

INVESTMENT DISPUTES AND DISPUTES RESOLUTION IN BULGARIA

XVII.

XVII.1. Legal Framework

XVII.1.1. Laws and Regulations

- **Civil Procedure Code** (promulgated in State Gazette, issue 12 of 1952, as amended);
- **International Commercial Arbitration Act** (promulgated in State Gazette, issue 60 of 1988, as amended);

XVII.1.2. International Treaties (bilateral and multilateral)

- **1958 New York Convention for recognition and Enforcement of the International Arbitral Awards** (ratified by Bulgaria in 1961);
- **1958 European Convention on the International Commercial Arbitration** (ratified by Bulgaria in 1964);
- **1978 European Convention on Mutual Assistance in Penalty and Civil Matters** (ratified by Bulgaria in 1994);
- **1965 Washington Convention for Settlement of Investment Disputes Between States and Other States' Citizens** (ratified by Bulgaria in 2000); .A number of bilateral treaties on protection of investments (over 50) and in the field of legal assistance (over 25) entered into by Bulgaria.

XVII.2. Investments Disputes. General Review

XVII.2.1. Investments Protection Treaties

Bulgaria is a party to more than 50 bilateral Investments Protection Treaties ("Treaties") and all of them explicitly provide for certain dispute resolution mechanism. The overwhelming majority of the Treaties stipulate for two separate mechanisms applicable depending on the type and level of the dispute:

- i) a dispute between a signatory state and an investor from the other state; and
- ii) a dispute between the signatory states themselves. According to most of the Treaties the disputes between the signatory states would be referred to an ad-hoc arbitration in case the parties fail to reach settlement through friendly negotiations. Each Treaty provides for the specifics of the arbitration in each separate case. However, this particular mechanism concerns **only disputes between the states** and it could be initiated only by a contracting state in the event of breach by the other, i.e. at a governmental level. Nevertheless, it may still be used as a (last) indirect possibility for protection of the interest of a particular investor but only if undertaken by its own state.

The direct means of action available to an investor in case of a dispute with the host-state (i.e. Bulgaria) will be reviewed separately below.

XVII.2.2. Regular Dispute Resolution Mechanism

Most of the Treaties provide for three potential institutions a dispute between a foreign investor and the host-state (Bulgaria) could be referred to:

- ad-hoc arbitration;
- International Centre for Settlement of Investment Disputes (ICSID);
- the competent national (Bulgarian) courts / arbitration.

The different Treaties provide for a number of potential combinations of these institutions. Few of the Treaties admit only the jurisdiction of the national courts or refer all disputes directly to arbitration adhoc. Some of the Treaties grant to the investor the possibility to choose upon its own discretion the institution to which to refer the dispute. The majority of the Treaties, however, provide for a differentiation of the procedure and institution disputes should be referred to depending on the nature of the dispute itself.

The most frequently stipulated mechanism involves:

- Ad-hoc or ICSID arbitration for disputes concerning nationalization or expropriation of investments / property and especially due compensations as well as concerning repatriation (transfer) of investments income, profit and other related funds;
- Jurisdiction of national (Bulgarian) courts in all remaining cases.

However, any investor considering the possibilities to protect its interests in an investment dispute should in any case thoroughly examine the provisions of the particular Treaty between its country and Bulgaria.

XVII.2.3. Arbitration Ad-hoc

As a principle, ad-hoc arbitration stipulated in the Treaties would be held by three arbitrators. Each party would appoint one arbitrator whereas the third to be appointed by the other two should in most cases be national of a third country which keeps diplomatic relations with both contracting states. Some of the Treaties stipulate the third arbitrator to be appointed by a respected international institution. Many of the Treaties explicitly refer to UNCITRAL arbitration rules (<http://www.uncitral.org/english/texts/arbitration/arbrules.htm>).

XVII.2.4. International Center for Settlement of Investment Disputes (ICSID)

ICSID is an autonomous institution closely linked to the World Bank. ICSID was established by the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The purpose of the Convention is to stimulate larger flow of private international investment between participating countries. ICSID procedures are specifically designed for the settlement of disputes between foreign investors and host nations. ICSID is a de-localized system operating independently and exclusively of domestic legal systems. The role of

domestic courts is limited to judicial assistance in recognition of ICSID awards. Further information on ICSID is available at: <http://www.worldbank.org/icsid/>.

XVII.3. National (Bulgarian) Court/Arbitration

XVII.3.1. Court Dispute Resolution

The Bulgarian Judicial System and the hierarchy of Bulgarian courts include four types of judicial bodies: district courts, regional courts, courts of appeal, and topping the hierarchy are the two highest courts – the Supreme Court of Cassation and the Supreme Administrative Court.

The resolution of disputes by the courts is generally regulated by the Civil Procedure Code (“CPC”). According to the CPC Bulgarian courts are exclusively competent to consider all civil cases (including disputes) with the exception of the cases, which by virtue of special laws are submitted within the powers of other bodies (such as administrative bodies). Further, Bulgarian courts are competent to administer justice against all persons (individuals and legal entities) in Bulgaria except in cases of extraterritoriality¹⁴.

