ii) have become insolvent, and unable to satisfy their financial obligations. Corporate debtors may be subject to simplified proceedings provided that:

- No assets can be identified;
- The by-laws or the company books cannot be found;
- The directors are unreachable;
- The registered office no longer exists or does not correspond to the address registered with the trade register;
- The required documentation has not been presented in court;
- The relevant company has been dissolved prior to the petition; or,
- The relevant company has declared its intention to enter into bankruptcy or is not entitled to benefit from the reorganization procedure.

The costs and expenses of insolvency proceedings are borne by the insolvent estate in the order of the priority assigned to the claims of the secured and unsecured creditors. In the absence of sufficient funds, the costs of the insolvency proceedings are satisfied by the liquidation fund, based on an estimated three (3) month budget that must subsequently be approved by the court.

10.4 Arbitration

Pursuant to the Romanian legislation on arbitration, the parties may conclude an agreement that any or all disputes between the parties arising from their contractual relationship shall be settled through arbitration.

The arbitral agreement shall be concluded either in the form of an arbitration clause, stipulated in the main contract (such clause is always previous to any arisen dispute), or in the form of a

separate agreement, which is concluded at the moment the dispute occurs. Both the arbitration clause and the compromise must be concluded in writing.

The parties are free to establish through the arbitration agreement, or a subsequent agreement, the procedure to be observed by the arbitral tribunal, the number of arbitrators, as well as the method that will be used to appoint the arbitrators, including whether the dispute shall be settled by a sole arbitrator or by two or several arbitrators. The only limits the parties have to observe are public order and professional conduct, as well as the mandatory provisions of the law.

If the parties fail to reach an agreement, the arbitral tribunal has the authority to decide upon the procedural rules that will apply to the arbitration; however, if the parties are unable to reach an agreement and the tribunal is unable to decide, the general provisions stipulated in the Romanian Civil Procedure Code shall apply.

As a general rule, if the parties have not specified the number of arbitrators, the dispute shall be settled by three arbitrators, one appointed by each party and the third arbitrator, the chairman, shall be appointed by the other two arbitrators.

Generally, arbitration awards are enforceable by the courts and the courts executors in the same manner as other legally binding court judgments. The arbitral award shall be final and binding, and according to Romanian law, the arbitral award shall have the same effect as any final decision rendered by a court of law.

Arbitration awards may be challenged with ordinary courts. The arbitral award may only be set aside following a petition for annulment based upon one of the following reasons:

- The dispute was not suitable to be settled by arbitration;
- The Arbitral Tribunal has settled the dispute in the absence of an arbitral agreement, or on the grounds of a void or inoperative arbitral agreement;
- The Arbitral Tribunal has not been properly set-up in compliance with the arbitral agreement;
- The party was absent on the date of the hearing and the summoning procedure has not been legally fulfilled;
- The arbitral award has been rendered after the time for rendering the award has lapsed;
- The Arbitral Tribunal has decided matters which have not been submitted to arbitration, or have failed to decide upon a requested matter, or has rendered an award that is outside the scope of the arbitral tribunals mandate;
- The arbitral award fails to include the justification(s) for the award, which may also include failing to state the date and place where the award was issued, or the award was not signed by the arbitrators, or the arbitrators issuing the award could not legally sit as an arbitrator and issue the award;
- The order of the arbitral award includes provisions which cannot legally be complied with; or,
- The arbitral award violates Romanian public order (bones mores); or, a mandatory provisions of the law.

The above stated list of grounds is exhaustive.

10.5 Enforcement of Foreign Judgments and Arbitral Awards

Arbitration awards which are not deemed to be a national award issued in Romania are considered foreign arbitration awards. Foreign arbitration award can be acknowledged in Romania by applying the provisions stipulated in articles 167-172 of Romanian Law no. 105/1992, regarding the regulation of the relations of international private law (Law No. 105/1992). Foreign arbitration awards, which are not willingly performed by those who are obligated to do so, may be executed in Romania, by applying the provisions of Articles 173-177 of Law No. 105/1992.

Foreign arbitration awards, which are not willingly performed by those who are obligated to do so, may be executed in Romania by applying the provisions of Articles 173-177 of Law No. 105/1992.

Generally, awards can be recognized in Romania if the following conditions are met:

- The award is final, according to the laws of the state where the award was issued;
- The court that rendered the award was competent to rule on the matter and issue a judgment; or,
- The effects of foreign awards are mutual between Romania and the state of the court that issued the award.

If the award was rendered in default of the party, it must also be established that the defaulting party was properly issued a subpoena and the subpoena was served on the party in “good time” for the party to debate the matter, as well as the document certifying the filing with the foreign court and that the party has been given the opportunity to defend itself and to exercise appeal against the award.

The non-final character of the foreign award, resulting from omitting to summon the person who did not appear in the trial before the foreign court, can be invoked only by that person.

The foreign award validity can be denied in one of the following situations:

- The award results from a fraud committed within the procedure followed abroad;
- The award infringes public order or private Romanian international law; or,
- The same subject matter has previously been settled between the same parties, even by a non-final award of the Romanian courts or there are pending proceedings before such courts of law when the filing occurred with the foreign court.

Romania is member state of the New York Convention since 24 July 1961, through the Decree No. 186/1961. Romania made two reservations to the New York Convention; thus, the NY Conventions provisions are applicable only for decisions resulting from disputes having commercial character according to Romanian legislation and, secondly, the recognition of arbitral awards given by states which are not members to the New York Convention can be made only under mutual conditions between Romania and the other state.

Since 1963 Romania has been a member of the European Convention for International Commercial Arbitration concluded in Geneva. Romania ratified the European Convention through

Decree No. 281/1963, a unique article, and did not make any reservations.

According to Law No. 105/ 1992, Section IV, foreign judgments may be enforced in Romania upon the request of the party seeking enforcement. The party must make the request for enforcement to the Tribunal that is competent in the county where the enforcement should be carried out. Enforcement is granted by the Tribunal only if the foreign decision is not time barred and may be enforced according to the law of the issuing country. All of these conditions must be satisfied and proven by providing corresponding evidence to the Tribunal. Based on the final award issued by the Tribunal, a valid Romanian enforcement order is issued which then allows the party to carry out the enforcement.

Law No. 105/1992 provides that foreign judgments are fully recognized, de jure, in Romania if the foreign judgment refers to the civil status of the citizens of the state where such judgments were issued or, the foreign judgment has been first recognized by the foreign states where the parties are citizens. Judgments other then those referred to in Art. 166 may be recognized in Romania and enjoy the benefits of a res judicata, if the judgment satisfies the following criteria:

- The judgment is final, according to the law of the state where it is issued;
- The foreign court issuing the judgment had competence to judge the matter; and,
- There is reciprocity between Romania and the foreign state that rendered the judgment.

