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EUROPE AND MIDDLE EAST

Litigation, Arbitration And Alternative Dispute Resolution

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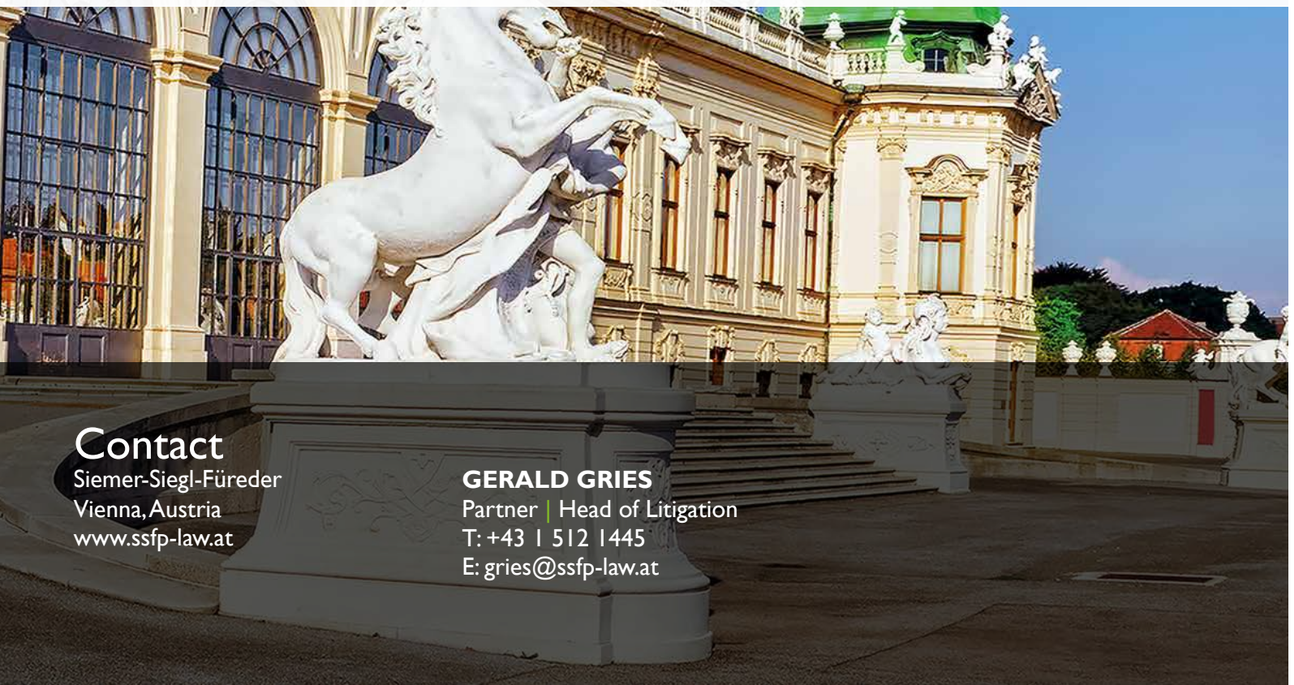

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Civil Litigation

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

   The official court language is German. If persons involved in the trial are not able to understand or speak German, an interpreter is summoned. In areas where the minority languages Slovenian, Croatian or Hungarian are officially acknowledged by constitutional law, members of the minority groups can choose to use their language in court.

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

   Discovery" or "disclosure" rules are not applicable under Austrian law. A potential plaintiff may conduct an independent procedure for the taking of evidence ("*Beweissicherungsverfahren*") if there is actual danger that evidence which is at the moment easily available may soon be destroyed or changed. Furthermore, parties may apply for interim relief ("*einstweiliger Rechtsschutz*") or an assertion of (undisputed) claims by legal dunning proceedings ("*Mahnverfahren*"). Under Austrian law, a plaintiff is not obligated to send a warning letter before initiating court proceedings.

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

   The court fees are stipulated in the Austrian Court Fees Act ("*Gerichtsgebührengesetz*") and determined by the amount in dispute. The applicable court fee is a flat-fee determined independently from the duration of the proceedings. A flat-fee accrues per each instance. The parties are free to agree on attorney fees e.g. based on an hourly-rate agreed between the parties or the Austrian Attorneys´ Tariff Act ("*Rechtsanwaltstarifgesetz*"). Attorney fees based on the Austrian Attorney´s Tariff Act are determined by the amount in dispute and fee units for the specific attorney´s activities. There are no contingency fees ("*Erfolgshonorare*") in Austria. As a general rule the unsuccessful party has to reimburse the prevailing party not only for the court fees but also for the attorney´s fees at a rate of the Austrian Attorneys´ Tariff Act (regardless of whether the prevailing party has paid attorney fees beyond the services which are reimbursed according to the fixed set of fees in a standard case).

   The amount of costs depends on the duration of the proceedings. For example, for a dispute value of Euro 1 million, attorney costs would be around Euro 25,000 for the claimant and the same amount for the defendant and with additional court fees of around Euro 12,000 for the first instance.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   A disclosure of documents is rather uncommon. In general, both parties have to support the proceedings in disclosing all facts or circumstances, including documents that could be relevant for solving the matter in dispute. Documents have to be disclosed if one party refers to such document in its own giving of evidence or if one party is entitled to require such disclosure by statutory regulations of the Austrian Civil Code or if the document is a joint document to both parties according to the document´s content. A third party has to disclose a document only if a statutory obligation for disclosure exists or if a document is a joint one for the third party and the party seeking to use the document as evidence. If a party fails to submit documents requested by the court, the court may take such failure into consideration of its evaluation of evidence. Once electronic data gets printed, it is produced as a document and the general rules about submission of documents apply. Other electronic documents fall under the category of prima facie evidence and disclosure requests cannot be enforced (sec 369 refers to sec 303-307 Austrian Code of Civil Procedure – "*Zivilprozessordnung*").

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

   The common process is witness examination. Witness summons within Austria obligates a witness to appear before court, to testify and to tell the truth. In rare cases must witnesses testify under oath. The Austrian law does not distinguish between witness examination and cross-examination. It is usually the judge who questions a witness. Thereafter, the parties are allowed to ask additional questions whereas leading questions are not allowed. According to the Principle of Immediate Apprehension ("*Unmittelbarkeitsgrundsatz*"), the judge may base his judgment only on that evidence which was presented during the hearing. Hence, written witness statements are not a sufficient proof.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions can be conducted orally or in writing, in or out of court. If the settlement negotiations are conducted out of court, there is no obligation to disclose respective correspondence to the court. In court proceedings, the judge is obliged to ask the parties in the first hearing whether the parties are willing to resolve the dispute in a settlement. Further, judges may initiate settlement discussion at every stage of the trial if deemed appropriate. A settlement reached by the parties in court has similar effects as a judgment, i.e., it is enforceable.

7. **What is the typical duration of a court procedure?**

   In Austria, the average duration of court proceedings (assuming a dispute value of around Euro 1,000,000) is around 18 months for the first instance.

8. How can foreign judgments be enforced?

For the enforcement of foreign judgments in Austria several regulations (European, multi- or bilateral or autonomous conventions) apply:

- European: According to the Regulation (EC) No 44/2001 ("EuGVVO") judgments of EU Member States will be acknowledged in each of those states and can be enforced if declared enforceable.
- Multilateral or bilateral conventions: Enforcement may also be obtained with for example the Hague Convention. Section 79 Austrian Enforcement Act stipulates that reciprocity provided in treaties has to be established before a judgment will be enforced. Consequently, the enforcement of foreign judgments is entirely subject to multilateral or bilateral treaties.

Arbitration And Alternative Dispute Resolution

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

Mediation clauses in commercial contracts are in principle binding. They cannot be realistically enforced as the obligation to mediate does not oblige the parties to actually settle the dispute. Each party can therefore abandon the mediation at any time or refuse to accept the result. After an attempt has been made to resolve the dispute, it is possible to approach the courts. Nevertheless, if a mediation clause was agreed upon by the parties, courts will deny action as inadmissible prior to mediation proceedings. The Austrian Supreme Court decided in 2008, if the parties fail to reach a settlement within a period of three months upon commencement of mediation proceedings, the court accepts the claim.

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

Austrian law does not provide specific procedural rules for mediation. The determination of any procedural rules is solely up to the mediator and the parties. The Austrian Civil Law Mediation Act ("*Zivilrechtsmediationsgesetz*") is primarily limited to qualifications for registered mediation training institutions, the duty of confidentiality and the right of mediators to refuse to give evidence in civil and criminal law proceedings. Up to now mediation is not a popular alternative dispute resolution method with regard to commercial disputes.

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

According to Austrian arbitration law, arbitration clauses are binding if they comply with the form requirements and scope of application set forth in sections 581, 582 and 583 of the Austrian Code of Civil Procedure ("*Zivilprozessordnung*"). Any claim involving an economic interest that lies within the jurisdiction of the courts of law can be subject to an arbitration agreement. Arbitration agreements are enforceable (sec 584 and sec 593 Austrian Code of Civil Procedure - "*Zivilprozessordnung*").

General comments on the Austrian Arbitration Act: The Austrian Arbitration Act is based on the UNCITRAL Model Law while harmonizing the Model Law provisions with Austrian law and practice. The Austrian Arbitration Act is regulated in sections 577-618 Austrian Code of Civil Procedure ("*Zivilprozessordnung*"). Only a few mandatory provisions exist, in general the parties are free to determine the proceedings within the limits of *ordre* public and good faith.

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

Both types are commonly used but with a stronger tendency to institutional proceedings.

5. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?

Settlement discussions can be conducted orally or in writing, in or out of court. If the settlement negotiations are conducted out of court, there is no obligation to disclose respective correspondence to the court. In court proceedings, the judge is obliged to ask the parties in the first hearing whether the parties are willing to resolve the dispute in a settlement. Further, judges may initiate settlement discussion at every stage of the trial if deemed appropriate. A settlement reached by the parties in court has similar effects as a judgment, i.e., it is enforceable.

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7. Which arbitration institutes are most popular?

VIAC (Vienna International Arbitral Centre / *Internationales Schiedsgericht der Wirtschaftskammer Österreich*) ICC (International Chamber of Commerce).

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

The parties are free to determine the number of arbitrators. Most commonly used is one arbitrator or a panel of three arbitrators. If the parties fail to agree on the number of arbitrators, a panel of three arbitrators will be appointed. Each party appoints one arbitrator and those two party appointed arbitrators agree on the third one who acts as the chairman of the panel.

9. In what language is an arbitration proceeding conducted?

The parties are free to agree on the language to be used in the arbitration.

10. What type of pre-arbitration measures are available and what are their limitations?

According to sec 593 Austrian Code of Civil Procedure ("*Zivilprozessordnung*") the parties may submit a request for all types of interim measures to the arbitral tribunal or directly to the competent Austrian court. As Sec 593 Austrian Code of Civil Procedure is not mandatory, the parties may opt out of Sec 593 all together. Type and scope of the interim measure is not specified in the Austrian Arbitration Act.

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

The parties may agree on how to allocate the costs both in the arbitration agreement as well as during the arbitral proceedings. Failing an agreement by the parties, the arbitral tribunal decides on the allocation of costs of the arbitral proceedings between the parties at its own discretion while taking into consideration the circumstances of the case. A specific and separate motion by the parties to that effect is not necessary. Of course, a cost decision is possible only if the parties have indeed disclosed the respective amounts together with sufficient evidence (where necessary). Arbitration institutes often provide a cost calculator on their website (e.g., the VIAC cost calculator: www.wko.at/arbitration/kostenrechner/kostenrechner.html).

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

The disclosure of documents is subject to agreement between the parties. "Discovery" rules are not per se applicable in Austrian arbitration proceedings.

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

The method of witness examination is subject to agreement between the parties. Both oral witness examination and/or written witness statements may be agreed upon. In the absence of a party agreement, both the admissibility and the conducting of the taking of evidence lies within the discretion of the arbitral tribunal while granting the parties a fair and just judiciary process.

14. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There are no specific provisions as to how settlement negotiations have to be conducted, all mentioned alternatives are possible. Generally, if the parties are represented by lawyers, the discussions will be usually conducted by those representatives. It is up to the parties if settlement correspondence will be disclosed to the arbitrators. In the absence of a confidentiality agreement between the parties, a party is not prevented from disclosing settlement correspondence to an arbitrator/the panel. The parties may find it convenient for the terms of settlement to be embodied in an award which is usually easier for a party to enforce performance by the other party of a future obligation. Alternatively the parties may decide for a simple arbitral settlement not embodied in an award which upon request of the parties, must be recorded by the arbitral tribunal during the arbitral proceedings and the protocol has to be subsequently signed by the arbitrators. According to Austrian law, arbitral settlements constitute enforceable titles *eo ipso* like regular court settlements. However, enforcement of such settlements outside Austria might be difficult. Settlements that are made out of court are generally subject to stamp duties, whereas settlements reached before the courts are exempt from such duties. If the arbitral tribunal renders an award on agreed terms, the settlement given the formal requirements of an award, is not subject to stamp duties.

According to the current opinion of Austrian tax authorities, arbitral settlements (which are not subject of an award) are qualified as out-of-court settlement and thus stamp duties at a rate of 1% of the settlement sum (of the arbitral settlement) would be charged.

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

According to sec 607 Austrian Code of Civil Procedure ("*Zivilprozessordnung*"), the award that has been rendered by an arbitral tribunal with its seat in Austria, has the effect of a final and binding court judgment between the parties. Upon receipt of the award by the parties, domestic awards are enforceable, i.e. a challenge of an award has no suspensive effect with respect to its enforceability. In order to enforce the domestic award, the chairman of the arbitral tribunal has – upon request of the party – to confirm in writing the legal effects and enforceability of the arbitral award (most practically on an exemplar of the arbitral award). Foreign awards are required to be recognized and declared enforceable by the competent district court before enforcement is granted (sec 614 Austrian Code of Civil Procedure - "*Zivilprozessordnung*"; Sec 82 Enforcement Act – "*Exekutionsordnung*"). Austria is inter alia a member to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"). A party of the arbitration may file an action for the arbitral award to be set aside with the competent domestic court. Sec 611 (2) Austrian Code of Civil Procedure ("*Zivilprozessordnung*") lists exhaustively the following grounds for challenge:

- There is no valid arbitration agreement (at all).
- The arbitral tribunal has wrongfully denied its jurisdiction (even though there is a valid arbitration agreement).
- One of the parties was under some incapacity to conclude the arbitration agreement.
- A party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was for other reasons unable to present its case.
- The award deals with a dispute not covered by the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement or the plea of the parties for legal protection; if the default concerns only one part of the award that can be separated, only that part of the award shall be set aside.
- The composition or constitution of the arbitral tribunal was not in accordance with a provision of the Austrian Arbitration Act or with an admissible agreement of the parties;
- The arbitral proceedings were conducted in a manner that conflicts with the fundamental values of the Austrian legal system (*ordre public*).
- The subject matter of the dispute is not arbitrable under Austrian law.

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Civil Litigation

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

Belgium is divided into four linguistic regions: the single-language Dutch, French and German linguistic regions where the proceedings are respectively conducted in the language of the region. In the bilingual (Dutch and French) region of Brussels-Capital, the proceedings can be introduced in Dutch or in French upon the plaintiff's choice. The Belgian Act on the Use of Languages in court proceedings of 15 June 1935 provides specific rules under which the defendant may request the court to change the language of the court proceedings in Dutch or in French. Foreign defendants may also make use of this right. If persons involved in the proceedings are not able to understand the language of the court proceedings, an interpreter will be used. Courts also require a translation of documents that are not in the language of the court proceedings.

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

Pre-action measures can be ordered by:

- The court in summary proceedings; or
- The court ruling on the merits of the case. Usually they aim either to preserve evidence, or to freeze a situation awaiting the outcome in the proceedings on the merits. One must not send a warning letter before starting legal proceedings or arbitration proceedings.

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

The cost of civil and commercial proceedings includes:

- Stamp duties, registration fees and enrollment rights.
- Cost and fees related to the service of legal documents, such as writ of summons and judgment (i.e., bailiff fees and costs).
- Costs of authenticated copies of the judgments.
- Costs of investigating measures such as a court-appointed expert, if any.
- The procedural indemnity, which is a lump sum for lawyer's fees and costs. The amounts depend on the value of the claim and the nature of the proceedings and vary between Euro 165 and Euro 16.500 . The court has limited powers to reduce or increase these amounts. The unsuccessful party usually bears the costs of the proceedings.

The legal indemnities for civil or commercial disputes are determined by law. For a civil or commercial dispute with a value of Euro 1,000,000 the standard legal indemnities amount to Euro 11,000.

In specific circumstances, the judge can also lower these indemnities to the minimum amount of Euro 1,100 e.g. if the financial resources of the losing party are limited. The judge can also award the maximum legal indemnities for an amount of Euro 22,000 e.g. if the case is very complex or if the claim was clearly unfounded or unreasonable.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

There are no disclosure proceedings. The parties are free to submit to the court any evidence they wish. Written and contemporaneous documents are the most important evidence under Belgian law. The parties are nevertheless under the obligation to cooperate in good faith with the burden of proof of the other party.

If a party does not comply with this obligation, the court may impose, either at its own discretion or upon the other party's request, an obligation to submit a specific document provided that the requested document is relevant to the matter and there are serious, certain and unequivocal presumptions that the party against which the injunction is sought has the document in his possession.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?

Witness evidence, although permitted by the Judicial Code, is very seldom applied in civil and commercial proceedings. The usual process is witness examination.

Since 2012, the Belgian judicial code provides for specific rules regarding the written witness statements. Article 961/2 of the Belgian judicial code states that, in addition to an overview of the facts, the written witness statement needs to include the identification of the witness, along with his/her relation towards the parties (e.g.: whether they are related or whether they work together) as well as the date and signature of the witness. The witness statement also needs to include the statement that the witness is aware of the fact that the witness statement will be used as an exhibit in legal proceedings, and that knowingly providing false statements is punishable by law.

The judge is free to determine the probative value of the written witness statement. However, since the content and form of the written witness statements have now been explicitly determined by the judicial code, this has in fact increased the probative value of the written witness statements and has also increased the use of written witness statements in civil proceedings. It is very seldom that in follow-up of the filing of a written witness statement as an exhibit, the court or judge would also examine the witness during a hearing. However, the possibility does exist.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?

Settlement discussions can be conducted in different ways, orally or in writing, usually out of court. Generally, if the parties are represented by lawyers, the discussions will be conducted by the lawyers. Correspondence exchanged between members of one of the Belgian Bars is privileged and may not be disclosed to the court in case settlement negotiations fail as evidence for admission of liability. Correspondence exchanged between the parties directly and/or between the parties and a member of the Belgian Bars is not privileged, even it if expressly includes a "without prejudice" warning.

7. What is the typical duration of a court procedure?

Commercial disputes on the merits of the case usually take about 1.5 to 2 years in first instance. On appeal, these proceedings usually take up to 2 or 3 years.

8. How can foreign judgments be enforced?

The direct enforcement of foreign judgments is governed by the Belgian judicial Code and several bi- and multi-lateral international treaties to which Belgium is a party.

Most importantly, the Brussels Regulation provides for the rules for enforcing judgments throughout the European Union. There is no international treaty in force between Belgium and the US on the enforcement of judgments. Written examination is very seldom applied and/or requested in Belgian civil or commercial proceedings.

Arbitration And Alternative Dispute Resolution

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

Yes.

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

Mediation is used in an increasing number of disputes in Belgium now that there is a legal framework in the Judicial Code. Mediation is always optional for the parties to a dispute and can never be imposed by the court. Either one party takes the initiative and the other parties accept (voluntary mediation), or the parties accept the proposal of a judge to mediate (judicial mediation).

In a voluntary mediation, the parties decide by mutual agreement, with the assistance of the mediator, upon the rules for the conduct of the mediation as well as its duration. The parties can decide whether to participate in the mediation in person and/or to be represented. The mediation costs and fees are payable in equal shares by the parties, unless otherwise agreed. The mediation may concern part of or the entire dispute.

The agreement reached after mediation does not have the status of a judgment and shall not be enforceable by the courts. However if the mediation is conducted by an accredited mediator, the parties may request the court to validate their agreement. The agreement shall therefore become legally enforceable as if it were a judgment.

By request of the parties, or on its own initiative but with the consent of the parties, a Court may order judicial mediation in pending proceedings, as long as the case has not been closed for the purposes of rendering a judgment. The parties agree on the name of the mediator, who must be accredited. Judicial mediation is conducted in the same way as voluntary mediation. The dispute continues to be pending before the Court during the entire time of the mediation proceedings. At any time, the Court may take such measures as it deems necessary. At the request, by the mediator or by one of the parties, the Court may terminate the mediation even before the expiry of the time limit which has been set. If mediation leads to a settlement agreement, the parties may request the Court to homologate their agreement.

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

Yes, except for termination of disputes about exclusive distribution agreements and agency agreements on Belgian territory providing for the application of another legal system as substantive law.

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

Institutional arbitration.

5. Which arbitration institutes are most popular?

The Belgian Centre for Mediation and Arbitration (CEPANI) The International Chamber of Commerce in Paris (ICC).

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

The parties are free to determine the number of arbitrators. If there is no agreement, a panel of three arbitrators will be appointed (Article 1682 of the Belgian Judicial Code). Each party appoints one arbitrator and the two appointed arbitrators appoint a third arbitrator who will be the Chairman of the arbitration panel. In case of CEPANI-arbitration, CEPANI appoints the Chairman of the arbitration panel.

7. How can foreign judgments be enforced?

The direct enforcement of foreign judgments is governed by the Belgian judicial Code and several bi- and multi-lateral international treaties to which Belgium is a party. Most importantly, the Brussels Regulation provides for the rules for enforcing judgments throughout the European Union. Since 10 January 2015 the Brussels Ibis Regulation has entered into force and applies to all legal proceedings that were initiated after 10 January 2015 and all judicial decisions rendered after the said date. The Brussels Ibis Regulations has abolished the former exequatur proceedings. If a creditor now obtains a foreign (e.g. French) judgment that is enforceable according to its own national law (e.g. French law), the creditor can immediately contact a Belgian bailiff to execute and enforce the foreign judgment in Belgium without needing any enforcement judgment from a Belgian court. There is no international treaty in force between Belgium and the US on the enforcement of judgments. Written examination is very seldom applied and/or requested in Belgian civil or commercial proceedings.

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8. In what language is an arbitration proceeding conducted?

The parties generally have the possibility to freely choose the language of the arbitration. In case where parties fail to find an agreement on the language of the proceedings, the language or languages of the arbitration proceedings will be determined by the Arbitral Tribunal, due regard being given to the circumstances of the case and, in particular, the language of the contract which provides for arbitration, or the arbitration agreement itself.

9. What type of pre-arbitration measures are available and what are their limitations?

The courts are competent to order interim measures at any time, even if arbitration proceedings are pending. The court may order measures (i) to obtain or to safeguard evidence material and/or (ii) to suspend or freeze certain actions for a certain period of time (for instance awaiting the outcome of the arbitration proceedings). If arbitration proceedings are pending, each party may also ask the arbitral tribunal to order interim or conservatory measures (except attachments).

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

The costs of arbitration proceedings shall include the fees and expenses of the arbitrators. They are usually fixed on the basis of the amount of the claim. Unless otherwise agreed, the provisions of the Belgian Judicial Code dealing with the recovery of judicial costs (including the attorney's fees) do not apply in arbitration proceedings. Such costs can be recovered under the principle "costs follow the events", meaning that the unsuccessful party bears the costs of the arbitration proceedings (including reasonable costs and fees of the successful party's attorney).

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

There is no discovery like in the US for arbitration proceedings governed by Belgian law. The Arbitral Tribunal may order a party to disclose documents (upon periodic penalty payment). The requested parties must produce the documents on which they rely. Evidence in arbitration proceedings governed by Belgian law is to a very large extent also dominated by contemporaneous written evidence material.

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

Witness evidence in Belgian arbitration is only seldom applied and mostly includes witness examination by the arbitrators.

13. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There are no specific provisions as to how settlement discussions must be conducted. All scenarios are possible. Generally, if the parties are represented by lawyers the discussions will be conducted by the lawyers. Correspondence exchanged between members of the Belgian Bars is privileged (unless exceptions) and therefore may not be produced in litigation and/or arbitration in case the settlement discussions would fail.

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

The parties shall mostly voluntarily comply with the award. Otherwise, the award can be enforced upon the request of a party (by the exequatur request). The President of the Court of First instance has exclusive jurisdiction to handle such requests. He can order enforceability of the award if it can no longer be challenged in front of the arbitrator(s), or if the arbitrators have declared it to be provisionally enforceable notwithstanding appeal. The exequatur request does not have the same effect as an appeal. The President of the Court of First instance may not examine the merits of the dispute settled by arbitration and can refuse to enforce the arbitration agreement only if such agreement or its enforcement are contrary to public order, or if the dispute was not arbitrable. The decision which grants exequatur is covered by *res judicata*.

An appeal to the arbitral award is only possible if this possibility has been provided for in the arbitral agreement. Unless stipulated otherwise, the term for appeal is one month following the date of the arbitral award. It is very exceptional that Belgian arbitration agreements provide for a possibility of an appeal and hence a re-hearing of the dispute.

An award can be annulled if:

- If the decision is contrary to public order.
- If the dispute can legally not be submitted to arbitration proceedings.
- If no valid arbitration agreement exists.
- If the Arbitral Tribunal has exceeded its jurisdiction or its powers; if the Arbitral Tribunal has omitted to decide on one or more issues of the dispute, and if such issues cannot be separated from the issues on which it did decide.
- If the award has been rendered by an arbitral tribunal that was irregularly appointed.
- If the parties were not given the opportunity to present their case and their arguments, or if any other imperative rule of arbitration proceedings has been violated, provided such a violation of the rules had an impact on the award.
- If the arbitral award was not duly motivated.
- If the rights of defence of one of the parties have been violated, on the condition that this irregularity has affected the arbitral award.
- If it was obtained by fraud.

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Civil Litigation

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

   The official language used in court is Bulgarian. If the persons involved in the trial are not able to speak Bulgarian, an interpreter will be appointed.

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

   In general there are two pre-action measures available for the potential plaintiff. Both are optional. The first measure is imposing interim security measures – the plaintiff may ask the court to freeze some of the assets of the potential defendant. If the seizure is allowed, the potential plaintiff may also be required to deposit a certain amount in the court's account as collateral in favor of the defendant. The second measure is the procedure for securing evidence before filing the claim. When there is danger that a particular piece of evidence may be lost or collecting it may be difficult, the court could be asked to collect the particular evidence in advance. Sending a warning letter or any other notification is not required before starting the claim procedure.

