WOLF THEISS

THE WOLF THEISS GUIDE TO:

Dispute Resolution in Central, Eastern & Southeastern Europe

Litigation, Insolvency, Arbitration, and Enforcement

THE WOLF THEISS GUIDE TO:

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The Wolf Theiss Guide to: Dispute Resolution in Central, Eastern & Southeastern Europe is intended as a practical guide providing a general overview of the legal systems and dispute resolution procedures in the 12 countries where Wolf Theiss has offices, as well as Kosovo.

While every effort has been made to ensure that the country chapters were accurate at the time of publication, 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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1. INTRODUCTION

Wolf Theiss is one of the leading law firms in Central, Eastern, and Southeastern Europe, with over 300 lawyers working across numerous practice areas in 12 countries. Across the region, 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. Because we concentrate our energies on this unique part of the world – the complex, fast-developing markets of the CEE/SEE region – the team is pleased to publish this second edition of *The Wolf Theiss Guide to: Dispute Resolution in Central, Eastern & Southeastern Europe*.

The revised Guide is more important than ever in the aftermath of the global financial crisis. We have seen an increased need for dispute resolution services across many commercial sectors, in particular financial services and healthcare due to increased regulatory reforms. In addition, litigation for the purpose of protecting investors against white collar crimes, as well as asset tracing and services to ensure our clients' compliance with local and international anti-corruption laws, have become increasingly important. With over 80 % of our work involving cross-border representation of international clients, the Guide is a valuable resource tool providing our clients with a brief overview of the legal systems and dispute resolution processes in each of the countries where Wolf Theiss has offices, as well as Kosovo.

In particular, our newly included table should ease understanding of major differences between the various jurisdictions at first glance; however, we would always recommend studying the full text as well. Our guide focuses on providing both a quick overview of basic legal knowledge and comparability of legal systems within the region. We believe the latter is of utmost importance for lawyers who deal with multi-jurisdictional questions.

Our extensive local presence in the region and our "one stop shop" philosophy is a major advantage and allows us to provide cross-border litigation & dispute resolution services at the highest level, ensuring that our clients don't spend their valuable time coordinating with different advisers in a multitude of jurisdictions. Our Dispute Resolution lawyers on the ground have local legal expertise, contacts, and experience in handling the complex jurisdictional, procedural, and substantive issues that arise when our clients are involved in civil and commercial disputes, government investigations, criminal proceedings, or national and international arbitrations.

With each case, our aim is to develop a strategic partnership with our clients, tailored to meet both their long-term business and economic goals. As our clients look for new and innovative ways to resolve disputes in this post-crisis period, we believe *The Wolf Theiss Guide to: Dispute Resolution in Central, Eastern & Southeastern Europe* will serve as a beneficial resource.

Our Dispute Resolution Team strongly hopes you will find it very useful. If you have any questions or comments, please do not hesitate to contact me.

Bettina Knoetzl
Head of Dispute Resolution Practice Group

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SPECIAL THANKS

We would like to thank all the individuals at Wolf Theiss who assisted in the preparation of this publication, especially Deborah Gibbs for her help in coordinating the project. Their continued efforts to ensure the successful completion and continued updating of this Guide are very much appreciated!

2. ALBANIA

By Agim Muco, Jonida Braja, and Blerta Nesho
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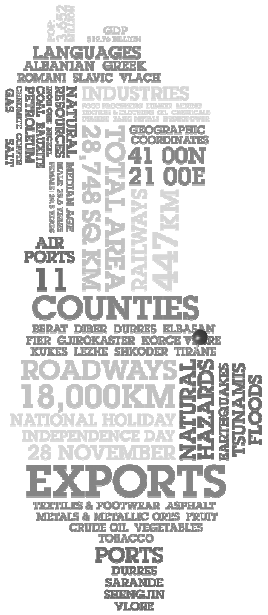

The information contained in this chapter on dispute resolution in Albania was correct as of 1 January 2011.

If you have any questions about the content of this chapter, 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, except for unifying decisions issued by the Joint Colleges of the Supreme Court.

2.2 Litigation

The Albanian court system is composed of District Courts, Courts of Appeal and the Supreme Court. Please note that Albania has a Constitutional Court whose influence is increasing, especially due to an expansion of the "constitutional due process" review of other courts' decisions.

In each District Court, there are special court departments in charge to decide on:

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

Cases in District Courts are heard by a single judge or a panel of three judges. Matters exclusively heard by a panel of three judges include:

- Claims valued at more than LEK 20 million (approximately EUR 156,000);
- Claims on objections to administrative acts valued at more than LEK 20 million (approximately EUR 156,000);
- 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 of three judges, while the High Court decides in panels of five judges. In the Supreme Court, associated colleges also hear cases with the participation of all judges.

In certain cases, courts may also 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 only be denied when the appeal is presented after the deadline

provided by law, 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.

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

After considering the case, the Appeals Court can decide to: (i) uphold and leave in effect the decision of the first instance court; (ii) change the decision; (iii) revoke the decision and terminate the case; or, (iv) revoke the decision and send the case back to the first instance court for retrial.

Decisions issued by the Court of Appeals may be challenged to the Supreme Court only when: (i) the law has been violated or 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 attorneys' fees, expenses for expert opinions and witnesses (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 attorneys' 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 relative 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 court fees in proportion with the refused part of the claim. The defendant shall have the right to require awarding court fees, even if the case is ceased.

Final 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 not a part of the ordinary court system. It is regulated as an independent body subject only to constitutional provisions. The Constitutional Court ensures respect for all constitutional provisions and gives final interpretations of these provisions.

According to the Code of Civil Procedure, any dispute (civil or other nature as prescribed by this code and other applicable laws) falls under the jurisdiction of the Albanian Courts. When a civil dispute is in the process of being heard by the Albanian courts, no other body is allowed to hear the matter. In this respect, any agreement that provides differently is deemed invalid.

Submission to the competence of a foreign court shall only be allowed when the trial is related to obligations between two foreign citizens or one foreign citizen and an Albanian citizen, or any foreign citizen that does not live/reside in Albania, as well as when such exemptions have been provided for in international agreements ratified by the Republic of Albania.

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 a 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 debt 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 timely instituted whenever the debtor is incapable of meeting its financial obligations. In the case of legal entities, bankruptcy proceedings must be opened even if the entity is over-indebted.

Without a mutual agreement, 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 only if:

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

2.4 Arbitration

Arbitration in the Republic of Albania is governed by Part II, Title IV, Articles 400 – 439 of the Albanian Code of Civil Procedure. The chapter contains provisions for the regulation of domestic arbitration proceedings, i.e. when all parties are resident in or have the legal seats of their companies within the territory of the Republic of Albania, and when the seat of arbitration is within this territory. The chapter does not apply to international arbitration proceedings. A draft arbitration law containing provisions for international arbitration proceedings, which is based on the UNCITRAL Model Law and

is sponsored by the World Bank is currently being discussed. At the current time, Albania does not have any domestic arbitral institution.

Generally, an arbitration agreement may be concluded for any monetary claim or dispute arising from a commercial transaction. Public law disputes, such as criminal law cases and family matters, including divorce, alimony or paternity disputes, are not arbitrable. An arbitration clause is deemed valid if it is made in writing and is included in the main agreement as part of this agreement, or in a separate agreement referring back to the main agreement. Although the Code of Civil Procedure does not contain explicit content requirements, the clause should specify that any disputes between the parties will be settled by means of arbitration. In addition, the arbitration clause should indicate the parties to the agreement, the scope of the agreement, the arbitral institution or the basis for forming the arbitral tribunal (in case of ad hoc arbitration).

The parties are free to decide on most aspects of any arbitration proceedings, including the seat of arbitration, the language of arbitration, the substantive law and the procedural rules. The parties are also free to decide on the number of arbitrators, although there may only be an uneven number, and the method of their appointment. Arbitrators are appointed by the court if the parties fail to do so.

The arbitral tribunal may, at the request of one of the parties and unless agreed otherwise, order any measure to preserve the interests of the parties in the arbitration.

If the parties have not agreed on any rules on this matter, the arbitral tribunal must apply the rules on interim measure that exist in the context of a lawsuit in the court system (Article 418 CPC). Interim measures granted by arbitral tribunals must always be enforced by state courts. The following rules apply:

- At the request of the claimant the arbitral tribunal may grant interim measures to secure the execution of the final award in the arbitration proceedings, if there are reasons to believe that the proper execution of an award in favour of the claimant may become impossible or difficult (Article 202 CPC);
- A claimant may also request the court to stay the execution of an administrative act (i.e. a decision by ministers or other acts issued by the state administration as provided by the CPC in the section on administrative disputes) (Article 329 CPC). The arbitral tribunal may grant such stay if there is a risk of grave and irreparable harm to the claimant. The arbitral tribunal must provide reasoning for its decision.

Such interim measures are allowed for all kinds of claims and at any stage of the arbitration proceedings, until the decision becomes final and irrevocable. Interim measures preserving rights are also allowed in proceedings before the court of appeal, if the award is under its consideration (Article 203 CPC).

The claimant may also request interim measures to preserve its rights in the arbitration even before bringing the claim before an arbitral tribunal. In such a case, the court

determines a time period of not more than 15 days within which a request for arbitration must be submitted (Article 204 CPC). If the claimant does not submit a request for arbitration for a claim regarding which a security measure has previously been granted by a court within the relevant time period, the security measure is considered revoked.

If the arbitral tribunal rejects the claim or if the arbitration proceedings are stayed, the arbitral tribunal must also decide on the lifting of the interim measure, which will in any case take effect when the decision to reject the claim or to stay the proceedings becomes final and irrevocable (Article 211 CPC).

Arbitral awards are enforceable in the same way as court decisions. The courts may set aside arbitral awards only under a few conditions, in particular in case of:

- the invalid constitution of the arbitral tribunal;
- an incorrect declaration of the arbitral tribunal of its jurisdiction or lack of jurisdiction;
- the arbitral tribunal has exceeded the scope of the arbitration agreement or has not decided on one or more claims submitted to it;
- the equality of the parties and their right to be heard has not been respected;
- the lack of impartiality and independence of one or more arbitrators; or
- an 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 Appeals 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 to a fair trial and 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 fundamental principles of the Albanian legislation (Public Order Exception).

Regarding the enforcement of foreign awards, Albania is a Contracting State to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), 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.

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

Dispute Resolution in Albania

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	**Simple cases:** *first instance:* 6 months up to 1 year from the date of the filing of the claim; *second instance*: 12 months from the date of filing the appeal claim*; third instance*: 16-24 months from the date of filing the request **Complex cases:** *first instance*: 2 years from the date of filing of the claim; *second instance*: 12-16 months from the date of filing the appeal claim; *third instance*: 24 months from the date of filing the request	▪ Cases before the District Courts are heard by a single judge or a panel of three judges. Cases heard by a panel of three judges include: (i) claims valued at more than LEK 20 million (approximately EUR 156,000); and (ii) claims objecting to administrative acts valued at more than LEK 20 million (approximately EUR 156,000).
Approximate Costs **Court Fees**	The filing fee of a claim in the First Instance Court is EUR 25 up to EUR 120. In complex cases, court fees may be up to 3% of the contractual amount in dispute. Such court fees are to be paid upon filing of the claim.	▪ Litigation costs consist of court and attorneys' fees and expenses for expert opinions, witnesses, and translators. The Council of Ministers determines the appropriate expenses for witnesses and translators. The court and attorneys' fees incurred by the prevailing party may be charged to the losing party in proportion to what the court accepted in the claim.
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** *first instance*: preparation of two briefs, four hearings with a duration of 1h, 2h, 4h, and 6h, respectively, preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 15,000 to 25,000; *second instance*: one brief, no hearing: € 5,000 to 10,000; *third instance*: one brief, no hearing: € 5,000 to 7,000	▪ Court fees in the first and second instances are to be paid by the party filing the appeal. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, each party assumes the reimbursement of the respective attorneys' fees.
Complex case	**Assumptions based on an amount in dispute of € 10,000,000**: *first instance*: preparation of 4 comprehensive briefs, six hearings with a duration of 2h, 4h, and 4 x 8h; preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 50,000 to 150,000 *second instance*: one brief, no hearing: € 15,000 to 25,000; *third instance*: one brief, no hearing: € 10,000 to 20,000	
Jury Trials	There are no civil jury trials in Albania.	
Class Actions	Limited	The Albanian Code of Civil Procedure does not provide for a

		special proceeding for collective redress.
Document Production	Limited	Documents are subject to disclosure if the party itself referred to the document during the proceeding.
Mandatory Presentation by Counsel	No	
Pro Bono System	Yes	Each court has a list of attorneys who provide free legal aid for people who can't afford the cost of legal proceedings.
Preliminary Injunction Proceedings		
Approximate Duration	Generally, a decision on a request for a preliminary injunction is rendered within 15 days after the filing of the claim. However, if the request is submitted during the legal proceeding, the decision is rendered immediately after the filing of the request by the applicant. *Appellate proceedings:* In general, 1 month from the date of filing the applicant's request.	▪ With the request for a preliminary injunction, the applicant must provide available evidence, such as documentary evidence and affidavits that can be examined immediately by the court. Foreign-language documents should be presented with Albanian translations. ▪ Witnesses should be readily available so that they can appear on short notice before the court.
Approximate Costs **Court Fees**	If the request for preliminary injunction is applied for together with the original complaint, no extra court fees have to be paid. Otherwise, regular court fees apply.	▪ The court may order the applicant to pay a security deposit. In practice, it is advisable to offer a security deposit if the demonstration of the claim faces challenges. ▪ No litigation costs will be awarded to the applicant in preliminary injunction proceedings. ▪ Costs incurred by a successful applicant in a preliminary injunction matter can only be sought in the main proceedings.
Attorneys' Fees (net) *Simple case*	Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	
Complex case	Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	
Arbitration Proceedings		
Approximate Duration	2-3 years	
Approximate Costs **Procedural Costs**	The procedural costs depend on whether a sole-arbitrator or an arbitral tribunal of three members is appointed, the	▪ The costs of arbitration depend on the arbitration agreement and the amount in dispute, the amount of documents, number

	complexity of the case, and the administrative charges.	of witnesses, and whether expert opinions are required. The costs of arbitration also include the fees of arbitrators and administrative charges. ▪ The arbitrators have large discretion regarding the award of costs. The award of legal fees is usually not determined by reference to a statutory tariff. ▪ Currently there are no arbitration courts in Albania.
Attorneys' Fees (net) *Simple case*	Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	
Complex case	Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	
Document Production	Limited	
Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	The law does not set forth any specific time limits; however, in practice, the duration of the process on enforcement of foreign judgements takes between 12 -24 months. The enforcement of arbitral awards varies depending on a series of factors including the identification of the debtors' assets, financial means, the response of the debtor, and the perseverance of the enforcement authorities in the fulfilment of their duties.	▪ The party seeking to enforce the foreign judgment must present an application, a notarized power of attorney for the attorney retained for the enforcement procedure, and a duly certified copy of the foreign court decision. All documents must be translated into Albanian and certified by a notary. ▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof, and the original of the arbitration agreement or a duly certified copy thereof.
Approximate Costs **Court Fees**	Court fees are from EUR 25 up to 3% of the contractual amount in dispute.	
Attorneys' Fees (net)	Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	In practice, not many bankruptcy proceedings have been brought before the Albanian courts. Only recently, statistics	▪ The court decides to open the insolvency proceeding after being satisfied that there is sufficient legal ground for opening

	show an increase in the number of such proceedings. This response is based on our experience with the Albanian court system and the Insolvency Law.	such proceeding, and the debtor's assets are estimated to be sufficient to cover the costs of the insolvency proceedings. In making such an assessment, the court may rely on the report of an interim insolvency administrator appointed by the court for such purpose. ▪ The decision of the court is published on the District Court website, delivered to the insolvent debtor and to the known debtor's creditors, and is filed with the National Center for Registration, the authority in charge with the administration of the companies registry.
Approximate Duration	Albanian Insolvency Law requires the courts to handle bankruptcy cases without delay. They must consider the case within 30 days from the date of filing the petition for insolvency. . The length of time for bankruptcy proceedings depends on several factors: the extent of the assets and liabilities of the debtor, the number of creditors, whether the bankruptcy receiver challenges any transactions of the debtor in court, the court's caseload, and any defensive pleadings pursued by the secured creditor etc. Although there is no general rule, according to our experience, more complex bankruptcy proceedings may take up to 12 months.	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	The amount of court fees is approx EUR 25; however, the costs of the proceedings may also include compensation for and expenses incurred by the insolvency administrator and members of the creditors' committee. Hourly fees or a fixed fee and success fee may be agreed upon between the attorney and the client.	

3. AUSTRIA

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The information contained in this chapter on dispute resolution in Austria was correct as of 1 January 2011.

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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 courts. 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 in Austria.

The Labor and Social Court is a Regional Court but only has jurisdiction to rule on 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, including claims in excess of EUR 10,000. However, the majority of cases are disputes arising 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, commercial matters, cases of administrative review and labor and social security disputes. It is the court of third instance in almost all the cases within its jurisdiction. Grounds of appeal to the Supreme Court are limited to substantive law and egregious procedural issues.

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 determining 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 a complaint is filed, the court will consider whether it has jurisdiction over the claim. 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. The trial is held and decided upon before a judge or panel of judges depending on the type and stage of the proceedings.

Trials serve the important purpose of allowing for the presentation and gathering of evidence. Evidence presented by either party during the proceedings may include documents, witnesses, expert 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 attorneys for the parties. 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; in 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 a year. The Supreme Court usually renders its judgment within a year.

A party may also request interim remedies. A court may order a preliminary injunction 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 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. 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 costs are divided on a pro-rata basis.

In Austria, contingency fees that entitle an attorney to a certain percentage of the amount obtained by the claimant are prohibited. The calculation of legal fees is 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

The new Austrian Insolvency Act (*Insolvenzordnung*) which came into force on 1 July 2010 distinguishes between three types of insolvency proceedings:

(a) bankruptcy proceedings (*Konkursverfahren*);

(b) restructuring proceedings where a bankruptcy receiver is appointed (*Sanierungsverfahren ohne Eigenverwaltung*); and

(c) restructuring proceedings where the debtor retains the right to self-administration (*Sanierungsverfahren mit Eigenverwaltung*).

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 restructuring proceedings is to enable the debtor to continue its business and to be discharged from its debts (*Restschuldbefreiung).*

Further, the Austria Business Reorganisation Act 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 restructuring) proceedings is that the debtor is illiquid, or in cases where the debtor is a corporate entity, either illiquid or 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*).

Both debtors and creditors have the right to file a petition for bankruptcy; however, a petition for the commencement of restructuring proceedings can only be filed by the debtor. In addition, 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 restructuring proceedings without culpable delay, and in any case, no later than 60 days. The debtor may already file for the opening of restructuring proceedings in case of threatened illiquidity.

The purpose of bankruptcy proceedings is to determine the value of the debtor's estate (*Konkursmasse*), to realize the debtor's assets and to distribute the proceeds among its creditors. Rights of secured creditors remain in principle unaffected. The costs of the insolvency proceedings including the court-appointed bankruptcy receiver's´ fees rank as priority claims. In effect, the unsecured creditors bear the costs of the proceedings. After liquidation and distribution of the debtor's estate the bankruptcy proceedings are terminated by 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, provided the debtor within such period, comes into possession of any assets. In the case of a corporate debtor, bankruptcy usually leads to the ultimate dissolution of the company, thus preventing later recourse to the debtor for payment of outstanding amounts.

Restructuring 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 has to offer a restructuring plan (*Sanierungsplan*) which must be approved by the majority of its (unsecured) creditors and the insolvency court. Rights of secured creditors remain in principle unaffected. The new Insolvency Act provides for the following two types of restructuring proceedings:

In restructuring proceedings where a bankruptcy receiver is appointed (*Sanierungsverfahren ohne Eigenverwaltung*) the debtor looses its right to dispose over its assets and the court-appointed bankruptcy receiver manages the insolvency estate. The debtor must offer a minimum payment of 20 % of the debts within a period of two years to its unsecured creditors. .

In restructuring proceedings where the debtor retains the right to self-administration (*Sanierungsverfahren mit Eigenverwaltung)* the insolvency court appoints a restructuring administrator that supervises the debtor and has to approve certain transactions. The debtor can be discharged from its debts by paying a minimum quota of 30 % to its unsecured creditors within a period of two years.Further since 1995, a special insolvency regime has applied to natural persons (entrepreneurs and private individuals). This became necessary since natural persons facing financial difficulties are often unable to meet the requirements for a restructuring plan, 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.

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

In all types of insolvency proceedings unsecured creditors have to file their insolvency claims within a deadline set by the insolvency court. If a creditor fails to meet this deadline, a further creditor's hearing may be scheduled at the expense of the creditor who failed to meet the deadline.

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. The settlement of disputes through arbitration allows for expeditious proceedings and the international treaties signed by Austria make arbitral 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 trial. 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 had 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 and to improve Austria's standing as the most attractive place for arbitration in Europe.

In addition to the International Arbitral Center of the Federal Economic Chamber, there is also a specialized arbitral panel 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.

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

- Public law matters, including marital and family matters;
- Penal law matters;
- Enforcement matters;
- Insolvency matters;
- Tenancy matters, including disputes on the termination of contracts regarding the lease of apartments and claims relating to the Non-Profit Housing Act;
- Claims for the contribution of the share capital of a limited liability company; and,

- Collective labor matters and Employment Law disputes, except for disputes arising from employment contracts for managing directors of limited liability companies and stock corporations.

In addition, consumer arbitration agreements and certain labor arbitration agreements have stricter form and content requirements. According to Section 617 of the Code of Civil Procedure, arbitration agreements to which a consumer is a party must be contained in a document which is holographically signed by the consumer. This document must not contain any agreements other than those referring to the arbitration procedure (Section 617 paragraph 2 CPC). In arbitration proceedings between an entrepreneur and a consumer, the consumer must, prior to concluding the arbitration agreement, be provided in advance with a written notice regarding the significant differences between arbitration and court proceedings (Section 617 paragraph 3 CPC). The seat of arbitration must be stipulated (Section 617 paragraph 4 CPC). Individual negotiation of the arbitration agreement is not expressly required.

In order to be valid and legally binding, the arbitration agreement must be in writing between the parties, and the writing must provide the parties' indication to solve any disputes arising out of the parties' contractual relationship through arbitration. In addition to being in writing, the arbitration agreement must contain the names of the parties and 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 arbitrators. 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 chair of the arbitral tribunal. If, however, the parties fail to appoint an arbitrator or the arbitrators fail to appoint a chair, the court is competent to appoint the arbitrators.

The parties may address requests for interim measures to either the domestic courts or the arbitral tribunal. Consequently, an arbitral tribunal’s competence includes the issuance of interim protective measures, unless the parties have agreed otherwise (Section 593 CPC). Any interim measures shall be issued in writing. The arbitral tribunal may require a party to provide appropriate security in connection with such measures.

Interim measures issued by an arbitral tribunal must always be enforced by the state courts. Subject to the list of grounds for refusal contained in Section 593 paragraph 4

CPC, domestic courts generally enforce interim measures issued by arbitral tribunals, regardless of whether the seat of arbitration is within Austria or not.

According to Section 593 paragraph 3 CPC, the competent district court shall enforce such measures upon the request of a party. Where a measure provides for a means of protection unknown under Austrian law, the court may enforce such protective measure which comes closest to the measure ordered by the arbitral tribunal (Section 593 paragraph 3 CPC).

According to Section 593 paragraph 4 CPC, a court may only refuse enforcement if

- the seat of arbitration is in Austria and the measure suffers from a defect which constitutes grounds for setting aside an arbitral award (pursuant to Sections 611 paragraph 2, 617 paragraphs 6 and 7 and 618 CPC);
- the seat of arbitration is not within Austria and the measure suffers from a defect which would constitute a grounds for refusal to recognise and enforce a foreign arbitral award;
- the enforcement would be incompatible with an Austrian or foreign court measure;
- the means of protection is unknown under Austrian law and no appropriate means as provided by Austrian law were requested.

According to Section 593 paragraph 6 CPC, the court shall set aside the enforcement if:

- the term of the measure as set by the arbitral tribunal has expired;
- the arbitral tribunal has limited the scope of or set aside the measure;
- a ground specified in Section 399 paragraph 1 (1)-(4) of the Enforcement Act is given; or
- security was provided, making the enforcement unnecessary.