Romania as a newly admitted member state of the European Union, has adopted the legal provisions of the Council Regulation No. 44/2001(the “Regulation”) in order to recognize the freedom of movement of judgments in civil and commercial matters between the member states. Article 38 of the Regulation provides that, a judgment issued in a Member State which is enforceable in that State shall be enforced in another Member State when, on the application of any interested party, the judgment has been declared enforceable in that State. The procedure, for filing the application, shall be governed by the law of the Member State in which enforcement is sought, which shall be determined by reference to the place of domicile of the party against whom the enforcement is sought, or the place in which the enforcement is sought.

Also, a party seeking recognition or a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish the judgments authenticity.

The court or competent authority of a Member State where a judgment was rendered shall issue, at the request of any interested party, a certificate stating the authenticity of the judgment. Also, if the court or competent authority requires, a translation of the documents shall be produced. The translation shall be certified by an individual that is qualified to perform translations in one of the Member State.

As a result of Romania’s admission into the European Union uncontested claims also became valid in Romania, EC Regulation No. 805/2004. The Regulation applies to judgments, court settlements and other authentic instruments of uncontested claims and to decisions delivered following challenges to judgments, court settlements and authentic instruments which are properly certified as European Enforcement Orders. An “uncontested claim” is a term that refers to all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor‘s express consent, which may be in the form of a court settlement or another type of authentic instrument.

A judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment issued by the Member State in which enforcement is sought.

11. SERBIA

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The information contained in this article on dispute resolution in Serbia was correct as of 1 April 2009.

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11.1 Legal System

The Serbian legal system is based on codified principles of civil law. Judicial precedents and opinions are non-binding but are strongly taken into consideration by the courts.

11.2 Litigation

Civil and criminal matters are decided by ordinary courts, while commercial and administrative matters are referred to specialized commercial and administrative courts.

The Serbian court system is composed of (i) Ordinary Courts (i.e. Municipal Courts, District Courts and the Supreme Court of the Republic of Serbia); and, (ii) Special Courts (i.e. the Commercial Court and the Superior Commercial Court). In accordance with the new Law on the Organization of Courts, which will become effective from January 2010, the Serbian court system will be composed of (i) Ordinary Courts (i.e. Basic Courts, Superior Courts, Court of Appeals and Supreme Court of Appeals); and (ii) Special Courts (i.e. Commercial Courts, Superior Commercial Court, Magistrates Courts, Superior Magistrates Courts and Administrative Court).

Generally, the Serbian court system is rather slow, especially concerning civil litigations where proceedings may last several years. In response to these delays, in 2005 Serbia adopted a new Civil Procedure Code that introduced instruments intended to prevent unjustified and unnecessary delays to court proceedings.

Litigation costs mainly consist of court and attorneys' fees, expenses for expert opinions, travel expenses for witnesses, and translators' expenses, which are generally paid by the unsuccessful party.

11.3 Insolvency

Insolvency proceedings are governed by the Serbian Bankruptcy Act.

There are two different ways in which insolvency proceedings may be carried out: (1) through a bankruptcy proceeding of an insolvent debtor; or, (2) through reorganization proceedings.

The main distinction between bankruptcy and reorganization proceedings is that in bankruptcy, the insolvent debtor's assets are sold and proceeds of the sale are distributed to the debtor's creditors. Whereas in reorganization proceedings, the creditors and the insolvent debtor may agree on the reorganization of the debtor and its liabilities, which should in turn result in the future settlement of those liabilities. In short, bankruptcy proceedings result in the liquidation of the insolvent debtor, whereas in the case of reorganization, the debtor continues to exist.

The purpose of the bankruptcy proceedings is for the insolvent debtor's estate to be liquidated and distributed to the creditors in accordance with the procedure established by the Bankruptcy Act. Bankruptcy proceedings may be initiated by creditors or the debtor, as well as by the liquidation administrator. In addition, in certain situations the Public Defender, the Public Prosecutor or the Republic Tax Office may initiate the bankruptcy proceedings. The petition to initiate bankruptcy proceedings may be withdrawn before the opening of the bankruptcy proceeding, which begins with a posting on the court's announcement board. Bankruptcy proceedings generally consist of: (1) preliminary proceedings, where the reasons for the bankruptcy proceedings are

stated and evaluated; and, (2) the main bankruptcy proceedings.

When the requirements for initiating bankruptcy proceedings are met, the debtor, the bankruptcy administrator and the creditors (holding at least 30 % of the secured claims towards the debtor), may propose reorganization. Reorganization may also be proposed simultaneously with the filing of the petition to initiate bankruptcy proceedings, and generally cannot be proposed later than ninety (90) days after the proceedings have been initiated. Once approved by the creditors, the reorganization plan becomes a new agreement for the settlement of the claims specified, and then the new agreement becomes directly enforceable. However, the debtor remains under the supervision of the bankruptcy administrator, and bankruptcy proceedings may be re-initiated if the debtor breaches the obligations set forth in the reorganization plan or provisions of the Bankruptcy Act.

Liquidation proceedings are regulated separately by the Serbian Commercial Entities Act. Insolvency proceedings are carried out in a special department of the Commercial Court. The purpose of liquidation is to compensate all of the creditors owed when the legal entity becomes insolvent. If the conditions for the initiating bankruptcy proceedings exist, then the liquidation proceedings will not be conducted.

11.4 Arbitration

Arbitration proceedings are governed by the Serbian Arbitration Act, which entered into force on 10 June 2006. The Arbitration Act applies to arbitrations where the seat, or place, of the arbitration is in Serbia. The Arbitration Act also applies to international arbitration, generally defined as arbitrations whose subject matter concerns disputes arising out of international commercial business relations, when the seat, or place, of arbitration is in Serbia.

Arbitration may only be agreed upon for the resolution of disputes for which the exclusive subject matter jurisdiction of courts is not provided. The arbitration agreement must be in writing, and is deemed to be in writing if contained in documents signed by the parties or in other forms of communication exchanged between the parties that provide written proof of the existence of the parties‘ mutual agreement to settle the dispute through arbitration.

The Arbitration Act does not stipulate a maximum duration of the arbitration proceedings. However, the Act does require the arbitrators to diligently and efficiently carry out their duties as arbitrators.

Arbitration proceedings may be presided over by an arbitration panel or by a sole arbitrator, depending upon the agreement between the contracting parties. In addition, the parties may agree on the procedure for appointing the arbitrators. However, if no agreement has been stipulated in the arbitration agreement or reached between the parties in this respect, a local court is allowed to make the decision about how the arbitrators should be appointed.

Arbitral tribunals‘ decisions are based on material laws, legal rules, agreements and customs; however, the tribunal may also decide on the basis of what is just and fair *(ex aequo et bono)* if the parties have agreed to allow the tribunal to make decisions based on this principle. If the parties have not agreed on the applicable substantive law and legal rules governing the arbitral proceedings, the arbitration tribunal or arbitral court may decide on the basis of conflict of laws rules.

In general, Serbian companies are willing to sign arbitration clauses, especially concerning international commercial and business transactions. The main arbitration institution in Serbia is the Foreign Trade Court of Arbitration, which is attached to, but independent of, the Serbian Chamber of Commerce.