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

   The costs of civil and commercial proceedings are the state fees and the expenditures of the parties. The state fees are regulated in Tariff for the state fees collected by the courts under the Code of Civil Procedure. The exact amount of the fee depends on the type of case and can vary, but for monetary claims the state fee is 4% of the value of the claim at first instance, and 2% at each consecutive instance. The other expenditures are the remunerations of the expert witnesses (determined by the court and never excessive) and the legal fees. The minimal legal fees are set in a special regulation issued by the Supreme Bar Council. As a general rule, the unsuccessful party must bear the court costs and reimburse the opponent's state fees and reasonable legal fees which have been actually paid (if the legal fees are excessive, the court may reduce them; success fees cannot be recovered from the other party).

   In case the claim value amounts to Euro 1,000,000 the state fee for the first instance procedure would be Euro 40,000 and for the second and third instance – Euro 20,000 each. Pursuant to the above-mentioned regulation of the Supreme Bar Council on the minimal attorney fees, the attorney fee for that value shall be at least Euro 30,000 (net of VAT) for each court instance.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   Under the Bulgarian Code of Civil Procedure there is no full disclosure of documents. The parties submit documents to the court according to their own procedural needs. Each party may require the other to be obliged to present a document after giving reasons for its significance to the dispute. If the other party fails to present the requested document, the court might consider as proven the facts which should be ascertained by the presentation of the required and not presented document.

   The plaintiff as well as the defendant may require a document to be presented by a third party, if there is any evidence of the existence of such document and its possession by the third party. If the third party fails to present the document, a fine could be imposed by the court and the third party is liable for the damages caused by its inaction.

   Any official documents relevant to the case should be presented by the respective party. In addition, the court may require the documents directly from the respective institution.

   Electronic disclosure of documents is done only when the document in question is electronic. As a general rule, the electronic document may be presented printed on paper and verified by the presenting party. However, on demand of the other party, the electronic document should be presented on electronic carrier as well.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?**

   The process for witness evidence is based on witness examination at open hearing before the jury of the court with the presence of the parties. As an exception, if the circumstances require, it is possible that the interrogation is done by another court outside the district of the decisive court. When it is difficult to obtain the witness evidence during the trial, the witness might be interrogated in the court beforehand. Written statements are not admissible. Only if after the collection of the witness statements the claim is withdrawn and then filed again, it is possible the statements written in the court minutes to be accepted as valid on the condition that there are serious difficulties for their recollection. Once summoned before the court, the witness is obligated to appear and give statements and answers. If the witness fails to do so, he or she could be fined and brought before the court compulsorily.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions can be both oral and written. They can be conducted in or out of the court and between the parties directly or between their representatives. If a settlement is reached, the claim can be withdrawn or, alternatively, the settlement agreement might be incorporated in the court minutes and affirmed by the court, and thus become a court settlement with *res judicata* effect. Settlement correspondence is not privileged and in case of a dispute can be submitted to court.

7. What is the typical duration of a court procedure?

The procedure before the first instance usually takes 6 to 12 months (add a few months if the case is before the courts in Sofia as they are much busier compared to the other courts). The normal duration of the second instance is 5 to 9 months. Cassation (third instance) review is admissible on very limited grounds. The Supreme Court of Cassation would usually issue a court ruling on the admissibility of the cassation appeal in 6 to 12 months. If the court finds the appeal admissible, the case would be resolved in additional 5 to 8 months.

In complex disputes the procedures before each instance could last longer.

8. How can foreign judgments be enforced?

If the foreign judgment is held by a court within the European Union, all institutions and authorities must acknowledge its effect. In order to be enforced, the judgment must be declared by the Bulgarian court as enforceable. If the foreign judgement is issued under Regulation (EU) No 1215/2012 of the European Parliament and of the Council, it is subject to direct enforcement by a bailiff (execution agent) without the need of being declared as enforceable by a Bulgarian court. A non-EU judgment could be enforced under the provisions of multilateral or bilateral treaties or according to the provisions of the Bulgarian Code of International Private Law. The later provides a formal claim procedure before the Bulgarian court for the enforcement of the foreign judgment.

Arbitration And Alternative Dispute Resolution

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

Mediation clauses in commercial contracts could not be deemed binding and enforceable because none of the parties could be forced to participate in mediation procedures. However, if properly stipulated, the parties might be obliged to first follow certain procedures for amicable settlement of the dispute before referring it to the court/arbitration.

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

The procedure for mediation is regulated in the Bulgarian Mediation Act. It provides that mediation procedure begins under the parties' mutual agreement. A proposal for starting a mediation procedure could be made by each of the parties, by the court or by other authority. Before starting the procedure, the mediator should inform the parties about the essence of the mediation and its possible consequences. Attorneys-at-law or other specialists can participate in the mediation procedure. During the procedure, after clarifying the parties' statements, the mediator should suggest different options for solving the dispute. If any agreement is adopted, the procedure is terminated. Otherwise the procedure continues until reaching an agreement or until one of the parties withdraws its consent of participation. The mediation procedure is still not a very popular method for solving disputes.

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

Arbitration clauses are binding. However, each party may file a claim before the court and if the other party fails to challenge the court competence on time, the dispute will be resolved by the court.

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

Both types of arbitration are used in the Bulgarian arbitration practice but the institutional arbitration is more popular.

5. Which arbitration institutes are most popular?

The most popular institute is the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry and Court of Arbitration at the Bulgarian Chamber of Economy. The newly established KRIB Court of Arbitration (http://arbitration.bg/) is also becoming popular.

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

The arbitration tribunal could comprise of one or more arbitrators – the exact number is determined by the parties. If no particular number of arbitrators has been stipulated, the Bulgarian International Commerce Arbitration Act provides that they must be three. Each of the parties chooses one arbitrator and the chairperson is chosen by the mutual consent of the other two arbitrators. If no consent can be reached, the chairperson of the arbitration panel should be appointed by the chairperson of the Bulgarian Chamber of Commerce and Industry.

7. In what language is an arbitration proceeding conducted?

The parties are free to choose the language to be used in the arbitration procedure.

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

Each of the parties is entitled to apply for all kinds of interim measures before the state court (regardless whether the arbitration procedure has started or not).

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

The costs of arbitration proceedings are usually determined by the respective internal regulations if the arbitration is institutional or, in ad-hoc arbitrations they are subject to agreement between the parties. Usually the costs vary between 1% and 5% of the values of the claim. For smaller claims the percentage could be higher.

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

There aren't any specific regulations regarding document disclosure. As a general rule all presented documents must be forwarded promptly to the other party.

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

There are no specific provisions regarding witnesses. The parties are free to establish rules about how witness evidence is to be collected in the arbitration procedure. Both oral hearing and written statements are possible. If the parties could not come to an agreement, the arbitration tribunal is entitled to determine the procedure. The institutional arbitrations have their own rules which are usually quite broad and leave room for the discretion of the tribunal.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There are no specific provisions in this area. All of the mentioned alternatives are possible. The parties could claim from the arbitration tribunal to reproduce their settlement agreement in the arbitration award. The settlement correspondence between the parties or their representatives is not privileged and it depends on the parties whether it's disclosed to the tribunal.

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

An arbitration award issued by domestic arbitration tribunal has the same status as a final judgment of the Bulgarian court. After the arbitration award enters into force, a writ of execution could be issued by Sofia City Court which is the competent court for the issuance of writs on the basis of arbitration awards. In order to be enforced, the foreign arbitration tribunal award should be acknowledged by the Sofia City Court.

The arbitration awards may be set aside in a special claim procedure before the Supreme Court of Cassation only on the following grounds:

1. The party was incapable when concluding the arbitration agreement.
2. The arbitration agreement is not valid according to the applicable law.
3. The award concerns a subject which is not arbitrable.
4. The party was not duly notified of the appointment of an arbitrator or the commencement of the arbitration procedure, or for reasons beyond its control was not able to take part in the procedure.
5. The award settles a dispute not covered by the arbitration agreement or deals with issues outside the scope of the dispute.
6. Formation of the arbitration tribunal or the arbitration procedure does not comply with the agreement of the parties unless the arbitration agreement is contrary to the mandatory provisions of the Bulgarian International Commercial Arbitration Act and if there is no arbitration agreement – in case the provisions of the International Commercial Arbitration Act were not applied.

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Civil Litigation

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

   The languages used in Court proceedings are Greek and Turkish, the official languages of the Republic of Cyprus. Translation and/or interpretation may be effected by a professional translator and/or interpreter or by any person evidenced to be apt in both the original and the translation language who gives a written and/or oral oath, depending on the requirements of the case, to that effect. The Republic will, on its own expense, provide a translator/interpreter to any party/parties not understanding Greek or Turkish.

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

   Sending a warning letter is compulsory only where it is prescribed by law, e.g., by Article 212(a) of Companies Law Cap 113 before filing an application for the dissolution of a company or before filing an action for libel. Further, there is no compulsory pre-action measure in terms of attempting to settle or negotiate the case before going to court.

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

   As between lawyer and client, costs are determined by the type of retainer signed by the client to the lawyer, which can take any of the following forms:

   1. As prescribed by a regulation issued by the Supreme Court from time to time as to fees which provide for minimum and maximum charges for each specific service provided in the course of a court case. There are also prescribed fees in the same format for out-of-court advising, legal drafting, legal work pertaining to conveyancing, etc.
   2. On the basis of any other agreement made between lawyer and client, such as by retainer, hourly rate, etc. As to costs between the parties, the unsuccessful party bears the litigation costs of the other party, as assessed by the Registrar and such assessment can be objected to, but it rarely is and usually under special circumstances.

   Typical costs for a civil case in Cyprus with a value of Euro 1 million, can range from Euro 20,000 to Euro 200,000 depending upon the importance and complexity of the case and the number of hearings. Appeal costs are generally lower than the costs of hearings at first instance. The appeals court usually awards costs as part of its judgment and these very rarely exceed Euro 10,000.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   The term disclosure does not exist in the Cypriot legal order. The terms used are discovery and inspection of documents. Cyprus Civil Procedure rules are identical to English CPR of 1957. As a result, disclosure is not obligatory or overly extensive. However, the general rule is that should a discovery and/or inspection order be made by any court, the party to which it is addressed must comply and any documents not disclosed cannot be presented or relied upon at the hearing. Under the CPR rules as mentioned above, discovery must be on oath and inspection can take place anywhere the parties agree to do so.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?**

   Witnesses' evidence is given in the forms of examination, cross-examination and re-examination. As a general rule evidence is given orally. Examination of a witness can be in the form of a written witness statement for evidence in chief followed by cross examination. Although written witness statements are not compulsory they are becoming increasingly common.

   A witness can be compelled by the court to attend to give evidence and/or produce documents, after a summons for witness has been issued either by the court itself or by the party requiring such evidence or documents and the summons has been duly served on the intended witness and the latter did not appear.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   The choice of negotiation means is left to the parties and their respective lawyers. Usually after a case has gone to court, negotiation is conducted between lawyers. Talking to another lawyer's client without the lawyer's consent is against lawyer's rules of ethics. Correspondence exchanged in the course of negotiations for settlement is, as a general rule, privileged and cannot be presented in court as evidence supporting or denying the allegations of either party.

7. **What is the typical duration of a court procedure?**

   Civil cases in Cyprus can take anything from three to five years to complete at first instance and a further three to four years on appeal.

8. **How can foreign judgments be enforced?**

   Enforcement is through the provisions of law 12(I)/2000 for the Recognition, Registration and Enforcement of foreign judgments, which applies only if the foreign judgment is from a state which has signed a bilateral agreement with the Republic of Cyprus to that effect. In relation to EU Member States, EC Regulation 44/2001 for the international jurisdiction, recognition and enforcement of foreign judgments in civil and commercial matters, applies although its application has only recently started to be enforced and much case law is anticipated on its interpretation in relation to domestic law.

Arbitration And Alternative Dispute Resolution

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

   It is not common practice in Cyprus to insert mediation clauses in contracts. Arbitration clauses are much more common. At the moment, there is no legal framework in Cyprus regarding mediation in civil and commercial matters. However, in case a mediation clause is inserted into a contract it is of course binding as between the parties according to its terms.

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

   Due to the absence of a legal framework regarding mediation as mentioned above, resolving by mediation is not yet common practice. However, as a Member State of the EU, Cyprus should transpose into its domestic legal order Directive 2008/52/EC which is designed to facilitate the voluntary use of mediation in crossborder (as defined) civil or commercial disputes. It calls on the Member States to encourage and facilitate recourse to mediation (and development of such procedures at the national level if they do not already exist) and to put codes of conduct in place to ensure the quality thereof. Such law, as already mentioned, has not yet been put into effect.

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

   Yes, they are. If the arbitration clause in a contract is clear and unequivocal and either party goes to court bypassing the arbitration clause, the court on the application of the opposing party may order a stay of court proceedings and refer the matter to arbitration, in accordance with the provisions of the Arbitration Law Cap. 4. The only exception to the rule that arbitration clauses are binding and enforceable is when allegations of fraud are made by either side, in which case the court may order that it hears the dispute, or the part of it, that relates to fraud.

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

   Ad hoc arbitration. There is no body in Cyprus for institutional arbitrations. The Arbitration Law, Cap 4, and Law 101/87, the international commercial arbitration law, provide for one or two or three arbitrators or two arbitrators and one umpire, according to the wishes of the parties.

5. **Which arbitration institutes are most popular?**

   As mentioned above there is no body in Cyprus for institutional arbitrations. However, commercial contracts signed in Cyprus or by a Cypriot party/parties may refer to institutional arbitration abroad such as the London Court of International Arbitration (LCIA) or the International Chamber of Commerce (ICC).

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

   The parties decide the arbitrator(s)' identity. In case the parties cannot decide on the identity of the arbitrator(s) the court may, on the application of either party, appoint arbitrator(s).

7. **In what language is an arbitration proceeding conducted?**

   In whatever language is agreed between the parties. It is usually Greek but not necessarily so.

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

   Interim measures are available. Since arbitration is mostly ad hoc, even if there is an arbitration clause between the parties, and a dispute arises, the parties would have not yet agreed upon an arbitrator(s') identity and therefore resolve to court for interim pre-arbitration measures. As mentioned above however, a court case initiated by one party may be stayed on the application of the other party and referred to arbitration.

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

   The costs of the arbitrator(s) and who is to bear them are agreed in the arbitration agreement. However, the contract containing the arbitration clause or the agreement to refer disputes to arbitration must not contain a provision that each party shall pay its own costs; as such a provision is considered void by law. However, it shall not be considered void if it is contained in a separate agreement as to costs. Most of the time, each party does pay its own arbitration costs.

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

    Disclosure of documents and its extent is for the parties to decide.

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

    The choice of witness evidence is with the parties. They may decide between:

    - Filing pleadings, in which case witness evidence will follow the examination - cross-examination - re-examination path.
    - Filing a statement of case complete with evidence, in which case witness evidence will again follow the examination - cross-examination - re-examination path, if necessary.
    - Conducting a documents only arbitration (more popular with construction disputes) in which case the parties forgo their rights for witness calling.

12. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?**

    The choice of negotiation means is left to the parties and their respective lawyers. Correspondence exchanged in the course of negotiations for settlement is, as a general rule, privileged and cannot be presented as evidence supporting or denying the allegations of either party.

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

    An arbitration award becomes binding and enforceable as a court order once it is registered with the court according to the provisions of Cap. 4 and any other relevant law. An arbitration agreement may be annulled if the arbitrator(s) or umpire shows bad behaviour or malpractice in conducting the arbitration or if the arbitration was conducted improperly or the decision has been issued improperly.

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Civil Litigation

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

   Court proceedings are held in the Czech language. Nevertheless, pursuant to Section 18 of the Code of Civil Procedure, the parties to the proceedings are entitled to act before a court in their mother tongue, where the court shall appoint an interpreter for a party whose mother tongue is other than the Czech language, once such need is ascertained during the proceedings.

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

   In disputes whose nature permits the parties to optionally provide for their mutual relations on the basis of substantive law, a petition may be lodged with any court having jurisdiction over the given case, requesting that the court make an attempt to reach an amicable solution or, where a settlement agreement has been concluded, that the court approve the settlement agreement. This possibility for resolution of a dispute before lodging an action is provided for in Section 67 of the Code of Civil Procedure; however, it is not often used by parties in dispute. Indeed, in any case, a settlement agreement may be concluded during court proceedings, after lodging an action, where the Code of Civil Procedure stipulates that the court shall proceed so that a dispute between the parties is resolved in an amicable manner, where possible, for the sake of swift hearing of a case. The court may issue a preliminary injunction prior to commencement of the proceedings if it is necessary to provisionally provide for the relations between the parties or if there is a concern that enforcement of the decision *in rem* could be impaired. By virtue of a preliminary injunction, a duty may be imposed on a person other than a party to the proceedings only if this can be fairly required from such a person. When submitting a petition for issuing a preliminary injunction, a claimant is obliged to state the facts of the case and duly justify the request for issuing the preliminary injunction. In addition, the claimant is obliged to deposit into the court's account a security in the amount of approx. Euro2,000, for business cases, or, in other cases, of approx. Euro400, which serves as a security for indemnification for damage or other injury that may be incurred as a consequence of a preliminary injunction. Similarly, on the basis of a petition lodged to secure evidence prior to commencement of the proceedings if there is a concern that the evidence could not be taken later, or could be taken later only with great difficulty. Evidence can also be secured in the form of notarial or distrainer record on acts performed in the given case or on the state of the given case, provided that such an act was performed in the presence of a notary or court distrainer or if these persons confirmed the state of the case. Czech law does not require any notice or proposal; for amicable resolution of a dispute be sent to the other party. However, having regard to the practice and the above-mentioned duty of the court to attempt to reach amicable resolution of a dispute prior to hearing the given case, it is desirable, in most disputes, that particularly the plaintiff be able to prove to the court, at the first hearing, that he has at least attempted to reach an amicable solution with the other party prior to lodging the action.

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

   The costs of civil proceedings include, without limitation, out-of-pocket expenses of the parties and their legal counsels, a court fee, the loss of earnings of the parties and their legal representatives and the costs of evidence. Reimbursement for the value added tax and attorney's fees are part of the costs of the proceedings only where a party is represented by an attorney-at-law or a patent attorney. Out-of-pocket expenses mean postage fees, travel costs and the costs of subsistence allowance and accommodation. Out-of-pocket expenses of attorneys-at-law are governed by the applicable provisions of Decree No. 177/1996 Coll., setting out the manner of compensation of the costs of the individual acts performed in provision of legal services. The Decree also provides for contractual or non-contractual remuneration of attorneys-at-law.

   For the purpose of decision-making on reimbursement of the costs of the proceedings in connection with a decision *in rem* in civil proceedings, the courts determine this item in the costs of the proceedings pursuant to Decree No. 177/1996 Coll., which sets out a lump-sum rate of remuneration for representation of parties by attorneys-at law. Court fees are set out in Act No. 549/1991 Coll. and their amount is dependent on the subject of the proceedings. A court fee is generally payable upon lodging the action or petition concerned with the court. During court proceedings, the parties are obliged to bear their own costs and the costs of their legal counsels. Depending on the success in proceedings, the court decides, in its decision *in rem*, also on the duty of the parties to reimburse the costs of the proceedings, where the success in the case is, in general, decisive.

   For example, in case of a disputed value of Euro 1 million (approx. CZK 27 million), the costs would consist of court fees of approximately Euro 50,000 (CZK 1,350,000) and attorney's fee of approximately Euro 12,400 (CZK 335,170) including 21% VAT. The amount of attorney's fee depends on the number of legal operations provided within the legal dispute, therefore the aforementioned fees are calculated for the ideal case of a short dispute (incl. two court sessions).

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4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

The parties to the proceedings submit documents to the court according to their own procedural needs, in particular in connection with the duty to state the decisive facts of the case and to propose evidence to prove them. However, the court may order that any person, who has in his or her possession a document required for taking evidence in the given case, submit the document to the court. Documentary evidence must be submitted to the court and the evidence as a whole taken in a manner protecting the duty to maintain confidentiality of secret information protected by special law and other statutory or State-protected duties of confidentiality. Making documents available by electronic means for the purpose of court proceedings is permitted and is often used by the parties.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?

Section 126 of the Code of Civil Procedure stipulates that each person, who is not a party to the court proceedings, is obliged to appear at the court upon request and is obliged to make a witness testimony. (S)he must testify the truth and must not conceal any facts. A witness has the right to refuse a testimony only if (s)he would thereby incriminate himself or herself or a close person. The court decides as to whether or not refusal to make a witness testimony is justified. Examination of witnesses is performed by the presiding judge who invites a witness to describe all facts related to the subject of the testimony that are known to him or her. The presiding judge, members of the tribunal, the parties, or their legal counsels, and experts, in the specified order, are entitled to ask questions. The presiding judge will not allow a question posed by a party or an expert only if such a question does not relate to the subject of the testimony, if it indicates the answer or if it is misleading, particularly due to simulation of non-proven or incorrect facts. In each case, the presiding judge must state the reasons for not allowing a question in a protocol, unless minutes of the testimony are being taken. The general duty to make a witness testimony in civil proceedings is thus provided for. The possibility to refuse a witness testimony in cases where a witness could breach his or her duty to maintain confidentiality of secret information protected by special law and other statutory or State-protected duties of confidentiality also applies to the duty to make a witness testimony. In such cases, examination of a witness may be performed only if the relevant person has been relieved of this duty by the competent authority or the person in whose favour this duty exists.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/ counsel privileged (i.e. may not be disclosed to the court)?

While the circumstances of a case are always decisive, negotiations can be held both by correspondence and in the form of personal meetings. Where parties are represented by attorneys-at-law, negotiations are usually held primarily between the attorneys. Attorneys-at-law are bound by a duty of confidentiality with respect to all facts ascertained by them during provision of legal services. However, it is understood that the parties always inform the court of the outcome of negotiations as this is, as a rule, associated with further procedural acts of the parties.

7. What is the typical duration of a court procedure?

The duration of court proceedings is not regulated by legislation. A case is typically decided by the court within two or three years after filing the suit. The duration is mainly influenced by evidence produced before court. The proceedings at a court of appeal typically last from 6 months to 2 years depending on the subject of a dispute and saturation of the court of appeal.

8. How can foreign judgments be enforced?

Enforcement of a decision or ordering of distraint on the basis of decisions of foreign courts is governed by Council Regulation No. 44/2001, where the court simultaneously also decides on declaration of enforceability, or by a bilateral or multilateral international convention providing for enforcement of judgments of courts of the States Parties. Enforcement of European enforcement orders, within the meaning of Regulation (EC) No. 805/2004 of the European Parliament and of the Council, represents a special case, where the court directly orders enforcement and enforces a judgment pursuant to the Czech laws, without special recognition proceedings.

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Arbitration And Alternative Dispute Resolution

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

Generally, these are contractual arrangements whose provisions are binding on all parties to a contract, subject to fulfilment of the general requirements for validity. Czech laws contain no detailed rules governing mediation; therefore, it is at the discretion of the parties how they will provide for their rights and obligations in this aspect. The issue of enforceability of such arrangements is more complex as, in cases of unsuccessful mediation, the parties usually proceed to initiation of court of arbitration proceedings. It can be expected that, having regard to business customs, the court or arbitrator would take into account breach of contractual arrangements, providing for an obligation to resolve a dispute amicably, by one of the parties to a contract and dispute, when rendering the decision in rem; however, such arrangements are rare in Czech commercial contracts.

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

It is solely the matter of negotiations between the parties to provide for such a procedure in a contract or some other agreement as Czech laws contain no regulation that would set out detailed conditions of mediation in commercial disputes. This method of dispute resolution is not common in the Czech Republic, not considering the usual attempt of parties and their legal counsels to resolve a dispute amicably before lodging an action so that an action is justifiably lodged only after exhausting other possibilities of resolution of a dispute. However, in most cases, this procedure is not based on any contractual arrangements providing for an obligation of the parties to attempt first to resolve a dispute amicably.

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

Parties may agree in writing that property disputes between them, whose discussion and resolution would otherwise fall within the jurisdiction of courts, with the exception of disputes arising in connection with enforcement of a decision (distraint) and incidental disputes, are to be resolved by one or more arbitrators or by an arbitration court. If, in performing the first act in proceedings before the court, a defendant claims that the given case should have been heard by arbitrators, pursuant to an agreement between the parties, the court will discontinue the proceedings. Nevertheless, the court will hear the given case if the parties declare that they do not insist on the arbitration agreement or if the court ascertains that, pursuant to Czech laws, the relevant matter cannot be subjected to arbitration agreement or that the arbitration agreement is invalid or non-existent or that discussion of the matter in arbitration proceedings extends the framework of the competence conferred by the agreement.

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

Both types of arbitration proceedings are commonly used. Institutional proceedings are preferred mostly by larger corporations.

5. Which arbitration institutes are most popular?

The Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic.

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

Arbitration proceedings are governed by Act No. 216/1994 Coll. An arbitration agreement shall, as a rule, specify the number (odd, in each case) and identity of the arbitrators or the manner of determining the number of arbitrators and their appointment. Otherwise, each party appoints one arbitrator and these arbitrators appoint the presiding arbitrator. Permanent arbitration courts may be established by virtue of the law; these courts adopt their Statutes and Rules that must be published. An arbitrator is obliged to notify the parties of any circumstance that could raise doubts as to his or her impartiality or that would represent grounds for his or her exclusion from an office of arbitrator.

7. In what language is an arbitration proceeding conducted?

As a rule, arbitration proceedings are held in the Czech language; however, parties may agree on the manner of holding arbitration proceedings. In each case, the applicable provisions of the Code of Civil Procedure apply mutatis mutandis to arbitration proceedings, i.e., also to the right of a party to act in his or her mother tongue.

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

Only the court may, upon petition of a party, issue a preliminary injunction in arbitration proceedings if it is found that enforcement of the arbitration award could be impaired. The court and the parties proceed similarly as if a petition for ordering a preliminary injunction in civil court proceedings were lodged by a party.

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

Generally, it holds that each party bears its own costs incurred during the proceedings. In practice, parties agree on the manner of appointment of an arbitrator upon conclusion of an arbitration agreement, referring also to the relevant rules providing for the fees and the manner of decision-making on the costs of the proceedings by the relevant arbitrator or arbitration court. A decision on the costs of the proceedings is usually based on the success in the case, similar to civil court proceedings.

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

There are no generally applicable rules governing publication of documents in arbitration proceedings, because the parties can provide for the manner of hearing the proceedings and also the obligation to reimburse the costs in an arbitration agreement. In general, the possibility of taking evidence in arbitration proceedings is limited to evidence proposed by the parties, unless evidence is taken by the court at the request of the arbitrators.