Austrian arbitration law contains an exhaustive list of the grounds for challenging arbitral awards (Section 611 CPC). Such grounds for challenge include

- lack of jurisdiction;
- *ultra petita*;
- lack of due process;
- improper composition of the arbitral tribunal;
- violation of Austrian procedural *ordre public*;
- non-arbitrability of the subject matter; and
- violation of substantive Austrian *ordre public*.

According to Section 611 paragraph 4 CPC, a challenge must be filed within 3 months from the receipt of the award.

Overall, Austrian courts have a very friendly attitude towards arbitration. Consequently, Austrian businesses 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, there are 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 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 a judgment that is 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 Article 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:

- 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, have jurisdiction over the legal matter;
- The opposing party was not properly served with the document that initiated the foreign proceedings;
- The opposing party could not properly participate in the foreign proceedings due to irregularities in the proceedings; or,
- The judgment 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.

Regarding the enforcement of foreign awards, Austria is party to the 1958 New York Convention on 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. Austria is also party to the 1961 European Convention on International Commercial Arbitration.

Dispute Resolution in Austria

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	**Simple cases:** *first instance*: 1 year; *second instance*: 6 to 12 months*; third instance*: within 1 year **Complex cases:** *first instance*: 1 to 3 years; *second instance*: 8 to 18 months; *third instance*: 10 to 18 months	
Approximate Costs **Court Fees**	**Court fees are based on the Court Fees Act** and depend on the amount in dispute. Examples: ▪ Amount in dispute € 500,000: Court fees: € 7.661 in first instance ▪ Amount in dispute € 1,000,000: Court fees: € 13,661 in first instance ▪ Amount in dispute € 5,000,000: Court fees: € 61,661 in first instance	▪ Litigation costs include court fees, attorneys' fees and expenses for expert opinions and witnesses. ▪ Court fees have to be paid upon filing the claim. ▪ Court fees in the first and second instances are to be paid by the party filing the appeal. ▪ If a claim is filed by a foreign party and enforcement of a decision on reimbursement of litigation costs is not safeguarded, the foreign party can be ordered to pay a security deposit.
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** *first instance*: preparation of two briefs, four hearings with a duration of 1h, 2h, 4h, and 6h, respectively, preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 35,000 to 50,000; *second instance*: one brief, no hearing: € 8,000 to 20,000; *third instance*: one brief, no hearing: € 7,000 to 18,000	▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, reimbursement of attorney fees only has to be made on the basis of the fees provided for in the Act on Attorneys' Tariffs. ▪ The actual attorney fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are of no relevance to the opposing party. ▪ Agreements on Quota litis and contingency fees are generally prohibited for Austrian lawyers in all types of proceedings.
Complex case	**Assumptions based on an amount in dispute of € 10,000,000**: *first instance*: preparation of 4 comprehensive briefs, six hearings with a duration of 2h, 4h, and 4 x 8h; preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 75,000 to 250,000 *second instance*: one brief, no hearing: € 30,000 to 60,000; *third instance*: one brief, no hearing: € 25,000 to 50,000	
Jury Trials	There are no civil jury trials in Austria.	
Class Actions	Limited	The Austrian Code of Civil Procedure does not provide for a special proceeding for collective redress. Traditional tools of multiparty

		practice such as joinder and consolidation of proceedings are applied. Consumer organizations often have similar claims of consumers assigned to them and file one complaint.
Document Production	Limited	▪ There is no formal discovery in Austria. ▪ Documents are subject to disclosure if a party itself referred to the document in the course of the proceedings. The party is obliged to hand the document over by substantive law, or the document is qualified as a "joint deed" between the parties. ▪ A court order to produce such documents is not enforceable. Failure to comply with a court order can only be considered by the court in its evaluation of the case.
Mandatory Presentation by Counsel	Generally yes	In cases before district courts where the amount in dispute is lower than EUR 5,000, or in matters where district courts have exclusive jurisdiction (e.g. family maters, tenancy), presentation by counsel is not mandatory.
Pro Bono System	Yes	There is legal aid for people who can't afford the cost legal proceedings.
Preliminary Injunction Proceedings		
Approximate Duration	Generally, a decision on a request for a preliminary injunction is rendered between 1 day and 3 weeks. *Appellate proceedings:* 1 to 3 months in second instance and 2 to 4 months in third instance.	▪ With the request for a preliminary injunction, the applicant must provide available evidence, such as documentary evidence and affidavits that can be immediately examined by the court; foreign-language documents should be presented with German translations.
Approximate Costs **Court Fees**	If the request for a preliminary injunction is applied for with the original complaint, no extra court fees have to be paid. If the request for a preliminary injunction is filed outside the main proceedings, the court fees are reduced to half in first instance. Except for some exceptions, the full court fees of second and third instance apply for appeals.	▪ Witnesses should be readily available, so that they can appear on short notice before the Court. ▪ The court may order the applicant to pay a security deposit. In practice, it is advisable to offer a security deposit if the demonstration of the claim faces challenges. ▪ No litigation costs will be awarded to the applicant in preliminary injunction proceedings. ▪ Costs incurred by a successful applicant in preliminary injunction matters can only be sought in the main proceedings.

Attorneys' Fees (net) *Simple case* *Complex case*	**Assumptions: only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent:** € 4,000 to 8,000 in first instance; second instance: one brief, no hearing:€ 6,000 to 10,000 Third instance: one brief, no hearing: € 6,000 to 10,000 **Assumptions: Apart from filing the request for a preliminary injunction, two comprehensive counter-statements are filed in reply to two statements of opponent; witnesses are heard:** Total costs (including meetings with client/witnesses) of first instance:€ 30,000 to 50,000; second instance: one brief, no hearing: € 20,000 to 45,000; third instance: one brief, no hearing: € 20,000 to 45,000	
Arbitration Proceedings		
Approximate Duration	The usual duration of arbitration proceedings is between 8 months and 2 years.	
Approximate Costs **Procedural Costs**	The procedural costs depend on whether a sole-arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case and the administrative charges. The following two estimates are based on the procedural costs of the Rules of Arbitration and Conciliation of the Vienna International Arbitral Centre (VIAC). **Assumption: sole arbitrator appointed and an amount in dispute of € 1,000,000** Total costs: registration fee of € 2,000, administrative fees of € 11,000 and fees for a sole arbitrator of € 26,500	▪ The costs of arbitration to a large extent depend on the arbitration agreement and the amount in dispute, the amount of documents, number of witnesses and whether expert opinions are required. The costs of arbitration also include the fees of arbitrators and administrative charges. ▪ The arbitrators usually have large discretion regarding the award of costs. However, in practice the award on costs often depends on the outcome of the case. The award of legal fees is usually not determined by reference to a statutory tariff.

	Assumption: sole arbitrator and an amount in dispute of € 10,000,000. Procedural costs: registration fee of € 2,000; administrative fees of € 20,500 and fees for a sole arbitrator of € 74,500 In the case there is an arbitral tribunal with three arbitrators, it may be that the fees for the arbitrators triple.	
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 100,000	
Complex case	**Assumptions based on an amount in dispute of € 10,000,000:** Review of 1000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 250,000	
Document Production	Limited	Usually the IBA Rules on the Taking of Evidence are applied which provide for a narrow document production.

Dispute Resolution in Austria

Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	1 to 2 months until a decision on recognition and enforcement is rendered in first instance. 3 to 6 months if the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	▪ Under EC Regulation 44/2001 and the Lugano Convention, the party seeking recognition/enforcement must submit a copy of the judgment which should be accompanied by a Certificate of Authenticity issued either by the court that rendered the judgment or by another competent institution of the state of origin. ▪ In order to avoid any delays, attaching a certified translation of the judgment is highly recommended. ▪ Judgments that fall outside the scope of application of the EC Regulation/ Lugano Convention must be submitted in the original or in a copy issued by the court that rendered the judgment. ▪ Further, a certified translation of the judgment must be submitted. ▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	 For a declaration of enforceability no court fees have to be paid. For specific execution actions court fees are based on the Court Fees Act Application for recognition/enforcement: *Simple case*: € 400 to 600 *Complex case*: € 2,000 to 5,000	
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	The commencement of insolvency proceedings is published by edict on the website of the Austrian Ministry of Justice under http://www.edikte.justiz.gv.at. In the edict, the period for filing of insolvency claims is set.	
Approximate Duration	1 year to several years; in very complex cases, a duration of more than 10 years is possible	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	Court fees of € 20 for each filing Filing of insolvency claim: *Simple case*: € 400 to 600; *Complex case*: € 2,000 to 5,000	

4. BOSNIA AND HERZEGOVINA

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The information contained in this chapter on dispute resolution in Bosnia and Herzegovina was correct as of 1 January 2011.

If you have any questions about the content of this chapter, or would like further information about dispute resolution in Bosnia and Herzegovina, please contact:

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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 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 judge to judge.

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 only be brought 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 estate 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 from 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 jurisdictional 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 recently underwent a significant change. In 2008, the RS introduced commercial courts that started functioning in 2010. The commercial courts in RS are competent to resolve disputes and matters in civil and extra-ordinary proceedings, which relate to issues arising out of contracts concluded between legal entities regarding legal transactions involving goods, services, securities, ownership and other rights as well as for disputes and matters related to the bankruptcy, ships, planes, copyrights, foreign investments, establishment of legal entities, etc. The commercial courts are established on two levels: 5 first instance District Commercial Courts and the second instance Higher Commercial Court, with its seat in Banja Luka, which decides on appeals from decisions of the District Commercial Courts as well as on the competency issues and establishment of legal standards for the uniform application of laws.

The RS court structure therefore consists of: (i) 13 Basic Courts (*Osnovni sudovi)* which have authority in criminal, civil and enforcement proceedings under conditions set out by the Law on Courts in RS; (ii) 5 District Courts (*Okružni sudovi*); (iii) 5 District Commercial Courts (*Okružni privredni sudovi)*; (iv) the Higher Commercial Court (*Viši privredni sud*); and (v) the Supreme Court of RS (*Vrhovni sud RS*). Appeals from awards of the Basic Courts may be filed with the competent District Courts. 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, with essentially the same competences 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 delivering the lawsuit to the defendant. 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 of the award by the court of first instance to the competent Cantonal Court in FBiH or District Court/Higher Commercial 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) or BAM 20,000 (approx. EUR 10,000) for commercial disputes in the RS.

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 FBi*H), 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 enter into 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 enter into 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 District Commercial Courts in RS. Bankruptcy proceedings are controlled by a single Bankruptcy Judge (*stečajni sudija*). The bankruptcy procedure is initiated with the 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 be liable with the company for the company's debts. In RS, to initiate a bankruptcy procedure against a company in which the state owns a majority of the share capital and which is (i) in the process of restructuring 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 the 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 enter into bankruptcy proceedings, the Bankruptcy Judge will commence the bankruptcy procedure, appoint a Bankruptcy Administrator, 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 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. The court registers must be notifed of the opening of the bankruptcy procedure 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 the 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 asset sale and liquidation or they will opt for the reorganization of the company. Reorganization of the company is an important novelty in the BiH bankruptcy system and has provided for better long-term settlement of claims. At the same time, the insolvent company gets an opportunity to continue with business activities and overcome difficulties.

Upon the request of creditors, a reorganization plan may be drafted and submitted to the Bankruptcy Court by the insolvent company before commencement of the bankruptcy procedure or the appointment of a Bankruptcy Administrator. 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 the 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 approx. 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.

4.4 Arbitration

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

Arbitration legislation is contained in Articles 434 – 453 of the FBiH Code of Civil Procedure and in Articles 434 – 453 of the RS Code of Civil Procedure. Both acts are valid for both domestic and international arbitration proceedings; however, for arbitration proceedings to be classed as international, a foreign element must exist.

The Arbitration Court attached to the Foreign Trade Chamber of Bosnia and Herzegovina has existed since 2003 and administers both domestic commercial disputes, i.e. disputes which involve parties only residing in BiH and commercial disputes between a party residing in BiH and a party with a foreign residence.

Arbitration may be initiated only on the basis of a written agreement signed by both parties. Any written proof, such as fax, email or postal correspondence is considered sufficient. Furthermore, an arbitration agreement is considered valid if the respondent does not contest the existence of such an agreement. An arbitration agreement may be part of a contract or contained in a separate document, i.e. in general terms and conditions which apply to the legal relationship between the parties. There are no specific content requirements for an arbitration agreement. However, the agreement should state the parties to the agreement and the subject-matter of the agreement, plus indicate clearly that a single dispute or all disputes that may arise from a certain contractual legal relationship will be subject to arbitration.

Generally disputes concerning all commercial transactions may be submitted to arbitration. Claims involving family law and claims under administrative proceedings that cannot be brought before the courts but are decided by state agencies are not arbitrable. The parties are free to decide on the language of arbitration and on the applicable procedural rules that will govern the proceedings and may also decide on the number and method for selecting the arbitrators. There may only be an odd number of arbitrators. Provided that a foreign element exists, the parties are free to agree on any substantive law.

The applicable legislation does not provide for any specific rules on interim measures in relation to arbitration proceedings.

An arbitral 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. These include:

- the invalidity or ineffectiveness of the arbitration agreement or no arbitration agreement existed;

- the conduct of the proceedings or the rendering of the award were not in accordance with the parties' agreement;
- the award does not contain reasoning or was not signed;
- the award was made in a dispute not falling within the terms of the statement of claim or contains decisions beyond the statement of claim;
- the reasoning in the award is inadequate or contradicts the findings of the arbitral tribunal; or
- an infringement of BiH public order.

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.
- The competent court in BiH has not already decided on the subject matter of the foreign judgment and/or it has not already recognized other foreign judgment for the same subject matter.
- 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 (it is common under the current court practice that factual reciprocity is required, rather than legal). 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 recognition:

- The subject matter of the foreign arbitral award is not exempt from arbitration according to BiH law;
- The subject matter of the foreign arbitral award is not under the exclusive jurisdiction of the BiH courts or other authorities;

- The foreign arbitral award does not contradict 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 arbitration agreement and such agreement is valid and binding;
- The party against which the arbitral award has been rendered was duly informed of the appointment of the arbitral tribunal and of the arbitration proceedings and there were no obstacles for such party to participate in the arbitration proceedings;
- The composition of the arbitral tribunal and the arbitration proceedings were in accordance with the provisions of the arbitration agreement and the arbitration rules;
- The arbitral tribunal has not exceeded its authority determined by the arbitration agreement;
- The foreign arbitral award is final and enforceable; and
- The foreign arbitral award is not ambiguous or contradictory.

BiH is a party to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958, with the reservations that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state, will only be applied to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law and will only be applied to those arbitral awards which were adopted after the entry into effect of the Convention. In addition, BiH is a party to the 1961 European Convention on International Commercial Arbitration.

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

Dispute Resolution in Bosnia and Herzegovina

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings [1]		
Approximate Duration	**Simple cases:** *first instance*: 1 to 2 years (please note that the practice of different courts varies to a great extent, therefore, it is difficult to make accurate assumption. E.g. cases brought before Municipal court in Sarajevo would in general last for shorter period of time than if brought before courts in other cities in FBiH); *second instance*: 6 months to 2 years*; third instance*: 1 - 2 years. **Complex cases:** *first instance*: 1 to several years; *second instance*: 1 to 3 years; *third instance*: 1 to 3 years.	▪ Duration and costs of the standard civil proceeding initiated before first instance courts in FBiH differ to a great extent from municipality to municipality and usually depend on practice and backlog of cases at the respective court. ▪ Litigation costs include court fees, attorney fees and expenses (e.g. expert opinions, travel expenses for witnesses). ▪ Court fees have to be paid upon filing of the claim. ▪ Court fees in the first and second instances are to be paid by the party filing the appeal. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. However, to losing party will only reimburse the minimum amount in accordance with the relevant regulation, regardless of the amount agreed between the winning party and its attorney which may be significantly higher. The actual attorney fees of a party (depending on the fee agreement between attorney and client) may thus be substantially higher, but are of no relevance to the opposing party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. ▪ Agreements on Quota litis are generally prohibited for BiH lawyers in all types of proceedings.
Approximate Costs **Court Fees**	**Court fees are based on the Law on Court Fees, which can vary from canton to canton**[2] and depend on the amount in dispute. Examples for Canton Sarajevo: ▪ If the amount in dispute is up to BAM 1,000 (app. EUR 500) – 5% of the amount in dispute for lawsuit and judgment, double that amount for appeal; ▪ If the amount in dispute is up to BAM 5,000 (app. EUR 2,500) – 4% of the amount in dispute for lawsuit and judgment, double that amount for appeal; ▪ For amounts in dispute above BAM 5,000 (app. EUR 2,500) – 3% but cannot exceed the amount of BAM 10,000 (app. EUR 5,000) for lawsuit and judgment, double that amount for appeal.	

[1] Please note that information provided in this guide is valid for Federation of Bosnia and Herzegovina only.

[2] The FBiH is divided into 10 cantons, and each canton has it own regulations related to the court fees.

Attorneys' Fees (net) *Simple case*	**In accordance with the Attorney's Tariffs:** **Assumptions based on an amount in dispute of BAM 1,000,000 (app. EUR 500,000):** *first instance*: preparation of lawsuit BAM 12,600 (app. EUR 6,300); preparation and presence at preliminary hearing (meetings with client, witnesses, correspondence with client, etc.) BAM 12,600 (app. EUR 6,300); preparation and presence at main hearing BAM 12,600 (app. EUR 6,300); In total BAM 37,800 (app. EUR 18,900); *second instance*: drafting appeal, no hearing: BAM 15,750 (app. EUR 7,875); *third instance*: one brief, no hearing: BAM 18,900 (app. EUR 9,450).	
Complex case	**Assumptions based on an amount in dispute of BAM 10,000,000 (app. EUR 5,000,000):** *first instance*: preparation of lawsuit BAM 52,200 (app. EUR 26,100); preparation and presence at preliminary hearing (meetings with client, witnesses, correspondence with client, etc.) BAM 52,200 (app. EUR 26,100); preparation and presence at main hearing BAM 52,200 (app. EUR 26,100); In total BAM 156,600 (app. EUR 78,300); *second instance*: drafting appeal, no hearing: BAM 65,250 (app. EUR 32,625); *third instance*: one brief, no hearing: BAM 78,300 (app. EUR 39,150) **It should however be noted that there is a limit imposed by the parliament to the amount that can be charged by an attorney for a single action (preparation of lawsuit, representation at the hearing, etc.) which corresponds to the average salary in FBiH, which is currently around**	

	BAM 800 (app. EUR 400). The actual attorneys' fees may be higher (depending on the agreement with the client), but this has no influence on the obligation of the losing party to reimburse the costs to the winning party.	
Jury Trials	There are no jury trials in Bosnia.	
Class Actions	Limited	The FBiH Law on Civil Proceeding does not provide for a special proceeding for collective redress. Traditional tools of multiparty practice such as joinder and consolidation of proceedings are applied. Consumer organizations often have similar claims of consumers assigned to them and file one complaint.
Document Production	No	▪ Documents are subject to disclosure if the party itself referred to the document in the course of the proceedings, the party is obliged to hand the document over by substantive law, or the document is qualified as a "joint deed" between the parties. A court order to produce such documents is not enforceable. Failure to comply with the order can only be considered by the court in its evaluation of the case. ▪ The court may, however, order a third party to disclose certain document if such party is obliged to disclose it by substantive law, or the document is qualified as a “joint deed” between such third party and a party to the proceeding that initiated the disclosure. Such order can be enforced in accordance with the Law on Enforcement Proceedings.
Mandatory Presentation by Counsel	No	The presentation by counsel in civil cases is not mandatory.
Pro Bono System	Yes	There is legal aid for people who can't afford the costs of legal proceedings.
Preliminary Injunction Proceedings		
Approximate Duration	In practice, resolution on preliminary injunction is rendered between 2 months and a year. The procedure is generally more efficient in family matters.	▪ The preliminary injunction can be proposed before the start, during and upon completion of the court proceedings until enforcement is finished.

Approximate Costs **Court Fees**	**Example for Canton Sarajevo:** 50% of the fees for the regular civil proceeding, but cannot exceed BAM 1,000 (app. EUR 500) both for the motion and court's decision.	▪ With the request for a preliminary injunction the applicant must provide available evidence, e.g. documentary evidence and affidavits that can be examined by the court right away; foreign-language documents should be presented with translations into one of the official languages in BiH (Serbian, Bosnian or Croatian). ▪ The applicant must advance the costs of the preliminary injunction proceeding, if the request for preliminary injunction is applied for out of main proceeding. ▪ The court will decide who and when will bear the costs of the preliminary injunction proceeding, if the request for preliminary injunction is applied for during the civil proceeding. ▪ The court may order the applicant to pay a security deposit.
Attorneys' Fees (net)	75% of the fees that would be charged by the attorney for actions in a standard civil proceeding (which depend on the amount in dispute); the same is for the motion, response to the motion as well as representation at the possible hearings in relation to the preliminary injunction.	
Arbitration Proceedings		
Approximate Duration	Arbitration proceedings are seldom used in BiH and the practice is seriously limited. Therefore, it is very difficult to give any estimates as to the duration, costs and other matters relevant to arbitration proceedings.	Institutional arbitration is regulated by the Arbitration Rules adopted by the Foreign Trade Chamber of BiH. However, up to date no arbitration proceedings have been initiated before the Foreign Trade Chamber of BiH.
Approximate Costs **Procedural Costs**	The procedural costs depend on whether a sole arbitrator or an arbitral tribunal is appointed. The following estimates are based on the procedural costs of the Arbitration Rules of the Foreign Trade Chamber of BiH. **Assumption: sole arbitrator appointed and an amount in dispute of € 1,000,000:** Administrative costs: € 3,060; Fee for a sole arbitrator: € 10,200. In total: € 13,260 **Assumption: sole arbitrator appointed and an amount in dispute of EUR 10,000,000:** Administrative costs: € 9,480; Fee for a sole arbitrator: € 31,600. In total: € 41,080 In case of an arbitral tribunal, the arbitrators' costs will be	

Attorneys' Fees (net)	multiplied by the number of arbitrators, minus 20%. According to the Attorney's Tariff, attorney's fees for all actions in arbitration proceedings are the same as the fees in standard civil proceedings. In addition, for representation of the client in international arbitration proceedings, the attorney is entitled to double the amount of fees as in standard civil proceedings.	
Document Production	No	There are no special provisions in the Arbitration Rules of the Foreign Trade Chamber of BiH regarding document production and therefore, the general rules of the Law on Civil Proceeding are applicable.
Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	Up to one year, if appealed even longer. The procedure is generally more efficient in family matters.	The following must be submitted along with the motion for recognition/execution of the foreign judgments / arbitral awards: ▪ Original or certified copy of the foreign judgment or a foreign arbitral award which recognition is sought including certification from the competent authority that the award became legally valid and binding under the law of the country where the award was rendered. ▪ Official translation of foreign judgment or a foreign arbitral award. ▪ Proof that the court fee has been paid.
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	**Example for Canton Sarajevo:** BAM 100 (EUR 50) for motion for recognition; BAM 200 (app. EUR 100) for appeal; fees for court's decision depend on the amount in dispute and are calculated in the same way as for the standard civil proceeding. Application for recognition of the foreign judgment/arbitral award – 50% of the fees that would be charged by the attorney for actions in standard civil proceeding. Attorney's fees for all actions in enforcement proceedings are the same as the fees in standard civil proceedings.	

Insolvency Proceedings		
Filing of Insolvency Claims by Creditors		In a case of insolvency of a company, either the company itself or any person/entity with a legal interest (e.g. a creditor whose claims are accrued and unsettled) is entitled to file a petition for bankruptcy proceedings. In the relevant court practice and legal theory, a third party is not entitled to seek opening of the bankruptcy proceeding, if such party can recover its debt through a less burdensome process. Accordingly, it would be considered that a secured creditor does not have the necessary legal interest for initiation of the bankruptcy proceeding if such creditor has an enforceable title over the collateral. However, if a secured creditor proves that its claims would not be fully settled from the value of the collateral in the course of the enforcement proceeding, it would generally be considered that such creditor has necessary legal interest for initiation of the bankruptcy proceeding.
Approximate Duration	1 year to several years; in very complex cases, duration of more than 10 years is possible.	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	**Examples for Canton Sarajevo** for filing: BAM 100 (app. EUR 50); for appeal against the court decision - 1% of the value of the claim but in any case not less than BAM 100 (app. EUR 50) or more than BAM 10,000 (app. EUR 5,000). Attorneys' fees for filing the motion for opening of the insolvency proceedings are the same as fees applicable in standard civil proceedings. Other actions are generally charged at 50% of the fees for standard civil proceedings.	