Also, other chambers and organizations may establish institutional arbitration courts, if their professional rules allow. For example, according to the Serbian Securities Act and the legal provisions governing the Belgrade Stock Exchange, disputes between members and participants of the Stock Exchange, or between these entities and the Stock Exchange, that are related to stock exchange transactions may be resolved by the Stock Exchange Arbitration Court.

11.5 Enforcement of Foreign Judgments and Arbitral Awards

Foreign judgments and foreign arbitral awards may be enforced only if the foreign awards have been previously “admitted” to the Serbian legal system in recognition proceedings. By being recognized by a Serbian Court, a foreign award receives the same status as a domestic award.

Enforcement of a foreign judgment in Serbia is subject to the requirement or reciprocity, unless the award creditor is a Serbian citizen (presumably, also a company with its seat in Serbia), or if the dispute is of a marital nature or for the purpose of determination of paternity or maternity, or other subject matter that is exclusively reserved for determination be the Serbian Court. However, there must be reciprocity with the foreign state that rendered the award. Generally, reciprocity is presumed unless it is proven to the contrary. If there is doubt, an inquiry should be made by the Ministry of Justice to determine whether reciprocity exists and an explanation should be provided.

The Serbian Court will not recognize or enforce foreign arbitral awards if:

- The foreign arbitral award is contrary to the Serbian public order; or,
- The subject matter of the dispute is not suitable for arbitration under Serbian law.

Serbia is party to the New York Convention of 1958 on the Recognition and Enforcement of Arbitral Awards.

Serbia is party to the European Convention of 1961 on International Commercial Arbitration.

12. SLOVAK REPUBLIC

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The information contained in this article on dispute resolution in the Slovak Republic was correct as of 1 April 2009.

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12.1 Legal System

The Slovak legal system is based on codified principles of civil law. Judicial precedents are not binding but taken into consideration by courts and the parties in dispute.

12.2 Litigation

Slovak‘s court system is composed of District Courts, Regional Courts and the Slovak Supreme Court. Each court deals with civil (including labor), criminal, commercial and administrative matters. In general, the cases are heard before the District Courts and the Regional Courts act as Appellate Courts. However, the Regional Courts act as first-instance courts in some cases, especially in matters concerning commercial disputes. Special criminal cases are handled by the Special Court (e.g. organized crime). Appeals are generally decided by the Supreme Court.

Furthermore, the Constitutional Court is an independent body protecting and upholding the principles of the Slovakian Constitution.

The Slovak court system is currently viewed as being rather slow. Depending on the complexity of the case, a dispute may take anywhere from six months to two years to be decided.

The disputes claiming the right to payment of a pecuniary amount are usually shorter (approximately three months). The court may decide without examining the defendant, without hearings, and rule based strictly on the application, if a determination is made that the exercised right follows from the facts stated by the claimant. An order to pay against that no protest has been filed within 15 days shall have the effects of a final judgment. In addition, the court may issue a payment order (cheque) without hearings if the claimant submits the original copy of a bill of exchange or cheque whose authenticity is uncontested. The court may also issue the European order for payment pursuant to Regulation (EC) No. 1896/2006 and the order for fulfillment of any other obligation as pecuniary payment. Furthermore, in case of small claims up to EUR 500, the simplified procedure is applied (e.g. no oral hearing, written evidence).

A court decision of a first-instance court may be challenged by an appeal. The appeal in the Slovak legal system is the only ordinary legal remedy against a non-final judgment of a first-instance court. The devolutionary effect of the appeal fully applies in Slovak law, which means that contested decision of a lower-level court are be resolved by the superior court.

The party may appeal almost all first instance decisions and their respective proceedings. Procedural irregularities or erroneous substantive law applications may be challenged and new facts and evidence may be offered in support of the appeal.

The court of second instance will either decline or proceed in the appeal. In the latter case it may consider additional facts and review the factual and legal aspects considered by the court of first instance. The court of second instance is generally bound by the extent and reasons for the appeal. After a full reconsideration of the relevant facts, the court of second instance may:

- Confirm the first-instance decision;
- Vacate and return the matter to the first-instance court, interrupt or terminate the proceeding; or,
- Change the first-instance decision and issue a new ruling on the matter.

In addition to appeals, Slovak law enables the use of extraordinary legal remedies under strictly defined conditions, including petition for retrial, recourse and extraordinary recourse, to contest decisions issued in civil or commercial matters.

In some cases, courts may grant interim measures, e.g. preliminary injunctions.

Litigation costs are mainly composed of court and attorneys' fees, expenses for expert opinions and travel expenses for witnesses, and are generally paid by the unsuccessful party.

Any person entitled to a valid judgment to request performance from another person may, in absence of voluntary performance by the other party within the period specified in the judgment, file a petition for judicial enforcement with a court or request the services of a self-employed judicial executor. The statutory duration of enforcement of judgments by a court or by a judicial executor is unlimited. Depending on the case specificities, it may last weeks or even years.

12.3 Insolvency

The debtor is being recognized as being insolvent if the debtor has become incapable of paying, or has become over-indebted. The debtor is incapable of paying its debts if the debtor has more than one creditor and has not been able to satisfy its obligations within thirty (30) days following their maturity date. The debtor is over-indebted if it is has financial obligations, where its liabilities exceed assets and has more than one creditor.

The debtor is obliged to file a bankruptcy application within thirty (30) days of discovery or learning of its incapability of settling or maintaining a solvent financial status. The bankruptcy application may also be filed by the debtor's creditors. The court decides the commencement of the bankruptcy proceeding within fifteen (15) days from the filing of the application.

In case of natural persons who are not entrepreneurs, the court can decide within the so-called "small" bankruptcy proceeding, if at least two of the following conditions are fulfilled: (i) the respective assets most likely do not exceed EUR 165.000, (ii) the turnover of the debtor did not exceed EUR 333.000 in the previous accounting period, (iii) the debtor most likely has no more than fifty (50) creditors. If any two of these conditions are met, the court should decide the matter within a shorter time period.

The creditors can register their receivables within forty-five (45) days from the commencement of the bankruptcy proceeding. The creditor or the trustee of debtor's assets are entitled to protest the following legal acts of the debtor: (i) legal acts without sufficient consideration, (ii) advantageous legal acts, (iii) shortening of legal acts and (iv) legal acts made after the cancellation of the bankruptcy proceeding. The right to protest expires if it is not applied for within six months after the commencement of the bankruptcy proceeding.

In case of the conversion of debtor's assets to financial means, the trustee is not bound by the contractual pre-emption rights, but solely by the statutory pre-emption rights of third parties.

If bankruptcy threatens the debtor or it has already started, the debtor may authorize the trustee of his assets to prepare a restructuring report. The debtor or the creditor may file an application for restructuring with the court if the restructuring report, not older than thirty (30) days, recommends it. The court approves the restructuring proceeding and the restructuring plan if (i) the

reasonable assumption exists that the essential part of the debtor's assets would remain unaltered, and (ii) there is a reasonable assumption that more creditors would be satisfied in bankruptcy.

The restructuring proceeding may start during the bankruptcy proceeding; the court then suspends the bankruptcy proceeding.