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

The manner of hearing of arbitration proceedings depends on the agreement of the parties. However, arbitrators may examine witnesses only if they appear voluntarily and make a testimony. Procedural acts that cannot be performed by the arbitrators themselves, although the arbitrators, on their own instigation (without request of the parties), consider them to be necessary for due hearing and resolution of the given dispute, are performed by the court at the request of the arbitrators. The court is obliged to satisfy an arbitrator's request, unless the required act is not permissible pursuant to the law.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

Similar to civil court proceedings, no exact rules are stipulated by the law for negotiations on a settlement. While the circumstances of a case are always decisive, negotiations can be held both by correspondence and in the form of personal meetings. Where parties are represented by attorneys-at-law, negotiations are usually held primarily between the attorneys. Attorneys-at-law are bound by a duty of confidentiality with respect to all facts ascertained by them during provision of legal services; however, it is understood that parties or their legal counsels always inform the arbitrator of the outcome of negotiations, even if it is negative.

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

An arbitration award must be delivered to the parties. Parties may agree in an arbitration agreement that an arbitration award may be reviewed by other arbitrators upon request of the parties or a party. Unless a different time limit is stipulated in an arbitration agreement, a request for review of an arbitration award must be sent to the other party within 30 days of the date when the party requesting the review received the arbitration award. An arbitration award that cannot be reviewed pursuant to the abovementioned agreement or for which the time limit for lodging a review request has elapsed to no effect, becomes effective as a final court judgment and enforceable as of the date of delivery thereof. An enforceable arbitration award is an enforcement order, on the basis of which the court may order enforcement of a decision pursuant to the Code of Civil Procedure or distraint with appointment of a court distrainer, within the meaning of Act No. 120/2001 Coll. Any party may claim that an arbitration award be cancelled by the court, provided that such a petition is lodged within three months of delivery of the arbitration award to the relevant party. The court may suspend enforceability of an arbitration award upon request of a party. The court will cancel an arbitration award upon request of a party, pursuant to Section 31 of Act No. 216/1994 Coll., if:

- The arbitration award was issued in a matter for which a valid arbitration agreement cannot be concluded.
- The arbitration agreement is invalid for other reasons, or has been terminated, or does not apply to the agreed matter.
- An arbitrator participating in the matter was not authorised to do so under the arbitration agreement or otherwise or did not have the capacity to act as an arbitrator.
- The arbitration award was not adopted by a majority of the arbitrators.
- A party was not given the opportunity to discuss the matter before the arbitrators.
- The arbitration award imposes a remedy on a party that was not requested by the entitled party or that is impossible or not permissible under Czech law.
- It has been ascertained that there are grounds, on the basis of which renewal of proceedings may be requested in civil court proceedings.
- If the court cancels an arbitration award pursuant to sub-paragraph a) or b) of the above-cited provision, the court proceeds in hearing the merits of the case upon request of a party, after the legal force of the relevant judgment, and resolves the dispute. The arbitration agreement remains valid after cancellation of the arbitration award, but the arbitrators who issued the original decision are excluded from new hearing and resolution of the same case. Even where no petition for cancellation of an arbitration award has been lodged by a party, the party against which enforcement of the arbitration award has been ordered may lodge a petition for discontinuing already initiated proceedings on enforcement of the decision, in addition to the grounds stipulated in the Code of Civil Procedure.
- If the arbitration award is invalidated by one of the defects set out in Section 31 (a), (d) or (f) of Act No. 216/1994 Coll.
- A party which must be represented by its statutory representative was not represented by the statutory representative and its acts have not been approved, even additionally.
- A person who acted on behalf of a party or its statutory representative in arbitration proceedings was not authorized to do so and his or her acts have not been approved, even additionally. If such a petition is lodged, the court enforcing the arbitration award suspends the proceedings on enforcement of the arbitration award and orders the obliged party to lodge a petition for cancelling the arbitration award with the competent court within 30 days. If the petition is not lodged within the time limit, the court continues the proceedings on enforcement of the arbitration award. If the arbitration award is subsequently cancelled, the parties may request, similar to the above, that the court hear and resolve the case, or they may submit the case to newly appointed arbitrators for a new hearing.

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Civil Litigation

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

   The official languages used in court are Finnish and Swedish. If persons involved in the trial are citizens of another Nordic country, they are allowed to use their own language and if necessary, an interpreter is summoned. Translation and interpreter services in other languages will become part of the legal expenses.

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

   An interim relief can be applied by the parties as a pre-action or during a trial if there is a need to safeguard the interest of either of the parties to the proceedings before the judgment in substantial matter. The rules on interim relief can be found in the Finnish Code of Judicial Procedure (4/1734) Chapter 7.

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

   The court fees are fixed. Party costs and attorney fees and other legal costs that are reasonable and necessary are paid by the losing party to a dispute as stated in the Finnish Code of Judicial Procedure (4/1734) Chapter 21. The same goes for the aforementioned court fees.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   Documents given to or received by the court of law during the litigation are public documents. Also the verdict is public. Non-disclosure can be applied for based on statutory grounds such as business secrets or sensitivity reasons.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

   Witness evidence is based on oral witness statements subject to cross-examinations. A witness can be compelled to give evidence unless statutory grounds exists for refusal (e.g. client privilege issues). Experts can provide written reports.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions can be held between the parties or led by the court. The discussions are usually both oral and in writing. According to local bar rules, one can refer to one's own settlement offer but not to the other party's offer.

7. **What is the typical duration of a court procedure?**

   The average length of a court procedure at the court of first instance (the District Court) is 9-10 months.

8. **How can foreign judgments be enforced?**

   The core rule is that foreign judgments cannot be enforced without an international agreement or a national provision forming the basis of the enforcement action. The Brussels I recast -regulation (1215/2012) is the primary regulation for enforcement within the EU.

Arbitration And Alternative Dispute Resolution

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

   Mediation clauses are generally binding and enforceable.

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

   Some provisions on court led settlement can be found on the Finnish Code of Judicial Procedure (4/1734) and in the mediation rules of the Finnish Bar Association. In general, mediation is carried out between the parties in normal party settlement negotiations, if any.

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

   Arbitration clauses are binding and enforceable. If the dispute has international aspects, it is advisable to include details about language, applicable law, and the seat of the arbitration.

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

   Both types of arbitration are known and used in Finland.

5. **Which arbitration institutes are most popular?**

   The Arbitration Institute of the Finland Chamber of Commerce.

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

   The parties can select the arbitrator(s), if agreed. The parties can agree that the arbitrators must fulfil certain qualifications. Alternative methods of selecting arbitrator(s) can also be stated in the arbitration agreement. If selection of the arbitrator has not been defined in the arbitration agreement, each party selects one arbitrator and those selected make the selection of one more arbitrator as the chairman (this if the arbitration is ad hoc as per the Finnish Arbitration Act). If the rules of the Arbitration Institute of the Finland Chamber of Commerce apply, the parties may jointly nominate the sole arbitrator. However, failing such joint nomination, the Board shall appoint the sole arbitrator. Where the parties to an arbitration according to the aforementioned rules have agreed that the dispute shall be referred to an arbitral tribunal composed of three arbitrators, each party shall nominate one arbitrator and jointly the third arbitrator, who shall act as the presiding arbitrator of the arbitral tribunal. Failing such joint nomination, the Board shall appoint the presiding arbitrator.

7. **In what language is an arbitration proceeding conducted?**

   The parties can agree on the language used in arbitration. If it has not been agreed on, it will be up to the arbitrators to decide the language of the arbitration.

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

   Interim measures by the arbitrator are possible, such as precautionary measures. Such measures are, however, not enforceable by local courts. Local courts can provide interim measures, if needed (see litigation answer number 2 above).

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

   The losing party is usually liable for the legal costs such as attorney's and arbitrator's fees.

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

    According to the Finnish Arbitration Act (967/1992), the arbitrator can order a party to put forward evidence if deemed necessary. An enforceable decision on such disclosure can be applied, if deemed necessary from a local court.

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

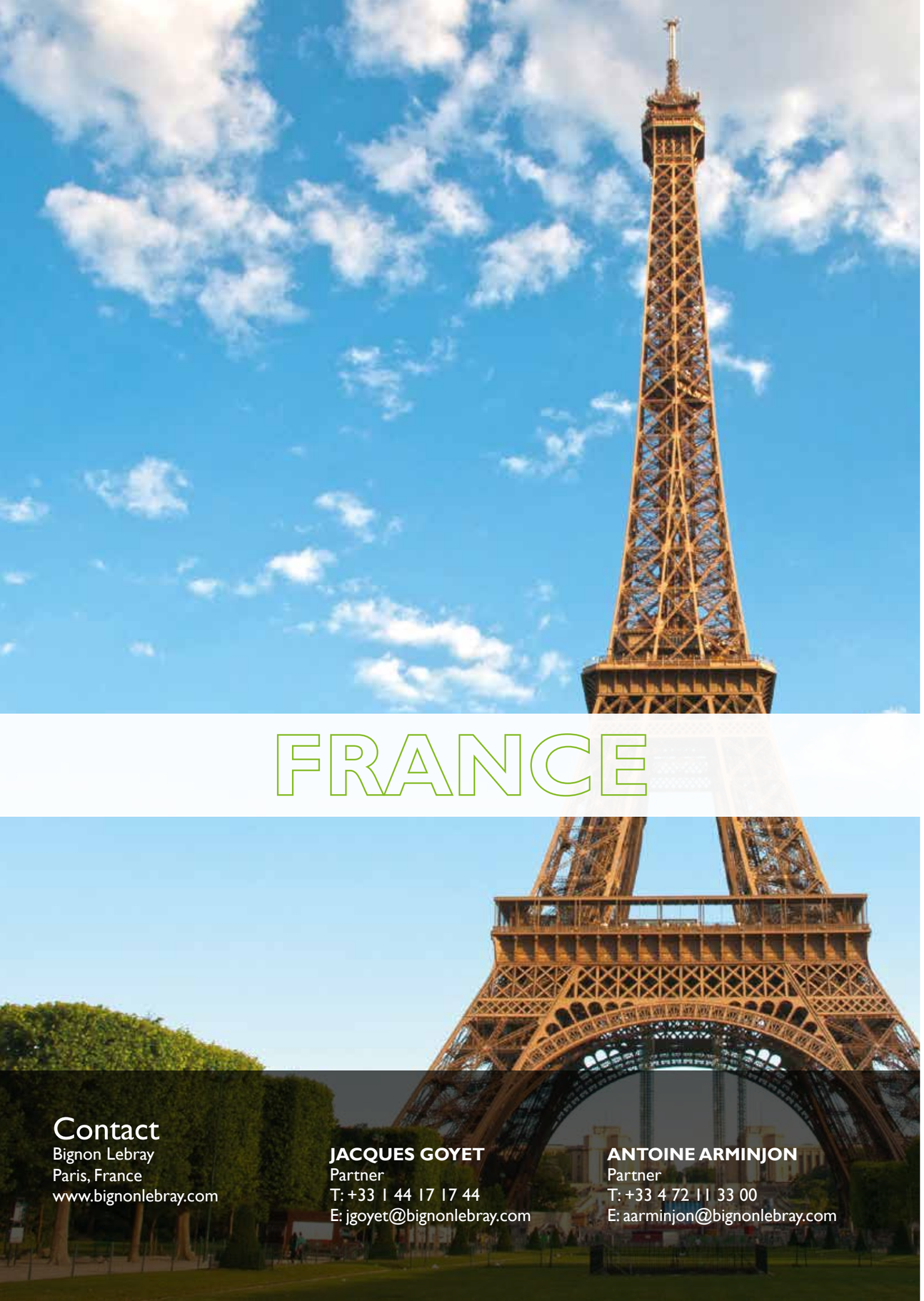
    Witness evidence is usually given orally and subject to cross-examination. Written witness statements are possible, subject to the parties' agreement.

12. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?**

    The parties usually conduct settlement discussions in a way (orally or in writing) they deem fit. As in the litigation answer number 6 above, local bar rules allow you to refer to your own settlement proposal but not the other party's.

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

    An arbitration award must be drafted in writing and each arbitrator must sign it as stated in the Arbitration Act section 36. The enforcement of a Finnish arbitration award must follow certain procedural phases as stated in the Arbitration Act sections 43-45. The court is required to enforce the Arbitration Award unless there are grounds for nullity or annulment as stated in section 40 and 41 of the Arbitration Act.



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Civil Litigation

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

French law requires all court proceedings, oral and written pleadings, evidence (e.g., witness statements), and documents to be in French.

Translations and interpretation have to be carried out by a translator/ interpreter on the court's official list of approved interpreters.

Documents which have not been translated are liable to be excluded from the proceedings.

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

Provisional / Interim Measures

In France it is possible to obtain interim orders from the court for:

- The production and preservation of evidence (if necessary, with the assistance of a court expert, e.g., for computer records, etc.)
- The appointment of a court bailiff or expert to record a specific state of facts. For example, an expert may be appointed to examine a machine requiring repair, to record its state prior to the repair being carried out and to authorise appropriate repairs.
- A charging order over real or movable property; for example, where there is a serious risk of non-payment in the case of persistent refusal or failure to pay (full details of the property will be needed).
- An attachment of assets, if there is a risk they may be sold or removed (e.g., under a reservation of title ("ROT" clause).

It must be noted, however, that these remedies are only granted in specific cases. For the purpose of seizing goods under a ROT clause, the following will be required:

- Evidence of acceptance of the ROT clause by the debtor;
- Evidence of identification of the goods concerned (batch or serial numbers);
- Evidence of the location of the goods; and

The debtor can apply to the court for any such interim orders to be set aside, in which case the parties and their lawyers will be able to attend Court to express their respective positions.

Court fees are set by law and are very low (less than Euro 1,000).

In terms of fees for legal services, the costs for civil and commercial proceedings vary hugely depending on the nature and difficulty of the case. These costs are not related to the amount under dispute. The average costs incurred in civil and commercial proceedings related to disputes assessed at Euro 1 million range from Euro 15,000 to Euro 30,000.

Written Notice

In most cases, proceedings should be preceded by a formal written notice to pay or letter before action sent by registered post with return receipt.

For example, written notice is necessary:

- Prior to urgent summary proceedings for payment of debts; and
- To set interest running.

In some cases notice will not be given to the debtor, for example to avoid destruction or removal of evidence or property.

According to the civil law reform, which will be applicable from October 1st, 2016, the debtor may send a formal written notice to the creditor in the event that the latter refuses to receive payment. For example, the main effect of a formal written notice to the creditor is to stop interest running.

There is a 10 years limitation period in many commercial matters – but there are shorter limitation periods, such as one year in transport matters.

Also, it must be noted that there is a 5-year limitation period for civil matters and a 2-year limitation period for consumer matters.

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

Legal Fees

Fees are usually based on hourly rates (or special retainers for volume recovery work).

Lawyers provide cost estimates which usually have to be updated in light of developments in the litigation.

Local law agents' fees may also be incurred for assisting with filing pleadings and attending the local court for procedural hearings.

In the case of disputes between the client and the lawyer about fees, the matter is referred in the first instance to the local Bar Council for arbitration with an appeal to the regional Court of Appeal.

Court Fees

Court fees are payable at first instance and at each stage on appeal through the regional courts of appeal to final appeals on points of law to the French Supreme Court.

The calculations are not simple and vary somewhat from place to place and from court to court. At first instance these are unlikely to exceed several hundred euros in most cases.

On appeal there will be court fees and fees of Court of Appeal law agents ('Avoués') who have a monopoly for

the filing of pleadings and assist with the directions hearing and procedural timetable at the Court of Appeal. These fees are partly fixed and partly scale fees (varying with the amount in issue).

The Avoués' profession is currently being phased out. The Avocat handling the case will continue to be responsible for the drafting of pleadings and strategy and will plead the case on appeal.

On the other hand, on final appeal on point of law to the French Supreme Court the Avocat will be required to use a Supreme Court agent who has a monopoly of pleading in that court and charges scale fees.

Bailiff's Fees

French procedural rules require service of most process (including judgments and orders) to be effected by an official Court Bailiff (if abroad, with translations).

The bailiff's charges are based partly on fixed fees and partly on scale fees (based on the amount involved). In some cases, special fees are payable. Bailiff's charges are, in most cases, recoverable from the defendant or debtor, if the claimant is successful, but the claimant will have to pay the bailiff in advance.

Other Expenses

The following costs are usually incurred and must be taken into account:

- Company search fees;
- Translation costs; and
- Court experts' fees and those of any special experts retained by the client to assist.

Cost Awards Against the Unsuccessful Party

The courts can award costs to successful litigants at their discretion but any awards made are usually on the low side (probably not more than one quarter of actual costs). As a result, there is less pressure on the parties to make attempts to settle actions and thereby avoid the risk of adverse costs awards being made against them at trial.

Another point to be taken into account in more complex and lengthy litigation, is that there is no system for payments into court in France (as in the English system) and, therefore, no mechanism, as in the UK, to force the other party to consider a settlement proposal or risk an adverse costs order, if it continues with the litigation.

Interest

Contractual interest can be claimed, otherwise legal interest from the date of formal notice to pay sent by registered letter with return receipt.

Under the terms of a ministerial order of December 23rd, 2015, the legal rate of interest is fixed twice a year. The current legal rate of interest which is applicable to commercial matters for the first semester of 2016 is 1.01%.

There is a legal limit on the rate of interest in certain cases (e.g., bank loans to individuals, consumer contracts, etc.).

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

Documents and written witness statements on which parties wish to rely must be produced with their written pleadings. Parties are supposed to disclose documents relevant to the case but are not strictly obliged to disclose documents which may be detrimental to their position. However, the other party will ask the court to draw appropriate inferences and in certain cases may obtain an order for production.

Orders for discovery of documents are unusual, although possible under French procedure (including against persons who are not parties to the proceedings but who are in possession of an essential document).

Any technical or scientific questions will have to be dealt with by a registered court expert appointed by the court on special application. The expert will organize site visits and hearings and may appoint a specially qualified assistant expert.

The parties will attend with their lawyers and, where necessary, with suitably qualified experts to enable full discussion of the technical issues. The parties may produce written statements from independent experts if need be to deal with technical questions and to support an application to appoint a second expert, if they wish to challenge the expert's findings.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?

Parties and witnesses are not usually required to attend at trial, but may be advised to do so to enable the court to ask any useful questions of them.

In the absence of satisfactory documentary evidence, the parties can produce statements from direct witnesses to the facts. These statements are written by the witness and signed by them, so are not depositions in the UK/US sense.

(The evidential value of witness statements will be likely to be discounted by the court, if given by the parties, members of their family or by persons in their employ, or who are in a dependent financial or business relationship with either party).

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?

French law does not grant privilege to 'without prejudice' discussions conducted by the parties.

In order to retain privilege and confidentiality of any settlement discussions under French law, these have to be conducted through lawyers admitted to practice in France under correspondence not stated as open. Most French lawyers will mark any settlement correspondence as 'confidential'.

To be valid under French law, a settlement must settle a genuine dispute. The parties must have had access to legal advice and the wording used must declare the settlement to be full and final.

A settlement can be recorded by the court on application by either party to enable enforcement.

7. What is the typical duration of a court procedure?

In first instance, the duration of a court procedure ranges from 10 to 18 months. It is approximately the same in case of an appeal.

As an exception, there is a faster procedure (référé) for claims to which a judge rules that there are no serious objections. These proceedings usually take approximately 1 month in the first instance.

8. How can foreign judgments be enforced?

Except for certain judgments from other EU jurisdictions which can be enforced directly in France, in most cases it is necessary to apply ex parte to the local High Court (Tribunal de Grande Instance) with an original or certified copy of the judgment or order and a full translation prepared by a French official court translator, for recognition and enforcement in France.

It is usually helpful to indicate that essential procedural requirements have been followed in the other jurisdiction (notice to defendant giving an opportunity to file a defence) and absence of any public policy grounds for refusal of recognition and enforcement.

Any interim or provisional measures needed to secure property for enforcement purposes may also be obtained ex parte at this stage.

Once the order has been obtained, the Court Bailiff can be instructed to enforce the foreign order or judgment.

The defendant can appeal the decision.

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Arbitration And Alternative Dispute Resolution

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

Yes. This is provided by a French Statute of 1995 (no. 95-1995). This was amended by a Directive of 2008 (no. 2008/52/EC) transposed in French law by an Order of 2011 (no. 2011-1540) dealing with certain aspects of mediation in commercial matters. This Order was also completed by a Decree of 2012 (no. 2012-66).

The use of mediation procedures may be imposed or proposed by the legislator, proposed by the judge or initiated by the parties.

Contractual mediation

French law acknowledges contractual mediation led by a third party without any court intervention.

Furthermore, the French Supreme Court decided in a case on April 8, 2009 that the parties cannot waive mediation procedure that is provided by a contractual clause.

Court-ordered mediation

The court may order mediation where the parties agree but they cannot be obliged to pursue mediation which is based on consent. The parties can agree to mediation by a designated individual or mediation organization provided the person is suitably qualified and independent.

Specific legislative provisions

There are specific legislative provisions on mediation in family and divorce, employment, discrimination and criminal cases.

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

The parties may voluntarily agree to ad hoc or institutional mediation, or the court may encourage the parties to mediate. The law imposes strict confidentiality of the mediation process on all parties involved.

Furthermore, there is a homologation procedure common to all agreements resulting from the various alternative dispute resolution. This procedure introduces the possibility to make the agreement enforceable.

The French Code of Civil Procedure determines which court has jurisdiction over the matter and which procedure must be used to obtain the homologation. It also mentiones the possibility to appeal the decision in the event of a rejection.

Since 2008, the use of mediation will suspend limitation periods during the mediation which should not normally exceed three months for court-ordered mediations and 2 months for contractual mediations (according to CMAP's rules), unless the parties agree otherwise.

However, mediation has been slower to take off in commercial dispute resolution in France compared to the UK or the USA (probably for cultural reasons, lower levels of legal costs and the absence of significant legal cost sanctions in litigation compared to other jurisdictions).

The Paris Commercial Court was a precursor and has supported mediation for some years. Certain other local commercial courts and regional Courts of Appeal are beginning to propose mediation to the parties (e.g., Grenoble Regional Court of Appeal for employment disputes, Toulouse Regional Court of Appeal for commercial disputes).

The ICC and CMAP have been active in promoting mediation with the support of the Paris Chamber of Commerce and Industry. (The CMAP handles about 300 mediations each year with a 70 percent successful settlement rate).

Most of the publicly-quoted companies in France have signed a charter for the use of mediation as a dispute resolution mechanism.

The French insurance industry actively uses mediation-type procedures to resolve disputes between insurance companies and their insured. Banks also frequently provide for mediation in their contracts with clients.

Mediation is also developing in family/divorce and consumer disputes.
An Order of 2015 (transposing a Directive of 2013) on the extrajudicial settlement of consumer disputes obliges professionals to guarantee consumers the recourse to a mediation mechanism

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

Yes. Legislation of 2008 widened the scope of commercial disputes capable of being submitted to arbitration; which is now possible in most commercial disputes, with some limited exceptions (e.g., between partners of certain types of professional corporations).

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

In the absence of reliable statistics, it is difficult to answer this question. However it is thought that many international commercial contracts negotiated with legal advice will provide for institutional arbitration such as the ICC.

Certain standard forms such as those recommended by the ICC for international sales of goods, distribution, agency, etc., will provide for arbitration.

The ICC International Court of Arbitration in Paris reports a significant increase in arbitration cases since 2005 (from 500 cases in 2005 to over 800 in 2009). The CMAP also notes an increase in workload.

We also have experience of French ad hoc arbitration in international contract disputes under the French civil code of procedure where the contract did not provide for arbitration and the parties wished to avoid litigation in the French courts on the one hand, and the additional administrative costs of institutional arbitration on the other.

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5. Which arbitration institutes are most popular?

ICC (International Chamber of Commerce) and CMAP (Paris Mediation and Arbitration Centre).

(WIPO procedures in Geneva are also widely used in IP disputes).

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

This will depend on such factors as the terms of the arbitration agreement (which may provide for the identity or qualification of the arbitrators) or the choice of an arbitration institution such as the ICC whose rules will enable the institution to determine the choice of arbitrators.

7. In what language is an arbitration proceeding conducted?

Usually in French, but arbitrators have the discretion for example where the parties both use a foreign language or all the documents and evidence is in a foreign language and it is convenient and cost effective to conduct the arbitration in a foreign language.

The arbitrators will be attentive to ensuring the parties have agreed to the use of the relevant language and the public policy requirements for the validity of their award, by ensuring that parties have not been deprived of a fair hearing by the use of a particular language and that adequate interpretation and translation facilities have been available during the arbitration.

Many international arbitrations are conducted in France in foreign languages. The ICC rules refer to the language of the contract as one of the relevant factors to be taken into account.

One example we have experienced is an ad hoc arbitration in France with US, French, Spanish and Saudi parties conducted in French but where it was agreed that to reduce costs, all documents could be produced in English without translations, the parties agreeing that their command of English was sufficient.

Any award to be enforced in France must be in French.

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

Usual provisional or interim measures can be obtained from the courts. In most cases, an interim award by the arbitrator(s) for any such measures can also be enforced in France.

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

These are at the discretion of the arbitrator(s) and/or as provided by the rules of the relevant arbitration institution chosen by the parties.

Institutional arbitration rules usually apply administrative costs based on a scale proportionate to the amount in issue, with arbitrators' fees varying in the same manner within a specific range, or fixed by the institution.

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

Normal civil procedure code rules will apply in ad hoc arbitration, although the arbitrators have considerable discretion provided normal rules of justice/due process (fair hearing, etc.) are applied.

In international institutional arbitration in France, arbitrators tend to avoid allowing full pre-trial discovery in the English or US sense.

Rules for the protection of trade secrets and secret know-how protecting disclosure of sensitive material to the other party may be applicable.

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

This is determined by the arbitrators and usually subject to a decision in the terms of reference or procedural order made by the arbitrators. Arbitrators (including French arbitrators) familiar with the UK/US system of evidence often require statements or depositions with (limited) oral witness evidence, with examination and cross-examination where necessary.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

As for ordinary proceedings. Where Counsel from different jurisdictions are involved, care will be needed to ascertain that similar rules to those applicable in France will govern settlement discussions between Counsel; and where necessary appropriate agreement obtained to secure confidentiality.

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

Foreign arbitration awards can be enforced in France under the New York Convention by a procedure similar to that used to enforce foreign court judgments. Challenge can be raised on the basis of public policy grounds such as procedural irregularity, lack of fair hearing, lack of impartiality of arbitrators, or contradiction with mandatory French international public policy rules, or where the arbitrators have gone beyond their terms of reference. The French courts are now more restrictive in their acceptance of such 'public policy' challenges.

Where the parties have agreed for French procedural rules to apply, an application can be made to the French courts to deal with any difficulty arising during the course of the arbitration.

In internal arbitration, the parties may renounce the right of appeal in writing in the arbitration agreement.

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Civil Litigation

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

   The official language used in court is German. If persons involved in the trial are not able to speak German, an interpreter is summoned.