5. BULGARIA

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The information contained in this chapter on dispute resolution in Bulgaria was correct as of 1 January 2011.

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5.1 Legal System

Bulgaria has a parliamentary republic form of government that operates within the limits of the division of powers between the legislative, executive and judicial branches specified by the Constitution adopted in 1991. By virtue of being an EU member state

since 1 January 2007, Bulgaria is a party to the various EU Treaties and must comply with EC Regulations and national implementation of EC Directives.

The Bulgarian court system consists of Regional Courts, District 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 laws passed by parliament (the "National Assembly").

Litigation in civil and commercial cases and recognition and enforcement of decisions and other acts of competent authorities of EU Member States is governed by the Civil Procedural Code (promulgated in State Gazette Issue No. 59/20.07.2007, in force as of 01.03.2008, as amended). 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 and 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) and the applicable EU legislative acts, including Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

5.2 Litigation

The Bulgarian Regional Courts and District Courts decide both civil and criminal cases. Jurisdiction 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;
- Civil claims and Commercial disputes pursuant to the Commercial Act, 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;
- Real estate claims exceeding BGN 50,000 (approx. EUR 25,000); 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 thirty-two (32) District and Administrative Courts, including the Sofia City 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**:**

- Issuing amending, terminating or proclaiming administrative acts invalid;
- Proclaiming agreements concerning administrative cases invalid;
- Protection against unjustified actions and/or omissions of the Administration;
- Protection 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;
- Proclamation of invalidity, revocation or repeal of decisions of the Administrative Courts; and,
- Establishing the lack of authenticity of administrative acts.

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 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 seat and registered address.

Insolvency law applies to all business entities, with the exception of public monopolies and public entities established under special legislation. 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.

A debtor, an appointed liquidator or a creditor may initiate insolvency proceedings. The National Revenue Agency appears as creditor on behalf of the state.

Generally, a debtor is required to file for bankruptcy within thirty (30) days after becoming insolvent or overindebted. 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 insolvency administrator responsible for: representing and supervising the management of the company (or managing it personally); recording assets; identifying any potential creditors; preparing a report on the reasons for the insolvency, current financial status of the debtor and preservation measures taken already, and suggests a financial recovery plan.

Although the court appoints an interim administrator, a permanent administrator is appointed at the first meeting of creditors. Usually the interim administrator is re-appointed permanently.

Creditors must file outstanding debt claims within one month after the registration of the decision to open insolvency proceedings in the Trade Registry, and the trustee must compile a list of creditors within fourteen (14) days from the opening of the insolvency proceedings. However, a two-month grace period is allowed for additional filing of claims, subject to certain restrictions.

Under the Commercial Act, the approval of a restructuring plan is the core of the formal composition proceedings. A restructuring plan can be proposed no later than one month following the date of announcement in the Trade Registry of the court's ruling approving the list of claims. A restructuring plan can be proposed by the: (i) debtor, (ii) administrator, (iii) creditors holding at least one-third of the secured claims, (iv) creditors holding at least one-third of the unsecured claims, (v) shareholders holding at least one-third of the capital of the debtor, and (vi) 20 % of the total number of the debtor's employees.

Once a plan (or plans) is presented, the court has to asses whether it meets the statutory requirements in order to submit it for approval at the meeting of creditors. In the event the statutory requirements are not met, the petitioner is allowed to modify the plan within seven (7) days.

A restructuring plan is considered to be accepted once the plan has been approved by a majority of each of the classes of creditors involved in the proceedings. After it has been accepted by the creditors, the court must approve the plan officially. Upon the approval of the restructuring plan, the court will terminate the insolvency proceedings and a judicially appointed supervisor will oversee the implementation of the plan.

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

The law sets forth the following priority of payments:

- claims secured by a pledge or mortgage;
- claims secured by a lien;
- insolvency costs;

- claims arising out of employment contracts, before the opening of the insolvency proceedings;
- obligations (allowance) owed by the debtor to third parties by operation of law;
- public claims of the state and the municipalities such as taxes, customs duties, social security contributions, which have arisen before opening of the insolvency proceedings;
- claims which have occurred after the opening of insolvency proceedings;
- all other unsecured claims that have arisen before the opening of insolvency proceedings;
- unsecured claims for interest payment which have become due and payable after the opening of insolvency proceedings;
- claims arising out of a credit extended to the debtor by a partner or a shareholder;
- claims arising out of gratuitous transaction; and,
- claims arising from the costs incurred by creditors in connection with their participation in the insolvency proceedings, with the exception of costs for opening of the 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 the accepted creditors for settlement of its debts.

5.4 Arbitration

Arbitration of commercial and civil disputes is regulated by the International Commercial Arbitration Act (promulgated State Gazette Issue No 60/5.08.1988, as amended), and applies to all commercial disputes with the exception of disputes relating to rights *in rem* or factual possession over real estate, employment law or child support, which fall within the subject matter jurisdiction of the Bulgarian Courts. Legal disputes such as those concerning personal status, marital status or alimony are also not arbitrable. Despite its name, and with the exception of certain provisions, the act is also applicable to domestic

arbitration, i.e. to disputes where all involved parties have their domicile or seat in Bulgaria.

The most important arbitral institution in Bulgaria is the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry ("BCCI"). The BCCI was set up in 1886 and reinstated after the Second World War in 1953. It has its own rules of arbitration, currently available in Bulgarian, English, French, Russian and German and maintains three lists of arbitrators (one for domestic arbitrations, one for international arbitrations with only Bulgarian arbitrators and one for international arbitrations including foreign arbitrators). The last amendments to the rules for arbitration proceedings were enacted on 1 February 2008.

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, in which case it shall be considered independent of the other terms of the contract or may be a separate agreement. An arbitration agreement is also considered to exist if the respondent takes part in any arbitration proceedings without challenging the jurisdiction of the arbitral tribunal at the latest with the reply to the statement of claim.

The arbitral tribunal may consist of one or more arbitrators, as determined by the parties, but there must be an odd number of arbitrators. The parties are also free to agree upon the procedure for selecting the arbitrators, the procedural rules to be followed, the seat of arbitration and the language or languages of the arbitral proceedings.

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of one of the parties, order the other party to take appropriate measures for securing the rights of the petitioner. When ordering such measures, the arbitral tribunal may order the petitioner to deposit a security (Section 21 ICAA). However, if a party refuses to cooperate, the interim measures granted by an arbitral tribunal are not enforceable and assistance from the state courts must be requested.

Arbitral tribunals may not order any interlocutory relief or provisional measures on a person or entity who is not a party to the arbitration agreement (e.g. to protect evidence). Such assistance may only be provided by the state courts. Only measures granted by the state courts are enforceable.

Only Bulgarian courts have the competence to order such interim measures in Bulgarian territory.

An arbitral decision and/or award is binding and enforceable. It is subject to appeal before the Supreme Court of Cassation only for certain reasons explicitly listed in the law. The relevant violations include:

- a party had some incapacity at the time of signing the arbitration agreement;
- there was no arbitration agreement or this is found to be null and void;
- a party was not notified of the appointment of the arbitrators or of the arbitration proceedings or was not able to participate in the proceedings for reasons beyond its control;
- the award dealt with a dispute beyond the scope of the arbitration agreement or outside the subject matter of the dispute;
- the composition of the arbitral tribunal or the arbitration proceedings did not conform with the parties' agreement;
- the subject-matter of the dispute is non-arbitrable; or
- the award contradicts the Bulgarian public order.

Once the arbitral award is rendered and enters into force, a Writ for execution of arbitration awards is issued by the Sofia City 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 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.

When an interested party seeks recognition of a court decision the request must be made to the District Court located in the jurisdiction of the corresponding party's registered permanent address. The Court will then decide upon the recognition of the foreign court decision and/or acts. Following the Court's formal recognition, the foreign judgment has the same effect as a domestic decision rendered by a Bulgarian court. The

decision on the recognition 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 is to be filed with the Sofia City Court.

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

- The foreign court or body was competent pursuant to the Bulgarian law principles;
- 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 entered into force 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.

A Third Country Decision becomes enforceable by filing a claim in the Sofia City Court along with a copy of the Third Country Decision, certified by the respective foreign court, and a certificate from the same that the decision has entered into force. The same documents are to be certified by the Bulgarian Foreign Ministry.

Regarding the enforcement of foreign awards, Bulgaria is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state and with regard to awards made in the territory of non-contracting States, the Convention will only be applied to the extent to which those States grant reciprocal treatment. Bulgaria is also a party to the 1961 European Convention on International Commercial Arbitration.

Dispute Resolution in Bulgaria

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	**Simple cases:** *first instance:* 18 months*; second instance:* 1 year; *third instance:* once admitted for hearing: within 1 year **Complex cases:** *first instance:* 2 to 3 years*; second instance: 2* years; *third instance:* once admitted for hearing: 1 year	
Approximate Costs **Court Fees**	**Court fees based on the Court Fees Tariff** The fees payable amounting to 4% of the interest. Example: ▪ Amount in dispute € 500,000: Court fees: € 20.000 in first instance	▪ Litigation costs include court fees, attorneys' fees and expenses for expert opinions and witnesses. ▪ Court fees have to be paid upon filing the claim. ▪ Court fees in the first and second instances are to be paid by the party filing the appeal.
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** *first instance*: preparation of a court claim/ response to court claim, three hearings with a duration of 1h, 2h, 4h, and 6h, respectively, preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 20,000 to 40,000; *second instance*: appeal/response to appeal, one hearing: € 15,000 to 20,000; *third instance*: appeal/response, one hearing: € 15,000 to 25,000	▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, reimbursement of attorney fees could be reduced to the levels provided for in the Regulation on Minimum Attorneys' Fees. ▪ The actual attorney fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are of no relevance to the opposing party.
Complex case	**Assumptions based on an amount in dispute of € 10,000,000**: *first instance*: preparation of a court claim/response to a court claim, six hearings with a duration of 2h, 4h, and 4 x 8h; preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 50,000 to 150,000 *second instance*: appeal/response to appeal, one hearing: € 25,000 to 50,000; *third instance*: appeal/response to appeal, no hearing: € 25,000 to 40,000	▪ Agreements on *Quota Litis* and contingency fees are prohibited for Bulgarian lawyers only in criminal proceedings, but it is recommendable to be avoided in civil and commercial disputes.

Dispute Resolution in Bulgaria

Jury Trials	There are no civil jury trials in Bulgaria.	
Class Actions	The new Bulgarian Code of Civil Procedure introduced special proceedings for collective redress, namely collective claims. The Regulation on Minimum Attorneys' Fees does not provide for separate instructions on structuring fees for such claims and therefore the criteria for awarding reimbursement of attorney fees applied by courts will follow the standard (described above) principles.	
Document Production	Limited	▪ There is no formal discovery in Bulgaria. ▪ Documents are subject to disclosure if the party itself referred to the document in the course of the proceedings, the party is obliged to hand over a certified copy of the document. ▪ A court order to produce such documents is not enforceable. Failure to comply with the order can only be considered by the court in its evaluation of the case.
Mandatory Presentation by Counsel	Not mandatory	
Pro Bono System		There is legal aid for people who can't afford the costs of legal proceedings.
Preliminary Injunction Proceedings		
Approximate Duration	Generally, a decision on a request for a preliminary injunction is rendered between 3 days and 3 weeks. The preliminary injunction becomes an injunction for the full duration of the court proceedings if not lifted.	▪ With the request for a preliminary injunction, the applicant must provide available strong evidence, e.g. documentary evidence and affidavits that can be immediately examined by the court; foreign-language documents should be presented with official Bulgarian translations.
Approximate Costs **Court Fees** **Attorneys' Fees (net)** *Simple case* *Complex case*	If the request for preliminary injunction is applied for together with a complaint in the main proceedings, no extra court fees have to be paid. If the request for a preliminary Injunction is filed outside main proceedings, the court fees are approx. € 20 and attorney fees are generally reduced to half of the fees for the first instance proceedings.	▪ Witnesses should be readily available, so that they can appear on short notice before the Court. ▪ The court may order the applicant to pay a security deposit. It is usually approximately 10% of the interest of the case. ▪ No litigation costs will be awarded to the applicant in preliminary injunction proceedings. ▪ Costs incurred by a successful applicant in preliminary injunction matters can only be sought in the main proceedings.

Dispute Resolution in Bulgaria

Arbitration Proceedings		
Approximate Duration	The usual duration of arbitration proceedings is between 1 and 2 years.	
Approximate Costs **Procedural Costs**	The procedural costs depend on the complexity of the case, the administrative charges, and the interest on the case. The arbitration institutions distinguish between domestic and international arbitration cases. The following are the initial court fees payable to the largest and most established arbitration institution in the country - the Arbitration Court at the Bulgarian Chamber of Commerce and Industry. **Assumption: sole arbitrator appointed and an amount in dispute of €1,000,000** Domestic cases (approximated to € from BGN): € 7,877 International cases: € 8,990 **Assumption: sole arbitrator appointed and an amount in dispute of €10,000,000** Domestic cases (approximated to € from BGN): € 52,877 International cases: € 53,990	
Attorneys' Fees (net) *Simple case* *Complex case*	**Assumptions based on an amount in dispute of € 1,000,000:** Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 70,000	

	Assumptions based on an amount in dispute of € 10,000,000: Review of 1000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 150,000	
Document Production	Limited	
Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	The law distinguishes between enforcement of decisions and acts issued by competent foreign authorities of other EU Member States, and the decisions and acts issued by competent authorities of other foreign countries (Third Country Decisions). Acts issued by courts in EU member states (if submitted for recognition): 1 to 2 months until a decision on recognition and enforcement is rendered in first instance. 3 to 6 months if the decision is appealed. Acts issued by Third Country Courts: 2 to 3 months until a decision on recognition and enforcement is rendered in first instance. 6 months to 1 year if the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	
Approximate Costs **Court Fees**	For a declaration of enforceability, no court fees have to be paid.	▪ Decisions that fall outside the scope of application of the EC Regulation must be submitted in the original or in a copy

Attorneys' Fees (net)	Application for recognition/enforcement: € 26 Attorney's Fees are calculated usually on the basis of the claimed outstanding amounts from creditors. The basic amounts according to the levels provided for in the Regulation on Minimum Attorneys' Fees would be: • interest below € 511 - € 51 ▪ from € 511 to € 2,556 - € 102 + 6% for the amount above € 511 ▪ from € 2,556 to € 5,113 - € 230 + 4% for the amount above € 2,556 ▪ interest above € 5,113 - € 332+ 2% for the amount above € 5,113.	issued by the court that rendered the judgment. ▪ A certified translation of the decision must be submitted. ▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors		The court ruling for commencement of insolvency proceedings is published on the website of the Trade Registry. With the ruling, the period for filing insolvency claims is set.
Approximate Duration	1 year to several years; in very complex cases, a duration of more than 10 years is possible.	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	Court fees for announcement of insolvency of: ▪ Sole trader - € 26; ▪ Company - € 128. Filing of insolvency claim: *Simple case*: Approx. € 400 to 600 *Complex case*: Approx. € 1,500 to 4,000	

6. CROATIA

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The information contained in this chapter on dispute resolution in Croatia was correct as of 1 January 2011.

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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 branches of government. 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).

In addition, 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

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 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 court finds the claimant's claims are well-founded from the supporting facts.

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, which is always available 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), or in other matters if certain additional requirements are met; 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 between companies, sole traders (*trgovci pojedinici; Einzelkaufleute*) and craftsmen (*obrtnici; Gewerbetreibende*), provided that disputes between sole traders and craftsmen relate to the performance of their 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.

Furthermore, the County Court of Zagreb and the Commercial Court of Zagreb have a special competence in matters concerning court assistance to arbitration or challenges of arbitral awards.

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, attorneys' 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 costs 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 attorneys' 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 private individuals may become subject to bankruptcy proceedings is if the individuals are sole traders or craftsmen.

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. For companies registered in Croatia, the competence of an individual Commercial Court's 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 a 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 deems 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, commence main bankruptcy proceedings, and appoint 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 decision on whether or not to institute the bankruptcy proceedings.

Following the court's 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 and sold and the proceeds are 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, whereas 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 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

Arbitration in Croatia is governed by the Croatian Arbitration Act of 2001. The purpose of the new act was to create a modern understandable law based on the UNCITRAL Model

Law and incorporating the main features of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Croatian law distinguishes between domestic arbitration and international arbitration, depending upon the seat of arbitration. For a dispute to be classed as international, at least one of the parties must be an individual with his or her domicile or habitual residence outside of Croatia, or be a legal person established under foreign law. The parties may choose international arbitration, i.e. arbitration proceedings having its seat outside Croatia, only in a dispute which is classed as an international dispute.

There is only one major arbitration institution in Croatia, the Permanent Arbitration Court of the Croatian Chamber of Commerce (PAC-CCC) which has been established since 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.

The parties may generally submit to arbitration all disputes involving rights which the party may freely dispose of. This excludes family law disputes, criminal law matters, administrative law matters, procedural law issues and all other disputes involving mandatory rules of law. In addition, in international arbitration proceedings, 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.

Under Croatian law, an arbitration agreement may be contained in 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 written form. The written form requirement may be satisfied by exchanging letters, faxes, telegrams or other means of communication demonstrating a written record of the agreement. Most importantly, there is no requirement that the writing contain the parties' signatures. In addition, the law provides that the written form requirement of the arbitration agreement is satisfied if an offer is made in writing to enter into an arbitration agreement or a written confirmation is sent of an oral arbitration agreement and by not objecting thereto the offer is deemed accepted under the usual trade customs. Furthermore, the written form requirement would also be satisfied if there is a reference in a bill of lading to a shipping contract that contains an arbitration clause and if the respondent in arbitration proceedings does not challenge the jurisdiction of the arbitral tribunal at the latest in its reply to the statement of claim.

The parties may freely designate the law applicable to the subject-matter of their dispute(s) and other procedural rules such as the language of arbitration, the number of

arbitrators and the method of selecting these. In international arbitration proceedings the parties are also free to designate the seat of arbitration. However, in domestic arbitration, i.e. when only Croatian parties are involved, the seat of arbitration must be in Croatia.

Unless otherwise agreed by the parties, an arbitral tribunal may, upon a request by a party, order such interim or protective measures (against the other party(ies) to the arbitration agreement) as the arbitral tribunal may consider necessary in respect of the subject matter of the proceedings. The party that has requested such measures may also apply to the competent national court for the enforcement of such measures. It is not incompatible with an arbitration agreement for a party to apply to the state courts before or during arbitration proceedings for an interim measure of protection or for a court to grant such a request.

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

There is only a limited list of grounds for challenging an award:

- No arbitration agreement has been concluded, or the agreement is invalid;
- The parties to the arbitration agreement were under some incapacity, or were not adequately represented;
- A party was not given proper notice of the commencement of the arbitration proceedings, or was unable to present its case due to reasons beyond its control;
- 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;
- The award does not adequately or appropriately state the reasoning unless this has been waived by the parties, or the award is not signed; or
- The subject-matter of the dispute is not arbitrable under the laws of the Republic of Croatia; or,
- The award violates the public policy of the Republic of Croatia.

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), with the reservations that the Convention will only be applied to the

recognition and enforcement of awards made in the territory of another contracting state, will only be applied to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law and will only be applied to those arbitral awards which were adopted after the entry into effect of the Convention. In addition, Croatia is a party to the 1961 European Convention 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).

Foreign state-court 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;
- 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.

Dispute Resolution in Croatia

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	**Simple cases:** *first instance*: within 18 months; *second instance*: 1 to 2 years; *third instance*: 2 to 3 years **Complex cases:** *first instance*: 2 to 5 years; *second instance*: 2 years; *third instance*: 2 to 3 years	▪ The duration of court proceedings usually depends on which court hears the case. For example, courts in Zagreb and Split are heavily overloaded with cases, which may cause the proceedings to last longer than they would in other courts.
Approximate Costs **Court Fees**	**Court fees are based on the Court Fees Act** and depend on the amount in dispute. Examples: ▪ Amount in dispute HRK 100,000 (approx. € 13,700): Court fees: HRK 2,700 (approx. € 370) in the first instance ▪ For cases in which amount in dispute is HRK 465,000 (approx. € 63,700) and higher: Court fees are fixed at HRK 10,000 (approx. € 1,370) in the first instance Court fees for appellate proceedings are increased by 25%.	▪ Litigation costs include court fees, attorney fees and expenses (e.g. for expert opinions, travel expenses for witnesses). ▪ Court fees generally include fees for statement of claim and fees for court decision. ▪ Court fees for statement of claim have to be paid upon filing the claim, while court fees for court decision are payable after a court decision has been rendered. ▪ Court fees in the first and second instances are to be paid by the party filing the statement of claim or the appeal. ▪ If a claim is filed by a foreign party and enforcement of a decision on reimbursement of litigation costs is not safeguarded, the foreign party can be ordered to pay a security deposit. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis.
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** *first instance*: preparation of two briefs, four hearings of 1h, 2h, 4h and 6h, respectively, preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 18,000 to 35,000; *second instance*: one brief, no hearing: € 5,000 to 18,000; *third instance*: one brief, no hearing: € 5,000 to 18,000	▪ Attorneys' fees are determined on the basis of the Attorneys' Tariff and depend on the amount in dispute. Attorneys' fees may be agreed differently than as provided in the Tariff. However, a court will only award fees calculated on the basis of the Tariff. ▪ The actual attorneys' fees of a party (depending on the fee agreement between attorney and client) may thus be substantially higher, but are of no relevance to the opposing party.
Complex case	**Assumptions based on an amount in dispute of € 10,000,000**: *first instance*: preparation of 4 comprehensive briefs, six hearings with a duration of 2h, 4h, and 4 x 8h; preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 50,000 to 180,000 *second instance*: one brief, no hearing: € 15,000 to 30,000; *third instance*: one brief, no hearing: € 15,000 to 30,000	

		▪ Agreements on contingency fees are allowed, but the fee is capped at 30% of the awarded amount.
Jury Trials	There are no civil jury trials in Croatia	
Class Actions	Limited	The Croatian Code of Civil Procedure does not provide for a special proceeding for collective redress. Traditional tools of multiparty practice such as joinder and consolidation of proceedings are applied. Consumer organisations often have similar claims of consumers assigned to them and file one complaint.
Document Production	Limited	▪ There is no formal discovery in Croatia. ▪ Documents are subject to disclosure if (i) the party itself referred to the document in the course of the proceedings, (ii) the party is obligated to hand the document over by substantive law, or (iii) the document is qualified as a "joint deed" between the parties. ▪ A court order to produce such documents is not enforceable. Failure to comply with the order can only be considered by the court in its evaluation of the case.
Mandatory Presentation by Counsel	Generally no	Except for some exceptions, counsel presentation is only mandatory in the proceedings before The Supreme Court of Croatia.
Pro Bono System	Yes	There is legal aid for people not able to afford litigation costs.
Preliminary Injunction Proceedings		
Approximate Duration	A decision on a request for a preliminary injunction is usually rendered within 2 weeks to 2 months. *Appellate proceedings:* 2 to 6 months in the second instance and 4 months to 1 year in the third instance.	▪ In practice, courts generally avoid issuing preliminary injunctions without hearing from the opponent, which, consequently, extends the duration of the proceedings
Approximate Costs **Court Fees** **Attorneys' Fees (net)** *Simple case*	The court fees for filing preliminary injunctions are reduced by half in the first instance. **Assumptions: only the request for a preliminary injunction is filed, the court renders its decision without hearing from the opponent:** € 2,500 to 6,000 in the first	▪ A preliminary injunction may be requested before, during and after the court proceedings, but not after the claim has been collected. ▪ With the request for a preliminary injunction the applicant must provide available evidence, e.g. documentary evidence and affidavits that can be examined by the court right away;

Complex case	instance; second instance: one brief, no hearing:€ 4,000 to 8,000 third instance: one brief, no hearing: € 4,000 to 8,000 **Assumptions: Apart from filing the request for a preliminary injunction, two comprehensive counter-statements are filed in reply to two statements from the opponent; witnesses are heard:** Total costs (including meetings with client/witnesses) of *first instance*: € 18,000 to 35,000; *second instance*: one brief, no hearing: € 5,000 to 18,000; *third instance*: one brief, no hearing: € 5,000 to 18,000	foreign-language documents should be presented with Croatian translations. ▪ In order to protect the opponent against losses incurred by a preliminary injunction, the court may order the applicant to pay a security deposit. ▪ An applicant may also offer to grant a security deposit in order to expedite proceedings if arguing the case may seem to be difficult.
Arbitration Proceedings		
Approximate Duration	The usual duration of arbitration proceedings is between 1 to 3 years.	
Approximate Costs **Procedural Costs**	The procedural costs depend on whether a sole-arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case and the administrative charges. The following two estimates are based on the procedural costs of the Rules of Arbitration of the Permanent Court of Arbitration of the Croatian Chamber of Commerce (Zagreb Rules). **Assumption: sole arbitrator appointed and an amount in dispute of € 1,000,000** Total costs: registration fee of € 200, administrative fees of € 2,140 and fees for a sole arbitrator of € 10,700. **Assumption: sole arbitrator and an amount in dispute of € 10,000,000.** Procedural costs: registration fee of € 200; administrative	▪ The costs of arbitration to a large extent depend on the arbitration agreement and the amount in dispute, the amount of documents, number of witnesses and whether expert opinions are required. The costs of arbitration also include the arbitrators' fees and the administrative charges. ▪ The arbitrators usually have large discretion regarding the award of costs. However, in practice the award on costs often depends on the outcome of the case. The award of legal fees is usually not determined by reference to a statutory tariff.

	fees of € 6,340 and fees for a sole arbitrator of € 31,700. In the case there is an arbitral tribunal with three arbitrators, it may be that the fees for the arbitrators triple.	
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 35,000 to € 70,000	
Complex case	**Assumptions based on an amount in dispute of € 10,000,000:** Review of 1000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 130,000 to € 200,000	
Document Production	Limited	Usually the IBA Rules on the Taking of Evidence are applied which provide for a narrow document production.