In case of financial institutions and insurance companies, the bankruptcy application can only be filed by the supervising institution (e.g. National Bank of Slovakia).

The bankruptcy courts are not organized as separate courts. The bankruptcy is provided by the district courts having the same seat as the Regional Courts. The Regional Courts in Bratislava, Banská Bystrica and Košice serve as appellate courts. The main role of the bankruptcy courts is to supervise and approve any measures undertaken by the trustee and the creditors.

The aim of bankruptcy and restructuring is to achieve a proportional satisfaction for the creditors from the debtor's assets.

12.4 Arbitration

Pursuant to the Slovak Act on Arbitration Proceedings, the parties may conclude an agreement that any or all disputes between them arising from their contractual relationship shall be decided by one or more arbitrators or by a standing court of arbitration. The list of the standing courts of arbitration is kept by the Ministry of Justice.

The arbitration agreement can be included as a clause contained in the initial contract between the parties, or as a separate agreement in the form of a "compromise" for current disputes that arose after the original contract was concluded. Also, in order for the arbitration agreement to be valid the subject matter of the dispute between the parties must concern subject matter that is not otherwise excluded by law from resolution by a judicial settlement.

A dispute cannot be decided by arbitration where the dispute: (i) concerns origin, change or expiration of the rights related to real estate; (ii) concerns personal status disputes; (iii) is linked with enforcement of the decision; or, (iv) arose in the course of bankruptcy or restructuring proceedings.

The arbitral awards are enforceable like court judgments. Slovak arbitration awards are not enforceable and the court shall stay the execution proceedings under a limited set of conditions, in particular if:

- The award was made in a dispute that cannot be decided in arbitration proceedings (i.e., subject matter excluded by law);
- The dispute was previously decided by a court or prior arbitration before the issuance of the challenged arbitration award; or,
- The arbitration award requires the party to performance something that is impossible or unlawful under Slovak law.

12.5 Enforcement of Foreign Judgments and Arbitral Awards

The Slovak Republic is a party to the Brussels Convention since its entry into the EU on 1 May 2004.

Pursuant to the Slovak Act on International Private and Procedural Law, decisions of foreign courts as well as foreign judicial settlements and foreign notary deeds in these matters are effective in the Slovak Republic if the judgments have become final according to a foreign authority that is recognized by Slovak authorities.

The foreign decision shall be neither recognized nor enforced if:

- It is impeded by exclusive jurisdiction of Slovak courts, or if the proceedings could not have been conducted before any authority of a foreign state if provisions concerning the competence of Slovak courts had been applied to the consideration of jurisdiction of the foreign authority;
- In the same case, a final decision has been issued by Slovak authorities or a final and conclusive decision of an authority of a third state has been recognized in the Slovak Republic;
- The authority of the foreign state disabled the participant against whom the decision is to be recognized to take part in the proceedings properly, particularly if this participant was not served the lawsuit or the writ of summons personally or if the defendant was not served the lawsuit personally;
- The recognition is contrary to Slovak public order;
- The decision is not valid or enforceable in the foreign state which has issued it; or,
- The decision is not a decision on the merits of the case.

Pursuant to the Slovak Act on International Private and Procedural Law, the provisions of this act shall apply unless an international treaty binding on the Slovak Republic stipulates otherwise. On civil matters, the following conventions recently became binding for the Slovak Republic: Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption, European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Convention Abolishing the Requirement for Legalization of Foreign Public Documents, Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

Pursuant to the Slovak Act on arbitration proceedings the arbitration awards issued abroad shall be recognized and enforced by the Slovak Court in the Slovak Republic. Recognition of a foreign arbitration award shall not be declared in a special decision. The foreign arbitration award shall be recognized by being taken into consideration by the respective court in execution proceedings. The courts may decline to recognize and enforce a foreign arbitration award only under a few conditions based on the petition of the party obliged by the award.

The Slovak Republic is party to the New York Convention of 1958 on the Recognition and Enforcement of Arbitral Awards.

The Slovak Republic is member of the European Convention 1961 on International Commercial Arbitration.

Furthermore, the following European regulations are directly applicable in Slovakia: Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility and Regulation No 805/2004 creating a European Enforcement Order for uncontested claims.

13. SLOVENIA

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The information contained in this article on dispute resolution in Slovenia was correct as of 1 April 2009.

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13.1 Legal System

On June 25, 1991, following Slovenia's secession from the former Yugoslavia, the Republic of Slovenia adopted the Constitutional Decision on Sovereignty and Independence. The Constitution set forth the legal foundations and structure defining the legal system and the legal entities of the new functioning state. Old Yugoslavian laws remained in effect, as long as those laws were not in contradiction with the new Slovenian constitution.

The Slovenian judicial system is organized according to the principle of hierarchy. The uniform judicial system of the Republic of Slovenia includes courts of general and specialized jurisdiction, the latter having jurisdiction only in the areas of labor, social law and administrative law. Generally, in the first instance, the Municipal Courts and District Courts decide multiple types of cases, involving both civil and criminal matters. Additionally, the four Labor Courts and one Social Court operate as specialized courts at a level equal to a District Court and hear disputes in the first instance concerning most labor and social matters.

Generally, appeals can be made from a court of first instance to the second-instance courts which are the Appellate Courts (i.e. Higher Courts), which have jurisdiction to decide appeals from the lower courts. Moreover, in a limited number of situations an appeal in the third instance could possibly be made to the Supreme Court of the Republic of Slovenia. However, appeals in the third instance to the Supreme Court are extremely rare.

The Slovenian legal system also has a Constitutional Court which operates as a court of extraordinary jurisdiction. The Constitutional Court is an autonomous and independent state authority that is the highest judicial body responsible for protecting the Slovenian Constitution by exercising the Courts constitutional authority to review and protect constitutional rights, and to ensure the legality of State actions.

13.2 Litigation

In 1999, a new Civil Procedure Act *(Zakon o pravdnem postopku)*, governing legal proceedings in Slovenian Courts was enacted.

According to the Slovenian Constitution, court decisions are generally not viewed as precedent and judges are under no legal obligation to follow the legal interpretation of the higher courts. However, lower courts generally tend to follow the opinions of the higher courts and the Supreme Court.

In the first instance, Municipal Courts are competent to decide on cases punishable either by fines or up to three years imprisonment, civil disputes where the amount in dispute is up to EUR 8,345 (effective on 1.1.2010 the amount will change to EUR 20,000 or less). Municipal Courts also monitor, maintain and administer the land registers. In any event, regardless of the amount in dispute, the Municipal Courts are vested with jurisdiction over the following matters:

- Minor criminal cases, excluding penal acts against honor and personal reputation, that are committed through the press, radio or television or with any other means of mass media;
- Civil cases concerning claims for damages or property rights up to a certain value;
- Cases concerning execution and security;

- All civil cases concerning easements, trespass (to land), lease or tenancy relations;
- The legal obligation to maintenance/alimony, if the matter is not dealt with in conjunction with marriage disputes or disputes over the establishment or contestation of paternity; and,
- Probate or other non-litigious matters, land registers, and civil enforcement.