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

   "Discovery" rules are not applicable under German law. A potential plaintiff may conduct an independent procedure for the taking of evidence ("*selbständiges Beweisverfahren*") if the procedure may serve to avoid a lawsuit or if there is actual danger that evidence which is at the moment easily available may soon be destroyed or changed. Furthermore, parties may apply for interim relief ("*einstweiliger Rechtsschutz*") or an assertion of (undisputed) claims by legal dunning proceedings ("*Mahnverfahren*"). A warning letter is not a precondition for taking legal action, however, if a plaintiff takes legal action without first issuing a warning letter, according to the rules of the German Code of Civil Procedure ("*Zivilprozessordnung*" or "ZPO") he may have to bear the costs of the legal proceedings if the respondent immediately accepts the asserted claim without defending the case and has not otherwise provided cause for complaint.

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

   The court fees are regulated by the German Court Fees Act ("*Gerichtskostengesetz*" or "GKG"). According to the value in dispute German courts will determine the applicable fee-unit from a schedule annexed to the GKG and charge the number of fee-units set forth by law for the court's specific activities. Statutory attorney fees are based on the Federal Attorney Remuneration Act ("Rechtsanwaltsvergütungsgesetz" or "RVG") and are also calculated by multiplying the applicable fee-unit according to the value in dispute with the statutory number of fee-units for the attorney's specific activities. It is highly common to agree on negotiated attorney's fees. As a general rule the unsuccessful party has to bear the court costs and reimburse the opponent's statutory court fees (regardless of whether the opponent actually paid statutory or negotiated fees).

   The overall court fees assuming a dispute value of Euro 1,000,000 in regular proceedings are Euro 16, 008 at first instance, Euro 21,344 at second instance and Euro 26,680 at third instance, altogether Euro 64,032, if the proceeding goes through all instances.

   Each party`s statutory attorney fees are, assuming a dispute value of Euro 1,000,000 at Euro 44,097.96 in first instance, Euro 52,799.04 in second instance and Euro 69,351.98 in third instance, altogether Euro 166, 248.98, if the proceeding goes through all instances. Additional statutory attorney fees may incur, for instance if the taking of evidence is particularly extensive.

   Both kind of fees may reduce if the proceeding terminates by other means of controversial judgement, for instance by court settlement, abandonment of action or judgement by confession.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   A disclosure of documents is rather uncommon. According to §§ 422, 423 of the German Code of Civil Procedure ("ZPO") documents have to be disclosed if the other party is entitled to require such disclosure by statutory regulations of the German Civil Code ("*Bürgerliches Gesetzbuch*" or "BGB") or the German Commercial Code ("*Handelsgesetzbuch*" or "HGB") such as §§ 259, 371, 402, 666, 667, 716,810 BGB or §§ 118, 157 HGB (each of them applies only in special cases) or if the other party referred to such document in their giving of evidence. An electronic disclosure of documents is uncommon.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

   The usual process is witness examination. The witness is questioned by the judge, there is no cross-examination but it is possible for the parties to put direct questions to the witness with approval of the court. A witness who has been properly summoned, yet fails to appear, can be charged with the costs attributable to his failure to appear. At the same time, a coercive fine can be imposed on him and coercive detention ordered if the coercive fine cannot be collected. In case of repeated absence, a witness may also be brought before the court by force.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions can be conducted in many different ways, orally or in writing, in or out of court. Generally, if the parties are represented by lawyers, the discussions will be conducted by those representatives. If the settlement discussions are conducted out of court, there is no obligation to disclose the according correspondence to the court. It is common to inform the court of the outcome of those settlement discussions and have the settlement recorded in writing by the court.

7. **What is the typical duration of a court procedure?**

   A first instance procedure is usually closed within 5 to 10 months. Appeals procedures are usually closed within 7 to 10 months. However, these are average values regarding all kind civil procedures; the duration may vary, depending on the complexity of the case. If a proceeding's duration is inadequately long, compensation can be demanded, § 198 GVG.

8. How can foreign judgments be enforced?

For the enforcement of foreign judgments in Germany several regulations (European, bilateral or multilateral treaties, autonomous) equally apply with the parties being free to choose the most advantageous regulations.

- European: According to the EuGVVO, judgments of EU member states will be acknowledged in each of those states and can be enforced if declared enforceable. The EuVTVO applies for European enforcement orders.
- Multilateral and bilateral treaties: Enforcement may also be obtained in accordance with the Hague Convention or other multilateral or bilateral treaties.
- Autonomous regulations: If no other regulations apply, the German Code of Civil Procedure ("ZPO") sets forth autonomous regulations in §§ 722, 723, 328 ZPO Generally speaking, enforcing foreign judgments in Germany may be quite time consuming.

Arbitration And Alternative Dispute Resolution

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

Mediation clauses in commercial contracts are generally binding. They cannot be realistically enforced as the obligation to mediate does not oblige the parties to actually settle the dispute. Nevertheless, if a mediation clause was agreed upon, courts will deny action as inadmissible prior to mediation proceedings. Irrespective of the obligation to mediate, it is always permissible to request interim measures by a court.

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

A procedure regulated by law does not exist. The parties are free to establish a mediation procedure. Mediation is offered by courts as well as by lawyers. Up to now, it is not a popular method of resolving disputes.

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

A broad range of disputes are generally arbitrable. Arbitration clauses are binding if they meet the requirements specified in §§ 1030, 1031 of the German Code of Civil Procedure ("ZPO") and are enforceable according to the regulations of §§ 1032, 1033 ZPO. GENERAL COMMENT ON ARBITRATION PROCEEDINGS IN GERMANY: The Arbitration Act, based upon the UNCITRAL Model Law is codified in §§ 1025-1066 of the German Code of Civil Procedure ("ZPO"). Only a few binding regulations exist. In general, the parties are free to determine the procedure. For the most part, the course of the arbitration is subject to respective agreements of the parties – within the limits of *ordre public* and good faith.

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

Both types can be used, institutional arbitration is more popular.

5. Which arbitration institutes are most popular?

DIS (Deutsche Institution *für Schiedsgerichtsbarkeit* e.V. / German Institution of Arbitration) ICC (International Chamber of Commerce)

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

The parties are free to determine the number of arbitrators. It is standard in German arbitration proceedings to agree either on one arbitrator or on a panel of three arbitrators. If no agreement is made, a panel of three arbitrators will be appointed. Each party appoints one arbitrator and those two arbitrators appoint the third arbitrator who will act as the chairman of the panel.

7. In what language is an arbitration proceeding conducted?

The parties are free to choose the language to be used in the arbitration proceedings.

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

Interim measures stay possible.

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

The decision on the costs is subject to agreement. If no agreement has been made by the parties, the arbitration tribunal decides at its own discretion who has to bear the costs, taking into consideration the circumstances of the case, in particular the outcome of the proceedings.

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

The disclosure of documents is subject to agreement. "Discovery" rules are not applicable in German arbitration proceedings.

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

There are no specific provisions concerning witnesses, the procedure for witness evidence is subject to agreement. Both oral hearings and written statements can be agreed upon.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There are no specific provisions as to how settlement discussions are conducted, all mentioned alternatives are possible. Generally, if the parties are represented by lawyers the discussions will be conducted by those representatives. It is subject to agreement whether the settlement correspondence will be disclosed to the arbitrator(s).

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

According to § 1055 of the German Code of Civil Procedure ("ZPO") an award made in arbitration, where the seat is Germany, has the same status as a final judgment of German courts. Domestic awards can be enforced if they are declared enforceable (§ 1060 ZPO), foreign Awards can be enforced in accordance with the New York Convention (§ 1061 ZPO). Arbitration Awards can be challenged under the conditions stated in § 1059 ZPO by filing an application to set aside the award with the proper court. The court will do so if the applying party establishes that one of the following circumstances existed:

- One of the parties to the arbitration agreement was under some incapacity pursuant to the law applicable to him or the agreement is not valid under the law to which the parties subjected it or – if no such agreement was made – German law.
- The applying party was not given notice of the appointment of an arbitrator or of the arbitration or was otherwise unable to present his case.
- The award deals with a dispute that was not arbitrable according to the arbitration clause or contains decisions on matters beyond the scope of the arbitration clause.
- The composition of the tribunal or the procedure of the arbitration was not in accordance with a provision of the Arbitration Act or with a permissible agreement made by the parties and this presumably affected the award. Or the court finds that:
- The matter in dispute cannot be settled in arbitration under German law.
- Recognition or enforcement of the award leads to a result that is in conflict with the ordre public.

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Civil Litigation

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

   The official court language is Greek. If persons involved in the trial (e.g. witnesses) are not able to speak Greek, an interpreter is appointed.

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

   Interim measures are provided under Greek Code of Civil Procedure. They mainly aim to freeze or regulate temporarily a situation until a ruling on the merits is issued or to freeze goods or assets. The existence of risk and danger if judicial action is delayed is a necessary prerequisite. In case of extreme urgency for specific cases provided by law, an ex parte interim measures process is also possible.

   No obligation to send a warning letter before initiating any legal proceedings exists.

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

   Costs involve legal fees and court expenses which mainly consist of a special court duty. Legal fees are regulated by Articles 91 to 180 of Legislative Decree 3026/1954 as amended by Law 3919/2011 setting minimum fees. However, they can be, and usually are, the object of negotiation between parties and lawyers. Court expenses are based on the amount at issue. The losing party is ordered by court to pay the court expenses and legal fees of the winning party. However, this concerns only the statutory minimum legal fees which are usually significantly less than the ones incurred on the basis of the negotiated agreement. The court may also order all parties to share the costs, if the legal matter at issue was complex.

   As an example, for a dispute value of Euro 1 million, statutory fees are set at 10,000 Euros, as per Article 63 of the Greek Lawyer's Code and a court duty of approximately 1.1% of the amount at issue is added to the costs.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   Each party must submit in court the supporting evidence documents that are invoked in its written pleadings, along with such written pleadings. Under the new Greek Civil Procedure Code, in force since 1.1.2016, mutual written pleadings and supporting documents are submitted in court 100 days after the filing of the law suit. Mutual counter pleadings and rebutting evidence documents are submitted within 15 days after the above deadline.

   Public documents are considered genuine and can only be challenged for forgery while the authenticity of private documents, if challenged, shall be proved by the party who invoked and used them at the trial. Photocopies of documents have equal probative force as the original, as far as their authenticity is certified by a person who is legally responsible for issuing copies.

   Although the e-filing possibility is foreseen in the Code, there is currently no process in place for e-filing of pleadings or evidence documents.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

   Under the new Greek Civil Procedure Code, in force since 1.1.2016, the main process for witness evidence is submission before court of witness affidavits. If the court deems it necessary, it has the right to summon any of the witnesses for which an affidavit has been submitted to testify orally.

   Oral witness examination and cross examination is provided for the interim measures procedure.

   As a general rule, each person summoned by the court is obliged to appear and testify under oath as a witness, unless he/she has a right to refuse to give testimony (e.g., clerics, lawyers, notaries, doctors on the facts learned in the exercise of their profession or close relatives). A witness can be compelled to attend by way of a court fine.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   There is no standard for the conducting of settlement negotiations. Negotiations may be conducted either orally or in writing, either through an attorney or directly between the parties. This depends largely on the circumstances, including location of the parties, i.e. whether the dispute is cross-border or not. Usually the attorneys of the parties are however involved. The settlement agreement may also be submitted and recorded before court and it can also be submitted before court for ratification in order to become an enforceable title. The settlement correspondence is under general confidentiality obligations. A special confidentiality provision is provided in the Commercial Mediation Law 3898/2010, stating expressly that no minutes are kept during a mediation, the parties involved in the mediation cannot serve as witnesses for the dispute and any information exchanged during the mediation cannot be used in court.

7. **What is the typical duration of a court procedure?**

   According to Article 237 of the new Greek Code of Civil Procedure (applicable since 1.1.2016), within 100 days (130 days if the defendant is domiciled/seated abroad) from filing of the action the parties must submit their pleadings and provide the relevant evidence. Counter pleadings are filed within the next 15 days and a hearing date is set within the next 30 days. The first instance ruling is usually issued within 6-8 months from the hearing. As regards the second instance procedure, a hearing date is set within 6-8 months upon filing of the appeal and the ruling is issued within 6-8 months upon hearing. Finally, the process before the Supreme Court is usually concluded within one year.

8. How can foreign judgments be enforced?

EU Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provides the rules for enforcing judgments throughout the European Union.

As regards multilateral and bilateral treaties, enforcement may be obtained in accordance thereto, where applicable.

Foreign judgments which fall outside the scope of the EU Regulation No. 1215/2012 and multilateral or bilateral treaties shall be declared enforceable as specified in Articles 905 and 323 of the Greek Civil Procedure Code.

The defeated party shall not be denied the right of defense and participation in the trial unless the refusal was in accordance with provision applied to nationals of the State the court of which delivered the judgment.

Arbitration And Alternative Dispute Resolution

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

A mediation clause is binding and considered to be a sui generis substantive law contract between the parties, for the validity of which a prior explicit, but not necessarily written, agreement shall be reached. According to the explanatory memorandum of Law 3898/2010, a mediation clause shall be reaffirmed before the conduct of the mediation. As a consequence of its character as a sui generis substantive law contract, potential breach may create a claim for damages.

As regards to any settlement agreement reached through the process of commercial mediation in accordance with law 3898/2010, it constitutes a legally enforceable title as per the respective Greek Civil Procedure Code provisions, upon filing thereof before the Court of First Instance.

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

There is no obligatory procedure for mediation. The process is determined by the mediator and the parties. Mediators in Greece are familiar with the generally accepted worldwide process variations, with most of them following the facilitative mediation model. Mediation was introduced in Greece by virtue of law 3898/2010 "Mediation in civil and commercial matters", which entered into force on 16.12.2010, implementing the provisions of Directive 2008/52/EC "on certain aspects of mediation in civil and commercial law matters" of the European Parliament and of the Council and regulates cross-border (within the EU) and national mediation.

In Greece, private law disputes may be subject to mediation. Mediation may be the result of a) agreement between the parties before or pending litigation proceedings; b) court invitation, in case where the court before which proceedings are pending uses its discretion to invite the parties to use mediation, taking into account all relevant circumstances of the case; c) another EU Member State's court order to mediate; or d) compulsory mediation by law. Mediation is currently not a popular method for resolving commercial disputes in Greece, mainly due to relatively low costs for litigation.

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

Arbitration is regulated by articles 867-903 of the Greek Code of Civil Procedure. An arbitration clause is enforceable if it is in accordance with the above provisions. The arbitration clause shall be in written form and refer to a specific legal relationship. Not every dispute can be resolved by means of arbitration. According to article 867 of the Greek Civil Procedural Code, only private law disputes may be brought to arbitration.

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

Arbitration offered by national (Chambers of Commerce) or international (ICC) bodies are used more often, or the arbitration provided under the Greek Civil Procedure Code.

5. Which arbitration institutes are most popular?

Athens Chamber of Commerce and Industry, ICC (International Chamber of Commerce).

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

The parties are free to agree on any method of appointing the arbitrators under the principle of equality, which derives from Article 110 of the Greek Code of Civil Procedure. Furthermore, according to Article 872 of the Greek Code of Civil Procedure, if the arbitration agreement does not specify the arbitrators, each party shall appoint one. If the parties have not appointed arbitrators and the agreement does not provide otherwise, arbitrators shall be appointed by Court of First Instance from the list of arbitrators and in absence of catalogue by persons of its choice.

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7. In what language is an arbitration proceeding conducted?

According to Article 22 of Law 2735/1999 under the title "International Commercial Arbitration", the parties are free to select a language of their choice for the arbitration proceedings. If such a selection has not been provided by the parties, the matter shall be regulated by the arbitral court.

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

The arbitrators cannot order, reform or revoke interim measures. An arbitral award which orders, reforms or revokes provisional measures is automatically void.

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

The cost of arbitration proceedings (arbitrators' fees and expenses) is determined by the relevant provisions of the Greek Civil Procedure Code (Article 882) regulating the costs depending on the subject of the dispute. The arbitral tribunal shall determine the way costs are borne by the parties, following the rules applicable on the judicial procedure of the Civil Procedure Code.

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

The disclosure of documents is not regulated by a specific provision. The parties are called upon by the arbitrators under art. 886 of the Greek Civil Procedure Code to provide their evidence, under the general rule of equality between the parties.

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

According to Article 888 of the Greek Code of Civil Procedure witnesses and experts are not obliged to testify under oath. The testimony of the witness may be in any form agreed by the parties such as in writing or in the form of oral examination. The arbitral tribunal may require the taking of evidence to be made by the respective district court. Thus, the district court has the power to impose the duty of testimony of the relevant witness.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There are no specific rules as to how settlement discussions are conducted. These may be conducted either orally or in writing, either through an attorney or directly between the parties. Usually, if the parties are represented by lawyers, the discussions will be conducted through them.

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

An arbitration award constitutes a legal title for enforcement under Greek Civil Procedure Law. According to Article 895 of the Greek Code of Civil Procedure, to the extent the arbitration agreement does not provide for an action against it, or if it provides, the deadline for such action has expired, the arbitration award has the force of res judicata.

Nullification proceedings may only be initiated for specific reasons mentioned in Article 897 of the Greek Civil Procedure Law, such as the lack of validity of the arbitration agreement, the expiration of the arbitration agreement prior to the issuance of the arbitral award, the opposition of the arbitral award to public policy or to bona mores, the existence of incomprehensible or contradictory provisions in the award, the violation of the principle of parties' equality during the proceedings.

Greece is a signatory to the New York Convention on the recognition and enforcement of foreign arbitral awards. The enforcement of arbitral awards in the territory of the contracting parties is made under its provisions.

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Civil Litigation

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

   The official language used in court is Hungarian. If persons involved in the trial are not able to speak Hungarian, an interpreter is summoned.

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

   A warning letter is strongly advised to be sent in all cases before any proceeding, otherwise the plaintiff might be obliged to pay the costs of the proceedings even in the event of a judgment in his favor. In addition to the above, in case of disputes of companies, the parties are required to conduct a pre-action mediation in attempt to settle their disputes out of court. Under certain conditions (for instance if there is actual danger that evidence which is at the moment easily available may soon be destroyed or changed), the plaintiff may apply for preliminary discovery ("*elozetes bizonyítás*"). Furthermore parties may also apply for interim relief ("*ideiglenes intézkedés*") if it is necessary to prevent the occurrence of directly threatening loss or to retain the state serving as a basis for the legal dispute or in the event of a rightful and equitable interest of the party, provided, however, that the advantages of such action will presumably exceed the disadvantages of such action.

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

   Civil and commercial lawsuits are subject to payment of a court duty. The plaintiff is required to advance the court duty upon filing the petition. The court duty is 6% of the dispute value, but maximum HUF 1,500,000 (ca. Euro 5,000). In addition to the court duty, there are various other costs that typically arise during a court proceeding (such as attorney fees, translation and travel costs, expert fees etc.). There are advanced by the party who incurred these costs.

   As a general rule, the losing party has to bear the court costs, which include the court duty and all other costs incurred by the winning party. There is one exception, though: although the winning party may request reimbursement for all of the attorney's fee, this is not automatic. The court will have to approve the amount of the attorney's fee, and if it is unreasonable according to the judgment of the court, then the court will determine to what extent the legal fee is to be reimbursed by the losing party. There is a ministry decree that sets out the rates up to which legal fees are generally approved by the court.

   It is to be noted that in case either of the parties want to challenge the judgment of the court of first instance, a court duty is payable in the appeal procedure. The applicable rate is 8% of the dispute value, but maximum HUF 2,500,000 (ca. Euro 8,300). The judgment of the court of second instance is legally binding, but can still be contested under limited circumstances at the Supreme Court. In this procedure the duty is 10% of the dispute value, but maximum HUF 3,500,000 (ca. Euro 11,600). These costs are to be advanced by the party challenging the decision and will be borne by the losing party. In the appeal procedures typically no other costs arise.

   As an example, for a dispute valued at Euro 1 million, court costs in Hungary could typically be about Euro 15,000 to Euro 20,000, which does not include the attorney's fees. Legal fees could be in a much wider range, depending on the complexity of the matter. It would not be untypical that attorneys charge a success fee in addition to or in combination with a lower base fee.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   A disclosure of documents is rather uncommon. However, the court may oblige the opponent to disclose documents to the other party, if so requested, and if sufficient grounds are provided as to why the disclosure of such documents is inevitable from the perspective of the subject of the procedure.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

   The usual process is witness examination. The witness is questioned by the judge, there is no cross-examination but it is possible for the parties to put direct questions to the witness with approval of the court. The witness is required to testify if summoned to a court hearing.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions can be conducted in many different ways, orally or in writing, in or out of court. Generally, if the parties are represented by lawyers the discussions will be conducted by those representatives. (The code of ethics of our bar association requires that attorneys contact the attorney of the opponent, rather than directly the opponent party.) If the settlement discussions are conducted out of court, there is no obligation to disclose the according correspondence to the court and it is general practice to set out that any correspondence aiming to settle the dispute out of court may not be used in the court procedure. If a settlement is reached, it is recommended to inform the court of the outcome of those settlement discussions and have the settlement recorded in writing by the court.

7. What is the typical duration of a court procedure?

There is no binding legislation in force as to how quickly the courts are required to pass a judgment. The courts in the capital are very much overloaded; consequently, it may take more time to finish a case in Budapest than in any other county. Depending on the complexity of the case and whether or not either of the parties requests witnesses to be heard, a judgment of a first instance can be expected within 12-24 months. Appeal procedures usually take just one hearing, hence, they are faster and can be expected to last ca. 6 months. It is to be noted, though, that the courts of second instance may also resolve that the case was not properly substantiated by the court of first instance and therefore instead of passing a judgment in the merits of the case they choose to revoke the whole judgment, in which case the proceeding starts anew at the court of first instance. In such an event, the court proceeding can get more protracted.

8. How can foreign judgments be enforced?

For the enforcement of foreign judgments in Hungary several regulations (European, bilateral or multilateral treaties, autonomous) equally apply with the parties being free to choose the most advantageous regulations.

- European: According to the EuGVVO, judgments of EU member states will be acknowledged in each of those states and can be enforced if declared enforceable The EuVTVO applies for European enforcement orders. In certain cases, decisions of courts of other European member states can be enforced directly, without any preliminary procedure to declare a decision enforceable.
- Multilateral and bilateral treaties: Enforcement may also be obtained in accordance with the Hague Convention or other multilateral or bilateral treaties.
- Autonomous regulations: If no other regulations apply, a court decision may still be declared enforceable if it complies with the statutory requirements set out in Hungarian Law.

Arbitration And Alternative Dispute Resolution

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

As explained above, in the event of commercial disputes mediation is a statutory condition precedent to even start the litigation procedure. However, it can be very formal, as the law only requires that the parties "try" to settle their dispute, but if no settlement is reached, then they can still refer their dispute to the court.

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

There is an act on mediation, which sets out the fundamental rules of mediation procedures, in the event the parties wished to include a more formal mediation as an interim dispute resolution forum. However, the settlement reached in such mediation can still be contested at court, the only consequence of such contest is that the plaintiff will be obliged to bear all costs irrespective of the outcome of the procedure. Mediation is currently not a popular method for resolving commercial disputes.

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

A broad range of disputes are generally arbitrable. It is, nevertheless, important to note that the arbitration clause should be set out in writing, and including such in the general terms and conditions applied by one of the parties is usually insufficient to refer the dispute to a court of arbitration

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

Both types can be used, institutional arbitration is more popular. The most popular court of arbitration is the Court of Arbitration organized by the Chamber of Commerce and Industry.

5. Which arbitration institutes are most popular?

The most popular court of arbitration is the Court of Arbitration organized by the Chamber of Commerce and Industry.

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

The parties are free to determine the number of arbitrators. It is standard in Hungarian arbitration proceedings to agree either on one arbitrator or on a panel of three arbitrators. If no agreement is made a panel of three arbitrators will be appointed. Each party appoints one arbitrator and those two arbitrators appoint the third arbitrator who will act as the chairman of the panel. In the case of institution arbitration, the parties are to appoint their arbitrator from the list of arbitrators provided by the Court of Arbitration.

7. In what language is an arbitration proceeding conducted?

The parties are free to choose the language to be used in the arbitration proceedings

8. How can foreign judgments be enforced?

For the enforcement of foreign judgments in Hungary several regulations (European, bilateral or multilateral treaties, autonomous) equally apply with the parties being free to choose the most advantageous regulations.

- European: According to the EuGVVO, judgments of EU member states will be acknowledged in each of those states and can be enforced if declared enforceable The EuVTVO applies for European enforcement orders. In certain cases, decisions of courts of other European member states can be enforced directly, without any preliminary procedure to declare a decision enforceable.
- Multilateral and bilateral treaties: Enforcement may also be obtained in accordance with the Hague Convention or other multilateral or bilateral treaties.
- Autonomous regulations: If no other regulations apply, a court decision may still be declared enforceable if it complies with the statutory requirements set out in Hungarian Law.

9. What type of pre-arbitration measures are available and what are their limitations?

Interim measures are possible in arbitration proceedings as well.

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

The costs vary depending on the specific arbitration forum, but as a general rule, they are also dependent on the value of the claim. Arbitration proceedings are usually more expensive, and there is no maximum value set. In the case of the Court of Arbitration organized by the Chamber of Commerce and Industry, there is a cost calculator available on their website. As to who bears these costs, the arbitration tribunal decides at its own discretion who has to bear the costs, taking into consideration the circumstances of the case, in particular the outcome of the proceedings.

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

There are no specific provisions concerning witnesses, the procedure for witness evidence is subject to agreement. Both oral hearings and written statements can be agreed upon.

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

There are no specific provisions concerning witnesses, the procedure for witness evidence is subject to agreement. Both oral hearings and written statements can be agreed upon. As a general rule, discovery rules are more flexible and less formal than at ordinary courts.

13. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

For settlement discussions the same rules applies as in case of litigation at ordinary courts.

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

Arbitration clauses are binding, as a general rule, and the court may only deny its enforcement if such dispute is not arbitrable or the decision is against the Hungarian ordre public. Foreign Awards can be enforced in accordance with the New York Convention. Arbitration Awards are not subject to appeal, however they can be challenged under the conditions stated in the Act on Arbitration by filing an application to set aside the award with the proper court. The court will do so if the applying party establishes that one of the following circumstances existed:

- One of the parties to the arbitration agreement was under some incapacity pursuant to the law applicable to him.
- The agreement is not valid under the law to which the parties subjected it or – if no such agreement was made – Hungarian law.
- The applying party was not given notice of the appointment of an arbitrator or of the arbitration or was otherwise unable to present his case.
- The award deals with a dispute that was not arbitrable according to the arbitration clause or contains decisions on matters beyond the scope of the arbitration clause.
- The composition of the tribunal or the procedure of the arbitration was not in accordance with a provision of the Arbitration Act or with a permissible agreement made by the parties and this presumably affected the award. or the court finds that
- The matter in dispute cannot be settled in arbitration under Hungarian law.
- Recognition or enforcement of the award leads to a result that is in conflict with the Hungarian ordre public. As a general rule, Hungarian courts are reluctant to override the arbitration court decisions, as the cases when such rewards can be contested are very limited.