Dispute Resolution in Croatia

Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	1 to 6 months until a decision on recognition and enforcement is rendered in the first instance; 4 months to 1 year if the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	▪ A party seeking recognition/enforcement must submit a copy of the judgment and a certificate confirming that the judgment became final and binding/enforceable under the law of the country in which it was rendered. ▪ Furthermore, a certified translation into the Croatian language must be enclosed. ▪ If there is no treaty on recognition and enforcement of foreign court judgments between Croatia and the state in which the judgment has been rendered, the recognition of such judgment would, generally, be subject to reciprocity. ▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	A court fee of HRK 250 (approx. € 35) is payable for the recognition of a foreign court judgment. For enforcement actions, court fees are determined by the Court Fees Act and depend on the amount of a claim. Application for recognition/enforcement: *Simple case*: € 400 to 600 *Complex case*: € 2,000 to 5,000	
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	Creditors file their claims directly with the receiver.	▪ A court's decision on the commencement of insolvency proceedings is published in the Official Gazette. ▪ The time period for filing the claims is set out in the published decision and may not be shorter than 15 days or longer than one month.
Approximate Duration	1 year to several years; in very complex cases, a duration of more than 10 years is possible	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	Court fees depend on the amount of the claim, but are capped at HRK 500 (approx. € 7). Filing of insolvency claim: *Simple case*: Approx. € 400 to 600 *Complex case*: Approx. € 2,000 to 5,000	

7. CZECH REPUBLIC

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The information contained in this chapter on dispute resolution in the Czech Republic was correct as of 1 January 2011.

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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 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 high court is the Supreme Court of the Czech Republic that is responsible for 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, the Regional Court may act as a court of first instance (especially in some commercial disputes) in cases where an appeal would be decided by the High Courts. Administrative proceedings are carried out by the Regional and the Supreme Administrative Court. Currently in the Czech Republic, there are 86 District Courts and 8 Regional Courts..

In appropriate cases, it is possible to petition the District or Regional Courts to grant interim measures of protection, such as a preliminary injunction.

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 for payment of a certain amount usually take a shorter period of time. For example, the court may decide to make a judgment based strictly on the application for a payment order, without a hearing or examining the defendant. The court may issue the payment order if the exercised right follows from the facts stated by the claimant; however, an explicit demand by 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 appellate court; however, reconsideration is possible, and certain appellate decisions can be resolved by the first instance court.

A party may appeal most decisions of the first instance. On appeal, a party may 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 allow the appeal. If the appeal proceeds, the court will review the factual and legal aspects of the case which had been considered by the court of first instance, and may accept new facts and evidence. The court is not restricted by the submission of the appellant, nor is the court bound by the reasoning stated in 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 appeal procedure which is an ordinary remedy, Czech law allows the use of extraordinary legal remedies under a strictly defined set of conditions such as: the revision (pertaining to legal aspects), the petition for retrial (dealing with factual aspects), and the petition for nullity (dealing with procedure aspects).

Court fees are based on the Czech Court Fees Act and are calculated based on a percentage of the claim. In general, the court fee is equal to 4 % of the total value of the claim, with a minimum of CZK 600 (approx. EUR 24) and a maximum of CZK 1,000,000 (approx. EUR 40,000).

Litigation costs mainly consist of court costs, attorneys' fees, and 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, file a petition for enforcement of the judgment. The execution can be carried out on the basis of a court order or with a 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 law, a debtor is bankrupt if it has payable financial liabilities in arrears more than 30 days and is unable to satisfy these obligations. 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) straight bankruptcy proceedings ("*Konkurs*"); (ii) restructuring ("*Reorganizace*"); (iii) debt relief or discharge from debts ("*Oddlužení*"); and, (iv) the special form of insolvency-solution (e.g. insolvency of a financial institution). 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 insolvency receivers and the documentation related to each insolvency case.

The insolvency proceeding is published on the website of the Czech Ministry of Justice under http://www.justice.cz.

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 insolvency 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. On the other hand, restructuring serves to the satisfaction of the creditors by preservation of the debtor's business. In general, a restructuring is possible only for large debtors whose turnover in the previous accounting period has reached at least CZK 100,000,000 (i.e. EUR 4,000,000), or for those that employ more than 100 employees. With the consent of the majority of secured and unsecured creditors, a restructuring is also permissible for smaller companies subject to other conditions. The debt relief is applicable only to non-business debtors and enables a discharge from the rest of the debtor's liabilities, provided a part (at least 30 %) of the debts is satisfied.

7.4 Arbitration

Arbitration in the Czech Republic is governed by Act No. 216/1994 Coll., on Arbitration Proceedings and the Implementation of Arbitration Awards and applies to both domestic and international arbitration proceedings.

Under the Arbitration Act, a permanent court of arbitration may only be established by an Act of Parliament (Article 13 Arbitration Act). A permanent arbitration court is empowered to enact its own statute and rules of arbitration, which shall be published in the Commercial Bulletin.

At present, three such arbitral institutions have been founded in the Czech Republic, the main one of which is the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic, founded in 1949. The Arbitration Court is the major permanent arbitral institution in the Czech Republic and administers both domestic and international disputes. It adopted two sets of Rules in 1996: one for international arbitration and one for domestic arbitration, both of these were replaced by new sets of Rules in 2002. The rules differ on various issues including procedure, fees charged and the language and place in which proceedings are heard.

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 agree 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 rules, 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. The written component is deemed to be met if the agreement is established by telegram, telex or electronic means. The agreement does not have to be signed, but the will of both parties to enter into the agreement must be clear.

In arbitration proceedings, decisions regarding property disputes can only be issued in: (i) those disputes linked to the enforcement of the decision, (ii) disputes arising within the course of insolvency proceedings, and, (iii) competence disputes. Disputes relating to personal status, marital statue, family law matters and administrative matters are not arbitrable.

The parties are free to agree on the substantive law, the procedural rules, the seat and language of arbitration. In addition, the parties are free to agree on the number of arbitrators and their method of appointment. However, there must always be an odd number of arbitrators.

Arbitral tribunals do not have the authority to order interim measures of protection, or to grant injunctions in support of the enforcement of arbitral awards. Article 22 of the Arbitration Act therefore provides the courts with jurisdiction, upon application by any party, to order a preliminary measure or injunction if, during or prior to the commencement of arbitration proceedings, circumstances arise which are likely to jeopardize the enforcement of the arbitral award.

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

Arbitral awards may be challenged in the courts. The valid grounds for setting aside an arbitral award include the following:

- the award has been issued in a case in which no valid arbitration agreement has been concluded (lack of jurisdiction);
- the arbitration agreement is not valid for other reasons, has been terminated or does not concern the appropriate subject matter in dispute (lack of competence);
- 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;
- the award was not adopted by a majority of the arbitrators;
- a party was not given the opportunity to plead its case before the arbitral tribunal;
- 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
- it is determined that reasons exist which provide a sufficient justification for reopening the case.

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 21 October 2005 and 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 unless:

- 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, 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 the Czech Courts, the proceedings could not have been conducted under the authority of the foreign state; and, the provisions concerning the competence of the Czech Courts have been applied to the consideration of jurisdiction of the foreign authority;

- 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 only decline to recognize and enforce a foreign arbitration award under limited conditions based on the petition of the party obliged by award.

The Czech Republic is party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state and with regard to awards made in the territory of non-contracting States, the Convention will only be applied to the extent to which those States grant reciprocal treatment.

The Czech Republic is also a party to the 1961 European Convention on International Commercial Arbitration.

Dispute Resolution in Czech Republic

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	*Simple cases*: *first instance*: 1 year; *second instance*: 8 to 12 months *Complex cases*: *first instance*: 1 to 2 years: *second instance*: 1 to 2 years	▪ The duration of court proceedings depends on the number of hearings and extent of evidence. ▪ The third instance is not permissible in the Czech Republic. A legally effective judgment may be contested by so called appellate review in the Supreme Court. The appellate review is an extraordinary remedy.
Approximate Costs **Court Fees**	Court fees are based on the Court Fees Act and depend on the amount in dispute: ▪ in general, the court fee is calculated based on a percentage of the claim and the fee is equal to an amount of 4 % of the total value of the claims; ▪ in the event of an electronic compulsory payment order, the court fee is equal to 2%, whereas the electronic compulsory payment order may be issued only if the amount in dispute does not exceed CZK 1,000,000; ▪ the maximum amount of court fee is CZK 1,000,000.	▪ Litigation costs include court fees, attorneys' fees, and expenses for expert opinions and witnesses. ▪ Court fees at the first and second instances are due at the court's request after the action / appeal was filed. ▪ Court fees exceeding CZK 5,000 must be paid by bank transfer to the court's bank account. Court fees not exceeding CZK 5,000 may be paid by duty stamps. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ The actual attorney fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are of no relevance to the opposing party.
Attorneys' Fees (net)		
Simple case	**Assumptions based on an amount in dispute of € 1,000,000**: *first instance*: preparation of the claim / responses, court hearings, preparation of the hearings (meetings with client, witnesses, correspondence with client): In total € 25,000 to 40,000; *second instance*: preparation of the appeal / responses, court hearing: In total € 7,000 to 15,000	
Complex case	**Assumptions based on an amount in dispute of € 10,000,000**: *first instance*: preparation of the claim / responses, court hearings, preparation of the hearings	

	(meetings with client, witnesses, correspondence with client): In total € 50,000 to 200,000; *second instance*: preparation of the appeal / responses, court hearings: In total € 20,000 to 50,000	
Jury Trials	There are no civil jury trials in Czech Republic.	
Class Actions	Class actions are not permitted in the Czech Republic.	▪ The Czech Code of Civil Procedure does not provide for a special proceeding for collective redress. Consumer organizations may file, on behalf of consumers, only actions for refraining from unlawful behavior; however, they cannot sue for damages. In such cases, each consumer must file a separate action.
Document Production	In civil litigation (in particular in case of actions for performance), the court adjudicates on the basis of evidence submitted / offered by the parties. In non-contentious proceedings (e.g. proceedings on personal status), evidence may be produced even though the parties do not offer to present evidence.	▪ Documents shall be submitted in Czech. Czech translations must be attached to documents in foreign languages. ▪ The court is entitled to ask the parties or third parties to submit other documents besides documents referred to as evidence. ▪ One copy of documents (documentary evidence) shall be submitted to the court. The counter-party is obliged to make their own copies using the copies from the court file at its own expense.
Mandatory Presentation by Counsel	Generally no	▪ The law proscribes compulsory representation by an attorney-at-law in cases of appellate review proceedings in the Supreme Court.
Pro Bono System	Yes	▪ There is legal aid for people who cannot afford the cost legal proceedings. Legal aid „ex officio“is organised by the Czech Bar Association and governed by the Bar Act.
Preliminary Injunction Proceedings		
Approximate Duration	*First instance*: The court shall make a decision without delay, no later than 7 days after a motion for preliminary	▪ The attachment of the motion for preliminary injunction must contain all proofs the applicant relies on.

	injunction has been filed. *Appellate proceedings:* 2 to 8 months in second instance.	
Approximate Costs **Court Fees** **Attorneys' Fees (net)** *Simple case* *Complex case*	Court fees are based on the Court Fees Act: CZK 500. **Assumptions: only the request for a preliminary injunction is filed**: € 3,000 to 7,000 in *first instance*; *second instance*: preparation of the appeal / responses, no court hearing: € 3,000 to 6,000 **Assumptions: the request for a preliminary injunction, meeting with the client**: € 15,000 to 30,000 in *first instance*; *second instance*: preparation of the appeal / responses, meeting with the client : € 7,000 to 15,000	▪ For the purpose of securing damages that could arise as a result of preliminary injunction, the applicant is obliged to deposit a returnable security in the amount of CZK 10,000 at the court, in commercial matters, this amount equals CZK 50,000.
Arbitration Proceedings		
Approximate Duration	The usual duration of arbitration proceedings is between 6 months and 2 years.	▪ The duration of arbitration proceedings can also be influenced by an agreement to have the arbitration award reviewed by a new arbitration senate.
Approximate Costs **Procedural Costs**	Arbitration fees are based on the Rules for Costs of Arbitration Proceedings and depend on the amount in dispute. The following two estimates are based on the Rules for Costs of Arbitration Proceedings at the Arbitration Court attached to the Economic Chamber of the Czech Republic and to the Agricultural Chamber of the Czech Republic: **Assumption: sole arbitrator appointed and an amount in a dispute of € 1,000,000** Procedural costs: (i) domestic disputes: arbitration fee	▪ The procedural costs depend on whether a sole-arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case, and the administrative charges. ▪ Arbitration costs are awarded against the losing party who must reimburse the winning party. ▪ Arbitration costs include fees, attorneys' fees and expenses for expert opinions and witnesses. ▪ The action shall not be tried until the fees are paid. ▪ in general, a special tariff for arbitration fee and administrative fee (lump-sum reimbursement of the costs of the arbitration court) applies to international disputes; in domestic disputes, the arbitration fee is 3% of the disputed

	EUR 30 000; (ii) international disputes: arbitration fee (reduced by 30%) EUR 18,500 plus administrative fee (reduced by 20%) EUR 15,000 **Assumption: sole arbitrator appointed and an amount in a dispute of € 10,000,000.** Procedural costs: (i) domestic disputes: arbitration fee EUR 40,000; (ii) international disputes: arbitration fee (reduced by 30%) EUR 74,500 plus administrative fee (reduced by 20%) EUR 26,500	amount, subject to a cap of CZK 1,000,000 (approx. € 40,000); ▪ the arbitration fee for arbitration in a domestic dispute in a foreign language is 50% higher; ▪ the fee for accelerated arbitration proceedings is 75% higher (within one month) or 50% higher (within three months in domestic disputes, within four months in international disputes); ▪ for international disputes, if a sole arbitrator is appointed, the arbitration fee is reduced by 30% and the administrative fee is reduced by 20%.
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000**: preparation of the arbitration claim / responses, review of 100 pages of document, nomination of the arbitral tribunal, preparation of the hearings (meetings with client, witnesses, correspondence with client): In total € 28,000 to 60,000	
Complex case	**Assumptions based on an amount in dispute of € 10,000,000**: preparation of the arbitration claim / responses, review of 500 pages of documents, nomination of the arbitral tribunal, preparation and review of expert opinions, preparation of hearing and participation in an oral meeting, meetings with client, witnesses, correspondence with client: In total € 50,000 to 200,000	
Document Production	The arbitration senate evaluates the produced documents.	▪ The documents shall be submitted in the language in which the arbitration proceedings are held or a translation shall be attached.
Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	6 to 12 months until a decision on recognition and enforcement is rendered in first instance. 5 to 10 months if	▪ Under EC Regulation 44/2001 and the Lugano Convention, the party seeking recognition/enforcement must submit a copy of

	the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	the judgment which should be accompanied by a Certificate of Authenticity issued either by the court that rendered the judgment or by another competent institution of the state of origin. ▪ Further, in order to avoid any delays, attaching a certified translation of the judgment is highly recommended.
Approximate Costs **Court Fees** **Attorneys' Fees (net)** *Simple case* *Complex case*	The court fees are based on the Court Fees Act: ▪ monetary performance - in general, the fee is calculated based on a percentage of the claim the fee is equal to amount 2 % the total value of the claims; the maximum fee amounts to CZK 50,000 ▪ non-monetary performance – the fee amounts to CZK 1,000 Application for recognition/enforcement of the foreign judgment: *Simple case*: € 500 to 1,000 *Complex case*: € 1,000 to 3,000	▪ Judgments that fall outside the scope of application of the EC Regulation/ Lugano Convention must be submitted in the original or in a copy issued by the court that rendered the judgment. ▪ Further, a certified translation of the judgment must be submitted. ▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	The insolvency proceedings are initiated on the day of service of the insolvency petition on the insolvency court. No decision on the commencement of insolvency proceedings is made, only a notice is published in the Insolvency Register.	▪ The commencement of insolvency proceedings is published by edict (e.g., on the website of the Czech Ministry of Justice under http://www.justice.cz). In the edict, the period for filing of insolvency claims is set.
Approximate Duration	6 months to several years	
Approximate Costs **Court Fees** **Attorneys' Fees (net)** *Simple case* *Complex case*	There is no fee for filing the petition for the commencement of insolvency proceedings. Filing of insolvency claim: *Simple case*: € 600 to 1,000 *Complex case*: € 1,000 to 3,000	▪ If a debtor files the insolvency petition, the duty to make an advance payment for the costs of the insolvency proceedings amounting up to CZK 50, 000 may be imposed on the debtor.

8. HUNGARY

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The information contained in this chapter on dispute resolution in Hungary was correct as of 1 January 2011.

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8.1 Legal System

Hungary has been traditionally considered to have a “continental” legal system, in which the main source of law comes from acts adopted by the Parliament, rather than case precedents made by the courts. The major governing principles of the Hungarian legal system are set forth in the Constitution (Act XX. of 1949 on Constitution of the Republic of Hungary).

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

Act No. III. of 1952 on Civil Proceedings contains the relevant procedural rules for civil lawsuits. 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 adopts harmonized decisions and publishes all its 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 from a legal issue in a decision adopted by another adjudication of the Supreme Court.

8.2 Litigation

The Hungarian judicial system is divided into three levels of ordinary jurisdiction, i.e. Local Courts, County Courts and Courts of Appeal (*ítélőtábla*), that rule in both civil and criminal law matters. As a general rule in civil law matters only, the decisions of the first instance can be appealed.

County Courts are superior to the Local Courts and have jurisdiction to decide matters of greater importance in the first instance. They also serve as a court of second instance for decisions of the Local Court at the first instance. Any matter that does not fall under any other court's specific jurisdiction is under the jurisdiction of the Local Courts. In labor disputes, Labor Courts are competent.

County Courts have jurisdiction as first instance courts in matters with the value exceeding HUF 5,000,000 (approx. EUR 17,900), and several other cases which are of high importance such as, IP/IT related matters, international transportation law related matters, matters connected to administrative authorities, press rectification matters and corporate matters. Also, the County Courts serve as Courts of Registration. Labor Courts rule in labor law related matters, whereas the County Courts, as Courts of Registration, are in charge of the registration of business legal entities and perform the mandatory supervision of those business entities.

Currently, there are no specialized administrative courts in Hungary; therefore, resolutions of administrative authorities are appealed directly to the County Courts. The establishment of the five territorial Courts of Appeal in 2003 and 2004, which act as second instance courts, was intended to reduce the volume of cases submitted to the Supreme Court.

Additionally, Hungary has a Constitutional Court which is not part of the ordinary 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 is to appeal the first instance ruling to a court of second instance (ordinary remedy). There is no ordinary remedy against the second instance court's decision. Only an extraordinary legal remedy is available (*felülvizsgálati kérelem*) to challenge such a decision. The Supreme Court is responsible for judging extraordinary legal remedies. 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 certain 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 act. As a general rule, court hearings must take place on a 4-month basis, meaning that between two consecutive court hearings, a maximum period of 4 months may elapse.

Litigation costs mainly consist of court costs, attorneys' fees, and expenses for expert opinions, evidence and language translations/interpreters. Generally, the court fees for civil procedures equal 6% of the amount in dispute; however, it must be a minimum of HUF 10,000 (approx. EUR 35), and must not exceed a maximum amount equal to HUF 900,000 (approx. EUR 3,300).

A new act on Payment Warrant Proceedings entered into force on 1 June 2010. Entry into force of this act significantly simplified the issue of payment warrants: public notaries became entitled to issue them and a significant part of the proceedings may also be carried out electronically. Pecuniary claims under HUF 1,000,000 (which is equivalent to approximately EUR 3,600) are only enforceable by means of payment warrants.

8.3 Insolvency

Act XLIX. of 1991 governs bankruptcy and insolvency proceedings. Bankruptcy and insolvency proceedings are non-contentious proceedings (*nemperes eljárás*) conducted

by the relevant County Court, which has jurisdiction over the case based on the location of the registered seat of the insolvent legal entity that is subject of the proceedings.

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 the debts owed to creditors in the order set forth by law, until either the insolvent entity's 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.

During bankruptcy proceedings, the debtor requests the creditors' consent for a moratorium to allow the debtor time to repay the debts and reorganize the debtor's legal entity. The period of such moratorium is ninety (90) days and can be extended to one hundred and eighty (180) or to three hundred and sixty-five (365) days with the approval of the simple or qualified (two-thirds) majority of the creditors, respectively. In the event that the creditors 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 proceedings will then turn into insolvency proceedings.

The Hungarian Insolvency Act was amended in 2009 (entered into force on 1 September 2009). A major purpose of the amendment is to help debtors avoid liquidation proceedings if possible, and to fade in bankruptcy proceedings where companies have the possibility to enter into a composition agreement with their creditors without termination their corporate existence. Further, the new regulation allows the debtor to turn petitions for insolvency proceedings into bankruptcy proceedings with a unilateral statement, and the debtor is entitled to a (provisional) prompt moratorium upon submitting the claim to start such proceedings.

8.4 Arbitration

Arbitration in Hungary is governed by the Hungarian Arbitration Act (Act LXXI of 1994) which closely follows the UNCITRAL Model Law. The act applies to both domestic and international commercial arbitration proceedings.

The main institution dealing with arbitration in Hungary is the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, which has been managing arbitration proceedings since 1994. The Arbitration Court deals with domestic and international commercial disputes and has its own rules of procedure.

According to Hungarian legislation, an arbitration agreement must be in writing. It can either be a separate agreement or form part of another agreement. The written element is deemed to be valid if it has been exchanged between the parties by way of letter, telegram, telex or other means of communication which produce a permanent record of the agreement. Such correspondence must be signed. An arbitration agreement is also deemed to be valid if the respondent in arbitration proceedings does not challenge the jurisdiction of the arbitral tribunal at the latest in its statement of defense.