Currently, there are forty-four (44) Municipal Courts established in Slovenia.

District Courts are competent to decide on cases punishable by more than three years imprisonment, and in civil matters where the amount in dispute exceeds EUR 8,345 (effective on 1.1.2010 the amount changes to EUR 20,000). Moreover, District Courts are vested with jurisdiction over the following:

- Criminal and civil cases which exceed the jurisdiction of municipal courts;
- Juvenile criminal cases;
- Execution of criminal sentences;
- Family disputes, excluding maintenance/alimony;
- Confirmation of rulings of a foreign court; commercial disputes;
- Bankruptcy, forced settlements and liquidation;
- Copyright and intellectual property cases; and,
- The District Court‘s, which competence includes the sea-territory of Republic of Slovenia in cases concerning ships and navigation on the sea, exploitation of the sea and the sea ground and cases which demand the use of maritime law.

The eleven (11) District Courts currently established throughout Slovenian are also responsible for monitoring and administering the commercial register.

The Labor Court and Social Court which have the position of a District Court have jurisdiction to rule only matters expressly provided by law, since the law determines the presumption of jurisdiction of courts of ordinary jurisdiction.

The four (4) Slovenian Higher Courts function as courts of appeal over judgments made by the Municipal and District Courts. In addition to determination of appeals against decisions of the municipal and district courts in their territories, they also determine disputes of jurisdiction between municipal and district courts.

At the top of the judicial hierarchy is the Slovenian Supreme Court. It functions primarily as a court of cassation. It is a court of appellate jurisdiction in criminal and civil cases, in commercial lawsuits, in cases of administrative review and in labor and social security disputes. It is the court of the third instance in almost all the cases within its jurisdiction. The grounds for appeal to the Supreme Court (defined as extraordinary legal remedies), are limited to issues of substantive law and to the most severe breaches of procedure. Apart from administering justice (reviewing cases in jurisdiction), the Supreme Court also determines most cases of disputes over jurisdiction between lower courts, grants the transfer of jurisdiction to another court in cases provided by law, and keeps records of the judicial practice of courts.

Most court decisions issued by the Supreme Court or the Higher Courts are published and made available online.

The Administrative Court is competent to decide matters concerning the judicial protection of the rights and legal interests of physical persons and legal entities in connection with decisions and actions of administrative bodies and other public authorities. The authority of the Administrative Court includes the authority to review the legality of the decisions and actions of the various administrative bodies and public authorities.

13.3 Insolvency

The new Compulsory Settlement, Bankruptcy and Liquidation Act *(Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju)* governs insolvency in Slovenia. The new Act was adopted on January 2008, and entered into force on 1 October 2008.

The debtor may, at the time of filing, request for compulsory settlement if the debtor proves with a reasonable certainty that: (i) the financial restructuring activities will abolish the causes of insolvency; and, (ii) the creditors will achieve satisfaction in connection with their claims against the debtor, with equal treatment of all creditors‘ claims.

Furthermore, in relation to companies, the Act requires that after the court renders judgment for the commencement of proceedings, the management of the company is required to compile and deliver to the court, a report regarding the performance of the actions of company‘s financial restructuring plan and payments of the claims to the creditors on a regular basis.

The most important change that is of particular interest to creditors and the business partners of an insolvent debtor are related to the rules concerning challenges of the debtor‘s legal actions in connection with the bankruptcy. Specifically, the objective and subjective conditions for challenging a bankruptcy have been narrowed, and as a direct consequence most commercially used executions can usually not be challenged under the new Act.

The rules regarding the personal bankruptcy apply in cases of bankruptcy of physical persons, including independent business persons, self-employed persons and consumers. The Insolvency Act contains two new instruments that had not previously been recognized under Slovenian law in the areas of personal bankruptcy and bankruptcy of an estate.

Generally, while the bankruptcy proceedings are pending, the debtor may request remission of the claims against the debtor; however, remission would not be possible if the debtor has been involved in a serious economic crime, or the debtor has within the previous 10 years, announced personal bankruptcy.

The Act introduces a provision determining that the deletion of the company from the court register does not affect the right of creditors of the deleted company to claim repayments from individual members of the company. The creditor may also claim damages from the management or supervisory board of the company, even after the company has been removed from the court register. If, at the moment the company ceased to exist, the company still has unpaid obligations, the active company members could be held jointly liable for any of the remaining financial obligations, even after liquidation of the companies assets. The active members of the company are those who had the opportunity to influence the management or business activities of the company and were able to adopt actions concerning financial restrictions of the company, or failed to suggest initiating bankruptcy proceedings in a timely manner. The active members are also those members that own or possess at least 25 % of voting rights in a company.

13.4 Arbitration

Slovenia recently enacted the new Slovenian Arbitration Act *(Zakon o arbitraži)* which adopts the UNCITRAL Model Law including recommendations, on which UNCITRAL has adopted in 2006 (concerning written form requirements of arbitration agreement and interim measures of protection).

The Arbitration Act regulates various types of arbitral proceedings when the seat on the arbitration is within the territory of the Republic of Slovenia. Specifically, this means that the provisions of the Act are applicable to commercial, as well as, non-commercial disputes which can be resolved through arbitration. The Arbitration Act applies to domestic disputes, in addition to disputes involving international elements. The provisions of the Arbitration Act shall apply to all types of arbitral proceedings, regardless of whether the arbitration is conducted by an institutional body or by an *ad hoc* tribunal.

The Act requires the arbitration agreement concluded by the parties to be in writing, and allows the parties to agree in the writing that either, all previously existing or future disputes arising out of the parties' contractual or non-contractual relationship shall be settled through arbitration.

Arbitral awards are considered final and binding upon the parties involved in the arbitration, and the arbitral decision possess the same effect and validity as a judicially imposed judgment. In general, appeals of an arbitral award may be challenged before the competent District Court.

In Slovenia there are permanent arbitral institutions attached to the Slovenian Chamber of Commerce of Slovenia *(Gospodarska zbornica Slovenije),* the Insurance Association *(Zavarovalnica Triglav d.d.)*, and the Ljubljana Stock Exchange.

The Permanent Court of Arbitration is an autonomous and independent institution acting as the central arbitral institution in the Republic of Slovenia that resolves commercial disputes, both for the domestic and international business community through arbitration or conciliation. The Arbitration Court maintains two permanent lists of arbitrators; one list for domestic arbitrators and a second list containing foreign arbitrators.

13.5 Enforcement of Foreign Judgments and Arbitral Awards

The recognition and enforcement of foreign judgments in Slovenia falls within the bounds of EC Regulation No. 44/2001 (Brussels I Regulation), EC Regulation No. 2201/2003 (Brussels II Regulation) and EC Regulation No. 805/2004 (European Enforcement Order).

In the event that the said EC Regulations do not apply (because the parties are not from EU or the subject matter is not covered by the scope of application of the Regulations), the procedure for recognition and enforcement of foreign judgments will be made in accordance with the applicable provisions of Slovenian Private International Law and Procedure Act *(Zakon o mednarodnem zasebnem pravu in postopku)*.