IRELAND

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Civil Litigation

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

   Court proceedings are conducted in English. If a witness is not fluent in English and an interpreter is required, the Courts Office should be notified in advance and an interpreter will be arranged.

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

   Pre-action measures available include:

   - Interim injunctive relief with a view to maintaining a status quo pending a trial of the issues or to preserve assets or evidence.
   - Discovery and inspection of documentation can be sought pre-action if it can be established that it is necessary to properly ascertain the identity of defendant(s) in an action.

   It is good practice to issue a warning letter prior to commencement of proceedings. Failure to issue a warning letter can have cost implications for an applicant.

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

   The Court has discretion to award costs in all proceedings. In the normal course, costs follow the event and a successful party will usually be awarded an order for costs against the unsuccessful party. Costs are usually awarded on a party and party basis; that will include all costs necessary for the enforcing or defending of the rights of the party. Costs are seldom awarded on a solicitor and own client basis or on an indemnity basis. A successful party can expect to recover the bulk of the costs that it incurs in the proceedings but may not recover the entire costs incidental to the proceedings.

   Solicitors are required to set out in writing to their client the basis upon which costs will be incurred and, in litigation matters, to caution the client that if the client is unsuccessful in the action it may be liable for the party and party costs of the opposing side.

   The level of costs will vary depending upon the complexity of the matters at issue, the volume of documentation, the number and duration of court attendances, etc. Where costs cannot be agreed, a bill of costs can be referred to a Taxing Master for assessment.

   For example, for a dispute over Euro 1,000,000, if no appearance is entered by the defendant judgment can be obtained through the court offices and costs would typically be approximately Euro 2,500. If an appearance is entered and a summary application is made to court, the matter can be dealt with on affidavit and costs would typically be in the region of Euro 10,000. If the claim is fully defended and a full hearing is required, costs are likely to be in the region of Euro 50,000 for a one day hearing.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   A party can be required to make discovery and facilitate inspection of documentation relevant to the matters in issue where discovery and inspection are necessary for a fair hearing of the proceedings or for saving costs. Privilege can be claimed over certain categories of documents, such as lawyer/client communications for the purpose of seeking or providing legal advice. Parties will be obliged to disclose documents in paper format and also electronically stored information. Where electronically stored information is held in searchable format, a party may be ordered to make available its information and communications technology systems to facilitate the inspection and to utilise searching facilities.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

   In matters before the Commercial Court (generally where the matters in dispute are commercial in nature and the value of the dispute exceeds Euro1 million), parties are obliged to exchange detailed witness statements in advance of the hearing. When an action comes on for hearing, the Court will hear oral testimony and witnesses will be subject to examination and cross-examination. Other than before the Commercial Court witness statements are occasionally directed, but more often oral evidence is given at the hearing. Applications for summary judgment will be on affidavit, though a party may in limited circumstances apply to cross-examine the deponent of an affidavit. A witness who is within the jurisdiction can be compelled to attend to give evidence by way of subpoena.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions are conducted in many different ways. Negotiations may be in correspondence or may be verbal. Sometimes a settlement meeting will be convened at which negotiations will take place. Settlement discussions will generally be conducted between the lawyers, on the instruction of the respective clients. The parties will typically agree that settlement discussions are "without prejudice" and will be privileged. A party may opt to make an open proposal, thus waiving the privilege.

7. **What is the typical duration of a court procedure?**

   Where the dispute is admitted to the Commercial Court (which handles commercial disputes for over Euro 1,000,000), the case will usually come on for hearing within three to six months. Outside of the Commercial Court, it typically takes eighteen months to come to hearing.

8. How can foreign judgments be enforced?

To enforce a foreign judgment in Ireland, the normal procedure would be to make an application to the Master of the High Court for an Order granting leave to enforce. This application is made ex-parte by Motion grounded on affidavit. The affidavit must exhibit the judgment, a translation of the Judgment (if appropriate) and certain other certificates depending on which jurisdiction issued the judgment. Normally, a foreign judgment cannot be reviewed as to substance.

The Court Order is served on the defendant who then has one month to appeal. During that one month period no steps can be taken to enforce the judgment.

If judgment for a liquidated sum is obtained in another EU state and is not contested, a judgment creditor can rely on Regulation (EC) No 805/2004 creating a European Enforcement Order which obviates the need to apply to the Irish court for a declaration of enforceability.

Arbitration And Alternative Dispute Resolution

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

Mediation clauses in commercial contracts are binding. The Courts will often stay an action to facilitate mediation between parties.

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

Mediation is not regulated by law and the parties are free to agree their own procedures. Mediation may in certain circumstances be ordered by the Commercial Court in commercial disputes. Mediation is becoming increasingly popular and a number of lawyers are qualified mediators and are retained by disputing parties to act in that capacity.

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

Arbitration clauses are binding and enforceable.

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

The UNCITRAL (United Nations Commission on International Trade Law) Model Law applies in the majority of arbitrations that take place within Ireland.

5. Which arbitration institutes are most popular?

ICC (International Chamber of Commerce) ICDR (International Centre for Dispute Resolution) / AAA (American Arbitration Association)

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

Typically the disputing parties will endeavour to agree the identity of an arbitrator. If agreement cannot be reached, there will be a procedure for a third party to appoint an arbitrator. In the absence of an agreed procedure, an arbitrator will be appointed by the Court.

7. In what language is an arbitration proceeding conducted?

Arbitrations are generally conducted in English, though the parties could agree some other language.

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

The most common pre-arbitration measures relate to maintaining or restoring the status quo pending the determination of the issues, the preservation of assets and/or evidence and in relation to discovery and inspection of documents. Parties may also apply to the arbitrator for security for costs.

9. How can foreign judgments be enforced?

Enforcement will vary depending on whether it is an EU or non-EU judgment, the nature of the order and whether there is a European Enforcement Order. Generally to enforce an EU foreign judgment in Ireland, the procedure would be to make an application to the Master of the High Court for an Order granting leave to enforce. This application is made ex-parte by Motion grounded on affidavit. The affidavit must exhibit the judgment, a translation of the Judgment (if appropriate) and certain other certificates depending on which jurisdiction issued the judgment. Normally, a foreign judgment cannot be reviewed as to substance. The Court Order is served on the defendant who then has one month to appeal. During that one month period no steps can be taken to enforce the judgment. If judgment for a liquidated sum is obtained in another EU state and is not contested, a judgment creditor can rely on Regulation (EC) No 805/2004 creating a European Enforcement Order which obviates the need to apply to the Irish court for a declaration of enforceability. Where the judgment is from a non-EU jurisdiction, (and assuming no reciprocal agreement is in place) enforcement requires summary proceedings in the High Court seeking an Irish judgment in the terms of the foreign judgment.

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

The arbitrator will, at his/her discretion decide who has to bear the costs, taking into consideration the circumstances of the case and in particular the outcome of the proceedings. Costs are usually awarded on a party and party basis; that will include all costs necessary for the enforcing or defending of the rights of the party. Costs are seldom awarded on a solicitor and own client basis or on an indemnity basis. A successful party can expect to recover the bulk of the costs that it incurs in the proceedings but may not recover the entire costs incidental to the proceedings. Solicitors are required to set out in writing to their client the basis upon which costs will be incurred and, in litigation matters, to caution the client that if the client is unsuccessful in the action it may be liable for the party and party costs of the opposing side. The level of costs will vary depending upon the complexity of the matters at issue, the volume of documentation, the number and duration of court attendances, etc. Where costs cannot be agreed, a bill of costs can be referred to a Taxing Master for assessment.

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Parties are generally required to make discovery and allow inspection of documentation relevant to the matters in issue where discovery and inspection are necessary for a fair hearing of the issues or for saving costs. Privilege can be claimed over certain categories of documents, such as lawyer/client communications for the purpose of seeking or providing legal advice. Parties can be required to disclose documents in paper format and also electronically stored information. Where electronically stored information is held in searchable format, a party may be ordered to make available its information and communications technology systems to facilitate the inspection and to utilise searching facilities.

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13. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

Settlement discussions are conducted in many different ways. Negotiations may be in correspondence or may be verbal. Sometimes a settlement meeting will be convened at which negotiations will take place. Settlement discussions will generally be conducted between the lawyers, on the instruction of the respective clients. Settlement correspondence between lawyers is generally "without prejudice" and is privileged. A party may opt to make an open proposal, thus waiving the privilege.

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

An award of an arbitrator may be enforced by way of application to Court. Once leave to enforce is directed by the Court, the award may be enforced in the same manner as a judgement or order of the Court. Enforcement may be refused or set aside if:

- A party to the arbitration agreement was under some incapacity.
- The arbitration agreement was not valid or lawful.
- Proper notice of the appointment of an arbitrator had not been given.
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.
- The composition of the arbitral authority was not in accordance with the agreement of the parties or the law of the country where the arbitration took place.
- The subject matter of the dispute is not capable of settlement by arbitration under the laws of Ireland.
- The award is contrary to public policy.
- Misconduct by the arbitrator or where the award has been improperly procured. Enforcement may also be refused where the award has not yet become binding or has been set aside or suspended by a competent authority in the country the award was made. A foreign award may be enforced in Ireland provided certain criteria are satisfied, including a requirement that the award be final in the country in which it was made and that the enforcement is not contrary to public policy or the laws of Ireland.

ISLE OF MAN

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Civil Litigation

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

The official language used in court is English. An interpreter will be provided by the Courts Service for deaf and hearing impaired litigants. The Courts Service will provide a foreign language interpreter if a person involved in the proceedings:

- Cannot speak or understand the language of the court well enough to take part in the hearing.
- Cannot get public funding.
- Cannot afford to privately fund an interpreter, and has no family member, or friend, who can attend to interpret for them and who is acceptable to the court.

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

The Isle of Man has its own Rules of the High Court of Justice 2009. In addition as would be expected various Rules and Regulations exist to cover the range of Courts and Tribunals. The rules state that the parties to a dispute should, before starting proceedings, exchange sufficient information about the matter to allow them to understand each other's position and make informed decisions about settlement. There are pre-action protocols for different types of disputes (for example, personal injury, construction and engineering, clinical negligence and professional negligence). However, even in cases not covered by the protocols, the court expects the parties to exchange information and attempt to resolve the claim without litigating. If the court concludes that proceedings were commenced precipitously, then it can mark its disapproval with an adverse costs award at the appropriate time. The claimant should send a "Letter before claim" to the defendant and the defendant should be allowed to respond within a "reasonable period of time." However, where there is a potential limitation period which may expire if proceedings are not issued, a party will not be criticised for issuing a "protective" claim if a "standstill agreement" cannot be agreed. In certain cases (e.g., fraud) a party can apply to the civil court without telling the intended defendant(s) to obtain powerful orders directed towards preserving assets (freezing orders) or preserving evidence (search and seizure orders). The court can supplement such orders with orders requiring the delivery up of passport(s) and prohibiting them from leaving the jurisdiction. A pre-action exchange would give the intended defendant(s) the opportunity to dissipate assets or destroy evidence.

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

Court fees are regulated by the Island's legislation. A variety of court fees are payable within the civil and family courts and these are set out in Statutory Instruments. Each party is primarily responsible to pay their own lawyer. Many lawyers charge for their services on the basis of hourly rates. The Court has absolute discretion on the issue of costs. It is usual that the successful party (ies) are awarded costs. It is unusual for all costs actually incurred to be recovered. Unlike England and Wales there are no Conditional Fee Agreements in the Isle of Man.

The court fees payable in civil and commercial proceedings in the Isle of Man, assuming a dispute value of Euro 1 million (Approximately GBP 800,000) are as follows:

- For filing a claim between £500,000.01 and £1,000,000.00 a fee of £2,000.00 is payable.
- A further £750.00 being payable for the scheduling of any matter which is set down for a hearing of more than two days duration, per day of part thereof.
- The filing of any Notice or Application within the Appeals process is subject to a £300.00 fee with an additional £750.00 being charged for the scheduling of any Appeal matter which is set down for a hearing of more than two days, per day or part thereof.
- The Judicial Committee of the Privy Council, is the court of final appeal for a number of the UK Overseas Territories and Crown Dependencies such as the Isle of Man. On filing an application for permission to appeal to the Privy Council a fee of £1,000.00 is payable, where the appeal value is over £500,000.00.
- On filing a case where the appeal value is over £500,000.00 a further £5,000.00 fee is payable.
- There is no statutory framework in respect of Advocates charges in the Isle of Man. It is difficult to calculate an Advocate's fees as fees are likely to be charged in accordance with an Advocate's hourly rates and applied on a case by case basis in accordance with the time spent on a matter.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

Ordinarily, parties will be required to disclose documents which assist or harm the case of any of the parties to the dispute (including their own case). The opponent has the right to inspect original documents and/or take copies of disclosed documents. Privileged documents must be disclosed (i.e., the fact of their existence revealed) but the content need not be revealed. Commercially sensitive information can be blanked out if it is irrelevant and it would not be appropriate to disclose it. A "document" includes all media on which information is recorded - this includes electronic information, and can extend to deleted data and metadata. Parties are expected to make electronic disclosure. The parameters of the extent of electronic disclosure can be decided by the court, if the parties cannot agree. It is open to a litigant to apply to the court for "specific disclosure" if it believes that particular documents exist that should be disclosed, but the other side has refused disclosure. A party is entitled to any document that is referred to or identified in a statement of case (also referred to as a pleading) or witness statement or affidavit.

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5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?

The general rule is that any fact which needs to be proved by the evidence of a witness is proved by written evidence at any other hearing other than a trial (Rule 8.2 (1)(b)) and by oral evidence at trial (Rule 8.2(1)(a)). In both circumstances a witness statement should be prepared and served on each party. In any other hearing the witness will usually not be called to give oral evidence and the hearing will proceed on the basis of the written evidence and oral submissions. At trial the witness statement sets out the "evidence in chief" of the witness. Oral evidence from the witness will be generally limited to the replies given under cross-examination by the opposing party at trial. A summons requiring a witness to attend court to give evidence can be issued:

- In circumstances when a witness is reluctant to appear.
- Where a witness needs to satisfy an employer they need time off work.
- Where a witness feels their relationship with a party will be compromised if they give evidence without being compelled.
- To ensure a busy expert witness will be available to give evidence at trial.

Written evidence is usually in the form of a signed witness statement. In certain proceedings for example an injunction where a 'freezing order' is requested the evidence must be in the form of a sworn affidavit.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?

The parties are free to decide how they conduct settlement discussions and negotiations. Many disputes are resolved through the process of lawyer to lawyer negotiation and agreement through a combination of oral and written exchanges. Negotiations are almost uniformly conducted "without prejudice" (i.e., without prejudice to the position that is being adopted in the litigation) and as such are protected from disclosure in the litigation process if no agreement is reached. If an agreement is reached, the without prejudice communications are no longer privileged. A party may refer to without prejudice communications if there is a dispute as to whether settlement was actually reached. It is possible to negotiate on a "without prejudice save as to costs" basis whereby communications can only be revealed (unless the parties agree otherwise) at the conclusion of the litigation, when the court considers the question of costs.

7. What is the typical duration of court procedure?

The duration of court procedure will depend on the nature of the matter in dispute. This will be extended if the matter is referred to Appeal and again if the matter is to be further referred to the Judicial Committee of the Privy Council for a final ruling.

That said, and subject to the negotiation process having been attempted, a fully prepared case should expect to be listed for trial within 6-12 months. It is the time requirement which dictates availability, i.e. trials requiring longer time periods are set down further into the future whereas shorter trials are easily slotted in where there is availability for shorter timeframes.

Ex parte applications, for example where a freezing injunction is sought, can be scheduled and determined quickly owing to commercial sensitivity, however, there is often further proceedings on the back of the initial application and the length of time expended is only determinable on a case by case basis.

8. How can foreign judgments be enforced?

An arrangement for the reciprocal enforcement of judgments is in place to enforce Manx judgments in the United Kingdom and certain other jurisdictions and territories and to enforce certain foreign judgments in the Isle of Man. The usual rule is that fresh proceedings must be commenced in the Isle of Man to enforce a foreign judgment unless one of a number of exceptions apply in which case the foreign judgment simply needs to be registered in the Isle of Man. It is then possible to proceed to enforce the judgment as if it were a Manx judgment. The registration of certain Judgments are governed by the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 and others under the High Court Act 1991.

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Arbitration And Alternative Dispute Resolution

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

Mediation clauses are binding and enforceable. It should be noted that mediation itself differs from litigation and arbitration in that the parties cannot be forced to settle.

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

The parties can agree among themselves with the mediator on the format. Typically, the parties commence by exchanging position papers in advance of the mediation. During the mediation, the mediator meets privately with each party to discuss the problem confidentially. This allows each party to be frank with the mediator and have a realistic look at their case in private, without fear that any weaknesses discussed will be communicated to other parties. The mediator shuttles back and forth seeking to identify and narrow the issues between the parties. The mediator can call plenary sessions where all the parties meet around the table to discuss their differences. Generally the parties themselves should attend the mediation. They are usually accompanied by their lawyer. In the case of a party that is a company or association, its representative will need to have authority to reach a binding settlement at the mediation. It is a condition of mediation that the parties will treat all discussions and documents as confidential and "without prejudice." Mediation is an accepted method of resolution, but can be expensive because of the need to prepare in advance, and the parties have to pay for the mediator, as well as for their own advisers.

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

Arbitration clauses are binding and enforceable as long as the clause:

- Gives the arbitrator(s) the power to decide all disputes that may arise between the parties.
- Excludes state courts, to the extent possible, from the dispute resolution process.
- Puts in place an efficient procedural framework that secures an arbitral award that is capable of being enforced.

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

Institutional arbitration is generally preferred due to reputation, familiarity with proceedings, understanding of costs and fees and the convenience of the process. However, corporations in sectors, such as shipping, construction or commodities, that have a tradition of arbitration, often adopt ad hoc arbitration.

5. Which arbitration institutes are most popular?

The main institutions used are:

- The London Court of International Arbitration("LCIA")
- The International Chamber of Commerce ("ICC")
- The Stockholm Chamber of Commerce ("SCC")
- The American Arbitration Association ("AAA") The ICC is regarded as the leading international arbitral institution because of the volume of cases and the significance of disputes heard.

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

The parties are able to determine the number of arbitrators and their identities.

7. In what language is an arbitration proceeding conducted?

Usually English, although the parties may agree on the language to be used.

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

Interim measures are available. Interim measures are often requested without notice and usually ordered on a provisional basis; they are subject to later adjustment or setting aside by the tribunal. Interim measures are sometimes referred to as "interim measures of protection" or "provisional relief.

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

The terms of the Arbitration referred to will determine forum, fees and who pays the costs.

10. How can foreign judgements be enforced?

By virtue of Part II of the Arbitration Act 1976, a foreign arbitral award may be enforceable in the Isle of Man between parties, of whom one is subject to the jurisdiction that is a party to the Geneva Convention on the Execution of Foreign Arbitral Awards. In order that a foreign award may be enforceable in the Isle of Man it must have:

a. been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;
b. been made by the tribunal provided for in the agreement or constituted in the manner agreed upon by both parties;
c. been made in conformity with the law governing the arbitration procedure;
d. become final in the country in which it was made;
e. been in respect of a matter which may lawfully be referred to arbitration under the law of the Island; and the enforcement thereof must not be contrary to the public policy or the law of the Island.

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Civil Litigation

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

Hebrew is the official language for court proceedings in Israel. In the event the parties, or any one of them, speak only English, hearings may at times be held in English, even without a translator, if the judge speaks English and does not require a translator. If the parties speak other languages, a translator is required, and is independently hired by the parties or hired through the court.

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

Temporary Lien:

In a monetary claim or a claim in kind, the court may impose a temporary lien on the defendant's assets or on the assets of a defendant which are being held by a third party, after examining the damages likely to be caused to either party resulting from imposing such lien. A motion to impose a lien can be granted based on reliable prima facie evidence that there is a cause of action, and subject to the plaintiff's deposit of a bond for compensation of any damages caused to the defendant in the event the action is rejected.

Temporary Injunction:

The court has the authority to grant a temporary injunction, which is an equitable remedy, after examining the damages which will be caused to the petitioner if such temporary relief is not granted, as opposed to the damages caused to the respondent if temporary relief is granted, as well as equity law considerations – whether the petition was lodged in good faith and if granting the remedy is just and right under the circumstances, and does not cause harm beyond what is necessary.

Stay of Exit:

The court may also grant a stay of exit from the country against a defendant, if it has been convinced on the basis of reliable prima facie evidence that there is reasonable concern that the defendant is planning to leave the country forever or for a prolonged period, and that this would cause serious difficulties with regards to the proceedings or execution of any judgment. If the defendant is a foreign resident, no stay of exit will be granted except in very unusual and rare circumstances and based on special grounds stated and recorded.

Temporary Receivership:

The court may appoint a temporary receiver for certain of the defendant's assets which are in his possession or in the possession of another, if the court is convinced on the basis of reliable prima facie evidence that there is a real concern regarding harm to the value of the assets or that the respondent or any other person might on his behalf smuggle such assets out or destroy them.

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

Fee payment is the duty of the party instigating the process. In a monetary action, fees are 2.5 percent of the overall amount of the action, paid in two instalments. The first half is paid upon opening the process, and the second half 20 days before the date set for trial. At the end of any process, the court decides whether to charge one party for the other party's attorneys' fees and legal expenses, and rules on the rates of such, provided attorney's fees are no less than the minimal rates recommended by the Israel Bar Association.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

The court may award an order instructing one party to disclose to the other party, by affidavit, what documents are in his possession or were in his possession or under such party's control or discovered by such after investigation and inquiry relating to the case at hand. Document discovery relates to documents relating to the issue in dispute. Specific discovery may also be requested for particular documents – if it is in the hands of the other party or in his possession or under his control. Internal correspondence between attorneys and clients is confidential, and not subject to discovery. Other documents may also be confidential, and the court may be asked to rule with respect to such. Electronic discovery is not yet accepted by law in Israel.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

The most common situation in Israel is proof of facts through affidavits. The court usually instructs that primary testimony be submitted by affidavit. Affidavits come in place of primary examination of the affiant. Later, the affiant will be crossexamined and re-examined. Parties who have not submitted affidavits of testimony as required will not be permitted to present the witness or prove these facts.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

Settlement discussions may be conducted in many different ways, orally or in writing, in or out of court. Generally, if the parties are represented by attorneys, the discussions will be conducted by those representatives. If the settlement discussions are conducted out of court, there is no obligation to disclose the related correspondence to the court. It is common to inform the court of the outcome of such settlement discussions and have the settlement recorded in writing by the court.

7. How can foreign judgments be enforced?

The Israeli court may declare a foreign judgment to be exercisable under the following cumulative conditions:

- The court which gave the judgment was authorized to give such under the laws of the country in which it was given.
- The judgment is final and cannot be appealed.
- The duty to be exercised under the judgment may be enforced under the laws of the State of Israel.
- The content of the judgment is not contrary to public policy.
- The judgment is enforceable in the country in which it was given.

A motion for exercise of a foreign judgment must be filed within five years of the date on which the judgment was handed down.

Arbitration And Alternative Dispute Resolution

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

Mediation clauses in commercial contracts are generally binding. They cannot be realistically enforced as the obligation to mediate does not oblige the parties to actually settle the dispute. Nevertheless, if a mediation clause was agreed upon, courts will deny action as inadmissible prior to mediation proceedings. It is always permissible to request interim measures by a court, irrespective of the obligation to mediate.

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

In mediation, the mediator meets with the two parties separately and together, in order to bring them around to a settlement of the dispute, though the mediator does not have the authority to decide with regards to the dispute. Mediation is not enforced on the parties, but obtained in agreement, and each of the parties may at any time stop mediation procedures. Israel has a mechanism for "obligatory mediation" for civil suits of amounts of no more than NIS50,000, (about Euro10,000) before the stage of pre-trial. The court refers the parties to a meeting with a mediator in an attempt to conclude the dispute through mediation. For suits of more than NIS50,000, evidence will not be heard before a meeting is held at the court examining the possibility of mediation. Mediation is very common in Israel.

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

Arbitration clauses are binding and enforceable by court except for limited cases in which the court may not enforce an arbitration agreement. Israel is also a party to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

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

Arbitration may come about in a few ways:

- Initiated by the parties, if there is an arbitration agreement.
- Initiated by the court when there is no arbitration agreement; subject to the consent of the parties.
- If one of the parties petitions the court to delay proceedings at the court which have been lodged despite the existence of an arbitration agreement. Types of arbitration in Israel:
- Ordinary – the classic situation is when there is an arbitration agreement between the parties which prescribes the mechanism for the appointment of an arbitrator and the manner of arbitration.
- Arbitration is usually ad hoc, but there are also arbitration institutions which have rules of procedure.

5. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?

Settlement discussions may be conducted in many different ways, orally or in writing, in or out of court. Generally, if the parties are represented by attorneys, the discussions will be conducted by those representatives. If the settlement discussions are conducted out of court, there is no obligation to disclose the related correspondence to the court. It is common to inform the court of the outcome of such settlement discussions and have the settlement recorded in writing by the court.

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- The judgment is final and cannot be appealed.
- The duty to be exercised under the judgment may be enforced under the laws of the State of Israel.
- The content of the judgment is not contrary to public policy.
- The judgment is enforceable in the country in which it was given.

A motion for exercise of a foreign judgment must be filed within five years of the date on which the judgment was handed down.

7. Which arbitration institute is most popular?

The Israel Institute of Commercial Arbitration

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

The parties are free to agree between them with regard to the identity of the arbitrator, as they so choose, or according to the provisions of the agreement between them. When there is an arbitration agreement and no arbitrator is named in the agreement, the court may appoint the arbitrator, at the request of the parties.

9. In what language is an arbitration proceeding conducted?

Usually in Hebrew, but the parties may choose the language.

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10. What type of pre-arbitration measures are available and what are their limitations?

Temporary lien, temporary injunction or any other temporary remedy existing under law if the process is at the court. The court has jurisdiction to determine with regards to temporary remedies even when a process in under arbitration.

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

The decision regarding costs is subject to agreement. If no agreement has been made by the parties, the arbitration tribunal decides at its own discretion who bears the costs, taking into consideration the circumstances of the case, in particular the outcome of the proceedings.

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

The parties may decide whether the arbitrator must act under substantive law regarding procedure and rulings. If it is decided that substantive law applies, then the usual laws of discovery as explained in Civil Litigation question 4 apply.

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

If arbitration is held under substantive law, then it is held according to the same rules that would apply if the case was heard before a court.

14. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There are no specific provisions as to how settlement discussions are conducted, all mentioned alternatives are possible. Generally, if the parties are represented by attorneys, the discussions will be conducted by those representatives. Whether or not settlement correspondence will be disclosed to the Arbitrator(s) is subject to agreement.