Court proceedings may develop in three or in some cases with interest under a certain limit - in two, instances.

Prior to the lodging of the claim or after the claim has been lodged the claimant may request the court to impose against the assets of the (future) defendant specific injunction measures for a total amount of up to the size of the claim. Such injunction may be enforced by placing interdict on a real estate; distraint on movables and receivables of the debtor and by other appropriate measures, determined by the court, including by stopping of the implementation of some actions of the debtor.

The court fees involved in a dispute resolution procedure depend on the scenario of the particular case. Generally, they may be summarized as follows:

- Court fee for the first instance court – 4 % of the claim’s value but not less than BGN 15.

- Court fee for the second (and third, when applicable) instance court – 2 % of the amount of the appealed part of the ruling.

In addition parties may have to pay court expenses for the appointment of court experts, summons of witnesses, etc.

The Bulgarian CPC provides for specific rules applicable to the **recognition and enforcement of foreign judgments**. According to the CPC the decisions of foreign courts and other authorities competent under the respective foreign law shall be recognized and enforced in Bulgaria in case there is an agreement between Bulgaria and the respective foreign country to that effect, and on the basis of reciprocity.

The competent first-instance court to hear the case on the recognition and enforcement is the Sofia City Court. The court shall not enter into considering the merits of the dispute resolved by the foreign judgment but will only ascertain whether the submitted decision

contains pronouncements contradictory to the legal order of the Republic of Bulgaria or to the morals. The court shall not recognize and enforce the foreign judgment as well in cases where the foreign court had no jurisdiction to decide the case or there was a breach of procedural rules depriving the defendant - Bulgarian citizen of taking part in the trial etc. The state fee for applying for recognition and enforcement of a foreign judgment depends on the value of the claim and is 4 % on the respective amount

XVII.3.2. Alternative Dispute Resolutions

Being faster and less expensive compared to the court proceedings, the arbitration is the most popular out-of court disputes’ resolution in Bulgaria. Arbitration in Bulgaria is based on the regulations of the International Commercial Arbitration Act (“ICAA”) and the relevant international treaties to which Bulgaria is a party.

ICCA applies to international commercial arbitration, based on an arbitration agreement when the place of arbitration is within the territory of the Republic of Bulgaria. The arbitration is only competent to settle civil disputes arising out of international economic relations, as well as disputes related to the filling gaps in contracts or their adaptation to newly arisen circumstances when the residence or the domicile of at least one of the parties is not within the territory of the Republic of Bulgaria. The CPC explicitly excludes from the competence of the arbitration court the disputes having as their subject matter any real rights or possession over a real estate, alimony or a right under a labor relation.

Following the adoption of the new Public Procurement Act (in force after October 1, 2004) a specialized **arbitration court at the Public Procurement Agency** will be established to deal with public procurement disputes. Due to the specific activity of this arbitration court its Chairman, the Rules on Arbitration and the Tariff on fees are to be approved by the Council of Ministers.

There are more than a dozen **arbitration institutions in Bulgaria** at the moment such as the Marine Court of Arbitration at the Bulgarian Marine Chamber, Sofia Court of Arbitration at the Association for Internal and International Arbitration, Court for Small Civil Disputes at the Bulgarian Association for Civil Society and Legal Initiatives, etc. The most famous and reputable among them are the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry (<http://www.bcci.bg/arbitration/index.html>) and the Arbitration Court at the Bulgarian Industrial Association (<http://www.bia-bg.com/arbitration/>).

The **fees attributable to the arbitration institutions** in Bulgaria differ from one another and are specified in their respective Rules on Arbitration. In principle the fees are formed on the basis of the value of the claim as they increase in proportion to it. The state fee for the enforcement of an arbitration award issued by an arbitration court in Bulgaria is 0.2% on the interest for which the enforcement is

requested.

With regard to the **recognition and enforcement of foreign arbitration awards** the ICCA refers to the international agreements to which Bulgaria is a party. In view of the above mentioned, such awards shall be recognized and enforced in compliance with the provisions of the New York Convention for Recognition and Enforcement of Foreign Arbitration Awards (the "Convention") to the extent it is not conflicting with the bilateral agreements concluded by Bulgaria which provide for specific rules for recognition and enforcement of foreign arbitration awards. Unless otherwise provided in an international convention to which Bulgaria is a party, the competent court is the Sofia City Court.

Sofia City Court may in some specific cases refuse the recognition and enforcement of the award, f. ex. where there was no valid arbitration agreement or in case of breach of the procedural rules or the provisions of the arbitration agreement as well as when the recognition or enforcement of the award would be contrary to the public order in Bulgaria. The **fee collected by the Sofia City Court** for the recognition and enforcement of foreign arbitration awards is fixed to 0,4 % of the amount for which enforcement is requested.

**FOR MORE INFORMATION CONTACT
US AT:**

Accountancy department:

accountancy@properties-guide.com

Legal department:

legal@properties-guide.com

Information department:

reports@properties-guide.com

Or visit our website at:

<http://www.properties-guide.com/>