According to Slovenian Private International Law and Civil Procedure Act, a party seeking the recognition and enforcement of a foreign judgment must submit a request for recognition to the

competent court in Slovenia. The request must include the original judgment or a certified copy, a certificate of finality of the judgment, or a certified copy and a certified translation of the judgment into Slovenian or another official language recognized by the Slovenian Courts.

Generally, the recognition or enforcement of the foreign judgment will not be granted against the party to which the enforcement is sought if:

- The due process rights of the individual against who the enforcement is sought were breached;
- The subject matter of the judgment falls within the exclusive jurisdiction of the Slovenian Courts;
- The jurisdiction of the foreign court was based solely on the nationality of the claimant, or on the assets of the claimant or personal service of the claim or any other document by which the litigation proceedings were commenced;
- The foreign court that granted the judgment did not comply with the bilateral agreement granting jurisdiction to the Slovenian Courts;
- The case involved issues that were barred by res judicata, because the matter had previously been ruled upon by another court, and the issues were prohibited from being adjudicated again in a different court, based on issues that were previously judged;
- The effect of recognition and enforcement would be contrary to public order of the Republic of Slovenia; or,
- If no reciprocity is established between the Republic of Slovenia and the foreign court which issued the award.

The recognition and enforcement of foreign arbitral awards are settled in accordance with the Slovenian Private International Law and Civil Procedure Act. Furthermore, most international arbitral awards are decided in accordance with the applicable provisions of the New York Convention, pertaining to the enforcement and recognition of foreign arbitral awards.

Arbitral awards that are enforced under the provisions of the Private International Law and the Civil Procedure Act must fulfill certain criteria. Generally, this requires that the party seeking enforcement submit to the competent court:

- The original arbitration award or certified copy,
- The original arbitration agreement or certified copy, and,
- A certified translation of the arbitration award into Slovenian, or another official language recognized by the Slovenian Courts.

The recognition and enforcement of a foreign arbitral award will not be granted in the following cases:

- If the subject matter of the award was not subject to arbitration according to Slovenian law;
- If the effect of recognition and enforcement of the foreign arbitral award is contrary to Slovenian public order;
- If no reciprocity exist between the Republic of Slovenia and the foreign court which issued the award;
- If the arbitration agreement was not concluded in writing;
- If either of the parties is not legally capable of concluding an arbitration agreement;

- If the arbitration agreement is not valid under the designated law, that applies to the arbitration agreement;
- If the effected party was not properly informed of the appointment of arbitrators or was otherwise impeded in asserting the parties rights pertaining to the arbitration proceedings;
- If the composition of the arbitration court/tribunal or the arbitral procedure was not in accordance with the terms specified in the arbitration agreement between the parties;
- If the arbitration court/tribunal exceeded the powers granted according to the terms of the arbitration agreement;
- If the award is not a final and enforceable award; or,
- If the arbitral award contradicts the intended purpose of the arbitral proceedings or the award is incomprehensible.

The request for the recognition and enforcement of the foreign arbitral award should be filed at the District Court. In the event that the court establishes that no obstacles exist for the recognition and enforcement of the foreign arbitral award, the court may issue an order for enforcement of the foreign award. Any appeals to an order recognizing a foreign arbitral award must be filed within a period of fifteen (15) days after the order recognizing the award is issued.

Slovenia adopted the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration, the 1961 European Convention on International Commercial Arbitration and the 1965 Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.

The Wolf Theiss Guide to: Dispute Resolution in Slovenia

14. UKRAINE

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The information contained in this article on dispute resolution in Ukraine was correct as of 1 April 2009.

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14.1 Legal System

The Ukrainian legal system is based on codified principles of civil law. Although judicial precedents are not binding, the Supreme Court of Ukraine regularly comments on applicable practice, with the aim of providing guidance and establish uniformity among Ukrainian courts. Hence, the Supreme Court's comments are heavily weighed by subordinate courts in Ukraine.

The Ukrainian court system is composed of local courts of general jurisdiction that are responsible for criminal and civil jurisdiction (consisting of district, urban district and town courts, regional courts, local administrative courts, local economic courts), courts of appeal (consisting of regional courts of appeal, court of appeal of the Autonomous Republic of Crimea, courts of appeal of the cities of Kiev and Sevastopol, economic courts of appeal, administrative courts of appeal, the Court of Appeal of Ukraine (currently not in existence), and high courts with specialized jurisdiction consisting of the High Administrative Court of Ukraine (responsible for administrative cases), the High Economic Court of Ukraine (responsible for covering economic and commercial cases), and the Supreme Court of Ukraine, which covers all cases and reviews rulings adopted by the appellate courts.

Generally, cases regarding civil matters (including labor, alimony and child custody), administrative omissions (i.e. minor offences) and criminal matters are first heard before the local courts. These courts have territorial jurisdiction over comparatively small administrative units. The respective courts are the courts of first instance; therefore their rulings in most instances may be challenged in the courts of appeal. Rulings of the courts of appeal may be challenged subsequently in the Supreme Court of Ukraine; however such an appeal can be brought under a limited list of grounds.

Disputes with respect to commercial matters arising between business entities (legal entities as well as individuals – private entrepreneurs) are tried in the economic courts. Local economic courts have territorial jurisdiction over regions; there are also economic courts of Kiev and Sevastopol due to the special status of these cities. Normally, jurisdiction of the economic courts of appeal spreads over several adjacent regions. There are economic courts of appeals in Kiev and Sevastopol.

It is possible to appeal the ruling of an economic court in the relevant economic court of appeals; subsequently the law provides the possibility to challenge the decision of that court of appeal in the High Economic Court of Ukraine. Ultimately, the decision of the High Economic Court of Ukraine can be appealed to the Supreme Court of Ukraine.

The jurisdiction of administrative courts covers public administrative disputes with respect to different legal acts of state authorities related to their power and authority (save for administrative omissions, as foreseen by the Code on Administrative Omissions) and criminal cases. Administrative omission cases are reviewed by the local courts. Decisions of the administrative courts may be appealed in the High Administrative Court of Ukraine and subsequently in the Supreme Court of Ukraine. Disputes arising out of elections or national referenda and refusal to register candidate for presidential elections are heard by the High Administrative Court of Ukraine.

Apart from the aforementioned courts of general jurisdiction, there is the Constitutional Court of Ukraine, which is the only judicial body with constitutional jurisdiction, having the authority to assess whether legislative acts of Parliament, President, Cabinet of Ministers or the Parliament

of the Autonomous Republic of Crimea comply with the Constitution of Ukraine. The Constitutional Court of Ukraine also provides commentaries to certain norms of the Constitution or laws of Ukraine (superior acts of Parliament).

14.2 Litigation

Litigation in Ukraine is governed by procedural codes: the Civil Procedural Code of Ukraine No 1618-IV dated 18.03.2004, the Commercial and Procedural Code of Ukraine No 1798-XII dated 06 November 1991, the Code of Administrative Proceedings of Ukraine No 2747-IV dated 06 July 2005, and the Criminal Procedural Code of Ukraine No 1001-05 dated 28 December 1960.