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

An arbitration ruling approved by the court, given the validity of a court ruling, is equivalent to a court ruling, save in the matter of appeals. Causes for cancellation of an arbitration ruling:

- Absence of a valid arbitration agreement.
- Arbitrator was not lawfully appointed.
- Arbitrator acted without authority or ultravires, and there is no estoppel regarding this claim.
- One party was not given an opportunity to be heard or to present evidence.
- The arbitrator failed to rule on a particular issue specifically given over for ruling.
- The arbitrator did not give the reasons for his arbitration ruling, though this was a condition.
- The ruling was given after the period stipulated for such, and the party reserved the right to make this claim.
- The contents of the ruling are contrary to public policy.
- There is a cause under which a court would strike an otherwise unappealable final ruling. The parties to an arbitration agreement may agree that the arbitrator's ruling may be appealed by either an appeal at the court or an appeal before an arbitrator.

ITALY

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Civil Litigation

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

   The only language admitted is Italian. If the parties involved in the proceedings are not able to understand the language, an official interpreter will be nominated by the Court. The Court could also demand the translation of the documents that are filed in other languages. Nevertheless the use of English and, sometimes, of French documents can be accepted by the Court.

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

   Seizures, injunctions, inhibitory and others pre-action measures are foreseen in Italian civil procedure code. Usually a pre-action measure can be ordered by the court in summary proceedings (before starting an ordinary trial) or during a pending litigation. Pre-action measures in Italy aim either to freeze the counterpart funds in a monetary claim, preserve evidence, or to freeze a situation waiting the outcome of the judgment on the merits if there is a danger in the delay given by the ordinary trial timing. There is no rule that establishes the need of a warning letter before starting a pre-action urgency proceeding or an ordinary trial, although the lawyers code of conduct requests to inform the lawyer assisting the counterparts before issuing proceedings when negotiations or discussions where pending.

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

   The costs of a civil proceeding (lawyer's fees and costs) are established by law, but can be negotiated between a party and its lawyer. The costs are usually advanced and sustained by each party. At the end of the proceeding, the Court will require the unsuccessful party to repay the legal costs (fees and costs) totally or partially depending on the case's complexity.

   For example, assuming a dispute value of 1 million, the costs of civil and commercial proceedings vary from a minimum of Euro 21,400 to a maximum of Euro 60, 400. Only if the proceeding relates to particular complexity the maximum cost could be higher.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   There are no disclosure rules in the proceedings. The parties are free to submit to the court any evidence they wish within a certain time limit which depends on the procedings you have promoted. A party could demand the Court to order the disclosure of a document in some cases, such as under certain and unequivocal presumptions that one of the parties has the document in his possession and the requested document is relevant to the matter under discussion.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

   The process is witness examination. In the Italian code of civil procedure, it is also foreseen the possibility to file written depositions if both parties agree on this. The lawyers give the questions to the Court, the Court will then decide whether to admit the questions or not and then pose the admitted questions to the witness. There is no room for examination or cross examination but it is accepted that a lawyer may ask the Court to pose further questions to a witness if the replies need more circumstances to be understood. A witness can be compelled to attend to give evidence.

   It is to be noted that should a party be concerned that a witness, whose declaration is considered fundamental in the proceedings, could disappear (for any reason, including death) before the trial begins, that party is entitled to request the judge to hear the witness in "future memory".

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions can be conducted both orally and in writing. Correspondence exchanged between members of the Italian Bars is privileged and confidential and cannot be disclosed. Correspondence exchanged between the parties directly and/or between the parties and a member of the Bar is not privileged, even it if expressly includes a "without prejudice" warning.

7. **What is the typical duration of a court procedure?**

   The typical duration of a court procedure (without need for witnesses or technical experts) is around two and a half years.

8. **How can foreign judgments be enforced?**

   The EU Regulation provides the rules for enforcing judgments throughout the European Union. Outside the EU, several treaties regulate the enforcement of judgments. If no treaty exists, the judgment will have to pass a formal Court examination during which the Court will also listen to the counterpart's reasons, if any.

Arbitration And Alternative Dispute Resolution

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

   Mediation clauses are binding if provided by the contract and are enforceable.

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

   The new Italian civil procedure code provides compulsory mediation for some kinds of civil and commercial trials. The procedure is left to the mediator to be decided.

   Mediation is not very popular for resolving commercial disputes.

   Specific hypothesis of ADR (including the mandatory attempt of settlement) are provided in favour of the consumers in case of disputes against utility companies, banks and financial intermediaries.

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

   Arbitration clauses are binding and enforceable.

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

   Institutional arbitration (Chamber of Commerce arbitration) or arbitration under the rules of the civil procedure code, are most commonly used.

5. **Which arbitration institutes are most popular?**

   Chamber of Commerce arbitration or other international entities.

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

   It depends on the arbitration clause. If the parties are not entitled to nominate the arbitrator(s), they have no influence at all. If a party is entitled to nominate its arbitrator, the party is free to decide on this. The President of the arbitration panel is usually decided by the arbitration institution, by the Court or by the Bar President.

7. **In what language is an arbitration proceeding conducted?**

   Arbitration can be conducted in any language chosen by the parties. In case the parties fail to agree on the language of the proceedings, the language or languages of the arbitration proceedings will be determined by the Arbitration panel.

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

   Pre-arbitration measures regarding preservation of state of facts are available. An arbitration panel cannot decide or impose any other kind of pre-arbitration measures, all are left to the competence of the ordinary Court.

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

   The costs of an arbitration proceeding (lawyer's fees, arbitrators' fees and costs) are established by law or by the Chamber of Commerce, but can be negotiated between a party and its lawyer. The costs are usually advanced and sustained by each party, at the end of the proceeding the Arbitration Panel may require the unsuccessful party to repay the legal costs (fees and costs) totally or partially depending on the case's complexity.

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

    The rules of discovery, if not given by the parties in the arbitration clause or in the Arbitration Entity, are the same as for civil proceedings.

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

    The process is witness examination. The parties and the arbitrators could also establish written depositions.

12. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e., may not be disclosed to the Arbitrator)?**

    Settlement discussions can be conducted both orally and in writing, usually out of court. Correspondence exchanged between the parties directly and/or between the parties and a member of the Bar is not privileged, even it if expressly includes a "without prejudice" warning.

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

    An award can be enforced upon the request of a party (by the exequatur request). The President of the competent Appellate Court has exclusive jurisdiction to handle the exequatur request and the opposition. The exequatur opposition will not allow the Appellate Court to re-examine the merits of the dispute judged by arbitration. The Appellate Court can refuse to enforce the arbitration, basically, only on specific procedural issues regarding the regularity of the trial, if the award is in contrast with a previous decision, if the award or its enforcement are contrary to public order, or if the dispute was not arbitrable.

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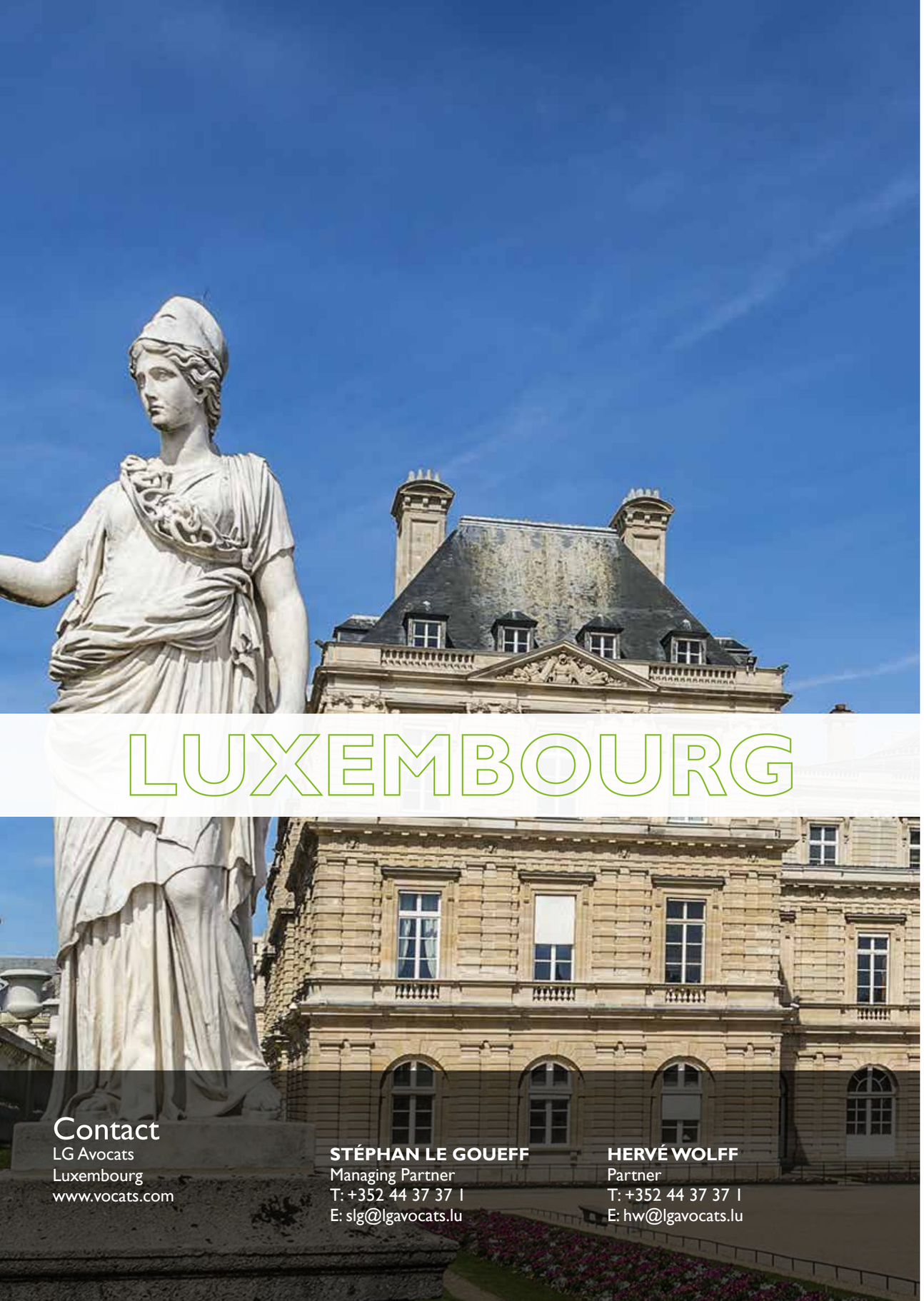

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Civil Litigation

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

   Court proceedings may be conducted in French, German, or Luxembourgish. If the persons involved in the trial are not able to speak one of these languages, an interpreter may be summoned.

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

   The plaintiff may send a written notice before introducing a court proceeding, but it is not a general obligation. In some areas, the plaintiff must send a written notice before introducing proceedings. For example, according to article 1146 of the Civil Code, the plaintiff may only claim damages once he has sent a written notice to the debtor to fulfill his obligations.

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

   There are no court fees in Luxembourg. There may be bailiff costs and other small expenses. Depending on the case brought before court, witnesses', experts' and interpreters' costs may also be involved. Lawyer's fees are freely negotiable and are borne by the client. If a client is under legal aid, lawyer's fees are fixed and controlled by the Luxembourg Bar (around Euro90 per hour), and borne by the State. The Court may grant a procedural indemnity ("*indemnité de procédure*") to the successful party (most of the time around Euro1,000 – Euro2,000). As a general rule, the unsuccessful party bears the bailiff costs and other expenses.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   Except in certain cases, each party has the burden of proof to provide evidence to support its case. There are no discovery proceedings in Luxembourg. However, the Court may, in certain circumstances, order a party to disclose certain documents. There is no electronic disclosure of documents.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

   The parties may provide the Court with written statements in accordance with articles 400 to 403 of the Luxembourg Civil Procedural Code ("*Nouveau Code de procédure civile*"). While this is rather exceptional (except in employment matters), the Court may also order a witness testify before Court if requested by a party or if the Courts deems it appropriate. Witness evidence is not allowed in civil proceedings above Euro2,500, except in specific cases ("*commencement de preuve par écrit*"). Indeed, it is important to note that in civil proceedings, it is not possible to prove above Euro2,500 other than by authenticated or private documents. In commercial proceedings, this rule does not apply, and evidence can be freely brought to the Court.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions are usually conducted out of court in writing or verbally by the parties' counsels. Communications between lawyers are strictly confidential and may not be disclosed to the Court except when explicitly authorized in writing. While it is not advisable, as such confidentiality does not exist, the parties may always discuss directly between themselves to find a negotiated settlement.

7. **What is the typical duration of a court procedure?**

   There is no specific regarding duration of a court procedure in Luxembourg. However, cases brought before commercial courts are conducted orally without exchanges of legal briefs and usually take between 6 months and 1 year. Cases brought before civil courts are conducted in writing with exchange of legal briefs (as many as the parties deem necessary) and usually takes at least 1 year and can take up to 2 or 3 years.

   The appeal procedure of civil and commercial cases is always in writing and usually takes at least 2 years.

8. **How can foreign judgments be enforced?**

   Foreign judgments may be enforced in Luxembourg before Luxembourg Court via two different procedures:

   - Article 679 et seq. of the Civil Procedural Code which details the procedure applying to foreign judgments rendered in a jurisdiction having a treaty on judgment recognition with Luxembourg or to judgments rendered in the European Union (EU Regulations, e.g., Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, etc.).
   - Article 678 of the Civil Procedural Code which refers to articles 2123 and 2128 of the Civil Code (mortgages) applying to foreign decisions that do not fall under a treaty or an EU Regulation.

Arbitration And Alternative Dispute Resolution

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

Yes.

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

The law of 24 February 2012 on mediation in civil and commercial matters (introduced in the Civil Procedural Code),.regulates both conventional and judicial mediation.

- Article 1251-8 et seq. of the Civil Procedural Code regulates conventional mediation and provides that any party may propose to other parties, as long as the case has not been pleaded before the courts, to use mediation in order to settle a case. The mediator shall be appointed by the parties or by a third party and an agreement determining the conditions of mediation must be signed by the parties.
- Article 1251-12 et seq. of the Civil Procedural Code regulates judicial mediation and provides that the judge in charge of a case may at any stage of the procedure, and as long as the case is been pleaded, invite the parties to use mediation. Judicial mediation is initiated at the request of the parties or at the request of the judge if the parties agree.

On 13 March 2003, Luxembourg Bar, Luxembourg Chamber of Commerce, and Luxembourg Chamber of Trades have created a mediation center, under the form of a non-profit association (ASBL). The mediation center aims to:

- Promote knowledge of mediation
- Create the conditions in order to develop mediation by choosing qualified mediators
- Offer to companies and citizens a simple alternative dispute resolution.

Regarding the procedure, the parties must sign a mediation convention at the beginning of the procedure, by which they agree to resolve their dispute in accordance with the rules of mediation. It can be noted that the mediator and the parties have an obligation of confidentiality. The mediator negotiates with the parties in order to find a solution to their dispute. The mediation may not in principle be longer than three months from the date of the signature of the mediation convention. The parties can nevertheless commonly agree to extend the mediation procedure. The mediator and the parties can decide at any time to stop the mediation. The use of this alternative method to resolve commercial disputes is increasing in Luxembourg.

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

Yes.

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

Arbitration in Luxembourg may be organized at the Luxembourg Chamber of Commerce and is governed by articles 1224 to 1251 of the Civil Procedure Code. Alternatively, the parties may agree to have their arbitration proceedings governed by alternative rules such as:

- The rules of arbitration of the Arbitration Center of the Luxembourg Chamber of Commerce.
- The rules of arbitration of the International Court of Arbitration of the International Chamber of Commerce.

5. Which arbitration institutes are most popular?

While arbitration proceedings in Luxembourg remain relatively rare, the Arbitration Center of the Luxembourg Chamber of Commerce is the most resorted to arbitration center. The Arbitration Center proposes a set of arbitration rules. It is managed by a Council of Arbitration consisting of five members. The Council of Arbitration does not itself settle disputes, but rather appoints or confirms the appointments of arbitrators and manages the arbitration proceedings

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

The parties may agree on the choice of the arbitrator(s). A person nominated as an arbitrator shall be independent of the party nominating him. If a party fails to nominate an arbitrator, the appointment shall be made by the Council.

7. In what language is an arbitration proceeding conducted?

The language of the arbitration is generally determined in consideration of all the relevant circumstances and in particular with respect to the language of the contract. The parties may decide, in the arbitration clause, in which language the arbitration proceedings will be conducted.

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

According to article 933 of the Civil Procedural Code, the judge can always order temporary measures either to prevent an imminent damage or to stop an illicit trouble. In order to prevent the disappearance of proof, he can also order any measure of inquiry he may deem useful, including the hearing/ examination of witnesses.

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

The arbitration clause may determine who will bear the cost of arbitration. The amount of the arbitration costs will be determined, as the case may be, by the applicable arbitration rules. In the absence of an agreement in this respect, the arbitrator's award shall determine the costs of the arbitration and decide which of the parties shall bear the costs or in what proportions the costs shall be borne by the parties. The costs of the arbitration shall include the arbitrator's fees and expenses, the administrative costs, the fees and expenses of any experts, and the normal legal costs incurred by the parties.

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

There are no particular rules of disclosure of documents in arbitration under Luxembourg law. The general civil laws shall apply (see above).

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

There are no particular rules for witness evidence in arbitration under Luxembourg law. The general civil laws shall apply (see above).

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There are no particular rules for settlement in arbitration proceedings under Luxembourg law (see above).

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

According to article 1244 of the Civil Procedural Code, an arbitration award shall only be challenged before Luxembourg Court ("*Tribunal d'arrondissement*") by application for annulment ("*par la voie de l'annulation*"), and in very limited cases (e.g., if the arbitration award is against public order, if there was no valid arbitration convention, if the dispute could not be settled by arbitration, or in case of violation of the right of defense). An Arbitration Award may be enforced (exequatur) before Luxembourg Court ("*président du tribunal d'arrondissement*"). Pursuant to article 1251 of the Luxembourg Civil Procedure Code, Luxembourg Court may refuse to enforce an arbitration award if:

- The award may still be challenged before arbitrators
- The award or its execution is against public order, or if the dispute could not be settled by arbitration; or
- There are some nullity causes of the award In addition, Luxembourg has signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958.

MONACO

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

The official language used in the Monaco Courts is French. Documents in any other language would need to be translated into French. If translation is required, it has to be certified by a sworn or official translator (which is appointed on a list drawn up by the Court of Appeal) and duly authenticated. If persons involved in the trial are not able to speak French, an interpreter is summoned.

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

The Monegasque Code of Civil Procedure does not provide for the assistance of the Courts in gathering the evidence within the trial process. Nevertheless, it would be possible for the parties to gather their evidence with the support of Courts, apart from the trial, by filing a request with the President of the First Instance Court (ex parte proceedings).

On this basis the President of the first instance Court could render several orders:

- *ordonnance de compulsoire* allowing the bailiff to gather evidence in records or documents held by any opponent or third party,
- *ordonnance aux fins de constat* allowing the bailiff to describe the reality of certain facts in the opponent's or a third party's place.

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

Article 234 of the civil code provides for Court fees ("Etat de frais") which are composed of fixed costs (between Euro 23 and Euro 69 depending on the amount of the claim), mail costs: Euro 23, a proportional duty (0.40% of the amount of the claim), **bailiff fees,** translation fees.

The judge sentences the losing party to bear the court fees.

The Attorneys' fees are generally calculated on an hourly basis. The cost of a procedure depends on its complexity and length. Lawyers' fees are not recoverable from the defendant. But the Monegasque judge could grant damages to compensate part of these fees, if this is requested by the applicant.

Article 259 of the Code of Civil Procedure provides that the foreign applicant which summons a Monegasque citizen or entity could be required to provide a security for costs called 'cautio judicatum solvi' in order to file a procedure in Monaco. That security would be for an amount sufficient to cover the costs and damages to which he could be sentenced to. The judgment which will order the security will also determine its amount.

However, this principle does not apply in commercial matters, if the foreign claimant resides in the Principality of Monaco, if the foreign claimant holds assets of a sufficient value in Monaco, or if the foreign claimant is from a country which absolves Monegasque citizens from paying such a deposit.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

Each party is supposed to disclose documents to prove its arguments.

Before the proceedings, the party who wants to obtain certain documents can use a procedure named "compulsoire". In this procedure, the President of the First Instance Court authorizes a bailiff to obtain certain documents from a third person or administration.

When the proceedings have begun, there is no specific procedure to obtain documents a party does not want to disclose.

There is no electronic disclosure of documents.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?

According to article 323 and following of the Code of Civil Procedure, the court may find admissible statements of witnesses which have personally observed the facts of the case. They can be written statements made by the witnesses, or after an enquiry conducted by the judge. Under penalty of nullity of the statement, the statement must be totally handwritten, dated and signed It has to mention the status of the witness (name, address, profession, place of birth), existence or non existence of a link of family, alliance, subordination or interest with the parties, mention if the witness has a personal interest in the trial. It has to indicate that the statement will be filed in Court an that any misrepresentation would expose the witness to criminal penalties provided for by article 103 of the Criminal Code, be accompanied by the copy of any official document showing the identity of the witness and his signature.

Exceptionally, and according to Articles 326 to 343, the judge may decide by a written decision to hear the witnesses without the direct intervention of the parties, the parties only submit their lists of questions for the witnesses to the judge. It is not a common practice.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representative)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?

Usually the settlement is conducted out of court, in writing or orally between lawyers for confidentiality reasons. It cannot be disclosed to the Court except when explicitly authorized in writing.

If the settlement is conducted between the parties directly, it is not privileged.

The settlement can be recorded by the court at the parties request.

7. What is the typical duration of a court procedure?

In the First Instance Court, a court procedure take an average of 18 months, but can be more depending on the difficulty of the case. An Appeal takes on average 18 months, while the Court of Revision takes on average 8 months.

8. How can foreign judgments be enforced?

Enforcement proceedings follow the procedure of 'exequatur'. The exequatur application has to be introduced by a writ of summons served on the defendant in which he is asked to appear before the First Instance Court which has exclusive jurisdiction.

According to Article 473 of the Code of Civil Procedure, if a reciprocity treaty exists between the foreign state and the local state (which is currently only the case between France and Monaco) or if reciprocity of foreign courts is established, the enforcement proceedings are simplified and Monegasque courts should not review the substance of the foreign judgment but may only verify that it meets the following conditions: If the judgment is valid in its form; if it has been rendered by the judge who has jurisdiction over the case (according to the foreign law, without contradiction with Monegasque law); if the parties have been correctly served and been duly able to defend themselves; if the judgement has gained legal authority (res judicata); if it is enforceable in the country where it was rendered, and lastly if the judgment complies with Monaco public order.

However, when there is no reciprocity, the Court will review the foreign judgment in its form and on the merits and will be free to modify it partly or totally, in accordance with Article 474 of the Code of Civil Procedure.

Arbitration And Alternative Dispute Resolution

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

The procedure of mediation does not exist in Monaco for commercial disputes.

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

The procedure of mediation does not exist in Monaco for commercial disputes.

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

Yes they are. The second paragraph of article 940 of the Code of Civil Procedure specifies that in commercial matters, the parties can decide when they pass a contract, to submit a possible conflict that would arise between them, to arbitration by inserting an arbitration clause.

Case law has extended this option to certain civil matters.

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

The ad hoc arbitration and the institutional arbitration are both commonly used.

A common forum for arbitration is the ICC Arbitration Court.

There is no current global arbitration institution in the Principality.

However, two arbitration institutions exist in Monaco but they are related to specific fields:

- The maritime field.
- The collective labour conflicts.

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

According to article 944 of the Code of Civil Procedure, the agreement to submit a case to arbitration has to designate precisely the names of the arbitrators. They have to be independent from the parties. The minimum compulsory number of arbitrators should be 3, and they have to be in odd number.

6. In what language is an arbitration proceeding conducted?

The parties may decide in which language the arbitration proceedings will be conducted.

7. What type of pre-arbitration measures are available and what are their limitations?

Case Law states that the emergency judge (*juge des référés*) can still rule on temporary or conservatory measures even in the case of an arbitration agreement.

It would be possible for any of the parties to file a request with the President of the First Instance Court (ex parte proceedings) in view of obtaining an attachment order under the condition that:

- the party establishes a principle of claim (the party is the creditor of its opponent for instance) against another party,
- a threat endangers the collection of the claim.

Such measures are called "*Ordonnances*". They are served by a bailiff to the opponent, once they have been executed. These measures could consist of attachments of accounts, freezing of movables, mortgages on real estates…

On the request of the parties, the President of the first instance Court could render several orders like *ordonnance de compulsoire* and *ordonnance aux fins de constat* (which is explained above).

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8. What are the costs of arbitration proceedings and who bears theses costs?

In the absence of any arbitration institution in Monaco, we cannot assess the costs of an arbitration process which would be specifically Monegasque.

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

Under Monegasque law if the parties have not chosen specific rules for instance applicable to the arbitral procedure, the Monegasque Code of Civil Procedure will apply by default.

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

The procedure for witness evidence is in arbitration is the same than the one organized by the code of civil procedure. If the arbitrators find necessary to conduct an enquiry on the witnesses, the arbitration tribunal may render a pre arbitral judgment organizing this enquiry, which would be enforceable by the President of the First Instance Court according to article 957 of the said Code.

11. How are settlements discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There are no specific rules for arbitration.

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

To be executed, the award has to be made enforceable by the President of the First Instance Court, by the way of ex parte procedure. Monaco applies the New York Convention on the recognition and the enforcement of foreign arbitration awards of June 10th, 1958.

There are only two proceedings to challenge an arbitration award: the Action for withdrawal (this action can be lodged within a period of 30 days following the notification of the award) and the Appeal on the merits.

According to article 438-8 of the Code of Civil Procedure, if the award contains material errors, it would be possible to amend or correct it by filing a request with the President of the First Instance Court within 30 days of the decision

The only proceedings which could be applicable *against the order of enforcement* would be those described under article 964 paragraph 1 of the Code of Civil Procedure. The order of enforcement of the award can be challenged in very few cases:

1. If the judgement has been rendered without arbitration agreement or outside the arbitration agreement,
2. If the award has been rendered once the arbitration agreement has expired,
3. If the award has been rendered by persons who could not be appointed as arbitrators or by some of the arbitrators authorized to rule in the absence of the others,
4. If the mandatory forms of the ordinary judgement provided for under the penalty of nullity have not been respected,
5. If it has been ruled on non sustained claims."

By virtue of article 964 paragraph 2 of the Code of Civil Procedure, in any of the above mentioned cases the parties could file an opposition to the enforcement order of the award.

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Civil Litigation

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

   The official language used in court is Dutch. If persons involved in the trial are not able to speak Dutch, an interpreter can be present during the proceedings.

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

   Pre-judgment Attachment. To secure the claim, the plaintiff may levy one or more pre-judgment attachments, before (or during) legal proceedings. The leave of the President of the district court is required for a pre-judgment attachment. Pre-judgment attachments can be levied on movables, real estate and claims on third parties (among others).