In general, any claim involving an economic interest that can be determined by the ordinary state courts may be submitted to arbitration (i.e. at least one of the parties is professionally engaged in business activities and the legal dispute arises out of or in connection with this activity and the parties may dispose freely of the subject-matter). However, claims regarding family law matters, labor law claims and further particular type of proceedings are not arbitrable and decisions of the administrative authorities (e.g. Hungarian Competition Authority, Hungarian Patent Office, Hungarian Financial Supervisory Authority) may only be challenged by the aggrieved party at the competent state courts.

The parties are free to agree on the substantive law, the procedural rules, the seat and language of arbitration. In addition, the parties are free to agree on the number of arbitrators and their method of appointment. However, there must always be an odd number of arbitrators.

According to Section 26 HAA, arbitral tribunals may, upon the request of a party, order any party to take such interim measures as the arbitral tribunal considers necessary (e.g. the freezing of bank accounts and assets or prohibiting a transfer of shares).

In addition, a party may at any time during the proceedings apply directly to a state court for interim measures or for the assistance in enforcing interim measures ordered by the arbitral tribunal (Section 37 HAA).

Hungarian arbitral awards have the same effect as a final and binding court judgment. Arbitral awards may only be challenged by requesting annulment of the arbitral award before the competent County Court; however, an annulment request must refer to a particular violation of a procedural rule, or it must state another particular ground that

presents a sufficient basis for annulment of the award. There are only a limited number of such grounds for challenge. These include

- The party concluding the arbitration agreement had no legal capacity or capacity to act;
- The arbitration agreement is invalid;
- A party 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 was made in a legal dispute to which the arbitration agreement did not apply or which was not covered by the provisions of the arbitration agreement;
- Incorrect composition of the arbitral tribunal or the proceedings were not in accordance with the parties' agreement;
- The subject matter of the dispute is not arbitrable under Hungarian law;
- The award is in conflict with the rules of Hungarian public order.

8.5 Enforcement of Foreign Judgments and Arbitral Awards

Since Hungary is a member of the European Union, the rules of Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters apply in enforcement proceedings. Further, Hungary is a party to the Brussels Convention since its accession to the European Union on 1 May 2004.

Decisions of foreign courts and authorities concerning matters not within the exclusive jurisdiction of Hungarian courts or authorities shall be recognized and enforced in Hungary, provided that: (i) the jurisdiction of the foreign court or 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 authority; and, (iv) none of the grounds for denial exists.

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

- Recognition of the foreign award would violate Hungarian public order;
- A party could not attend the proceedings either in person or by proxy, because the subpoena, statement of claim or other document which formed the basis for

the proceedings was not properly served upon the individual or in a timely manner;

- 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 Authority, and the basis materialized prior to the initiation of the foreign proceedings; 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 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to disputes arising out of legal relationships, whether contractual or not, that are considered commercial under Hungarian law; and only to awards which were made in another contracting state. Hungary is also a party to the 1961 European Convention on International Commercial Arbitration.

Dispute Resolution in Hungary

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	**Simple cases:** first instance: 1 year; second instance: 6-12 months; special remedies (significant new facts or violation of proceeding rules): 6-12 months **Complex cases:** first instance: 1 to 2,5 years; second instance: 1 year; special remedies (significant new facts or violation of proceeding rules): 12-18 months	▪ The duration of proceedings may depend on the competent court. ▪ Longer proceedings can be expected in those courts with heavy workloads, such as the Metropolitan Court.
Approximate Costs **Court Fees**	Court fees depend on the amount in dispute, as follows: ▪ *First instance*: 6% of the amount in dispute, but minimum HUF 10.000 and maximum HUF 900.000 (approx.€ 35 to 3.300) ▪ *Second instance*: 6% of the amount in appeal, but minimum HUF 10.000 and maximum HUF 900.000 (approx. € 35 to 3.300) ▪ *Special remedies*: 6% of the amount in dispute, but minimum HUF 10.000 and maximum HUF 900.000 or 2.500.000 (approx. € 35 to 3.300 and 8.900) depending on the type of procedure	▪ Litigation duties do not include attorney fees. ▪ Court fees have to be paid simultaneously with filing a claim, and finally will be paid by the losing party. ▪ In the event of a partial win, the costs for both sides are divided on a pro-rata basis. ▪ Usually the courts at their own discretion award attorneys' fees described by law.
Attorneys' Fees (net)	As a general rule, attorneys' fees are subjects of the arrangement between the client and the attorney. In case of no arrangement or if the fee is overstated, the court awards attorney fees described by law, which is 1 to 5% of the amount in procedure.	
Jury Trials	There are no jury trials in Hungary.	

Dispute Resolution in Hungary

Class Actions	The Hungarian Act on Civil Procedure does not provide for a special proceeding for collective redress; as a similar legal institution joinder is accepted and the court is entitled to consolidate parallel proceedings. Consumer protection organizations are entitled to challenge general terms and conditions with an effect to all contracted consumers.	
Document Production	The Hungarian Civil Code sets up a free evidencing system, therefore it is a general rule that the court is not bound by formal evidencing rules or special kinds of evidences and the parties are free to choose the evidences supporting their argumentation. As a general rule that party bears the burden of proof, which is interested in the acceptance of the relevant fact.	
Mandatory Presentation by Counsel	Generally no, but exceptions are listed in the law.	
Pro Bono System	The Hungarian state provides legal aid to people who can't afford a legal representative.	
Preliminary Injunction Proceedings		
Approximate Duration	Preliminary injunction and seizing/freezing of assets is not possible before initiating a lawsuit; only preliminary evidencing is possible at that stage. Generally, a decision on a request for a preliminary evidencing is rendered a few days after filing the request with the public notary or in between 1 day and 2-4 weeks after filing the request with the competent court.	▪ Evidence taken by a public notary can be utilized in a litigation proceeding like evidence taken by a court. Public notaries are entitled to appoint an expert if special expertise is needed. After filing a claim, only the competent court is entitled to proceed.

Approximate Costs **Court Fees** **Attorneys' Fees (net)**	The public notary's fee is based on hourly rates in preliminary evidencing procedures: **Simple cases (without expert appointment):** € 200-300, according to general practice experience. **Complex cases (with expert appointment):** € 400-600, according to general practice experience. Court: standard civil proceeding rules apply Subject to the engagement	After a preliminary evidencing procedure, the court fee is reduced to 50%.
Arbitration Proceedings		
Approximate Duration	The duration of arbitration proceedings is between 7 months and 1.5 years.	
Approximate Costs **Procedural Costs** **Attorneys' Fees (net)**	The below information is based on the Regulation on Fees of the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (MKIK). The Arbitration Fee depends on whether an arbitral tribunal or a sole arbitrator will be appointed. The Arbitration Fee includes the registration fee, arbitrators' fee and administrative costs and the state duty. The Arbitration Fee does not include other cost incurred by the Arbitration Court, e.g. experts' and interpreters' fees. **Assumptions: Sole arbitrator appointed and an amount in dispute of € 1,000,000:** Total costs: registration fee of € 90-100, administrative fees of € 9,200 and fees for a sole arbitrator of € 9,200. **Assumptions: Sole arbitrator appointed and an amount in dispute of € 10,000,000:** Total costs: registration fee of € 90-100, administrative fees of € 34,760 and fees for a sole arbitrator of € 27,000. Subject to the engagement	An English language fee calculator has been published on the website of MKIK at www.mkik.hu/index.php?id=4494.

Document Production	Usually 4-8 written statements have to be made during the arbitration procedure.	It is a general rule that an arbitral tribunal is not bound by formal evidencing rules or special kinds of evidence and the parties are free to choose the evidence supporting their argumentation. As a general rule, the party interested in the acceptance of the relevant facts bears the burden of proof.
Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	Depends on the complexity of the case; 2 months to more than a year.	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	3% of the enforceable amount, but minimum HUF 8.000 and maximum HUF 450.000 (approximately EUR 30 to EUR 1600). Subject to the engagement	
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	If the insolvency proceeding is requested by a creditor, the claim must specify the description of the debtor's debt, the date of maturity (due date), and a summary of the reasons for which the debtor is deemed insolvent.	Upon the court's resolution on opening the insolvency proceeding, the court must arrange for the publication of the insolvency proceeding in the Company Gazette. Publication in the Company Gazette takes place on the official website of the Company Gazette at www.cegkozlony.hu.

Approximate Duration	The court must issue resolution on the commencement of the insolvency proceeding within 60 days of receipt of the claim. Following the end of the *second* year from the time of the opening of insolvency proceedings, a final liquidation balance sheet must be prepared, after submission of the balance sheet the court decides on the insolvency (with the exception if a creditor has a pending lawsuit against the debtor in which case the insolvency proceeding may last for several years, until closing of the lawsuit).	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	Court fees for insolvency proceeding: HUF 50,000 (approx. EUR 180) Subject to the engagement	

9. KOSOVO

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The information contained in this chapter on dispute resolution in Kosovo was correct as of 1 January 2011.

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9.1 Legal System

Kosovo's 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 provided for by the Constitution that 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 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 declaration of independence on 17 February 2008, 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 24 Municipal Courts, 5 District Courts, a Commercial Court and the Supreme Court (the latter two being seated in Prishtina). In addition to this, since June 2009 Kosovo has a Constitutional Court, which is responsible for ensuring the constitutionality of acts of public authorities and for hearing individual complaints regarding the violation of constitutionally guaranteed human rights.

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 annulment of 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 24 Municipal Courts for Minor Offences and the High Court for Minor Offences, whose competence includes general minor administrative violations, i.e. violations of sanitary standards, as well as violation of traffic safety laws and public order rules.

In addition to the aforementioned courts, Kosovo has two additional adjudicatory 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.

9.2 Litigation

Civil proceedings in Kosovo are governed by the Civil Procedure Law, which was enacted on 30 June 2008. According to this law, civil litigation is based on the 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 law. 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 where: 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 to realize its claim, particularly by disposing of or concealing his/her property.

The imposition of an injunction order may be conditioned with the requirement that Claimant provides 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.

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. 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 for the initiation of proceedings are 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 amount of time before cases are heard (unless urgent preliminary measures are sought). By way of example, in 2009 the Commercial Court had 1,329 unresolved cases from 2008 and received 1,063 new cases. Out of a total of 2,392 cases, the Commercial Court was able to resolve only 851 cases in 2008, leaving 1,541 unresolved cases. According to the 2010 enforcement of contract survey conducted by World Bank “Doing Business” project, the enforcement of a contract in Kosovo, without the appellate procedure, involves 53 procedures and takes 420 days. The survey notes that the costs of enforcing a contract in Kosovo amounts to 61.2 % of the claim, of which 25.1 % are attorney costs, 18 % are court costs and 18 % are enforcement costs.

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.

According to this law, the Commercial Court has exclusive jurisdiction over insolvency proceedings.

Within two (2) days following the receipt of a petition for the initiation of insolvency proceedings, the court appoints an administrator and sets the date for the first meeting of the board of creditors, which should be set no later than fifteen (15) days after the receipt of the petition. Creditors who have more than 60 % of the secured and unsecured claims can request the court 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 the 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 intended 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 where 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 the 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. In addition, until the debtor receives the approval of its reorganization plan, or breaches the terms of the reorganization plan, the insolvency proceedings will continue.

It should be noted that the voluntary dissolution of business organizations is governed by the Law on Business Organizations. At the same time, the procedures for the reorganization or liquidation of enterprises and their assets are 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 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 in writing; however, this requirement is deemed to have been satisfied if the arbitration agreement is recorded by means of letters, telefaxes, telegrams or other means of telecommunication or electronic communication etc.

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, with each party appointing one and then two appointed arbitrators will select the third.

The arbitral tribunal may issue preliminary orders that are enforceable by the court upon request of a party, if that party gives credible evidence that an 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, the 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, an arbitral decision 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

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.

Dispute Resolution in Kosovo

NOTE: Some of the information contained in this chart is based on the World Bank's Doing Business Report 2011

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	The approximate duration for the enforcement of a contract in the Commercial Court in Pristina is 420 days, which includes: a) 60 days for filing and service of claim; b) 180 days for trial and judgment; and c) 180 days for enforcement of judgment. The aforementioned estimates are based on a case that includes a claim assumed to be equivalent to 200% of income per capita.	The first instance procedure consists of two parts: the preparatory proceedings and the main trial. It should be noted that according to the Kosovo Judicial Council (KJC) Statistical Report 2009, Kosovo Courts have a backlog of 213,967 of unresolved cases. Presently, the KJC is implementing a backlog reduction strategy, which is expected to significantly reduce the backlog in the next two years.
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	Official fees in Kosovo Courts range from EUR 15 for a claim up to EUR 1,000 to EUR 500 for a claim of over EUR 10,001. According to the World Bank's Doing Business Report 2011, approximate costs for a case, including a claim assumed to be equivalent to 200% of income per capita, are as follows: a) Attorney Costs: 25.2% of the claim b) Court Costs: 18% of the claim c) Enforcement Costs: 18% of the claim According to the aforementioned report, there are 53 procedures that must be undertaken for the enforcement of a contract in Kosovo.	
Jury Trials	There are no jury trials in Kosovo.	The first instance trial is chaired by an individual judge, while the second instance proceedings are chaired by a three-member panel of judges.
Class Actions	Yes	Collective redress is foreseen by law in cases when the object of the claims derives from the same or similar factual or legal basis.

Dispute Resolution in Kosovo

NOTE: Some of the information contained in this chart is based on the World Bank's Doing Business Report 2011

Document Production	Parties have the right to access and inspect the case files. The law is silent whether the parties have the right to compel the production of a document from another party. Notwithstanding the above, the Court is authorized to verify facts that the parties have not presented, subject to certain legal requirements.	
Mandatory Presentation by Counsel	No	Parties can represent themselves in civil proceedings and/or they can authorize any other person, fit to stand before the Court, to represent them even if the latter is not an Attorney at Law.
Pro Bono System	There is legal aid system for people who cannot afford the cost legal proceedings provided by Kosovo Legal Aid Commission.	
Preliminary Injunction Proceedings		
Approximate Duration **Approximate Costs** **Court Fees**	With respect to time limits for seeking injunctive relief, the following deadlines should be considered: An Order to Secure the Claim, as it is referred to by the Law on Contested Procedure, can be sought even before a claim is filed with the Court. However, in these cases the claim must be submitted no later than 30 days after the request for an Order to Secure the Claim. The Court may decide on the request without notifying the party but in that case the Court must inform the opposing party after the decision is taken. In these cases, the opposing party has 3 days to file an objection, which triggers a hearing. Otherwise, in regular cases, the Court sends the request to the opposing party prior to making a decision and the opposing party has 7 days to respond. The Order to Secure the Claim can remain in effect until 30 days after the award becomes enforceable. There is no sufficient information available to determine the	In cases when the Court determines that the party that is subject to the injunction order may suffer damages, the Court will request the claimant to provide a security for the Order to Secure the Claim. According to the law, injunction can be ordered for securing a monetary claim, securing a claim involving an object or preservation of existing circumstances.

Dispute Resolution in Kosovo
NOTE: Some of the information contained in this chart is based on the World Bank's Doing Business Report 2011

	costs and duration for these proceedings, except for what is stated above on the wide range of Court Fees.	
Arbitration Proceedings		
Approximate Duration	N/A.	Presently, there are no arbitration tribunals in Kosovo. However, in 2011, the Kosovo Chamber of Commerce and the American Chamber of Commerce, through the assistance of USAID, are expected to establish either two separate tribunals or one joint tribunal.
Approximate Costs **Procedural Costs** **Attorneys' Fees (net)**	N/A	
Document Production	N/A	
Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	According to anecdotal evidence, the approximate duration of proceedings for the recognition of foreign judgments is 3 to 4 months. In cases when such a decision is appealed, the proceedings may take between 6 and 9 months. Enforcement of foreign judgments is facilitated by the Ministry of Justice of the Republic of Kosovo, namely its Section on International Legal Cooperation.	Kosovo is not part of the Brussels Regime, which consists of the Brussels Convention, the Lugano Convention, and the Brussels I Regulation. Enforcement of judgments is conducted based on principle of reciprocity. Further, in order to avoid any delays, attaching a certified translation of the judgment in Albanian language is highly recommended. Enforcement of awards under the New York Convention is possible. In such case, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	There is no sufficient information available to determine the costs for these proceedings, except for what is stated above on the wide range of Court Fees.	

Dispute Resolution in Kosovo

NOTE: Some of the information contained in this chart is based on the World Bank's Doing Business Report 2011

Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	Creditors can file a claim for insolvency proceedings in cases when: a) the Debtor has not paid the debt for 60 days after the debt was due for payment; b) the amount of the debt exceeds EUR 2,000; c) the debt is not conditioned; and d) the Debtor is generally not able to settle its debts.	
Approximate Duration	According to the law, direct liquidation process must be completed within 90 days (for unsecured debts) and within 60 days (for secured claims) after the case was assigned to an Administrator.	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	To date, the Commercial Court in Pristina has not had any liquidation cases.	

10. ROMANIA

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The information contained in this chapter on dispute resolution in Romania was correct as of 1 January 2011.

If you have any questions about the content of this chapter, or would like further information about dispute resolution in Romania, please contact:

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10.1 Legal System

The Romanian legal system is based on codified principles 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 Appeal 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 from decisions of the County Courts are judged by the Courts of Appeal. A case which is initially heard by the County Courts may be appealed before the Courts of Appeal 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. Depending on the case, there are panels for hearing civil, criminal or commercial cases, matters involving minors and family disputes, administrative or tax disputes, labor disputes and social insurance matters. Additionally and depending on the nature and number of cases, the Courts of Appeal 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. Depending on the case, there are panels for civil and, 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, maritime and inland waterways matters. Depending on the nature and number of cases, specialized sections or panels may be set up in the 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 amount in dispute. In civil cases, the tribunal may hear the matter as a first instance court if the amount in dispute is over RON 500,000 (approx. EUR 140,000), and in commercial cases where the value is 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 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, new facts or evidence).

Litigation costs are mainly composed of court and attorneys' fees and expenses for expert opinions and the production of evidence. 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 judicial reorganization or bankruptcy proceedings, and apply exclusively to legal persons. However, simplified proceedings are confined to bankruptcy proceedings and represent a rapid, simple and efficient means of liquidating. In cases of simplified proceedings, the debtor is directly the subject of the bankruptcy proceedings, either at the same time with the commencement of the insolvency proceedings, or after a supervision period of maximum 50 days.

A petition for the initiation of insolvency proceedings can be presented in court by the debtor, creditor, or by any other person expressly allowed to initiate the proceedings according to 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 10,000 which has been overdue for at least ninety (90) 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.

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

The bankruptcy trustee or representative reviews the claim and either admits and registers the claim in a preliminary claims chart, or rejects 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 within five (5) days from the publication in the Insolvency Bulletin. Unless appealed by the debtor, bankruptcy trustee or 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.

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 incurred by the insolvent estate in the order of 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, which is based on an estimated three (3) month budget that must subsequently be approved by the court.

The Romanian Parliment has recently adopted Law no. 381/2009 regarding the introduction of the **ad-hoc mandate** and the **preventive concordat**.

The ad-hoc mandate

The ad-hoc mandate is a confidential procedure initiated by the debtor in which an ad-hoc attorney negotiates with the creditors in order to reach an agreement with one or more of them, which will resolve the debtor's financial difficulties.

The aim is to reach an agreement between the debtor and one or more of its creditors within 90 days of the date on which the ad-hoc attorney is appointed. The negotiations may cover the partial and total release of debt, debt rescheduling, personnel dismissals, termination of certain agreements, or other such measures.

The mandate will be terminated once an agreement is reached with the creditors. However, if no agreement is reached within the 90 day deadline, the mandate will terminate automatically.

The preventive concordat

The preventive concordat is an agreement concluded between the debtor and its creditors which hold at least two thirds of the accepted and undisputed receivables against the debtor, by which these creditors and the debtor agree on a plan to restructure the debtor's business and re-pay its debts.

This procedure is available only for legal persons who encounter financial difficulties but intend to continue activity and negotiate the payment of the outstanding debts.

Any legal person may use the preventive procedure with several exceptions: (i) debtors against which a definitive court decision for economic crime was issued; (ii) debtors against which the insolvency procedure was opened five (5) years before the offer of the preventive concordat; (iii) debtors which in the last three (3) years before the offer of the preventive concordat have benefited from another preventive concordat procedure; (iv) the debtor or its shareholders or representatives were convicted of crimes; (v) the representatives of the debtor have been liable according to the Insolvency Law; or, (vi) the debtor has a tax offense record.

A request for the initiation of the preventive concordat proceedings can be made in court only by the debtor. The debtor must ask the court to appoint an insolvency practitioner to assume the role of "conciliator". Within 30 days of the appointment of the conciliator, the debtor and the conciliator must prepare the concordat offer, which must be included in a special register held by the court and published by the Trade Registry.

Among other things, this concordat must include: (i) steps which will be taken to change the way the debtor conducts its business; (ii) the means by which the debtor intends to solve its difficulties; (iii) the percentage by which the receivables of the creditors will be covered by implementing the concordat (at least 50 %); and, (iv) the term within which the debts set out in the concordat must be paid, which must not exceed 18 months from the date the concordat is signed.

For fiscal debts, the approval of the tax authorities must be obtained and state aid rules must be complied with.

The debtor may ask the court to temporarily suspend any enforcement proceedings while the concordat offer is being analyzed by the creditors.

The concordat will be approved if it is voted for by the creditors holding two thirds of the total amount of accepted and undisputed receivables.

The recognition of the concordat may be performed if the value of disputed and litigated receivables does not exceed 20 % of the total amount of the receivables, and if the concordat has been approved by the creditors holding at least 80% of the total value of the receivables.

In recognizing the concordat, the court will suspend all enforcement measures against the debtor.

The creditors which voted against the concordat may request its cancelation within 15 days from the date the preventive concordat was registered to Trade Registry.

10.4 Arbitration

Arbitration in Romania is governed by the Fourth Book (Articles 340 – 371) of the Romanian Code of Civil Procedure. The law was substantially amended in 1993 and is now broadly based on the UNCITRAL Model Law. It applies to both domestic and international arbitration proceedings. To be classed as international, a dispute must involve a foreign element.

The main arbitral institution in Romania is the International Court of Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (the “CCIR”). During the communist era, the CCIR dealt with national and international commercial disputes. In 1990, a new law concerning the CCIR was enacted, enabling the institution also to handle domestic commercial disputes. The CCIR has its own Rules of 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 ("compromise"), which is concluded at the moment

the dispute occurs. Both the arbitration clause and the compromise must be in writing and signed by the parties.

Generally all disputes involving a financial interest may be submitted to arbitration. Disputes concerning personal status, collective labor conflicts, certain shareholder disputes, the annulment of intellectual property rights and bankruptcy proceedings are not arbitrable.

In the arbitration agreement or by subsequent agreement, the parties are free to establish the procedure to be observed by the arbitral tribunal, the number of arbitrators, and the method used to appoint the arbitrators, including whether the dispute shall be settled by a sole arbitrator or by two or several arbitrators. The parties are also free to decide on the seat and language of arbitration. As a general rule, according to the Romanian Civil Procedure Code, 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.

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.

The arbitral tribunal has the authority to order interim or protective measures during the arbitration proceedings. If the parties do not voluntarily comply with such measures, these may be enforced with the permission of the court (Article 358 (9) CPC).

It is not inconsistent with arbitration proceedings before or even during the arbitration proceedings for any party to request the court to grant interim injunctions or to order other conservatory or protective measures related to the subject matter of the arbitration (Article 358 (8) paragraph 1 CPC), or to establish relevant factual circumstances (i.e. preserve evidence). A copy of the statement of claim and of the arbitration agreement must be submitted to the court in support of the petition (Article 358 (8) paragraph 2 CPC). The party requesting such measures before the court shall notify the arbitral tribunal once these have been granted (Article 358 (8) paragraph 3 CPC).

Generally, arbitration awards are enforceable by the courts through 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, shall have the same effect as any final decision rendered by a court of law.

Arbitral awards may be challenged in ordinary courts. An 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 arbitration agreement, or on the grounds of a void or inoperative arbitration agreement;
- The arbitral tribunal was not set up in compliance with the arbitration 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 has failed to decide upon a requested matter, or has rendered an award that is outside the scope of the arbitral tribunal's 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 one of 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.