Ukrainian law provides for the possibility to have a court issue an injunction prior to the submission of a claim.

A lawsuit starts with the filing of a claim. The court verifies whether the submitted claim meets the formal requirements and if it does, the court accepts it into legal proceedings and sets the first hearing date. This is made in the form of a court order. Normally the court would require the defendant to provide defense statement stipulating whether the defendant admits the claim. The defendant may file a counterclaim or may refrain from providing any defense statement. Normally all communication between the parties to a lawsuit are made in writing, save for oral arguments in court.

Later on in civil and administrative cases, a preliminary hearing is set. The purpose of this hearing is to specify the claim request and the relief sought, identify individuals and/or legal entities participating in the trial, identify facts needed to be proven, specify the list of evidence, and if needed secure the evidence and/or claim. Then the next hearing is set.

It should be noted that although the regulations governing legal proceedings in commercial disputes do not contain any of the requirement specified above, the first hearing in commercial disputes is normally used for the same purposes.

At the next hearing, after dealing with certain procedural/technical issues (concerning verification of the parties involved and the powers of their representatives including announcement of court membership and rights of the parties), the court would hear the parties' applications and motions. After the relevant review, the court should issue a ruling with respect to each application and/or motion.

In certain instances the court proceedings may be recorded by technical means.

The litigation process may have several hearings depending on the complexity and nature of a lawsuit.

After identification of the participants of the trial, the court asks them to deliver their statements regarding the dispute. The plaintiff is the first to delver its opinion. The parties at this stage answer questions that might arise from the other party and third parties (other then plaintiff and defendant) involved in the matter. Thereafter the court examines evidence provided (regarding which the parties can present an objection or comment), and examines witnesses and experts. Witnesses and experts might also be examined by the parties to the dispute.

Thereafter the court would summarize the statements of the parties in view of the presented evidence. Usually, parties are allowed to present additional statements prior to the court's summary. This ends the debate stage of the hearing and the court, after due consideration, issues its judgment on the merits of the case.

It can happen that one of the parties may fail to attend a court hearing. Normally, if this is the case, the court would postpone hearing for another date. Subsequent failures to attend court hearings may result in the following: if the plaintiff fails to attend, the court would stop the proceedings on the lawsuit, and if the defendant is absent, the court would issue a judgment in favor of the plaintiff in the defendant's absence (however, under certain circumstances this may provide grounds to challenge such a ruling).

A party may ask the court to carry out hearings in its absence as well.

Ukrainian law provides the possibility to seek monetary and non-monetary remedies as reimbursement of damages (including contract and tort damages), an injunction awarding specific performance; for instance, *restitutio in integrum*, replevin or prohibitory and mandatory injunctions.

Although the law provides for relatively expedited period of court proceedings, in practice this is sometimes quite a lengthy process. The procedure may last from several months up to several years before a final ruling is issued.

Litigation costs are mainly composed of court fees (i.e. fees related to the consideration of the case by a court) Generally the fee is 1 % of the amount of the claim t, however it can not be less than 3 nor more than 100 administrative units of measurement (currently one such unit equals approximately EUR 1,5). In addition to the aforementioned court fee, there is a fee for technical and information services (amounting to approximately EUR 10 for commercial disputes), attorneys' fees, expenses for expertise, expenses related to the involvement of witnesses and interpreters etc.

Normally, the fees and costs mentioned above are awarded against the unsuccessful party. However, depending on the court these costs may be reduced. It is also possible that such expenses may be distributed equally between the parties or levied on the party incurring such expenses. Court fees are to be paid prior to filing a compliant.

14.3 Insolvency

Insolvency proceedings in Ukraine are mainly regulated by the Law "On Restoring a Debtor's Solvency or Recognizing It Bankrupt" No 2343-XII dated 14 May 1992, as amended.

Bankruptcy under Ukrainian law is defined as court recognition of a failure of the debtor to satisfy the creditors' claims through means other than liquidation or a court supervised return to solvency. Insolvency proceedings in Ukraine are heard by economic courts of Ukraine in accordance with the law cited above, the Commercial Code of Ukraine and the Commercial and Procedural Code of Ukraine.

False or intentional filing for bankruptcy or the concealment of financial insolvency is a criminal offense in Ukraine.

An economic court would open bankruptcy proceedings once the total amount of claims against the debtor is equal to or exceeds 300 minimal wages (the amount of minimal wage in Ukraine is UAH 605 as of 01 December 2008) and these claims were not satisfied within three months of their maturity date, provided that they were not challenged.

The insolvency procedure is initiated by lodging a petition to open a bankruptcy proceeding. The procedure shall be initiated by the relevant economic court of the region where the entity with respect to which the insolvency procedure is initiated is located.

Currently, under the Law "On Imposing a Moratorium On Forced Sale of Property" No 2864-III dated 29 November 2001, there is a moratorium on declaring bankrupt entities where the state stake equals 25% or more. The moratorium likewise extends to the sale of assets of such enterprises.

Economic courts consider filings solely against corporate entities. Should an individual debtor be recognized as an entrepreneur, it will be possible to initiate insolvency proceedings against him/her. Both a creditor and a debtor are entitled to initiate an insolvency proceeding.

Generally, the court should accept a petition within five days as of its filing and simultaneously impose a moratorium on enforcement of claims against the debtor subject to the insolvency proceeding. A preparatory hearing is held by the court within thirty days of the acceptance of the petition for bankruptcy proceeding. The purpose of this preparatory hearing is to identify and approve a list of creditors and to identify possible financial rehabilitators. Once a petition for initiation of an insolvency procedure is accepted by the court, the latter would impose a moratorium on imposition of new fines and penalties (such as fines for late tax and pension payments).

A bankruptcy trustee (manager), which are individuals licensed and supervised by the Ministry of the Economy of Ukraine, shall be appointed by a court as an administrator of property, and the administrators role would be that of a financial rehabilitation manager or liquidation manager, depending on the circumstances of the case. This official shall be responsible for supervising the management of the debtor and its property during the insolvency proceeding and is appointed either during the initiation of the insolvency proceeding or during the preparatory hearing.

Within three months of the preparatory hearing, a preliminary hearing shall be held. The task of this hearing is to approve the claims register and approve the date for a meeting of creditors. Thereafter, the creditors with approved claims hold a meeting to elect a committee on the basis of debt-weighted voting. The creditor's committee may recommend that the court initiate either a financial rehabilitation procedure taking measures directed at restoring and making the debtor solvent, or alternatively a liquidation procedure.

An amicable settlement agreement can be negotiated with the creditors' committee and be approved by the court at any time during the insolvency proceeding.

The insolvency process should be finished within twelve months but this period may be extended for another six months at the discretion of the court. According to some sources, however, the average period of bankruptcy proceedings in Ukraine is 2.9 years and cost is equal to about 42% of the estate while the average recovery rate is 8,7%.

As discussed above, the possible outcomes allowed under Ukrainian insolvency laws are:

- Liquidation of the bankrupt entity;
- Amicable agreement; or,
- Financial rehabilitation.