   Discovery Rules. Dutch law does not provide for full discovery of documents. However, article 843a Dutch Civil Procedural Code does allow a party who is considered to have a justified interest to demand inspection or a copy or extract of identifiable documents that relate to a legal relationship to which it is a party. The requirement that documents are 'identifiable' entails that the party who asks for inspection must identify the documents or at least a specified category of documents. The party may demand this information from any party that has these documents at its disposal or in its possession.

   Provisional Relief. In urgent cases, the President of the district court may sit in summary proceedings to provide provisional relief. Summary proceedings have the advantage of being fast. The President generally hands down his decision in summary proceedings within 14 days, but may do so earlier if the case is urgent. After the summary proceedings, the interested party may start principal proceedings in which the case is judged on its full merits. The court that decides on the merits is in no way bound by a judgment given in summary proceedings.

   Preliminary Examination of Witnesses. Prior to the formal commencement of a claim, the court, upon the petition of a party, can order a preliminary examination of witnesses by a judge. A preliminary examination can be useful to examine a witness whose testimony is important and might otherwise be lost. Also, the results of the examination are useful in determining the evidence position and, thereby, whether further litigation is opportune.

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

   The court fees are regulated by the Dutch Civil Court Fees Act. The applicable fee is determined on the basis of the value that is in dispute. The actual amount may vary depending on the type of court before which the proceedings are conducted. The applicable fee has to be paid both by the plaintiff and the defendant. As a general rule, the unsuccessful party has to bear the court costs and reimburse the opponent's statutory court fees (regardless of whether the opponent actually paid statutory or negotiated fees). Statutory attorney fees are based on the nature of the work of the lawyer and the value in dispute. In general the statutory attorney fees are lower than the real attorney fees, which implies the greater part of the real attorney fees is not reimbursed to the successful party.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   As described before, Dutch law does not provide for full discovery of documents. The procedure pursuant to article 843a Dutch Civil Procedure Code (as mentioned under 2 above) offers a possibility to obtain documents. This can, however, not be used as a "fishing expedition." Only documents that are known to exist can be the subject of the request.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?**

   The usual process is witness examination. The witness is questioned by the judge, there is no cross-examination but it is possible for the parties to put direct questions to the witness with approval of the court. A witness can be compelled to attend witness hearings to give evidence.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   There are no specific provisions as to how settlement discussions are conducted, all mentioned alternatives are possible and are used in practice. If the parties are represented by lawyers and the discussions are conducted by those representatives, the rules of conduct of lawyers state that the lawyers are not allowed to inform the court on the contents of the negotiations, unless the other party consents otherwise. Pursuant to those same rules of conduct, all correspondence between lawyers is privileged. A party can only refer to the correspondence during proceedings after approval of the other lawyer. If the other lawyer does not consent, the advice of the Dean of the Bar Association must be sought. If these rules are not followed, a lawyer might face disciplinary sanctions by the Bar Association.

7. What is the typical duration of a court procedure?

The typical duration of a first instance procedure is about 14 months, however small claims can be dealt with faster and large or complex cases may take (significantly) longer. Civil and commercial cases are conducted mostly in writing, normally by a writ of summon and a statement of defence. After these documents are submitted to the court, in general the court orders a personal appearance of the parties to give information or to try to reach a settlement. The court then can give its judgment, but also has the ability to give interim judgments, e.g. ordering additional evidence. In this context it should be noted that the court is allowed to postpone its decision (over and over again). Appeal proceedings may take longer than in other jurisdictions, as they consists of a full review on the merits of the case and the court of appeal may order new evidence through witness hearing or expert reports. The typical duration of an appeal proceeding is about 15 months, again noting that small claims can be dealt with faster and large or complex cases may take longer. Finally, the typical duration of a proceeding before the Supreme Court is also about 15 months.

8. How can foreign judgments be enforced?

- Several legal mechanisms can be used (European, bilateral or multilateral treaties, national) for the enforcement of foreign judgments in The Netherlands.
- European: According to the Regulation (EU) No 1215/2012, judgments of EU member states will be acknowledged in each of those states and can be enforced if declared enforceable. The Council Regulation (EC) No 805/2004 applies for European enforcement orders.
- Multilateral and bilateral treaties: Enforcement may also be allowed under the applicable Hague Convention or under other multilateral or bilateral treaties.
- National Regulations: If no international legal mechanism applies, the Dutch Civil Procedural Code sets forth autonomous regulations in article 985-994, which allow for the acknowledgement of foreign judgment where certain minimum standards (such as valid service, proper ground for jurisdiction of the foreign court, due process) are met.

Arbitration And Alternative Dispute Resolution

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

Mediation clauses in commercial contracts are generally binding. The enforceability of a mediation clause can be difficult, due to the nature of the clause. Mediation depends on the willingness of both parties to present the dispute to a mediator. If one of the parties is not willing to comply with the mediation clause, the mediation itself might have lost its function. Furthermore, if a party starts legal proceedings even though a valid mediation clause is in place, the Dutch court will generally try the case and will not declare that it lacks jurisdiction (unlike the situation in which parties agrees to arbitration or a binding third party ruling as means of alternative dispute resolution).

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

The procedure is not regulated by law. The parties are therefore free to agree upon a procedure for mediation. The Mediatorsfederation Netherlands (MfN) is a national platform for mediation in The Netherlands. Among other things, the MfN offers an infrastructure for mediation in the form of uniform mediation rules and models. In general mediation is not a very popular method of resolving commercial disputes. Mediation is mainly used in disputes regarding employment and family law.

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

Unlike mediation, arbitration is regulated by law in articles 1020-1077 of the Dutch Civil Procedural Code. The arbitration clause is enforceable if it meets the specific statutory requirements. The main requirements are that the arbitration clause i) regulates that the parties submit existing and/or future disputes to arbitration and ii) that it is in writing. Not every subject can be resolved by means of arbitration. Examples of such subjects are, among others, issues of family law, company law and bankruptcy law.

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

The vast majority of arbitrations are institutional arbitrations.

5. Which arbitration institutes are most popular?

The Netherlands Arbitration Institute in Rotterdam (NAI) (http://www.nai-nl.org/en/) and The ICC International Court of Arbitration

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

The parties are free to decide on the number of arbitrators, but if parties have agreed on an even number of arbitrators, the arbitrators shall appoint an additional arbitrator who shall act as the chairman of the arbitral tribunal. Furthermore, the parties are – in principle – free to agree on any method of appointing the arbitrators. If the parties have not determined in their arbitration agreement in what way the arbitrators will be appointed, the arbitrators shall be appointed by the parties jointly. In general, most arbitration clauses refer to arbitration rules for the appointment of the arbitrators, such as the arbitration rules of the NAI.

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7. In what language is an arbitration proceeding conducted?

The law does not contain any provision on the language of the arbitration proceedings. In principle parties are free to agree in which language they wish to conduct the arbitration proceedings.

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

Interim measures are possible in the same manner as described under question 2 above, except that in arbitration it follows from article 1040 (2) instead of article 843a Dutch Civil Procedural Code.

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

The decision on the costs is determined by the arbitration agreement. If no arbitration agreement has been made by the parties, the arbitration tribunal decides at its own discretion who has to bear the costs, taking into consideration the circumstances of the case, in particular the outcome of the proceedings. The NAI Arbitration rules provide that – in principle – the unsuccessful party has to pay both the arbitrators' fees and the legal fees of the other party.

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

As described before, Dutch law does not provide for full discovery of documents. The procedure pursuant to article 1040 (2) Dutch Civil Procedure Code (as mentioned under 2 and 8 above) offers a possibility to obtain documents.

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

Unless the parties have agreed otherwise, the arbiters are free to decide on the application of the general rules of evidence. Pursuant to the law, the arbitrators can hear witnesses, at the request of one of the parties or at their own discretion. The procedure in The Netherlands can be compared to witness examination (see the answer under 5 above).

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There are no specific provisions as to how settlement discussions are conducted, all mentioned alternatives are possible. If during the arbitration proceedings the parties reach a settlement, the arbitral tribunal may, at the joint request of the parties, record the content of the settlement in the form of an arbitral award. An arbitral award on agreed terms shall be regarded as an arbitral award. If the parties are represented by lawyers and the discussions are conducted by those lawyers, the rules of conduct of lawyers state that they are not allowed to inform the arbitration institute on the contents of the negotiations, unless agreed otherwise by the parties. Pursuant to those same rules of conduct, all correspondence between lawyers is privileged. A party can only refer to the correspondence during proceedings after approval of the other lawyer or the Dean of the Bar Association.

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

Enforcement

Dutch Arbitral decisions can easily be enforced in The Netherlands. Furthermore, The Netherlands is a signatory to the New York Convention on the recognition and enforcement of foreign arbitral awards. Thus, arbitral awards given in the territory of the member states of this convention can be enforced in The Netherlands and vice versa.

Challenge

In principle, arbitration awards can only be challenged in appeal if the parties have agreed in the arbitration agreement on the possibility of appeal.

Annulment

An arbitral award can only be annulled by the regular courts on the following limited grounds:

- No valid arbitration agreement
- The arbitral tribunal is not composed in accordance with the applicable rules
- The arbitral tribunal has not complied with its assignment
- The arbitral award has not been signed properly or it was an unreasoned award or
- The arbitral award itself or the procedure leading up to the award violates public order or good morals.

POLAND

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Civil Litigation

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

   The official language used in court is Polish. If persons involved in the trial cannot speak Polish, an interpreter is summoned. This mainly refers to witnesses, and to the parties if they are heard before the court.

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

   "Discovery" rules are not applicable under Polish law. A plaintiff may follow an independent procedure to collect (secure) evidence before submitting a statement of claim, provided there exists a risk that evidence will be impossible or too difficult to collect in the future or that the facts must be established due to any other reason. A warning letter must be sent in commercial cases.

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

   The court fees are regulated by the Act on Court Fees in Civil Cases. In general, in cases related to pecuniary claims, the court fee amounts to 5 percent of the claim value, but no more than PLN100,000 (about Euro25,000). Certain claims are subject to a fixed fee regardless of the claim value. The fee is preliminarily borne by the party that brings a claim or institutes an action. At the end of the proceedings, as a general rule – subject to the court's decision – the unsuccessful party has to bear the court fees and reimburse the opponent's statutory legal fees and expenses.

   Assuming that the dispute value is Euro 1,000,000 basic costs are the court fees in the amount of PLN 50,000 and the costs of legal representation in the amount of PLN 14,000.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   The party referring in proceedings to a document as evidence for its statement should file a copy of that document. However, at the court's request, the party is obliged to file the original of the document (or a certified copy thereof). Also at the court's request, each person (whether or not a party to the proceedings) is obliged to provide the court with the original of the document in his/her possession, unless the document contains a state secret.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?**

   The usual process is examination of witnesses. The witness is questioned by the judge; there is no cross-examination but it is possible for the parties to ask direct questions to the witness with the approval of the court. As a general rule, each person summoned by the court is obliged to appear and testify as a witness, unless he/she has a right to refuse to give testimony (e.g., close relatives). A witness can be compelled to attend to give evidence by way of a court fine and use of means of coercion.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions can be conducted in many different ways, orally or in writing, in or out of court. Generally, if the parties are represented by lawyers, discussions will be conducted by the representatives. If settlement discussions are conducted out of court, there is no obligation to disclose related correspondence to the court. The court is frequently informed of the outcome of the settlement discussions and the settlement is often recorded in writing by the court. The mediation proceedings are confidential, and the parties are not authorised to effectively rely during the court proceedings on the settlement proposal submitted during the mediation proceedings.

7. **What is the typical duration of a court procedure?**

   Duration of the court procedure depends on the complexity of the case (including the scope of evidentiary proceedings) and the court before which the case is pending. Generally it can be assumed that proceedings before the court of first instance takes about two years. The court of second instance issues a judgment after about one year. Another year is needed for the proceedings before the Supreme Court, if it is possible to file the cassation.

8. **How can foreign judgments be enforced?**

   For the enforcement of foreign judgments in Poland, numerous (European, bilateral or multilateral treaties, autonomous) regulations apply.

   - European: Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and other EU Regulations.
   - Multilateral and bilateral treaties: Enforcement may also be obtained in accordance with the Lugano Convention or other multilateral or bilateral treaties.
   - Autonomous regulations: If no other regulations apply, the Polish Code of Civil Procedure (k.p.c.) sets forth autonomous regulations in Articles 1145-1152.

Arbitration And Alternative Dispute Resolution

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

   Meditation clauses are binding. However, each party may bring a claim to the court and then the court will forward the case to be mediated only upon request of the opposite party

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

   Meditation is voluntary and could be commenced either based on a mediation clause or by the court. The mediation ends with a settlement which must be recognized by the court.

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

   Generally, disputes relating to property rights (rights that represent money value) are arbitrable. As to non-property rights, disputes are arbitrable if they may be subject to the court settlement. Arbitration clauses are binding if they meet the requirements specified in Article 1161 of the Polish Code of Civil Procedure and are enforceable under the regulations of Articles 1212–1217 thereof.

   General Comments on Arbitration Proceedings in Poland:

   The arbitration provisions contained in the Polish Code of Civil Procedure are based upon the UNCITRAL Model Law. Only few binding regulations exist. In general, parties are free to determine the procedure. Arbitration proceedings are usually subject to appropriate arrangements made by the parties. Only if the parties have not determined the rules (or have not applied any recognised rules), will the procedure set forth in the Code of Civil Procedure apply.

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

   Both types can be used. Institutional (both domestic and international) arbitration is more popular.

5. **Which arbitration institutes are most popular?**

   Court of Arbitration at the Polish Chamber of Commerce (*Krajowa Izba Gospodarcza* – KIG) in Warsaw ICC (International Chamber of Commerce)

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

   The parties are free to determine the number of arbitrators. It is standard in Polish arbitration proceedings to appoint either one arbitrator or a panel of three arbitrators. The most common rule is that each party appoints one arbitrator and those two arbitrators appoint the third arbitrator who acts as the panel chairman. If no agreement is made, then according to the rules provided in the Polish Code of Civil Procedure, a panel of three arbitrators will be appointed by the common court.

7. **In what language is an arbitration proceeding conducted?**

   The parties are free to choose the language to be used in the arbitration proceedings.

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

   Interim measures are possible. Also mediation is both possible and practised.

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

   The decision on the costs is subject to an agreement. If no agreement has been made by the parties, the arbitration tribunal decides at its own discretion who will bear the costs, taking into consideration the circumstances of the case, in particular the outcome of the proceedings. The detailed provisions on costs are usually set forth in the rules of institutional arbitration which the parties must agree to observe.

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

    The disclosure of documents is subject to agreement between the parties. "Discovery" rules are not applicable in Polish arbitration proceedings (i.e., under domestic arbitration rules).

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

    There are no specific provisions concerning witnesses, the procedure for witness evidence is subject to agreement. Both oral hearings and written statements can be agreed upon.

12. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?**

    There are no specific provisions as to how settlement discussions are conducted; all the alternatives mentioned are possible. Generally, if the parties are represented by lawyers, the discussions will be conducted by the representatives. It is subject to agreement whether the settlement correspondence will be disclosed to the Arbitrator(s).

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

    According to §1212 of the Polish Code of Civil Procedure, an arbitration award has the same status as a final judgment of Polish courts, after it has been acknowledged or declared enforceable by such Polish court. Foreign arbitration awards can be declared enforceable after a court hearing is held. Foreign awards can be enforced under the New York Convention. Arbitration Awards can be challenged under the conditions stated in Article 1205 of the Code of Civil Procedure by filing an application for the award to be overturned by the appropriate court. The court will do so, if the applying party proves that one of the following circumstances existed:

    - There was no arbitration agreement or the arbitration agreement was not valid or became invalid under the law applicable to it.
    - The applying party was not given notice of the appointment of an arbitrator or of the arbitration or was otherwise unable to present its case.
    - The award covers a dispute that was not arbitrable according to the arbitration clause or contains decisions on matters beyond the scope of the arbitration clause.
    - The composition of the tribunal or the basic rules of the arbitration did not comply with the provisions of the Polish Code of Civil Procedure or with a permissible agreement made by the parties.
    - The award was obtained as a result of a crime or it was based on forged documentation.
    - Res judicata. or the court finds that:
    - The matter in dispute cannot be settled through arbitration under Polish law.
    - Recognition or enforcement of the award leads to contravention of public order.

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Civil Litigation

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

   The official language used in court is Portuguese. If the persons involved in the trial are not able to speak Portuguese, the court can appoint an interpreter.

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

   There are no mandatory pre-action measures available.

   However, in certain cases, it is possible to file interlocutory injunctions against the debtor (either in order to seize assets or to avoid other actions from the debtor).

   Although the lawyers are not obliged to send a warning letter before initiating legal proceedings, it is common to do so in order to prevent useless lawsuits.

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

   In the Portuguese legal system, the court fees are calculated according to the amount of the civil or commercial lawsuit. To initiate a legal proceeding or to file an opposition, both parties must do an initial payment, which represents an advance payment of the final court fees. As a general rule the unsuccessful party has to bear the court costs and reimburse the opponent's court fees.

   Court costs in Portugal are a combination of fixed and varied costs. The fixed costs (ranging from Euro 102 to Euro 1,632) are calculated according to the value of the action and are paid upon delivery of the statement of claim or defence. The varied cost are calculated according to the complexity of the proceeding and are determined by the judge at the end of the proceedings. For proceedings with a value over Euro 275,000 the parties shall pay additional court costs in the amount of Euro 306 for each fraction of Euro 25,000 above the referred amount at the end of the proceedings, although the judge may exempt the payment if the complexity and the procedural conduct of the parties justifies.

   For example, the court costs for a dispute with a value of Euro 1 million will amount to approximately Euro 15,000.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   The parties only disclose the documents they want and when they want, unless the judge orders otherwise. The documents containing information under professional secrecy may not be disclosed, even against a court order. Yes. Electronic disclosure of documents is normal.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

   The interrogation is made by the lawyers of the parties, first by the lawyer of the party that presented the witness and then by the lawyer of the other party who has the right to cross-examine in order to complete or clarify the testimony, subject to the clarifications sought by the Judge. If the witness does not attend to the court session and does not justify its absence, the court will apply a penalty and the Judge may order its presence in the next court session.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions can be conducted in many different ways, orally or in writing, although they should be held out of court. Generally, if the parties are represented by lawyers the discussions will be conducted by those representatives. In this case, the lawyer is obliged to keep professional secrecy regarding all facts which were brought during the negotiations to settle by the other party (or their representatives). It is common to inform the court of the outcome of those settlement discussions and have the settlement recorded in writing by the court.

7. **What is the typical duration of a court procedure?**

   The duration of a court procedure depends on many factors, including the court where the procedure is pending, the existing of opposition by the defendant, the evidence to be produced, the complexity of the matter, among others. Notwithstanding this, we would say that the average duration of a simple court procedure would be between 18 to 36 months until first instance decision.

8. **How can foreign judgments be enforced?**

   Foreign judgments can be enforceable in Portugal according with several regulations:

   - European: According to the Regulation (EU) no. 1215/2012 of the European Parliament and of the Council of 12 December 2012 judgments of EU member states will be acknowledged in each of those states and can be enforced if declared enforceable. The Regulation (EU) no. 1215/2012 of the European Parliament and of the Council of 12 December 2012 only applies for European enforcement orders.
   - Multilateral and bilateral treaties: Enforcement may also be obtained in accordance with the Hague Convention or other multilateral or bilateral treaties.
   - Autonomous regulations: If no other regulations apply, the Portuguese Civil Procedure Code ("*Código de Processo Civil*" or "CPC") sets forth autonomous regulations in Articles 978 and following.

Arbitration And Alternative Dispute Resolution

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

   Mediation clauses in commercial contracts are generally binding. Nevertheless, if a party decides to take legal action against the other prior to mediation proceedings, the court will not deny action as inadmissible, since there is no legal obligation to submit the dispute to mediation. In this case however the other party may be entitled to a compensation for the breach of the contract.

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

   There is no procedure regulated by law, therefore the parties are free to establish the rules for the mediation procedure. In some areas of activity the companies agree to submit the dispute to mediation (mostly consumer disputes), but it is yet a minority. However it is not a popular method for resolving disputes.

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

   Arbitration clauses are binding if they meet the requirements specified in articles 1 and 2 of the Portuguese Arbitration Law and are enforceable according to the regulations of Articles 705 and 712 and the following of the Portuguese Civil Procedure Code ("*Código de Processo Civil*" or "CPC").

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

   Both types can be used, although institutional arbitration is more common.

5. **Which arbitration institutes are most popular?**

   ACL (*Associação Comercial de Lisboa / Câmara de Comércio e Indústria* Portuguesa – Centro de Arbitragem) CAL (*Centro de Arbitragem de Litígios Civis, Comerciais e Administrativos da Ordem dos Advogados*).

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

   According to the Portuguese Arbitration Law, the parties can determine the number of arbitrators. The court may be constituted by a single arbitrator or by several, in odd number. If the parties have not appointed the arbitrator or arbitrators or set the mode of choice, and there is no agreement between them to such designation, each shall appoint at least one arbitrator, leaving it to designated arbitrators the choice of the last arbitrator.

7. **In what language is an arbitration proceeding conducted?**

   The parties are free to choose the language to be used in the arbitration proceedings.

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

   There are no pre-arbitration measures available.

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

   The decision on the costs can be subject to agreement between the parties. However, it is common the arbitration institutes stipulate their own costs. The arbitration tribunal shall decide who has to bear the costs, taking into consideration the circumstances of the case, in particular the outcome of the proceedings.

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

    According to the Portuguese Arbitration Law, any evidence admitted by the civil procedure law can be produced before the court.

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

    There are no specific provisions concerning witnesses, the procedure for witness evidence is subject to agreement between the parties. According to the Portuguese Arbitration Law, any evidence admitted by the civil procedure law can be produced before the court.

12. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?**

    There are no specific rules as to how settlement discussions are conducted, all mentioned alternatives are possible. Generally, if the parties are represented by lawyers the discussions will be conducted by those representatives. In this case, the lawyer is obliged to maintain professional secrecy regarding all facts which were brought during the negotiations to settle by the other party (or their representatives).

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

    According to Article 705, n. 2 of the Portuguese Civil Procedure Code ("*Código de Processo Civil*" or "CPC") an Award made in arbitration where the seat is Portugal is enforceable in the same terms as a final judgment of Portuguese courts. Foreign Awards can be enforced in Portugal after being reviewed and confirmed by a Portuguese court. Foreign Awards can also be enforced in Portugal in accordance with the New York Convention. A National Arbitration Award can be challenged before a judicial court in accordance with the Portuguese Civil Procedure Code. According to the Portuguese Arbitration Law, Arbitration Awards can be annulled, within one month of notification of award, on any of the following reasons:

    - The dispute was not arbitrable.
    - The award was issued by an incompetent or irregularly constituted court.
    - The award was issued in violation of the principles mentioned in Article 16 of the Portuguese Arbitration Law: i) The parties shall be treated equally. ii) Defendants will be summoned to defend themselves. iii) In all phases of the process, strict observance of the principle of contradiction is guaranteed. iv) Both parties must be heard, orally or in writing, before being given the final decision.
    - The award was issued in violation of Article 23 of the Portuguese Arbitration Law which states the Arbitration Award shall be made in writing and shall contain: i) The identification of the parties. ii) The reference to the arbitration agreement. iii) The subject of the dispute. iv) The identification of the arbitrators. v) The place of arbitration and the place and date on which the decision was made. vi) The signature of the arbitrators. vii) The appointment of arbitrators who are unable or unwilling to sign. viii) The decision must contain a number of signatures at least equal to the majority of the arbitrators and shall include the dissenting opinions, properly identified.
    - The court decided based on facts that it could not be aware, or did not appreciate any facts that were relevant to the decision. In the case of International Arbitration, the court's decision is not appealable, unless the parties have agreed the appeal and set its terms.

SLOVAKIA

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Civil Litigation

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

Court proceedings are held in the Slovak language. Nevertheless, pursuant to Section 155 of the Code of Civil Procedure, the parties to the proceedings are entitled to act before a court in the language, which they comprehend. The court shall appoint an interpreter for a party who does not understand Slovak language, once such need is ascertained during the proceedings.

If a motion or evidence presented to the court is not in Slovak language, the court shall ask the submitting party to provide within a specified period the translation of such motion or evidence, otherwise the court will secure such translation.

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

The court may issue a preliminary injunction (in Slovak: "*neodkladné opatrenie*") prior to commencement of the proceedings if it is necessary to provisionally provide for the relations between the parties or if there is a concern that enforcement of the judgement could be impaired. The court shall issue the preliminary injunction in the case when the aim cannot be attained by the issuance of a security measure (in Slovak "*zabezpečovací prostriedok*"). By virtue of a preliminary injunction, a duty may be imposed on a party to the proceedings to act or refrain from an action in order to achieve the aim of the preliminary injunction. When submitting a petition for issuing a preliminary injunction, a claimant is obliged to state the facts of the case and duly justify the request for issuing the preliminary injunction. The court may issue the preliminary injunction without hearing and seeking the opinion of the parties.

If there is a danger that an execution of a monetary claim against a debtor might be impaired, the court may create a pledge on the assets of the debtor by means of issuing a security measure. The pledge shall be executed only after the final ruling of the court in favor of the creditor. The court must favor this tool (security measure) over the preliminary injunction.

Similarly, on the basis of a petition lodged to secure evidence prior to commencement of the proceedings if there is a concern that the evidence could not be taken later, or could be taken later only with substantial difficulties, the court shall secure the evidence adequately applying the principles for presenting the evidence during the court proceedings.

Slovak law does not require any notice or proposal for amicable resolution of a dispute to be sent to the other party.

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

The costs of the civil and commercial proceedings are any and all proved, well-founded and reasonably incurred costs, which may arise from the proceedings. During court proceedings, the parties are obliged to bear their own costs and the costs of their attorneys. The court bears the costs of translators. The costs of legal representation are determined based on the Regulation No. 655/2004 Coll. On remuneration and compensation of advocates for provided legal services, as amended, and the amount of the compensation depends on the value of the claim and the number of legal acts exercised by the attorney during the proceedings.

The costs of the adjournment of the hearing bear the party who caused the adjournment.

The court decides on the compensation of the costs of proceedings based on the principle of success. If a party is fully successful in the proceedings, the court shall award that party full compensation of the costs. If a party is successful in part, the court may grant a partial compensation of the cost (depending on the balance of the party´s success) or the court may decide that no party gets the compensation of the costs.

As an example, for a dispute value of Euro 1 million, court fee would amount to Euro 33 193,50 and party costs (in the most part represented by the costs of legal representation) would be somewhere in the range Euro 14 551 – Euro 29 102 (assuming that there there is from 5 to 10 acts of legal assistance conducted by the attorney).