10.5 Enforcement of Foreign Judgments and Arbitral Awards

Arbitral awards which are not deemed to be a national award issued in Romania are considered foreign arbitral awards. Foreign arbitral awards 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 arbitral 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.

Romania is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to awards resulting from disputes having commercial character according to Romanian legislation; and, the Convention will only be applied to the recognition and enforcement

of awards made in the territory of another contracting State and with regard to awards made in the territory of non-contracting States, the Convention will only be applied to the extent to which those States grant reciprocal treatment. Romania is also a party to the 1961 European Convention on International Commercial Arbitration.

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. This 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 judgment's 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, one shall be produced. The translation shall be certified by an individual that is qualified to perform translations in one of the Member States.

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.

COMMENT: According to Chapter 1, Article 1, paragraph 2 (d), the Council Regulation No. 44/2001 does not apply to the arbitration.

The same provision is set in Chapter 1, article 2, paragraph 2 (d) of EC Regulation No. 805/2004, which states that this regulation does not apply for the arbitration.

Dispute Resolution in Romania

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	**Simple cases:** first instance: 6 months – 12 months; second instance: 4- 12 months; third instance: 6-12 months **Complex cases:** first instance: 1 to 3 years; second instance: 1 to 2 years; third instance: 1 year to 1 year and a half	
Approximate Costs **Court Fees** **Attorneys' Fees (net)** *Simple case* *Complex case*	**Court fees are based on Law no. 146/1997 on judicial stamp taxes** and depend on the amount in dispute. Examples: ▪ Amount in dispute € 500,000: Court fees: € 6,000 in first instance ▪ Amount in dispute € 1,000,000: Court fees: € 11,000 in first instance ▪ Amount in dispute € 5,000,000: Court fees: € 51,000 in first instance **Assumptions based on an amount in dispute of € 1,000,000:** *first instance*: preparation of two briefs, four hearings with a duration of 2 to 6 hours respectively, preparation of hearings /meetings with the client, witnesses, technical surveys, cross-examination correspondence with client: In total € 15,000 to 30,000; *second instance*: one brief, no hearing: € 8,000 to 15,000; *third instance*: one brief, no hearing: € 6,000 to 15,000 **Assumptions based on an amount in dispute of € 10,000,000**: *first instance*: preparation of 4 comprehensive briefs, six hearings with a duration of 2h, 4h, and 4 x 8h; preparation of hearings /meetings with client, witnesses, technical surveys, correspondence with client: In total €	▪ Litigation costs include court fees, attorneys' fees, and expenses for court appointed experts and witnesses. ▪ Court fees have to be paid upon filing the claim. ▪ Court fees in the second and third instances are to be paid by the party filing the appeal and it represents 50% of the court fees paid in the first instance. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, attorneys' fees may be decreased by the court depending on the complexity of the case. There are certain provisions stipulated in the law regarding the organization and practice of the profession of attorney-at-law related to the attorneys' fees. ▪ The actual attorneys' fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are of no relevance to the opposing party. ▪ Agreements on Quota litis and contingency fees are generally prohibited for Austrian lawyers in all types of proceedings.

	50,000 to 150,000 *second instance*: one brief, no hearing: € 15,000 to 20,000; *third instance*: one brief, no hearing: € 15,000 to 25,000	
Jury Trials	There are no civil jury trials in Romania.	
Class Actions	Limited	The Romanian Civil Procedure Code does not provide for a special proceeding for collective redress. Traditional tools of multiparty practice such as joinder and consolidation of proceedings are applied.
Document Production	Limited	Documents are subject to disclosure if the party itself referred to the document in the course of the proceedings. If the opposite party has in its possession a certain document relevant for the case, the court may order that party to present it.
Mandatory Presentation by Counsel	Generally no	
Pro Bono System	Yes	There is a special legislation which provides legal aid for people who cannot afford the cost of legal proceedings.
Preliminary Injunction Proceedings		
Approximate Duration	Generally, a decision on a request for a preliminary injunction is rendered between 1 day and 6 months depending on the preliminary issues raised by the opposing party. *Appellate proceedings:* a preliminary injunction is subject to an appeal which may take between 1 to 3 months.	There are 3 conditions provided by the Romanian Civil Procedure Code in order for an injunction to be allowed by the court: ▪ Urgency of the matter; ▪ The measures, taken by filing the injunction, must have a temporary character; ▪ The court may not try the substance of the matter during such a procedure. As a general rule, due to the urgent character of such proceedings, only written notes are admitted as evidence (sometime cross-examination). All documents should be presented in Romanian.
Approximate Costs **Court Fees**	The request for preliminary injunction is judged by a distinct court than the complaint in the main proceeding; therefore court fees must be paid. The cost fee may consist of (i) a fixed amount for non monetary claims or (ii) variable amounts depending on the actual value of the monetary	▪ The court may order the applicant to pay a security deposit. ▪ In general, litigation costs will be incurred by the party who lost the case. ▪ In some cases, costs incurred by a successful applicant in preliminary injunction matters can only be sought in the main proceedings (e.g. securing evidence).

	claim. For the appeal, the party who files this remedy must pay 50% of the initial amount.	
Attorneys' Fees (net) *Simple case* *Complex case*	**Assumptions: only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent:** € 4,000 to 6,000 in first instance; and for the appeal one brief, 1-3 hearings: € 4,000 to 7,000 (the appeal implies in general the presence of the parties) **Assumptions: Apart from filing the request for a preliminary injunction, two comprehensive counter-statements are filed in reply to two statements of opponent:** Total costs (including meetings with client/witnesses) of first instance:€ 10,000 to 20,000 and for the appeal: one brief, 2-3 hearings: € 10,000 to 25,000 (the appeal implies in general the presence of the parties)	
Arbitration Proceedings		
Approximate Duration	The usual duration of arbitration proceedings is between 6 months and 1 year.	
Approximate Costs **Procedural Costs**	The procedural costs depend on whether a sole-arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case and the administrative charges. The following two estimates are based on the procedural costs of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry. **Assumption: sole arbitrator appointed and an amount in dispute of € 1,000,000** Total costs: administrative fees of € 22,275 and fees for a	▪ The costs of arbitration to a large extent depend on the amount in dispute, the amount of documents, number of witnesses and whether expert opinions are required. The costs of arbitration also include the fees of arbitrators and administrative charges. ▪ The arbitrators usually have large discretion regarding the award of costs. However, in practice the award on costs often depends on the outcome of the case. The award of legal fees is usually not determined by reference to a statutory tariff.

	sole arbitrator of € 14,850-18,600 **Assumption: sole arbitrator and an amount in dispute of € 10,000,000.** Procedural costs: administrative fees of € 79,275 and fees for a sole arbitrator of € 52,850-76,600. In the case there is an arbitral tribunal with three arbitrators, it may be that the fees for the arbitrators triple.	
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 40,000- 60,000.	
Complex case	**Assumptions based on an amount in dispute of € 10,000,000:** Review of 1000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages**;** preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 60,000-100,000.	
Document Production	Limited	

Dispute Resolution in Romania

Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	1 to 3 months until a decision on recognition and enforcement is rendered in first instance. 3 to 5 months if the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	▪ Under EC Regulation 44/2001 and the Lugano Convention, the party seeking recognition/enforcement must submit a copy of the judgment which should be accompanied by a Certificate of Authenticity issued either by the court that rendered the judgment or by another competent institution of the state of origin. ▪ Further, in order to avoid any delays, attaching a certified translation of the judgment is highly recommended.
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	For a declaration of enforceability, no court fees have to be paid. For the enforcement of the award by a bailiff, there are specific costs. Application for recognition/enforcement: *Simple case*: € 1,000 to 1,500 *Complex case*: € 2,000 to 5,000	▪ Judgments that fall outside the scope of application of the EC Regulation/ Lugano Convention must be submitted in the original or in a copy issued by the court that rendered the judgment. ▪ Further, a certified translation of the judgment must be submitted. ▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	The commencement of insolvency proceedings is published by edict on the website of the Romanian Insolvency Bulletin under http://www.buletinulinsolventei.ro. In the edict, the period for filing of insolvency claims is set.	
Approximate Duration	1 year to several years; in very complex cases, a duration of more than 3 years is possible.	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	Court fees of € 30 for each filing *Simple case*: € 2,000 to 3,000 (no representation in court) *Complex case*: € 3,000 to 6,000 (no representation in court)	

11. SERBIA

By Miroslav Stojanovic and Vidak Kovacevic
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The information contained in this chapter on dispute resolution in Serbia was correct as of 1 January 2011.

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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. 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 litigation where proceedings may last several years. In response to these delays, in 2005 Serbia adopted a new Civil Procedure Code (amended in December 2009) that introduced instruments intended to prevent unjustified and unnecessary delays in 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 (or debtor as a legal entity) 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 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 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 company's creditors before it ceases to exist. If conditions for the initial bankruptcy proceedings exist, 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 both domestic and international arbitration proceedings where the seat of the arbitration is in Serbia. International arbitration is generally defined as arbitrations whose subject matter concerns disputes arising out of international commercial business relations. 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 related to stock exchange transactions between members and participants of the Stock Exchange, or between these entities and the Stock Exchange, may be resolved by the Stock Exchange Arbitration Court.

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.

Arbitration may only be agreed upon for the resolution of proprietary disputes arising out of rights of the parties over which they may freely dispose. Claims where the subject matter is in the exclusive jurisdiction of the state courts (such as disputes concerning real estate in Serbia, marital and family disputes, personal status rights etc) are not arbitrable.

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. The parties are free to agree on the substantive law, the procedural rules, the seat and language of arbitration.

Depending upon the agreement between the contracting parties, arbitration proceedings may be presided over by an arbitral tribunal or by a sole arbitrator. There may only be an odd number of arbitrators 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 shall decide how the arbitrators should be appointed.

The decisions of arbitral tribunals 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 so agreed. If the parties have not agreed on the applicable substantive law and legal rules governing the arbitral proceedings, the arbitral tribunal or arbitration court may decide on the basis of conflict of laws rules.

The Arbitration Law is silent on the authority of the arbitral tribunal to order interim measures. However, as the law does not actively prohibit it, it may be concluded that arbitral tribunals have this authority unless the parties to the arbitration agree otherwise.

The Arbitration Law stipulates that the parties may request interim measures from a court either before or during arbitral proceedings (Article 15 Arbitration Law). The Arbitration Law also stipulates that this possibility exists even when the arbitration agreement relates to an arbitration that has its seat outside of Serbia.

Under the Arbitration Law domestic arbitral awards (i.e. awards rendered in Serbia) may be challenged by way of a law suit for annulment. The Arbitration Law contains an exhaustive list of grounds for such challenge (Article 58 Arbitration Act). Those grounds include:

- invalidity of the arbitration agreement;
- lack of due process;
- ultra petita;
- incorrect composition of the arbitral tribunal;
- lack of arbitrability;
- violation of Serbian ordre public; and
- false testimony or a criminal act of an arbitrator or a party to the proceedings (if established by a final court judgment).

11.5 Enforcement of Foreign Judgments and Arbitral Awards

Foreign judgments and foreign arbitral awards may be enforced only if the foreign award has been previously “admitted” to the Serbian legal system in recognition proceedings. When 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 determining paternity or maternity. In all other cases 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 refuse to recognize foreign arbitral awards, upon a proposal of a party against which the enforcement is sought, based on the grounds which are essentially the same as the described grounds for challenge of the domestic arbitral awards.

However, whereas the false testimony or criminal act of an arbitrator or a party to the proceeding is not among the grounds for refusal of the recognition of a foreign award by Serbian courts, the recognition of the award may be refused based on one additional ground. Namely, if the foreign award has not yet become binding for the parties, or if it has been annulled or its enforcement has been stopped by a court of a state where or based on whose law the award was made, the Serbian court will be entitled to refuse its recognition (and enforcement).

Serbia is party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, with the reservations that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state, will only be applied to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law and will only be applied to those arbitral awards which were adopted after the entry into effect of the Convention. Serbia is also party to the 1961 European Convention on International Commercial Arbitration.

Dispute Resolution in Serbia

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	**Simple cases:** *first instance:* 1 to 2 years; *second instance*: 9 to 12 months; *third instance*: within 1 year. **Complex cases:** *first instance:* 3 to 4 years; *second instance*: 9 to 12 months; *third instance*: within 1 year.	
Approximate Costs **Court Fees**	Court fees are based on the Law on Court Fees and depend on the amount in dispute. Examples for commercial disputes: ▪ Amount in dispute: € 47,620; court fees: € 1,000 in the first instance. ▪ Amount in dispute: € 95,240; court fees: € 2,860 in the first instance.	▪ Litigation costs include court fees, attorneys' fees and expenses for expert opinions and witnesses. ▪ Court fees have to be paid upon filing the claim. ▪ Court fees in the first and second instances have to be paid by the party filing the appeal. ▪ If a claim is filed by a foreign party, a defendant may file a request for imposing of security. If the court accepts such request, the foreign party shall be obligated to pay such security. Otherwise, the claim shall be deemed revoked. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a party has been partially successful, the court may order that each party bears its own costs, or that one party reimburses the other party a proportional amount of the costs. ▪ Regardless of the outcome, a party must reimburse the costs of the other party that result as a fault of that party. ▪ Unless the parties agree otherwise, each party bears its own costs if the litigation results in a court settlement or a settlement after mediation. ▪ Reimbursement of attorneys' fees has to be made on the basis of the fees provided for in the Act on Attorneys' Tariffs. ▪ The actual attorney fees of the party (depending on the fee agreement between attorney and client) may be substantially higher but they are of no relevance to the opposing party. ▪ Agreements on Quota litis and contingency fees are generally prohibited for Serbian lawyers in all types of proceedings.
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** *first instance*: preparation of two briefs, four hearings with a duration of 1h, 2h, 4h, and 6h, respectively, preparation of hearings/meetings with client, witnesses, correspondence with client: In total € 20,000 to 40,000; *second instance*: one brief, no hearing: € 5,000 to 15,000; *third instance*: one brief, no hearing: € 4,000 to 12,000	
Complex case	**Assumptions based on an amount in dispute of € 10,000,000**: *first instance*: preparation of 4 comprehensive briefs, six hearings with a duration of 2h, 4h, and 4 x 8h; preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 35,000 to 120,000. *Second instance*: one brief, no hearing: € 15,000 to 30,000; *Third instance*: one brief, no hearing: € 15,000 to 30,000	

Dispute Resolution in Serbia

Jury Trials	Yes According to the Law on Judges, a juror may be an adult citizen of the Republic of Serbia who is honourable for a function of the juror. The juror may not be a lawyer and may not provide paid legal services. Furthermore, Family Law prescribes that in family matter disputes, the jurors must have experience in working with children.	▪ The Serbian Civil Procedure Code prescribes that in the first instance, the court may comprise of a panel of judges or a sole judge. The panel of judges consists of one judge and two jurors. The sole judge tries property disputes if the amount in the dispute does not exceed € 50,000 in RSD counter-value on the middle exchange rate of the National Bank of Serbia on the day of filling the appeal. ▪ In the second instance, the court is comprised of a panel of three judges. There are no jury trials in the second instance. ▪ With respect to commercial disputes, the sole judge tries such disputes in the first instance. In the second instance, the court is comprised of a panel of three judges.
Class Actions	Limited	The Civil Procedure Code does not provide for a special proceeding for collective redress. Traditional tools of multiparty practice such as joinder and consolidation of proceedings are applied.
Document Production	The Civil Procedure Code prescribes special rules for disclosure of documents.	▪ The party is obligated to provide the court with the document which is used as a proof for the party's arguments. ▪ If the party refers to the document but claims that the document is in the possession of the other party, the court shall request the other party to present the document within a determined period of time. ▪ The party may not refuse to present the document if (i) the party itself referred to the document in the course of the proceedings; (ii) the party is obliged to hand the document over by substantive law; or (iii) the document is qualified as a "joint deed" between the parties. ▪ The court may order a third person to present the document only when such obligation is provided by substantive law, or the document is qualified as a "joint deed" between the party referring to the document and the third party. This court order is enforceable. The court may impose a fine up to € 285 for a physical person or a fine up to € 951 for a legal entity.

Mandatory Presentation by Counsel	Limited	▪ The party who has legal capacity may take part in the court proceedings independently. The party may act personally or may engage a representative to act in the name and on behalf of the party. ▪ The party who does not have legal capacity shall be represented by a legal representative. ▪ The party must be represented by a lawyer in the revision proceedings as well as in the proceedings initiated on the basis of the request for protection of legality.
Pro Bono System	Yes	▪ If the party's material situation does not allow the party to bear litigation costs, the court shall exempt the party from payment of such costs. ▪ The party may be exempted from payment of (i) all litigation costs (i.e. court fees, attorney fees and other expenses), in which case the president of the court shall appoint the party's legal representative from the list of the lawyers submitted to the court by the Bar Association; or (ii) only court fees.
Preliminary Injunction Proceedings		
Approximate Duration	Generally, a decision on a request for preliminary/temporary injunctions is rendered within 10 days. *Appellate proceedings*: 1 to 2 months in the second instance and 3 to 4 months in the third instance.	▪ The Law on Enforcement provides for two types of injunctions: (i) preliminary injunctions; and (ii) temporary injunctions. ▪ The preliminary injunction may be imposed by a domestic court on a monetary claim which has not become final or enforceable, if an enforcement creditor establishes the probability that there is a risk that, without such securing, satisfaction of the claim would be impossible or made significantly more difficult. ▪ The temporary injunction may be ordered before or in the course of court or administrative proceedings, as well as, after termination of such proceedings, until enforcement is conducted. ▪ The temporary injunction for securing monetary claims may be ordered if the enforcement creditor has shown the probability
Approximate Costs **Court Fees** **Attorneys' Fees (net)** *Simple case*	If the request for a preliminary injunction is applied for together with a claim in the main proceedings, the court fee for the claim as well as for the request for the preliminary injunction has to be paid. **Assumptions: only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent:** € 2,000 to 4,000 in first instance; Second instance: one brief, no hearing: € 4,000 to 8,000 Third instance: one brief, no hearing: € 4,000 to 8,000	

Complex case	**Assumptions: Apart from filing the request for a preliminary injunction, two comprehensive counter-statements are filed in reply to two statements of opponent; witnesses are heard:** Total costs (including meetings with client/witnesses) of first instance: € 15,000 to 25,000; second instance: one brief, no hearing: € 10,000 to 25,000; third instance: one brief, no hearing: € 10,000 to 25,000.	of the existence of the claim and the risk that, without such temporary injunction, the enforcement debtor would prevent or considerably hinder satisfaction of the claim by disposing of, hiding or otherwise making unavailable his property or means. ▪ The temporary injunction may be ordered to secure a non-monetary claim, if the enforcement creditor has shown the probability of the existence of the claim and a risk that otherwise satisfaction of the claim would be prevented or considerably hindered.
Arbitration Proceedings		
Approximate Duration	According to the Rules of the Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce, arbitration proceedings shall be completed within a year from the date of commencement of an arbitral tribunal or appointment of a sole arbitrator. Furthermore, as an exception, the arbitral tribunal or the sole arbitrator may decide to extend the arbitration proceedings for the following reasons: (i) obtaining evidence; (ii) responding to requests by the parties; or (iii) other justified reasons.	
Approximate Costs **Procedural Costs**	According to the Rules of the Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce, at the time of submission of a request for arbitration, a claim, a counterclaim, or a set-off claim, the party shall deposit the amount of € 200 with the Secretariat of the Court of Arbitration as a registration fee. The claimant has to pay the whole amount of arbitration costs determined by the chairman of the Court of Arbitration in accordance with the value of the claim within the limits set by the Tariff of Costs and Fees.	▪ The arbitration costs depend on the amount of the claim, whether a sole arbitrator or an arbitral tribunal of three members is appointed, the number of witnesses, language of arbitration, and whether expert opinions are required. The arbitration costs also include the fees of arbitrators and administrative charges. ▪ Arbitrator's costs include travel and accommodation expenses if the arbitrator resides outside of the place of arbitration. ▪ The fees of the arbitrators, as well as fees of the chairmen vice-chairmen and members of the board of the Court of Arbitration shall be determined in each case by the decision of the managing board in accordance with the Rules of the

	Assumption: the amount in dispute is € 1,000,000 Total costs: registration fee of € 200 and administrative fee of € 27,000. **Assumption: the amount in dispute is € 10,000,000:** Total costs: registration fee of € 200 and administrative fee of € 67,100.	Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce.
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 100,000	
Complex case	**Assumptions based on an amount in dispute of € 10,000,000:** Review of 1000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 250,000	
Document Production	The Law on Arbitration, as well as, the Rules of the Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce do not provide for special rules regarding	

	presentation of documents.	
Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	Varies	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	According to the Law on Court Fees, for the purpose of issuing a decision on recognition, the following amounts have to be paid: ▪ € 18 in the civil proceedings; and ▪ € 185 in the commercial proceedings. Application for recognition/enforcement: *Simple case* € 250 to 450 *Complex case*: € 1,000 to 4,000	▪ Under the Serbian Law on Conflict of Laws, the party seeking recognition/enforcement of foreign judgments must provide the court with the following documentation: original foreign judgment or a duly certified copy thereof; certified translation of the judgment; and Certificate issued by the competent foreign court proving that the judgment is legally-binding/enforceable. ▪ Under the Serbian Law on Arbitration, the party seeking recognition/enforcement of arbitral awards must provide the court with the following documentation: original arbitral award or a duly certified copy thereof; agreement on arbitration or a document on acceptance of arbitration in the original or a duly certified copy thereof; and certified translations of the abovementioned documents. ▪ For enforcement of arbitral awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	The Law on Insolvency prescribes that insolvency proceedings may be initiated on a motion filed by (i) a creditor; (ii) an insolvency debtor; or (iii) a liquidator. The insolvency proceedings shall be opened when at least one of the following reasons is established with respect to insolvency debtor:	▪ The decision on opening of the insolvency proceedings shall be delivered, on the same day it was rendered, to the debtor, the authorized petitioner, the organization carrying out the enforced collection procedure, the business register held with the Business Registers Agency, which agency shall published this decision on its official web-site, as well as to other persons if the court estimates that there is a need for such delivery.

	▪ Permanent insolvency; ▪ Pending insolvency; ▪ Over indebtedness; and ▪ Failure to comply with the adopted reorganization plan or if the reorganization plan was put into effect in a fraudulent or unlawful manner.	▪ Immediately after rendering the decision on opening of the insolvency proceedings, the insolvency judge shall draft the announcement on opening of the insolvency proceedings. ▪ The announcement on opening of the insolvency proceedings shall be published on the court's board, in one high-circulation daily newspapers distributed on the entire territory of the Republic of Serbia, and in the "Official Gazette of the Republic of Serbia". It may also be published in other Serbian or foreign media.
Approximate Duration	2.5 years. In very complexes cases, duration of more than 10 years is possible.	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	According to the Law on Court Fees, the amount of € 10 has to be paid for each filing. Filing of insolvency claim: *Simple case*: € 400 to 600 *Complex case*: € 2,000 to 5,000	

12. SLOVAK REPUBLIC

By Lubos Frolkovic and Zuzana Slavikova
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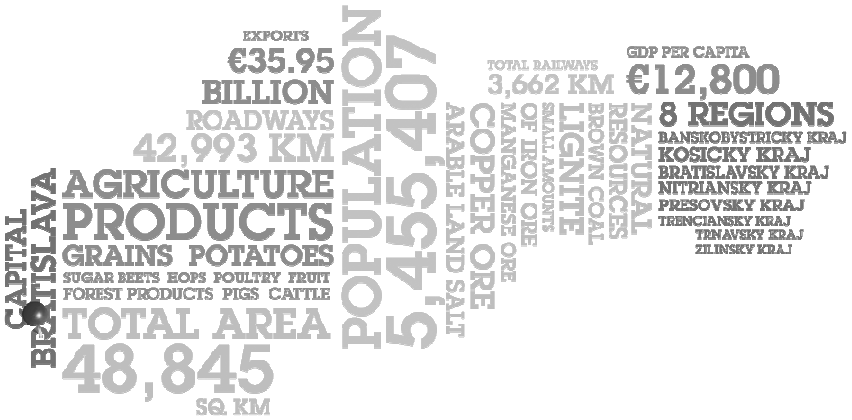

The information contained in this chapter on dispute resolution in the Slovak Republic was correct as of 1 January 2011.