14.4 Arbitration

Ukrainian law distinguishes between domestic arbitration and foreign arbitrations depending upon the parties involved in the dispute. The primary law regulating domestic arbitration in Ukraine is the Law of Ukraine "On Courts of Arbitration" No 1701-IV dated 11 May 2004.

Pursuant to the law on arbitration, the parties may enter into an arbitration agreement and on the basis of the latter, corporate entities and individuals may submit for arbitration review any civil or commercial dispute, save for disputes regarding: invalidation of state acts; disputes with respect to commercial agreements regarding state interests; disputes regarding state secrets; family law disputes save for those disputes arising out of the covenant of marriage; insolvency disputes; disputes to which a state body (including state enterprises) is a party; disputes involving a party that is not a resident of Ukraine (this dispute shall be submitted to international arbitration for review); or, cases that are considered to be within the exclusive jurisdiction of courts of common jurisdiction or within the jurisdiction of the Constitutional Court of Ukraine.

It should be noted that if the parties entered into an arbitration agreement and one of the parties filed a claim with the court of general jurisdiction (i.e. not with the designated arbitration tribunal) the court of general jurisdiction would normally refuse to accept and review the claim. However, it is possible to challenge an arbitration ruling with the relevant court of general jurisdiction. Under Ukrainian law there are permanent arbitration courts as well as *ad hoc* arbitration courts.

Arbitration agreement must be made in writing and may be in the form of an arbitration clause in the contract between the parties as well as in the form of a separate arbitration agreement. An arbitration agreement is also deemed to be made in writing if it is contained in documents signed by the parties, for example, written correspondence.

In international arbitration, the reference to the arbitration court in the arbitration agreement means also the reference to the regulations of the relevant arbitration court. In situations of discrepancy between the arbitration agreement and such regulations, the regulations of the given tribunal prevail.

Parties are free to choose an arbitration court and arbitrators. It is possible to have one or any odd number of arbiters. Permanent arbitration courts have relevant regulations concerning the appointment and number of judges.

The law itself does not provide for any maximum duration of the arbitration proceedings. These terms may be established by an arbitration agreement or the rules of an arbitration court. The regulations on arbitration proceedings are very similar to those in the courts of general jurisdiction.

Decisions of the arbitration courts are enforceable on the basis of a court order issued by a relevant court of general jurisdiction.

The major international arbitration institution in Ukraine is the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry.

Disputes involving a party which is not considered a resident of Ukraine, or disputes between Ukrainian corporate entities with foreign investments, disputes involving international organizations created in Ukraine, disputes between founders of such organizations may be reviewed by international commercial arbitration.

Provisions regarding arbitration agreements in international arbitration cases are very similar to those described for domestic arbitration.

Parties may elect any number of arbitrators. In the event the parties fail to specify, three arbitrators shall be elected, with each party appointing one arbitrator each, the two appointed arbitrators will in turn elect the third arbiter. The parties at their discretion may decide on the procedure and place of arbitration. It is possible to have the arbitral tribunal grant preliminary injunctions.

Ukrainian international arbitration awards are final and obligatory for the parties and in case of refusal to execute them voluntarily, they are enforced according to the New York Convention on recognition and enforcement of foreign arbitral awards in the jurisdiction of the debtor.

The awards of international arbitration may be challenged only on the basis of a limited number of grounds and are enforced by order of competent local courts which can be obtained within three years of the day of issue of the relevant arbitral award. The court would issue such order provided that it accepts that no grounds for refusal of recognition and enforcement of such award exist. This order can be challenged in the court of appeal.

In practice, Ukrainian courts are reluctant to enforce arbitral awards under the New York Convention and application of bilateral treaties on mutual legal assistance. As a result cases for enforcement of awards may be sent from one court to another several times before an enforcement order is issued.

14.5 Enforcement of Foreign Judgments

Ukraine is a party to Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated 15 November 1965 (effective in Ukraine as of 19 October 2000 with certain comments) and Convention on the Taking of Evidence Abroad in Civil or Commercial Matters dated 18 March 1970 (effective in Ukraine as of 19 October 2000 with certain comments), Convention on the Legal Aid and Legal Relations in Civil, Family and Criminal Cases dated 22 January 1993 (effective in Ukraine as of 14 April 1995). A number of bilateral treaties of Ukraine with other countries, the Civil Procedural Code of Ukraine, the Law "On Private International Law" No 2709-IV dated 23 June 2005 and the aforementioned conventions provide for the possibility to enforce a foreign judgment in Ukraine. The Instruction on the order of enforcement of the international treaties on the matters of legal aid in civil cases and delivery of documents, obtaining evidence and recognition and enforcement of judgments (approved by the order of Ministry of Justice of Ukraine and State Judicial Administration of Ukraine No 1092/5/54 on 27 June 2008) also constitute ground for enforcement of foreign judgments in Ukraine.

Foreign judgments can be enforced only within three years (save for the claims with respect to indebtedness on periodical payments) from the date such judgment came into effect.

In order to be executed in Ukraine, a foreign judgment needs to be effective in the country where it was issued, the proceedings duly notified to the party against which the judgment is to be enforced enabling such party to present its position, the case does not fall within exclusive jurisdiction of Ukrainian courts, there is no ruling issued by Ukrainian courts with respect to the same matter between the same parties, there is no similar legal proceeding pending in Ukraine, the limitation period has not expired, the dispute is subject to judicial settlement, enforcement of the judgment does not present any threat to the national interests of Ukraine.

To enforce a foreign judgment one has to apply to a Ukrainian court (that has jurisdiction over the territory where the party, against which the ruling was issued, is located or, if that party's location is unknown or it is located outside Ukraine, over the territory where the property is located) to obtain a relevant order. Certain international treaties may foresee that such application shall be submitted via governmental bodies. Such application for enforcement must contain details of the party seeking to enforce the judgment and the party against which the judgment is to be enforced and the reasons for filing said application.

Unless international treaties ratified by Ukraine provide otherwise, the application for enforcement in civil cases shall be supported by a certified copy of the foreign judgment, an official document certifying that judgment of the foreign court is enforceable (if the same is not noted in the judgment itself), a document evidencing that the party against which the judgment is enforced was duly notified of the court hearing, a document confirming the enforcement details and time of enforcement (if the judgment was previously enforced), a document supporting the powers/authority of the applicant (if application for enforcement is submitted by the representative). All listed documents must be translated into Ukrainian and that translation must be certified.

Within five days of proper submission to a Ukrainian court, the latter sets a hearing date and notifies the applicant no later than 10 days prior to the date of the hearing.

Once a Ukrainian court issues a relevant order of execution, it can be submitted to the state execution service for execution.

Ukraine is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 10 June 1958 (the "New York Convention") and to the European Convention on International Commercial Arbitration dated 21 April 1961. According to the New York Convention each of the contracting states shall recognize both written arbitration agreements and arbitration awards rendered in the respective contracting state other then where recognition and enforcement is sought. Ukrainian Law "On International Commercial Arbitration" No 4002-XII dated 24 February 1994 is based on the UNCITRAL Model Law on International Commercial Arbitration.

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