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12.1 Legal System

The Slovak legal system is based on codified principles of civil law. Acts and some other legal provisions are published in the Collection of Laws (*Zbierka zákonov*) upon which they become valid and generally known. The efficiency of laws is specifically set forth in the respective law.

Judicial precedents are not binding but generally taken into consideration by courts and the parties in dispute. However, decisions of Slovak courts are not necessarily published and made available to the public.

Slovak's court system is composed of District Courts (54), Regional Courts (8) and the Supreme Court. All courts deal with civil (including labor), criminal, commercial and administrative matters. In general, cases are heard before District Courts and Regional Courts act as Appellate Courts. Exceptionally, Regional Courts act as first instance courts, in particular, in some social security matters, and the Supreme Court then functions as Appellate Court.

In addition, certain District Courts are appointed to handle very special matters. For example, the District Court Bratislava II is competent for competition matters for all of Slovakia.

Special criminal cases (e.g. organized crime, corruption) are handled by the Special Court and appeals are decided by the Supreme Court.

The Supreme Court never acts as a first instance court.

Furthermore, the Constitutional Court serves as an independent body protecting and upholding the principles of the Slovak Constitution. It is competent to decide on constitutional compliance of laws with the Slovak Constitution, competence conflicts between public authorities (unless decided by other bodies) and individual constitutional complaints against public authorities.

12.2 Litigation

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 proceeding generally starts based on a motion of a party. Only in exceptional cases (such as custody of children, inheritance, legal capacity of an individual, etc.), proceedings may be commenced without a motion.

In addition to the exact identification of the parties, the motion must contain the description of the matter, identification of the alleged evidence and the petition. The claimant may also request the following information:

a) Personal status (e.g. divorce, invalidity of marriage, legal capacity);

b) Performance of an obligation resulting from law, legal relationship or breach of law; or

c) Determination if there is a legal relationship or right subject to the existence of an urgent legal interest.

There is generally no deadline for the court to render a decision under Slovak law (except for some cases such as interim injunctions or provision of evidence). Therefore, court delays and long proceedings are something common in Slovakia.

Disputes claiming the right to payment of a pecuniary amount or performance are usually shorter (approximately three months). The court may rule strictly on the application without examining the defendant or holding hearings if it determines that the exercised right follows from the facts stated by the claimant. If no objection, including reasoning, is filed against the issued order within 15 days, it shall have the effect 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 same provisions newly apply to the order to perform if the right for performance clearly results from the submitted evidence. The court may also issue the European order for payment pursuant to Regulation (EC) No. 1896/2006 and order the fulfillment of any other obligation as pecuniary payment.

Furthermore, in small claims matters up to EUR 500, a simplified procedure has been newly introduced (e.g. no oral hearing, written evidence).

A court decision of a first instance court may be challenged by an appeal. It is the only ordinary legal remedy against a non-final judgment of a first instance court in Slovakia. The contested decision of a lower-level court is resolved by the superior court (devolutionary effect).

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.

Generally, the appellate proceeding is governed by the concentration principle, and new facts or evidence may be accepted only in exceptional cases (e.g. a party could not offer them by no fault of their own).

The second instance court will either decline or proceed with 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 second instance court is generally bound by the extent and reasons for the appeal. After a full reconsideration of the relevant facts, the second instance court may:

- Confirm the first instance decision;
- Reverse the first instance decision 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.

Appellate courts usually decide without a hearing. The hearing is compulsory only in specific cases set forth in law (e.g. if the first instance court decided without a hearing, etc.).

In addition to appeals, Slovak law enables the use of extraordinary legal remedies under strictly defined conditions, including petition for retrial and 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 requesting performance from another person may, in absence of voluntary performance by the other party within the period specified in the judgment, request the services of a self-employed judicial executor (judicial enforcement is possible only in cases of child-rearing). The statutory duration of enforcement of judgments by a judicial executor is unlimited. Depending on the case, it may last weeks or even years.

12.3 Insolvency

The bankruptcy courts are not organized as separate courts. Bankruptcy proceedings are 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.

In general, a debtor is considered bankrupt when it is: (i) insolvent, i.e. it has become incapable of paying its debts for more than one creditor and has not been able to satisfy its obligations within thirty (30) days following their maturity date, or (ii) over-indebted, i.e. it is has financial obligations, where its liabilities exceed assets and has more than one creditor.

Slovak insolvency law distinguishes between two main types of insolvency proceedings:

1. Bankruptcy proceedings: The purpose of which is to sell the debtor's assets, and to satisfy the debtor's creditors pro rata (subject to statutory exceptions), from the proceeds of the sale, in accordance with the rules set out in the insolvency law; and,

2. Restructuring/business reorganization proceedings: These are insolvency proceedings in accordance with the court's approval of reorganization plan, under which the debtor is obliged to fulfill the debts by agreement with his creditors.

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

The debtor is obliged to file a bankruptcy application within thirty (30) days of discovering 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 about the commencement of the bankruptcy proceeding within fifteen (15) days from the filing of the application.

The commencement of bankruptcy proceedings has the following effects: (a) the debtor is obliged to restrict the performance of its activities only to the day-to day legal acts; (b) enforcement (execution) proceedings are suspended or cannot be commenced; and, (c) except for some exceptions (e.g. receivables from the bank account, governmental bonds, transferable securities), it is not possible to commence nor continue with

enforcement of collateral rights on assets of the debtor, due to obligation of the debtor secured by the collateral right.

If there are sufficient assets for the payment of bankruptcy costs, the court declares bankruptcy over the assets of the debtor. Otherwise, the bankruptcy proceeding is suspended.

The declaration of bankruptcy has, in particular, the following effects: (i) disposal over bankruptcy assets passes on to the bankruptcy trustee; (ii) unpaid obligations become mature; (iii) court and any other proceedings are suspended; and, (iv) no security instruments over the bankruptcy assets may be established.

The creditors are obliged to register their receivables within forty-five (45) days from the declaration of bankruptcy over the debtor’s assets. Late registration is not considered with insolvency proceedings.

The creditor or trustee of a debtor's assets is 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 within six months after the commencement of the bankruptcy proceeding.

In cases involving conversion of a 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 poses a threat to the debtor or has already started, the debtor may authorize the trustee of his assets to prepare a restructuring report. If the restructuring report is not older than thirty (30) days and recommends it, the debtor or creditor may file an application for restructuring with the court. The court will approve the restructuring proceeding and the restructuring plan if: (i) the debtor conducts business activities; (ii) the debtor is or likely will become insolvent; (iii) the reasonable assumption exists that the essential part of the debtor's assets would remain unaltered; and, (iv) there is a reasonable assumption that more creditors would be satisfied in bankruptcy.

If the restructuring proceeding starts during the bankruptcy proceeding, the court then suspends the bankruptcy proceeding.

If the debtor is a natural person who is not an entrepreneur, 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 income of the debtor did not exceed EUR 333,000 in the previous accounting period; or, (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. Since 2006, natural persons are entitled to ask for the discharge from any claims after the cancellation of the bankruptcy proceeding subject to certain conditions and lapse of the probational 3-year period.

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

12.4 Arbitration

Pursuant to the Slovak Act on Arbitration Proceedings (Act No. 218/1996 Coll.), the parties may enter into an agreement that any or all disputes arising from their contractual relationship shall be decided by one or more arbitrators or by a standing court of arbitration. The list of standing courts of arbitration is kept by the Ministry of Justice. The act applies to both domestic and international arbitration proceedings, if the place of the arbitration is in the Slovak Republic, and is based on the UNCITRAL Model Law.

The main arbitral institution in the Slovak Republic is the Arbitration Court of the Slovak Chamber of Commerce and Industry established in 2002. The Arbitration Court deals with commercial disputes of both national and international nature. It has its own rules of arbitration.

An arbitration agreement can be included as a clause contained in the initial contract between the parties, or as a separate agreement (e.g. as a "compromise" for disputes that arose after the original contract was concluded). An arbitration agreement must be in writing. It may be replaced by a statement of the parties to the minutes of an arbitral tribunal in which they subject themselves to the jurisdiction of the arbitral tribunal. This statement shall be done at the latest at the commencement of arbitration proceedings. In order for the arbitration agreement to be valid, 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 the origin, change or expiration of the rights related to real estate; (ii) concerns personal status disputes; (iii) is linked with enforcement of a decision; or, (iv) arose in the course of bankruptcy or restructuring proceedings.

The parties are free to agree on the substantive law, the procedural rules, the seat and language of arbitration. However, disputes arising from domestic commercial or civil relationships are decided only on the basis of Slovak law. In addition, the parties are free to agree on the number of arbitrators and their method of appointment. However, there must always be an odd number of arbitrators.

According to Section 22 of the Arbitration Act the arbitral tribunal has authority to issue any interim measures it deems necessary to protect the subject matter of the dispute and preserve the integrity of the proceedings. The arbitral tribunal may require that the party seeking interim measures provides security in exchange for any interim measures that are granted. Parties also have the right to seek interim measures from the courts either before the constitution of the arbitral tribunal or after the termination of the arbitration proceedings. The arbitral tribunal may also apply to the courts for assistance in enforcing an interim measure.

Generally Slovak courts only uphold challenges to arbitral awards if there are compelling reasons for them to do so. Section 40 of the Arbitration Act provides the following grounds for challenging an award:

- the subject matter of the dispute was non-arbitrable;
- the award dealt with a dispute not contemplated by or not falling within the terms of the arbitration agreement and the party challenging the award objected to this fact before the arbitral tribunal;
- the award addressed issues that had already been determined by a previous court or arbitral tribunal;
- a party to the arbitration challenges the validity of the arbitration agreement;
- a party to the arbitration was unable to present his case (e.g. was not duly represented);
- the award was rendered by an arbitrator who had been removed for bias;
- the principle of the equality of the parties was violated;
- there are compelling reasons for re-opening the case (e.g. new evidence has emerged which casts serious doubt upon the correctness of the tribunal's decision);

- the award was tainted by fraud or other criminal conduct; or
- the consumer protection laws were violated in the decision-making within the arbitration.

12.5 Enforcement of Foreign Judgments and Arbitral Awards

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

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, 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. In 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, and Convention on Jurisdiction, Applicable Law, Recognition,

Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children.

Pursuant to the Slovak Act on arbitration proceedings, arbitral awards issued abroad shall be recognized and enforced by the Slovak Court in the Slovak Republic. Recognition of a foreign arbitral award shall not be declared in a special decision. The foreign arbitral award shall be recognized by the respective court in execution proceedings. In some instances, the courts may decline to recognize and enforce a foreign arbitral award based on the petition of the party obliged by the award.

The Slovak Republic is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, with the reservations that the Convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting State and with regard to awards made in the territory of non-contracting States, the Convention will only be applied to the extent to which those States grant reciprocal treatment.

The Slovak Republic is also a member of the 1961 European Convention 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, Regulation No 805/2004 creating a European Enforcement Order for uncontested claims, Regulation No 1896/2006 creating a European order for payment procedure, Regulation No 861/2007 establishing a European Small Claims Procedure, and Regulation No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

Dispute Resolution in Slovakia

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	**Simple cases:** *first instance*: 1 to 2 years; *second instance*: 8 to 18 months **Complex cases:** *first instance*: 1 to 5 years; *second instance*: 1 to 3 years	
Approximate Costs **Court Fees**	**Court fees are based on the Court Fees Act** and depend on the amount in dispute (6% of the dispute amount, max. € 16,596.50 and in commercial matters, max. € 33,193.50) Examples: ▪ Amount in dispute € 1,000,000: Court fees: € 16,596.50/33,193.50 in first instance ▪ IP rights: Court fees: € 331.50 in first instance ▪ Invalidity/cancellation of arbitration decision: Court fees: € 331.50 in first instance	▪ Litigation costs include court fees, attorneys' fees, and expenses for expert opinions and witnesses. ▪ Court fees have to be paid upon filing the claim or upon the request of the court; otherwise, the court normally terminates the proceeding. ▪ Court fees in the first and second instances are to be paid by the party filing the appeal and are the same amount; court fees in the recourse proceeding are double this amount. ▪ Court fees are paid in cash or in court stamps up to EUR 300; higher court fees are generally paid by a bank transfer or a postal money order. ▪ Some proceedings (e.g. inactivity of the public authority) or persons (e.g. consumer, petitioner for damages caused by criminal offense) are exempt from court fees. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, reimbursement of attorney fees only has to be made on the basis of the fees provided for in the Regulation on Attorneys' Tariffs. ▪ The actual attorney fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are of no relevance to the opposing party. ▪ Agreements on Quota litis and contingency fees are generally permitted for Slovak lawyers in all types of proceedings; the attorney fees may not exceed 20% of the dispute amount (value).
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** *first instance*: preparation of two briefs, four hearings with a duration of 1h, 2h, 4h, and 6h, respectively, preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 25,000 to 35,000; *second instance*: one brief, no hearing: € 2,500 to 10,000	
Complex case	**Assumptions based on an amount in dispute of € 10,000,000**: *first instance*: preparation of 4 comprehensive briefs, four hearings with a duration of 2 x 2h, and 2 x 4h; preparation of hearings /meetings with client, witnesses, correspondence with client: In total € 200,000 to 300,000; *second instance*: one brief, no hearing: € 21,000 to 35,000	

Dispute Resolution in Slovakia

Jury Trials	There are no civil jury trials in Slovakia.	
Class Actions	Limited	The Slovak Code of Civil Procedure does not provide for a special proceeding for collective redress. Traditional tools of multiparty practice such as joinder and consolidation of proceedings are applied. Consumer organizations often have similar claims of consumers assigned to them and file one complaint.
Document Production	Limited	▪ In general, there is no formal discovery in Slovakia. ▪ Documents are subject to disclosure if the party itself referred to the document in the course of the proceedings, the party is obliged to hand the document over by substantive law, or the court may order its submission from another person/entity. ▪ Failure to comply with the order to produce such documents can be subject to a procedural fine up to EUR 820 (repeatedly up to EUR 1,640).
Mandatory Presentation by Counsel	Generally no	Presentation by counsel is mandatory only in recourse proceedings (extraordinary remedy) and actions against decisions and procedures of administrative authorities.
Pro Bono System	Yes	There is legal aid for people who can't afford (full or partial) costs of legal proceedings and the dispute is not apparently arbitrary or unsuccessful.
Preliminary Injunction Proceedings		
Approximate Duration	Depending on the type of the preliminary injunction, the decision is rendered between 1 and 30 days after the delivery of the request. *Appellate proceedings:* depending on the type of the preliminary injunction, the decision should be issued within 1 to 30 days after the submission of the matter pursuant to the Code of Civil Procedure (in practice, the duration may be up to 3 months).	▪ In the request for a preliminary injunction, the applicant must specifically justify its claim and the existence of the danger of immediate threatening damages.

Approximate Costs **Court Fees** **Attorneys' Fees (net)** *Simple case* *Complex case*	**Court fee** for any type of preliminary injunction is EUR 33. If the request for a preliminary Injunction is filed outside main proceedings, the court fees are reduced to half in first instance. **Assumptions based on an amount in dispute of € 1,000,000:** only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent: € 1,300 to 5,000 in *first instance*; *second instance*: one brief, no hearing:€ 1,300 to 5,000 **Assumptions based on an amount in dispute of € 10,000,000:** Apart from filing the request for a preliminary injunction, two comprehensive counter-statements are filed in reply to two statements of opponent; witnesses are heard: Total costs (including meetings with client/witnesses) of *first instance*:€ 40,000 to 50,000; *second instance*: one brief, no hearing: € 10,000 to 20,000	▪ The court may (and often does) decide about the preliminary injunction without a hearing and proceeding. ▪ The court is not obliged to hear evidence. However, it must verify the existence of the claimed right and general facts proving the necessity of the preliminary injunction. ▪ Costs incurred by a successful applicant in preliminary injunction matters can only be sought in the main proceedings. ▪ If the preliminary injunction is cancelled or terminated for reasons different from the satisfaction of the applicant's claim, the applicant is obliged to compensate the injured party for incurred damages. The court ordering the preliminary injunction decides about this compensation upon motion of the injured party.
Arbitration Proceedings		
Approximate Duration	The usual duration of arbitration proceedings is between 1 month and 2 years.	
Approximate Costs **Procedural Costs**	The procedural costs depend on several factors: whether a sole-arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case, the administrative charges and other expenses (translation costs, travel and accommodation costs of foreign arbitrators, etc.), if the dispute is national or international, speedy decision (up to 1 month) is expected, etc. The following two estimates are based on the procedural costs of the Arbitration Court of the Slovak Chamber of Commerce and Industry.	▪ In cases with a speedy decision within 1 month, the arbitration fee is increased by 75% and if within 4 months, by 50%. ▪ In simple proceedings (without any hearings, only based on evidence), the arbitration fee is decreased by 30%. Total decrease may be up to 50%. Similarly, the administrative fee may be decreased up to 30% in total. ▪ If the dispute is decided by a sole arbitrator, the arbitration fee is decreased by 30% and the administrative fee by 20%

Attorneys' Fees (net) *Simple case* *Complex case*	**Assumption: sole arbitrator appointed and an amount in dispute of € 1,000,000** Total costs: arbitration fee of € 14,000, administrative fee of € 9,500 **Assumption: sole arbitrator and an amount in dispute of € 10,000,000.** Total costs: arbitration fee of € 62,400; administrative fee of € 16,700 **Assumptions based on an amount in dispute of € 1,000,000:** Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 4 witnesses; review of 4 written witness statements; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. In total: € 25,000 to 35,000 **Assumptions based on an amount in dispute of € 10,000,000:** Review of 1000 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; assistance with the preparation of 8 witnesses; review of 8 written witness statements; document production up to 500 pages; preparation and review of expert opinions; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. In total: € 230,000 to 400,000	
Document Production	Limited	▪ The arbitral tribunal considers only the evidence proposed by the parties.

		▪ In general, a party could ask the arbitral tribunal for its support in document production. The arbitral tribunal may then ask the general court for support in document production.
Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	1 to 2 months until a decision on authorization to the executor is rendered in first instance. 3 to 6 months if the decision is appealed. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	▪ Under EC Regulation 44/2001, the party seeking recognition/enforcement must submit a copy of the judgment which should be accompanied by a Certificate of Authenticity issued either by the court that rendered the judgment or by another competent institution of the state of origin. ▪ Similarly, under EC Regulation 805/2004, the decision has to be certified as a European Enforcement Order. ▪ Documents issued under applicable law implementing the EC Directive 2008/55/EC concerning the enforcement of claims are also deemed as execution titles. ▪ Further, in order to avoid any delays, attaching a certified translation of the judgment is highly recommended.
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	**Court fee** for the decision on authorization to the executor is EUR 16.50. Reward and expenses of the executor are governed by the Regulation on Rewards and Expenses of Court Executors. Application for recognition/enforcement: *Simple case*: € 1,300 to 3,000 *Complex case*: € 2,000 to 6,000	▪ Judgments that fall outside the scope of application of EC laws described above must be submitted in the original or in a copy issued by the court that rendered the judgment including the information about its validity or enforceability and evidence that the other party was duly delivered the court documents and decisions (or the confirmation of the other party in this respect). ▪ Further, a certified translation of the judgment must be submitted. ▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	A creditor may file a motion for the insolvency proceeding if (i) a debtor is more than 30 days in delay with the payment and (ii) the debtor has at least two creditors with at least two	The commencement of insolvency proceedings and the declaration of insolvency is published in the official Commercial Journal (available on the website of the Slovak Ministry of Justice under

	enforceable/recognized claims for more than 30 days delay despite the prior written notification.	http://www.justice.gov.sk/yyyy.aspx). The period for registration of insolvency claims is 45 days as of the published declaration of insolvency.
Approximate Duration	1 year to several years; in very complex cases, a duration of more than 10 years is possible	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	The initiation of the insolvency proceeding and registration of the insolvency claims are free of charge. Court fees are paid upon the sale of assets from the achieved proceeds. Registration of insolvency claim (fully depending on fee arrangement): *Simple case*: Approx. € 400 to 600 *Complex case*: Approx. € 2,000 to 5,000	The applicant for the insolvency proceeding (except for a liquidator of a debtor) is obliged to pay advance payment for insolvency costs to the court: ▪ € 1,659.70 if a debtor is a natural person ▪ € 6,638.78 if a debtor is a legal entity

13. SLOVENIA

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The information contained in this chapter on dispute resolution in Slovenia was correct as of 1 January 2011.

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13.1 Legal System

On 25 June 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. In limited situations, an appeal in the third instance can 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. It is the highest judicial body responsible for protecting the Slovenian Constitution by exercising its 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 and civil disputes where the amount in dispute is up to EUR 20,000 or less. Municipal courts also monitor, maintain and administer the land registers.

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 civil matters where the amount in dispute exceeds EUR 20,000. In addition, 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 Slovenia are also responsible for monitoring and administering the commercial register.

The Labor Court and Social Court have the position of a District Court and have jurisdiction to rule only on 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, commercial lawsuits, cases of administrative review and labor and social security disputes. It is the court of third instance in almost all 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 breaches of procedure. In addition to administering justice, the Supreme Court also determines most jurisdictional disputes between the 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 in 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.

With regard 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 company's financial restructuring plan and payments of the claims to the creditors on a regular basis.

The most important change for 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 a 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 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 in the areas of personal bankruptcy and bankruptcy of an estate that were not previously recognized under Slovenian law.

Generally, while the bankruptcy proceedings are pending, the debtor may request remission of the claims against the debtor; however, remission would not be possible in the following cases: (i) the debtor has been involved in a serious economic crime; (ii) in the last three years prior to initiation of personal bankruptcy, the debtor gave incorrect and untrue information to the tax office and the tax office subsequently charged a tax in the amount not less than EUR 4,000; (iii) ten years have not passed from the finality of the last decision on remission of claims; and, (iv) in the last three years prior to initiation of personal bankruptcy, the debtor took over liabilities disproportionate with its economic situation or the debtor disposed of assets without or for insignificant payment.

The Act introduces a provision determining that the deletion of a 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 the company still has unpaid obligations at the moment it ceases to exist, the active company members could be held jointly liable for any of the remaining financial obligations, even after liquidation of the company's assets.

The active members of the company are those who had the opportunity to influence the management or business activities of the company, 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 the recommendations adopted by UNCITRAL in 2006 concerning the written form requirements of arbitration agreements and interim measures of protection.

The Arbitration Act regulates various types of arbitral proceedings when the seat of 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 both to domestic disputes and 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.

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 and 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.

The Act requires that the arbitration agreement entered into by the parties be in writing. It can be a separate agreement or form part of another agreement. An arbitration agreement is deemed to be in wiring if it is concluded between the parties by way of an exchange of letters, facsimiles or telexes or by such other means of telecommunication which produce a permanent record of the agreement. It is also considered to be in writing if it is sent from one party to the other or by a third person to both parties and if no objection was raised in good time. An arbitration agreement is also valid if a bill of lading contains an express reference to an arbitration clause in a charter party. It will also be deemed to be in writing if one of the parties states in its statement of claim that

an arbitration agreement was entered into between them, and the other party does not deny this in its statement of defense at the latest.

Further, the Act allows the parties to agree that all previous or future disputes arising out of the parties' contractual or non-contractual relationship shall be settled through arbitration. Generally all pecuniary claims are arbitrable. Public law disputes e.g. marital disputes and adoption or parental issues are not arbitrable. In addition, claims that would normally be decided by regulatory or supervisory authorities such as patent, trademark or antitrust disputes are not arbitrable.

The parties are free to agree on the substantive law, the procedural rules, the seat and language of arbitration. In addition, the parties are free to agree on the number of arbitrators and their method of appointment.

Unless otherwise agreed by the parties, an arbitral tribunal may, upon request of the other party, order such interim or protective measures against a party as the arbitral tribunal may consider necessary in respect of the subject matter of the proceedings. The party that has requested such measures may also apply to the competent national court for the enforcement of such measures. It is not incompatible with an arbitration agreement for a party to apply to the state courts before or during arbitration proceedings for an interim measure of protection or for a court to grant such claim.

Arbitral awards are considered final and binding upon the parties involved in the arbitration, and an arbitral decision possesses 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. There are only limited grounds to challenge an arbitral award. These are:

- The party concluding the arbitration agreement had no legal capacity or capacity to act;
- The arbitration agreement is not valid under the law to which the parties have subjected it, or failing such indication, under Slovenian law;
- A party 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 was made in a dispute not falling within the terms of the statement of claim or contains decisions beyond the scope of the statement of claim;

- Incorrect composition of the arbitral tribunal or the proceedings were not in accordance with the parties' agreement;

- The subject matter of the dispute is not arbitrable under Slovenian law;

The award is in conflict with the rules of Slovenian public order.

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 posto*pku).

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

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, with the reservation that the Convention will only be applied to those arbitral awards which were adopted after the entry into effect of the Convention. Slovenia is also a party to 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.

Dispute Resolution in Slovenia

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings		
Approximate Duration	**Simple cases:** *first instance:* 3 years; *second instance:* 6 months; *extraordinary remedies:* 18 months **Complex cases:** *first instance:* 5 years; *second instance:* 1 year; *extraordinary remedies:* up to 30 months	▪ In a Slovenian Civil Procedure, the court will at the beginning of dispute offer mediation as an alternative dispute resolution method. The parties may or may not give their consensus to participate in the proceeding. Generally those proceedings are for free (paid out of the State's budget) – recently, commercial disputes are no longer free. An average commercial mediation costs approx. EUR 94 per party (excluding attorneys' fees). ▪ Litigation costs include court fees, attorneys' fees and expenses for expert opinions and witnesses. ▪ Court fees have to be paid upon filing the claim. ▪ Court fees in the first and second instances are to be paid by the party filing the appeal. ▪ If a claim is filed by a foreign party and enforcement of a decision on reimbursement of litigation costs is not safeguarded, the foreign party can be ordered to pay a security deposit – subject to international conventions and EU Law. Security deposits can not be ordered for EU citizens. ▪ Litigation costs are generally awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis. However, reimbursement of attorney fees only has to be made on the basis of the fees provided for in the Act on Attorneys' Tariffs. ▪ The actual attorney fees of a party (depending on the fee agreement between attorney and client) may be substantially higher, but are of no relevance to the opposing party.
Approximate Costs **Court Fees**	**Court fees are based on the Court Fees Act** and depend on the amount in dispute. Examples: ▪ Amount in dispute € 500,000: Court fees: € 5,925 in first instance ▪ Amount in dispute € 1,000,000: Court fees: € 8,925 in first instance ▪ Amount in dispute € 5,000,000: Court fees: € 32,925 in first instance	
Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 500,000:** *first instance*: preparation of briefs, attendance on hearings, correspondence with client, in total: EUR 4,937.50 EUR; *second instance*: preparation of briefs, attendance on hearings, correspondence with client, in total: EUR 5,530; *extraordinary remedies*: preparation of briefs, attendance on hearings, correspondence with client, in total: EUR 6,320	
Complex case	**Assumptions based on an amount in dispute of € 5,000,000:** *first instance*: preparation of briefs, attendance on hearings, correspondence with client, in total: EUR 27,435.50 EUR; *second instance*: preparation of briefs, attendance on hearings, correspondence with client, in total: EUR 30,730; *extraordinary remedies*: preparation of briefs, attendance on hearings, correspondence with client, in total: EUR 35,120	
Jury Trials	There are no civil jury trials in Slovenia.	

Dispute Resolution in Slovenia

Class Actions	There are no class actions in Slovenia.	
Document Production	Document production occurs within the standard civil procedure.	▪ There is no formal investigation in Slovenia. ▪ Documents are subject to disclosure if the party itself referred to the document in the course of the proceedings, the party is obliged to hand the document over by substantive law, or the document is qualified as a "joint deed" between the parties. ▪ A court order to produce such documents is not enforceable. Failure to comply with the order can only be considered by the court in its evaluation of the case.
Mandatory Presentation by Counsel	Generally no	Mandatory presentation by Counsel (Attorney at Law) is required only in proceedings concerning extraordinary remedies (*izredna pravne sredstva*). Should a party decide to be represented, it may empower: ▪ anyone with full contractual capacity (*poslovna sposobnost*) in front of a Local Court; and, ▪ Counsel (Attorney at Law) or a person with a bar exam in front of a District, High or Supreme Court.
Pro Bono System	Yes	There is legal aid for people who can't afford the costs of legal proceedings.
Preliminary Injunction Proceedings		
Approximate Duration	Generally, a decision on a request for a preliminary injunction is rendered within 1 week.	▪ In the request for a preliminary injunction, the applicant must provide available evidence, such as documentary evidence and affidavits that can be immediately examined by the court; foreign-language documents should be presented with Slovenian translations. ▪ Witnesses should be readily available, so they can appear before the Court on short notice.
Approximate Costs **Court Fees** **Attorneys' Fees (net)** *Simple case*	Court fees for a preliminary injunction amount to EUR 16, regardless of the disputed amount. **Assumptions based on an amount in dispute of € 1,000,000 - only the request for a preliminary injunction is filed, the court renders its decision without hearing the opponent:** *first instance:* EUR 892.50; *second instance*: EUR 1,785	

Complex case	**Assumptions based on an amount in dispute of € 1,000,000 - the request for a preliminary injunction is filed, with a hearing:** *first instance:* EUR 1,785; *second instance*: EUR 3,570	
Arbitration Proceedings		
Approximate Duration	The usual duration of arbitration proceedings at the Permanent Court of Arbitration Attached to the Chamber of Commerce and Industry of Slovenia is up to 2 or even 3 years (based on individual experience – there are no official statistics available).	▪ The Permanent Court of Arbitration Attached to the Chamber of Commerce and Industry of Slovenia is the only general and permanent arbitral institution in Slovenia.
Approximate Costs Procedural Costs	The procedural costs depend on whether a sole-arbitrator or an arbitral tribunal of three members is appointed, the complexity of the case, and the administrative charges. The following two estimates are based on the procedural costs of the Rules of Arbitration of the Permanent Court of Arbitration Attached to the Chamber of Commerce and Industry of Slovenia: **Assumption: international dispute, sole arbitrator appointed and an amount in dispute of € 1,000,000:** Procedural costs: registration fee of € 500; administrative fees of up to € 5,580 and fees for a sole arbitrator of up to € 18,600 **Assumption: international dispute, sole arbitrator appointed and an amount in dispute of € 10,000,000:** Procedural costs: registration fee of € 500; administrative fees of up to € 8,340 and fees for a sole arbitrator of up to € 27,800 In the case there is an arbitral tribunal with three arbitrators,	▪ The costs of arbitration depend on the arbitration agreement and the amount in dispute, the amount of documents, number of witnesses and whether expert opinions are required. The costs of arbitration also include the fees of arbitrators and administrative charges. ▪ The arbitrators usually have large discretion regarding the award of costs. However, in practice the award on costs often depends on the outcome of the case. The award of legal fees is usually not determined by reference to a statutory tariff.

	the fees for the arbitrators and administrative fees double.	
Approximate Attorneys' Fees (net) *Simple case*	**Assumptions based on an amount in dispute of € 1,000,000:** preparation of briefs, attendance at hearings, correspondence with client, in total: EUR 7,140	
Complex case	**Assumptions based on an amount in dispute of € 10,000,000:** preparation of briefs, attendance at hearings, correspondence with client, in total: EUR 52,437.50	
Document Production	Very limited	Document production is only allowed according to the Rules of Arbitration of the Permanent Court of Arbitration Attached to the Chamber of Commerce and Industry of Slovenia.
Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	Depends mainly on the type and basis of the proceeding. Under EC Regulation 44/2001, proceedings are shorter than under usual proceedings under the Private International Law and Procedure Act or under the Arbitration Act (New York Convention). 1 to 3 months until a decision on recognition and enforcement is rendered in first instance. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	▪ Under EC Regulation 44/2001, the party seeking recognition/enforcement must submit a copy of the judgment which should be accompanied by a Certificate of Authenticity issued either by the court that rendered the judgment or by another competent institution of the state of origin. ▪ To avoid any delays, attaching a certified translation of the judgment is highly recommended. ▪ Judgments that fall outside the scope of application of the EC Regulation must be submitted in the original or in a copy issued by the court that rendered the judgment. ▪ Further, a certified translation of the judgment must be submitted. ▪ For enforcement of awards under the New York Convention, the creditor must provide the court with the authenticated original award or a duly certified copy thereof and the original of the arbitration agreement or a duly certified copy thereof.
Approximate Costs **Court Fees**	Court fees for enforcement of foreign judgments and arbitral awards amount to EUR 16, regardless of the disputed amount.	

Attorneys' Fees (net)	**Assumptions based on an amount of the award of € 1,000,000:** EUR 446.25 **Assumptions based on an amount of the award of € 5,000,000:** EUR 1,646.25	
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	Creditors should generally file their claims within 3 months after the insolvency proceeding begins.	The commencement of insolvency proceedings is published on the webpage http://www.ajpes.si/eObjave/ On the webpage all the relevant periods (e.g. for filing of claims, for appeals) are set.
Approximate Duration	1 year to several years; in very complex cases, a duration of more than 10 years is possible.	
Approximate Costs **Court Fees**	**Assumptions based on an amount of the filed claim of a creditor of € 500,000:** court fees amount to EUR 1,777.50	
Attorneys' Fees (net)	**Assumptions based on an amount of the claims claimed of € 500,000 representing the creditor in a compulsory settlement proceeding:** preliminary proceeding + main proceeding: EUR 2,962 **Assumptions based on an amount of the claims claimed of € 500,000 representing the debtor in a compulsory settlement proceeding:** preliminary proceeding + main proceeding: EUR 7,900 **Assumptions based on an amount of the claims claimed of € 500,000 representing the creditor in the bankruptcy proceeding:** preliminary proceeding + main proceeding: EUR 2,962 **Assumptions based on an amount of the claims claimed of € 500,000 representing the debtor in the bankruptcy proceeding:** preliminary proceeding + main proceeding: EUR 3,950	

14. UKRAINE

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The information contained in this chapter on dispute resolution in Ukraine was correct as of 1 January 2011.

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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 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 Highest Specialized Court of Ukraine (expected to be created in late 2010), will cover all civil and criminal cases and review rulings adopted by the appellate courts, although not rulings from other specialized courts, such as economic and administrative courts.

The Supreme Court of Ukraine does not cover cases under jurisdiction of the specialized courts of Ukraine (for instance, the cases reviewed by the Highest Economic Court of Ukraine or cases covered by the Administrative Court of Ukraine) and can only review the rulings of the mentioned courts on a very limited set of grounds (in cases of lack of uniformity of application of law in similar cases, in case some international court jurisdiction of which is recognized by Ukraine ruled that Ukraine is in breach of its international obligations, reviews the cases where president of Ukraine is tried on allegations of treason against the state etc.)

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 Highest Specialized Court of Ukraine, while the Supreme Court of Ukraine can only subsequently review the cases on a very limited number 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. In addition, there are 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 appeal in Kiev and Sevastopol.

It is possible to appeal the ruling of an economic court in the relevant economic court of appeal. Further, the law provides the possibility to challenge the decision of that court of appeal in the High Economic 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, under a very limited set of grounds, in the Supreme Court of Ukraine. Disputes arising out of elections or national referenda and refusal to register candidates 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 March 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 6 July 2005, and the Criminal Procedural Code of Ukraine No 1001-05 dated 28 December 1960.

Under Ukrainian law, a court may 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 requires the defendant to provide a defense statement stipulating whether the defendant admits the claim. The defendant may file a counterclaim or may refrain from providing any defense statement. Generally, all communications between the parties to a lawsuit are made in writing, except for oral arguments in court.

Later on in civil and administrative cases, a preliminary hearing may be 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 to be proven, specify the list of evidence, and if needed, secure the evidence and/or claim. Then, the next hearing date is set.

It should be noted that although the regulations governing legal proceedings in commercial disputes do not contain any of the requirements 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 hears the parties' applications and motions. After the relevant review, the court issues a ruling with respect to each application and/or motion.

The litigation process may have several hearings depending on the complexity and nature of a lawsuit, and in certain instances, court proceedings may be recorded by technical means.

After identification of the trial participants, the court asks the parties 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 than plaintiff and defendant) involved in the matter. After the court examines the evidence presented (the parties can make an objection or comment to the evidence presented), it examines the witnesses and experts. Witnesses and experts might also be examined by the parties to the dispute.

Thereafter, the court summarizes 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 postpones the hearing for another date. Subsequent failures to attend court hearings may result in the following: (i) if the plaintiff fails to attend, the court can stop the proceedings of the lawsuit, and, (ii) if the defendant is absent, the court can 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 also ask the court to carry out hearings in its absence as well.

Under Ukrainian law, one can seek monetary and non-monetary remedies as reimbursement for damages (including contract and tort damages) or an injunction awarding specific performance; for instance, *restitution in integrum*, replevin or prohibitory and mandatory injunctions.

Although the law provides for an expedited period of court proceedings, in practice this is sometimes 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; 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 fees, there are fees for technical and information services (amounting to approximately EUR 12 for commercial disputes), attorneys' fees, and expenses for experts, witnesses and interpreters.

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 the 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.

Under Ukrainian law, bankruptcy is defined as court recognition of a failure of a debtor to satisfy the creditors' claims through means other than liquidation or a court supervised return to solvency. Insolvency proceedings in the 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 can 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 was UAH 907 from 1 October to 30 November 2010 and UAH 922 from 1 December to 31 January 2011) 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 filing a petition to open a bankruptcy proceeding. The procedure shall be initiated by the relevant economic court of the region where the entity initiating the insolvency procedure 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 of its filing and simultaneously impose a moratorium on enforcement 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 a bankruptcy proceeding. The purpose of this

preparatory hearing is to identify and approve a list of creditors and 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), who is licensed and supervised by the Ministry of the Economy of Ukraine, shall be appointed by the court as an administrator of the property. The administrator's role is 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 a date for a meeting of the creditors. Thereafter, the creditors with approved claims hold a meeting to elect a committee on the basis of debt-weighted voting. The creditors' committee may recommend 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. However, according to some sources, the average period of bankruptcy proceedings in Ukraine is 2.9 years and the cost is equal to approximately 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 arbitration depending upon the parties involved in the dispute. The primary law regulating domestic arbitration in the Ukraine is the Law of Ukraine "On Courts of Arbitration" No 1701-IV dated 11 May 2004. The primary legislation regulating international arbitration is the Law of Ukraine "On International Commercial Arbitration" dated 24 February 1994, the provisions of which are based on the UNCITRAL Model Law.

The following disputes are considered to be international: disputes resulting from contractual or other civil law relationships arising in the course of foreign trade and other forms of international economic relations, provided that the place of business of at least one of the parties is situated outside the Ukraine; as well as disputes arising between enterprises with foreign investments or international associations or organisations established in the Ukraine; disputes between their participants as well as disputes between such entities and other legal entities in the Ukraine.

The major international arbitration institution in Ukraine is the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry. The following disputes may be reviewed by the international commercial arbitration court: disputes involving a party who is not considered a resident of Ukraine; disputes between Ukrainian corporate entities with foreign investments: disputes involving international organizations founded in the Ukraine; disputes between the founders of such organizations.

Pursuant to the law on arbitration, the parties (corporate entities and individuals) may enter into an arbitration agreement and submit to arbitration any civil or commercial dispute, except for disputes regarding: the invalidation of state acts; disputes with respect to commercial agreements regarding state interests; disputes regarding state secrets; disputes regarding real estate (including land plots); disputes regarding employment matters; disputes between shareholders to a legal entity and disputes between a legal entity and its shareholder; disputes that will result in a ruling according to which a state authority shall undertake certain steps; 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 which 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.

Arbitration agreements must be made in writing and may be in the form of an arbitration clause in the contract between the parties or 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 (i.e. written correspondence) or in correspondence exchanged between the parties which ensures the proof of such agreement. An arbitration agreement is also deemed to be valid if a respondent in arbitration proceedings does not challenge the jurisdiction of the arbitral tribunal at the latest with its reply to the statement of claim.

In international arbitration, the reference to an arbitration court in the arbitration agreement also means 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 arbitration court prevail.

The parties are free to agree on the substantive law, the procedural rules, the seat and language of arbitration. In addition, the parties are free to agree on the number of arbitrators and their method of appointment.

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.

According to Article 17 ICA Law, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measures.

At the same time, the party may apply directly to the state court. According to Article 9 ICA Law, it is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, a court of general jurisdiction to order interim measures securing the claimant's claim.

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

Ukrainian international arbitral awards are final and obligatory for the parties. In cases where the parties refuse to execute them voluntarily, they are enforced according to the

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in the jurisdiction of the debtor.

International arbitral awards may be challenged only on a limited number of grounds:

- incapacity of one of the parties to conclude an arbitration agreement, other grounds for invalidity of the arbitration agreement;
- absence of proper notification of the arbitration proceedings;
- lack of arbitrability according to the arbitration agreement;
- incorrect composition of the arbitral tribunal, incorrect arbitration procedure;
- violation of Ukrainian *ordre public*;
- the subject matter of the dispute may not be subject to arbitration under Ukrainian law.

International arbitration awards are enforced by the order of competent local courts, which can be obtained within three years of the date of issue of the arbitral award. The court can issue such order provided there are no grounds for refusal of the recognition and enforcement of such award. The order can be challenged in the court of appeal.

14.5 Enforcement of Foreign Judgments and Arbitral Awards

The Ukraine is a party to the following conventions: 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), 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), and 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).

Foreign judgments in the Ukraine are enforced by 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.

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 constitutes grounds for enforcement of foreign judgments in Ukraine.

Foreign judgments can be enforced within three years from the date such judgment came into effect, except for claims regarding indebtedness on periodical payments).

In order to be executed in the 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 can not fall within the exclusive jurisdiction of the 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, and 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), and 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 the translation must be certified.

Within five days of proper submission to a Ukrainian court, the court 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.

Regarding the enforcement of foreign awards, the Ukraine is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 10 June 1958 (the "New York Convention"), with the reservation that with regard to awards made in the territory of non-contracting States, the Convention will only be applied to the extent to which those States grant reciprocal treatment. Ukraine is also a party to the 1961 European Convention on International Commercial Arbitration. 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.

Dispute Resolution in Ukraine

Type of Proceedings	Procedure and Assumptions	Practice Tips
Standard Civil Proceedings, Commercial Proceedings **(the purpose of the Commercial Proceedings is settlement of disputes between commercial entities/private entrepreneurs involved in economic activity)**		
Approximate Duration	**Standard Civil Proceedings** *First instance*: 2 months; *second instance*: 2 months*; third instance*: 1 month **Commercial Proceedings** *First instance*: 2 months; *second instance*: 2 months*; third instance*: 1 month	Practically, litigation may last much longer in Ukraine. It may take years for passing the final judgment on a matter.
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	**Standard Civil Proceedings** Court fees are based on the State Duty Decree and comprise 1% of the amount in dispute. The amount of court fees is capped to UAH 1 700 (aprox. € 170). **Commercial Proceedings** Court fees are based on the State Duty Decree and comprise 1% of the amount in dispute. The court fees amount is capped to UAH 25 500 (aprox. € 2 550). **Assumptions, based on the following figures:** *first instance*: preparation of the law suit, four hearings with a duration of 1h, 2h, 4h, and 6h, respectively, preparation of hearings /meetings with client, preparation of procedural documents (e.g. explanations to the court), correspondence with client: In total € 15,000 to 50,000; *second instance*: preparation of the appeal, procedural documents, 2 hearings: € 8,000 to 20,000; *third instance*: preparation of the appeal, procedural documents, 2 hearings € 8,000 to 20,000	▪ Litigation costs include court fees, attorneys' fees and expenses for expert opinions and witnesses. ▪ Court fees have to be paid upon filing the claim. ▪ Court fees in the second and third instances are to be paid by the party filing the appeal. ▪ Litigation costs are awarded against the losing party who must reimburse the winning party. ▪ If a claimant has been partially successful, the costs of both sides are divided on a pro-rata basis.
Jury Trials	There are no jury trials in Ukraine.	

Dispute Resolution in Ukraine

Class Actions	Limited	The Ukrainian Codes of Civil Procedure and Commercial Procedure do not provide for a special proceeding for collective redress. Such traditional tool of multiparty practice as consolidation of proceedings is applied. The parties may also opt for filing collective law suit with several plaintiffs.
Document Production	Limited	There is no formal discovery in Ukraine.
Mandatory Presentation by Counsel	No	The party may participate in proceedings either personally or via its representative. Presentation by Counsel is not mandatory in Ukraine.
Pro Bono System	Yes	Formally there is legal aid for people who can't afford the cost of legal proceedings. However, in practice it is hardly possible to obtain this free-of-charge legal aid.
Preliminary Injunction Proceedings		
Approximate Duration	Generally, a decision on a request for a preliminary injunction is rendered in 2 days upon submission of relevant application.	▪ With the request for a preliminary injunction, the applicant must provide available evidence that the preliminary injunction is needed. ▪ The court may request additional explanations or documents.
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	At present, no extra court fees have to be paid. Current legislation provides for the possibility of implementing court fees in the future. Amount of such fees is not specified. **Assumptions:** the request for a preliminary injunction is filed and the court renders its decision without hearing the opponent: € 4,000 to 8,000	
Arbitration Proceedings		
Approximate Duration	The foreseen duration of arbitration proceedings in the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC at the UCCI) is 6 months; however, it may be prolonged.	
Approximate Costs **Procedural Costs**	The procedural costs depend on the amount in dispute, number of arbitrators, complexity of the case and the administrative charges.	The arbitration costs to a large extent depend on the arbitration agreement, the amount in dispute, and complexity of case.

Attorneys' Fees (net)	**Registration fee** is USD 600. **Arbitration fee** depends on amount in dispute. For example, amount in dispute is USD 200,000 – the arbitration fee is USD 9,200; amount in dispute is USD 500 000 – the arbitration fee is USD 15 200; amount in dispute is USD 4,000,000 – the arbitration fee is USD 35,200. If the case is considered by 1 arbitrator, the arbitration fee decreases by 20%. Arbitration proceedings may also suggest additional expenses. **Assumptions based on an amount in dispute of € 1,000,000:** Review of 100 pages of documents; no challenge to the jurisdiction of the arbitral tribunal; two exchanges of submissions; review of correspondence with arbitral tribunal; no experts; preparation of oral hearing and participation in an oral hearing; preparation and review of one post hearing brief. Total approximate cost: € 100,000	
Document Production	Limited	There is no formal discovery in Ukraine.
Enforcement of Foreign Judgments and Arbitral Awards		
Approximate Duration	Ukrainian law provides for the following stages of enforcement procedure: ▪ submission of application regarding recognition and enforcement of foreign judgment or arbitral award to the local court; and,	In order to recognize and enforce a foreign judgment or arbitral award, the creditor or its representative must submit to local court a written application with set of following documents: 1. Duly legalized original judgment, award or its copy (i.e. apostilled document).

	▪ execution proceedings. The duration of court proceedings is not specified by Ukrainian law. Usually it takes several months, but may take longer. The duration of execution proceedings depends mainly on whether the debtor has executable assets and whether execution measures are opposed by the debtor.	2. Original arbitration agreement or its duly certified copy based on which the arbitral court was authorized to settle the dispute. 3. Duly legalized (i.e. apostilled) official document certifying that the award or judgment has become effective. 4. In the event the application is submitted by a representative - duly legalized (i.e. apostilled) power of attorney and some others.
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	State duty for submission of application to the local court is absent. However, additional expenses may be imposed by the court when passing judgment. Amount of such expenses is not specifically provided. Submission of application for recognition/enforcement and representation in court: € 6 000 to € 14 000.	
Insolvency Proceedings		
Filing of Insolvency Claims by Creditors	Insolvency claims are filed by the creditors to the local economic court in case amount of indisputable claims is not less than UAH 276.700 (approxim. € 27.600)	The announcement regarding the commencement of insolvency proceedings is to be published in mass-media. Information regarding active insolvency proceedings is available in a special database.
Approximate Duration	Up to several years.	
Approximate Costs **Court Fees** **Attorneys' Fees (net)**	State duty for submission of application regarding launch of insolvency proceedings to the local economic court - € 8.5 Filing of insolvency claim and representation in court: € 20.000 to € 30.000	

15. CONTACT INFORMATION

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