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

The parties submit documents to the court according to their own procedural needs, in particular in connection with the duty to state the decisive facts of the case and to propose evidence to support them. However, the court may order any person (natural or legal) to submit to the court a document relevant for the proceedings which the person has in his/her possession. Documentary evidence must be submitted to the court protecting the duty of confidentiality of information imposed by law.

Making documents available by electronic means for the purpose of court proceedings is permitted and is often used by the parties but the court is free to request the party to present the original of the document during the court hearing.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or crossexamination)? Can a witness be compelled to attend to give evidence?

The court may order the examination of the witness upon the proposal of the party. Each natural person is obliged to appear at the court upon a request and to make a witness testimony before the court.

The witness must testify the truth and must not conceal any facts. A witness has the right to refuse a testimony only if he/she would thereby incriminate himself or herself or a close person. For the reason of economy, the court may order the witness to answer questions in writing.

The court invites a witness to describe all facts which the witness knows in relation of the subject of the testimony. After this, first the court and then the parties are entitled to ask question. A question asked by the parties which does not related to the subject of the testimony is not allowed. Also misleading questions and questions which indicate the answer are not allowed. The court decides which questions of the parties are admissible.

The court may order joint questioning of witnesses whose testimonies contradict.

The general duty to make a witness testimony in civil/commercial proceedings is thus provided for. The witness can refuse to testify if his/her testimony could breach his /her duty to maintain confidentiality of secret information protected by special law and other statutory or state-protected duty of confidentiality. In such cases, examination of a witness may be performed only if the witness has been relieved of this duty by the competent authority or the person in whose favor this duty exists.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?

Depending on the circumstances of a case, negotiations can be held either in writing, through personal meetings or combination of both. Where parties are represented by attorneys, negotiations are usually held primarily between the attorneys. Attorneys are bound by law to keep confidential all information which they learn during these negotiations.

However, it is usual that the parties inform the court whether there were settlement discussions prior to the filing of the lawsuit and what the outcome was. It is also usual that the settlement discussions are conducted during the proceedings and the parties ask the court to adjourn the court hearing for that purpose.

The settlement correspondence is usually not privileged and parties usually present it to the court in order to evidence that they have attempted to reach an out-of-court settlement.

7. What is the typical duration of a court procedure?

The typical duration of a court procedure for the court of first instance is 1.5 – 3.5 years. For appellate proceedings, the typical duration is between 0.5 - 1 year.

8. How can foreign judgments be enforced?

In general, the acceptance and enforcement of foreign judgements is governed by Sections 63 – 70 of the Act No. 97/1963 Coll. on International private and procedural law, as amended. The foreign judgements are accepted by the court authorization of an executor to enforce the foreign judgement, no separate decision is necessary. The exceptions to this where a separate court decision is necessary are: a) matrimonial matters, b) adoptions, c) limitation of a legal capacity of a natural person.

Rules stipulated by a bilateral or multilateral international conventions on enforcement of foreign judgments to which Slovak Republic is a party or EC Regulation No. 44/2001 (Brussel I) or EC Regulation No. 2201/2003 (Brussel II), have a priority over application of Act No. 97/1963 Coll.

Enforcement of European enforcement orders, within the meaning of EC Regulation No. 1896/2006 represents a special case, where the court directly orders enforcement and enforces a judgment pursuant to the Slovak laws, without special recognition proceedings.

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Arbitration And Alternative Dispute Resolution

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

Generally, these are contractual arrangements whose provisions are binding on contractual parties, subject to fulfillment of the general requirements for validity. The mediation is governed by Act No. 420/2004 on Mediation, as amended, which regulates the mediation process. If the mediation clause fulfills the general requirements for the validity as well as requirements of the Act on Mediation, it shall be binding and enforceable.

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

The mediation process is regulated by the Act on Mediation.

At the beginning it is necessary to conclude an agreement on mediation between the parties in dispute and the mediator.

In the agreement, the parties and the mediator have to specify the dispute which shall be the subject of the mediation, the remuneration of the mediator as well as the period for the mediation. The agreement shall be registered in the book of mediation kept by the respective mediator.

Under Section 14 of the Act on Mediation, the mediation starts upon the conclusion of the agreement on mediation and its registration in the book of mediation. The mediation ends when: (i) the settlement agreement which is the result of the mediation is concluded, (ii) the mediator announces that parties have decided not to continue in mediation, (iii) one party announces that the mediation in canceled, (iv) other cases specified by the Act on Mediation (e.g. the mediator´s license in canceled).

The mediation between parties is not common in the Slovak Republic. The surveys in Slovakia have shown that even though the mediation is already not a new form for dispute resolution, it is not common to use it.

Also the court can recommend to the parties to resolve their dispute through mediation.

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

Arbitration clauses in commercial contracts are binding and enforceable.

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

Both types of arbitration proceedings are used. Institutional arbitrations are preferred mostly by larger corporations.

5. Which arbitration institutes are most popular?

The Arbitration Court of the Slovak Chamber of Commerce and Industry.

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

Arbitration proceedings are governed by Act No. 244/2002 Coll. on Arbitration.

In the arbitration clause, the parties can either choose a specific arbitrator(s) or agree upon a procedure for selection of an arbitrator(s).

The parties have a right to select more arbitrators, but this number shall be odd in each case. If the parties fail to agree on the number of arbitrators, the Act on Arbitration stipulates that there shall be three arbitrators.

The parties have also a right to agree on the name of arbitrator(s). It they fail to do so, each party appoints one arbitrator, and these arbitrators appoint the third arbitrator, who shall preside over the panel.

7. In what language is an arbitration proceeding conducted?

The parties may agree on the language of arbitration proceedings. If they fail to agree, the court of arbitration has a right to select the language.

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

The arbitration court can issue a preliminary injunction upon a petition of a party if the enforcement of the arbitration award could be impaired. The conditions for the issuance of the preliminary injunction by the arbitration court are similar to those in the civil/commercial court proceedings.

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

Costs of arbitration are usually cash expenses of the parties and their attorneys, costs of evidence, arbitration fees, remuneration of arbitration court and its expenses, remuneration of experts or interpreters, remuneration of the attorneys.

In general, each party bears its own costs incurred during the arbitration proceedings. The arbitration award has to deal also with the costs of arbitration. The compensation of the costs of arbitration proceedings is based on the principle of success, similar to civil/commercial court proceedings.

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

Each party is obliged to present the documents supporting its claims.

The arbitration court is allowed to ask a disclosure of documents by third parties, but third parties are not obliged to disclose the documents to the arbitration court. In such case, the arbitration court can ask a civil court to make such request.

By the document disclosure, confidentiality of information must be observed, similar to the civil court proceedings.

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

The rules for questioning of witnesses shall be agreed by the parties. In case, there is no such agreement, rules of the respective arbitration court shall apply. If no rules are agreed or contained in the rules of the arbitration court, the arbitrator shall conduct the arbitration proceedings in a way which secures the equality of the parties.

Usually the arbitration rules for examination of the witnesses are not so specific in compare to the Code of Civil Procedure so it is up to the consideration of the arbitrator how to conduct the questioning. Arbitrators may examine witnesses only if they appear voluntarily. If a witness refuses to give a testimony, the arbitration court may ask a civil court to secure the questioning of the witness.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

Depending on the circumstances of a case, negotiations can be held either in writing, through personal meetings or combination of both. Where parties are represented by attorneys, negotiations are usually held primarily between the attorneys.

The settlement correspondence is usually not privileged and parties usually present it to the arbitration court in order to evidence that they have attempted to reach a settlement.

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

An arbitration award must be delivered to the parties. An arbitration award which is delivered to the parties and which cannot be reviewed by another arbitrator shall be final.

The parties may agree in an arbitration agreement that an arbitration award may be reviewed by other arbitrators upon request of a party which must be submitted within 15 days after the delivery of the arbitration award.

Final arbitration award can be enforced by an executor.

Each party to the arbitration proceedings may file a complaint with a court to cancel the final arbitration award due to the following reasons:

a. the arbitration agreement is invalid,
b. the plaintiff was not notified on the appointment of the arbitrator, or on the commencement of the arbitration proceedings or was prevented from participating in the arbitration proceedings,
c. the dispute which was subject of the arbitration award, was not the subject of the respective arbitration agreement or arbitration clause,
d. the arbitration award exceeds the scope of the agreement on the arbitrator or the scope of the arbitration clause,
e. the arbitration court was not duly appointed, the arbitration proceedings was not conducted in compliance with the agreement of the parties or such agreement was not concluded, if such events could have affected the decision in rem,
f. if there are grounds for the refusal of the acceptance and enforcement of a foreign arbitration award.

The party must file the complaint within 60 days after the delivery of the arbitration award. The statutory provisions regarding the cancelation of the arbitration award by the court cannot be excluded by the agreement of the parties.

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Civil Litigation

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

Court proceedings may be conducted in Spanish. However, if proceedings are conducted in an Autonomous Community of Spain where another official language is recognized, such proceedings may be carried out in that language, if no party opposes. The official languages of Spanish Autonomous regions are: Catalan for Catalonia, Balearics and Valencia, Basque for the Basque Country, and Galician for Galicia. (See Article 231 of the Spanish Judicial Power Law 6/85, of 1 July 1985, and Article 142 of the Spanish Civil Procedural Law 1/2000 of 7 January 2000). Documents that are not in Spanish or, where applicable, in an official language of the Autonomous Community, must be translated into Spanish or into the community language. For any witness not familiar with any of the official languages who is required to appear for interrogation or receive an oral statement from the Court, an interpreter must be appointed. The interpreter will be a person knowledgeable of the language, and shall be required to swear and promise to provide a true translation. (See Articles 144 and 143, respectively, of the Spanish Civil Procedural Law 1/2000 of 7 January 2000).

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

According to articles 256 and following of the Spanish Procedure Law, the claimant, before initiating legal action, can ask the Court to confirm information regarding the defendant's capacity or to disclose documents relating to liability insurances or last will. In proceedings relating to intellectual or Industrial property the claimant can ask the Court to disclose relevant documents or data about the alleged infringement before initiating the claim.

A warning letter may be necessary in some proceedings before filing the claim, depending on the subject matter of the proceeding.

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

Attorney's fees guidelines and court proceedings costs are set forth by the applicable Bar Association Guidelines of the place where the attorney is registered and the proceedings have been conducted. Clerk´s fees (which are mandatory in the majority of the proceedings) are regulated by Law and will depend on the amount claimed. Allocation of judicial costs is governed under articles 394-398 of the Spanish Civil Procedural Law. If the Court entirely rejects one party's claim, it will be the unsuccessful party that bears the court's costs. Court costs include the costs of the court, Clerk´s fees and attorney's fees subject to the guidelines stated by the Bar Association. If the attorney's fees are beyond the guidelines, the unsuccessful party shall pay up to one-third of the amount subject to the court proceedings. If the Court partially rejects one party's claim, each party shall bear its own costs, shared costs shall be split in half with each half to be paid by each party.

Additionally, the complainant, if it is a company, must pay a tax at the moment of filing the claim in most common cases. This does not apply if the complainant is a natural person. The quantity of the tax consists on a fixed tax depending on the kind of claim, and a variable tax depending on the amount of the claim. In the case the outcome results favourable, this tax shall be refundable to the complainant by the other party.

Under Civil Procedure Law, in addition to the attorney's fees, the claimant shall pay a judicial tax of Euro 5,300 and Clerk's fee ("procurador") of Euro 3,000 (VAT not included).

Attorney´s fees shall be agreed by the attorney and the client. Nevertheless, a fee guideline is set by the Bar Association where the attorney is registered and the proceedings conducted.

The guidelines stipulates that for a dispute of Euro 1,000,000, the Attorney´s fees would be Euro 59.640 (excluding VAT) in Madrid; and Euro 54,800 (excluding VAT) in Barcelona.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

Once the civil or commercial procedure has been commenced, each party can ask the other party to disclose specific documentation necessary to solve the proceeding, as long as the Court has approved this request. It is also allowed to request information from a third party that has information relating to the matter and is also necessary to solve the proceeding.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?**

Witness evidence is governed under articles 360- 381 of the Spanish Civil Procedure Law. Parties may submit to the Court the designation of witnesses. This designation is made in writing and states the name and position under which these witnesses shall be interrogated. The Court is the first to ask its own questions of the witness, followed by the party calling that witness, and lastly by the opposing party. The Court may decide that some questions are not admissible if not related to the facts of the case. Witnesses who do not attend the hearing shall be charged with a fine from Euro180 to Euro600, and the Court may compel the witness to attend the hearing. Witnesses who do not attend the hearing after being compelled, may incur criminal charges for defaulting the public authority. See article 291 and 292 of Spanish Civil Procedural Law.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?

Settlement discussions may be carried out orally or in writing. However, the final settlement agreement shall be made in writing in order to be binding for the parties. Correspondence regarding settlement discussions is privileged.

7. What is the typical duration of a court procedure?

The duration depends on the Court knowing the case and its charge of work. The average duration for civil and commercial proceedings is 12-18 months in first instance and 1-2 years in second instance.

8. How can foreign judgments be enforced?

European judgments within the subject matter jurisdiction stated under the provisions of the E.U. Regulation 1215/2012do not require a special proceeding to be enforced in Spain. These judgments shall be submitted before the Courts of first instance of Spain in order to be enforced. Non-European judgments must follow the proceeding of Exequatur set forth in articles 44 and following of the Law no. 29/2015 of the International judicial cooperation in civil order to be enforced in Spain. This Exequatur proceeding confirms that the foreign judgment has been declared in accordance with all due process guarantees accepted under Spanish public law.

Arbitration And Alternative Dispute Resolution

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

Mediation clauses, as with any other clauses in contracts, are binding for the parties. Mediation proceedings are generally voluntary proceedings the resolution of which has a non-binding effect however, they could be compulsory when users or consumers are involved. EU Regulation 524/2013 on Online Dispute Resolution set forth a platform for consumers to file complaints about goods or services bought over the internet and find an impartial ADR entity listed to handle the dispute. Commission implementing regulation (EU) 2015/1051 develops the ODR regulation and lays down the electronic complaint form, the exercise of the functions of the ODR platform and the cooperation between ODR contact points.

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

Mediation is a voluntary proceeding the agreement to which has a non-binding effect. Therefore, there is no particular proceeding for mediation; it is tailored to each case as is established in Act 5/2012 of 6 July on mediation and commercial matters and developed by Royal Decree 980/2013 of 13 December. For family and labour conflicts, there is a mediation law which may be applicable to resolve these disputes, but again, the decision reached under mediation is not binding.

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

The Spanish Arbitration Act 60/2003 of 23 December 2003, as amended by Act 11/2011 of 20 May 2011, states that the parties may agree to submit the dispute to arbitration and that such agreement shall be binding for the parties regardless of the validity of the rest of the contract. Moreover, Spain is a signatory country of the New York Convention, therefore international arbitration proceedings are recognized in Spain.

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

We mostly encounter international arbitrations governed by an arbitration institution and under its rules rather than ad hoc arbitrations. Normally, the institution most often utilized by international clients is the ICC and the WIPO.

5. Which arbitration institutes are most popular?

The ICC, particularly in international arbitration cases. In local arbitration proceedings, the Barcelona Arbitration Tribunal (TAB), which is the most popular arbitral institute in Spain, or the Madrid Court of Arbitration.

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

Parties are free to determine the number of arbitrators, subject only to appointing an odd number thereof. Unless otherwise agreed, a sole arbitrator will be appointed. If the parties do not nominate arbitrators and the arbitration is institutional, the appointing authority will be designated by the rules of the institution and if the arbitration is not administered, the competent court will act as the appointing authority.

Each arbitration institute provides in its rules a proceeding to contest the arbitrator's appointment. Articles 17 and 18 of the Arbitration Act also regulate the challenge of arbitrators and IBA Guidelines on conflict of interest are frequently followed especially in international arbitration disputes. Arbitrators and courts can also take into account the best practices guidelines published by the Club Español del Arbitraje.

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7. In what language is an arbitration proceeding conducted?

Arbitration is a private-party proceeding, therefore, the language of the arbitration shall be agreed by the parties in the arbitration agreement. If the parties do not set forth the language of the arbitration, and the proceedings are administered by an institute, the language of the arbitration shall be determined according to the rules set forth by that institute. In any event, and on the issue of what language the award needs to be issued in in order to be enforced in Spain, the provisions set forth in question 1 under Civil Litigation shall apply.

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

Parties may request the Spanish Courts to declare preliminary measures in an arbitration proceeding before it commences or while it has already been started in accordance to the provisions set forth in article 722 of the Spanish Law of Civil Procedure and article 11 of the Spanish Arbitration Law.

As for the limitations, the Arbitration Law article 8.3 and the Law of Civil Procedure article 724 state that these measures have to be submitted before the tribunal entitled to execute the award or before the court where these measures shall be taken into effect.

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

Allocation of costs shall be a matter of agreement between the parties when executing the arbitration agreement. It is normal practice that each party of the arbitration bears its own costs. However, the arbitrators may set forth any provisions on the award regarding the costs of the proceedings. In practice, costs are commonly imposed in proportion to the success of each party's claims. The rules of the arbitral institutions and the arbitrators consider the parties' behaviour and collaboration when deciding on the apportion of the arbitration costs.

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

If the arbitration is administered by an arbitration institute, discovery rules shall be those applicable in the Rules. If the arbitration is "ad hoc" and the seat of the arbitration is Spain, the Spanish procedural rules may apply.

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

There are no provisions on the taking of evidence, and the parties shall stand by their agreement. In fact, the arbitration community regards the IBA Rules on Taking of Evidence for Commercial Arbitration as the general standards for taking of evidence in commercial arbitrations. Therefore, witness statements shall follow the provisions set forth by the parties, and in the event no agreements were made, by the instructions made by the arbitrators of the case.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

Settlement discussions can be conducted orally or in writing, however for the settlement to be binding, it shall be made in writing. Correspondence between counsels is privileged.

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

A domestic arbitral award is enforceable in the same terms as a final judgment of Spanish courts. In Spain, an international arbitration award shall be enforced through the proceedings of an exequatur after being reviewed and confirmed by a Spanish court. Annulment of an award is governed under articles 40-43 of the Spanish Arbitration Law. The circumstances under which an international arbitration award may be challenged or annulled are governed by these articles as well. Indeed one of the circumstances that is closely revised by our tribunals and which has aroused the most case law in our jurisdiction are due process guarantees. International arbitration proceedings are strictly requested to comply with due process guaranties in order to stand before the challenges in Spain. In turn, Spanish tribunals do not have jurisdiction to revise the merits of the arbitration. Since Spain is a signatory of the New York Convention, most of international awards are recognised and enforced in accordance with the aforementioned.

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Civil Litigation

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

   The language used in the Swedish court system is Swedish. Hearings will thus be held in Swedish and briefs shall be written in Swedish. However, depending on the circumstances it may be acceptable to submit documentary evidence in other languages, especially the other Scandinavian languages or English, since most judges are sufficiently familiar with those languages. If a party, witness or expert does not command the Swedish language, an interpreter will be provided by the court free of charge.

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

   There is no formal requirement to send a warning before bringing an action before a Swedish Court. However, it is practically always done as part of the Bar Association's rules of professional conduct. Such a warning need not be in any specific form and may even be oral. As a matter of business culture, it is very unusual in Sweden to sue without making some efforts to settle out of court first.

   The plaintiff may request interim measures during or prior to the initiation of the court proceedings (no warning needed). Relief may be granted in any form necessary to secure the plaintiffs interests until the case is decided. To obtain interim relief the plaintiff must show that the claim has reasonable merit prima facie and also post collateral for the possible damage caused by the interim relief.

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

   The court application fee is modest (presently about € 300) and flat in the sense that it does not depend on the size of the claim or the complexity of the case.

   As for the litigation costs, the courts apply the "English rule" meaning that the losing party will bear both parties' costs for legal counsel, evidence, etc. If the case is partially won/lost the court will typically allocate the costs to reflect the substantive outcome of the case. There are no statutory limits to the costs that can be claimed, but the court will may a general assessment of the reasonableness of the claimed costs in relation to size and complexity of the case.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   Sweden has no equivalent to the American discovery procedure and, generally, the parties must preserve documents/evidence themselves from their business dealings that they wish to rely on in court as evidence. However, upon request by a party the court may order anyone (including non-parties) to produce documents or objects that may have relevance as evidence in the case. But such a request production must specifically identify the document or object, and the requesting party also must show that the specific document/object really has relevance as evidence. "Fishing expeditions" are not allowed and it is possible to avoid production of documents, e.g. if they contain trade secrets.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?**

   The general rule is that all evidence must be presented at the main hearing. Depositions in advance are not taken and witnesses/experts are typically questioned at the main hearing by counsel on direct and cross examination. The judges will typically not question the witnesses or experts apart from minor questions for clarification. Written witness statements are not used unless a witness will not likely be available at the main hearing e.g. is terminally ill or similar. Experts will submit a written opinion beforehand and then be questioned at the hearing as well. A witness can refuse to answer questions, e.g. with reference to self-incrimination but cannot refuse to testify as such. Everyone has a duty to testify as a witness if summoned by the court.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Swedish parties will almost always make efforts to settle a dispute out of court. There is no particular format for these discussions, but it is done on a case-by-case basis. Settlement negotiations are often conducted by the parties themselves first and if discussions fail by their attorneys as a second round. Even after the case has been initiated, the court is compelled to make efforts to find a settlement and judges will often press the parties to find an amicable solution.

   Since almost any evidence is permissible in Swedish court, settlements offers may theoretically be invoked as evidence, but such tactics are frowned upon by judges and attorneys and while the Swedish Bar Association's ethical rules forbid members to disclose what has taken place during such negotiations, the information as such is not privileged.

7. What is the typical duration of a court procedure?

Case duration varies between different courts depending on their work load. In smaller courts the duration will typically be shorter than in Stockholm, and a first instance case may take anywhere between 9-18 months. Appeal proceedings are generally faster, around 6-9 months and leave to appeal is necessary.

Arbitration is considerably faster and under the SCC rules the award shall be rendered within six months from the formation of the tribunal, and under the SCC expedited rules within three months. However, in major cases those time frames cannot always be kept.

8. How can foreign judgments be enforced?

Within the European Union judgements are freely transferable, but as regards enforcement of judgements from outside of the EU enforcement requires an international agreement between relevant government and Sweden and that must be checked on a case by case basis.

In order to be enforceable the judgement must first be submitted to certain designated District Courts or the Svea Court of Appeals in Stockholm, which will not re-examine the substantive matters only formal requirements. Once the judgement has been approved it can be enforced through the Swedish Enforcement Agency (SEA) for example by seizing funds, incoming payments or property in Sweden.

Arbitration And Alternative Dispute Resolution

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

Mediation clauses are binding and enforceable, but in practice it is oftentimes hard to assess when a mediation requirement has been exhausted. Typically the burden of proof is low when it comes to showing that the negotiations have failed and arbitral proceedings can be initiated.

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

If the parties agree the court may appoint a mediator (typically a senior or retired judge) and order the parties to attend a mediation hearing. Apart from that there are mediation institutes at both the Stockholm Chamber of Commerce that have their own set of rules. Due to the Swedish culture of always trying to settle anyway, formalized mediation has not been a very prominent feature in the Swedish legal culture, but it is certainly growing in popularity.

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

Yes on both accounts. Arbitration is the preferred method for resolving commercial disputes in Sweden.

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

Both are used for domestic arbitral proceedings. In international cases the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) is highly regarded both for its own rules and as administrator of UNCITAL cases.

5. Which arbitration institutes are most popular?

The Arbitration Institute of the SCC which was established in 1917 and is recognized as a leading neutral centre for the resolution of international trade disputes, particularly East/West disputes (former Soviet Union/China). Approximately 50% of the arbitration cases administered are international disputes and parties from as many as 40 countries use the services of the SCC every year. In at least 120 of the current bilateral investment treaties (BITs) Sweden or the SCC is cited as the forum for resolving disputes between investors and the state and the SCC is currently the world's second largest institution for investment disputes.

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

As far as the parties agree, they may appoint anyone with legal capacity (not mentally incapacitated bankrupt etc.). If they cannot agree on the composition of the Arbitral Tribunal and have not specified anything else beforehand in the arbitration clause, the Arbitration Act provides that in ad hoc arbitral proceedings one arbitrator shall be appointed by each party and those two arbitrators will then choose a chairman. Under the Stockholm Chamber of Commerce rules the parties appoint one arbitrator each and the SCC appoints the chairman. In multi-party arbitral proceedings it may get more complicated and it is advisable to specify the procedure for forming the Arbitral Tribunal in the arbitration clause as far as possible.

7. In what language is an arbitration proceeding conducted?

The parties may choose any language in the arbitration clause. If the parties fail to agree the Arbitral Tribunal decides, in international arbitral proceedings that usually means English.

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

The same rules apply as for court proceedings, i.e., a plaintiff may apply to a court for interim relief during or prior to arbitration.

A party may also apply to the SCC Institute for an Emergency Arbitrator. The SCC will seek to appoint an Emergency Arbitrator within 24 hours of receiving the application and any emergency decision on interim measures shall be made not later than 5 days from the date upon which the application was referred to the Emergency Arbitrator. The emergency decision ceases to be binding if an arbitration procedure is not commenced within 30 days; alternatively the case has not been referred to an arbitrator or arbitral tribunal within 90 days, from the date of the emergency decision.

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

In ad hoc arbitration the fee to the Arbitral Tribunal is decided by the arbitrators themselves in the award and there are no limits on the arbitrator's fees. The Arbitral Tribunal will basically charge by the hour. In cases administered by the SCC Institute, the fees are related to the size of the claims adjudicated and therefore more foreseeable. The SCC webpage (www.sccinstitute.se) includes a calculator where parties can easily determine what their case will cost based on the amounts at stake. The SCC webpage is available in English Russian and Chinese. As for the allocation of litigation costs, an Arbitral Tribunal has a bit more freedom compared to a court but, typically the "English rule" will be applied (loser pays).

By way of example, the arbitration costs for a Euro 1,000,000 SCC Institute arbitration case - excluding attorneys' fees but including arbitrators, the SCC administrative fees and expected expenses - will be approx. Euro 85,000 (three arbitrators, normal rules); Euro 50,000 (one arbitrator, normal rules) or Euro 30,000 (one arbitrator, expedited rules).

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

On request, the Arbitral Tribunal may grant a party leave to apply to the local court for an order to produce documents or objects that may be of relevance as evidence. If such leave is granted the party may apply to the court under the same rules as in civil proceedings (see above).

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

The parties may agree on this, but if they do not the Arbitral Tribunal will decide on procedural matters. In domestic cases the Arbitral Tribunal will likely apply the same procedure in court (examination and cross-examination, see above), but in international cases the arbitral proceedings are usually more adapted top the parties. Written witness statements are very common in international arbitral proceedings in an effort to shorten main hearing and limit questioning to cross examination.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

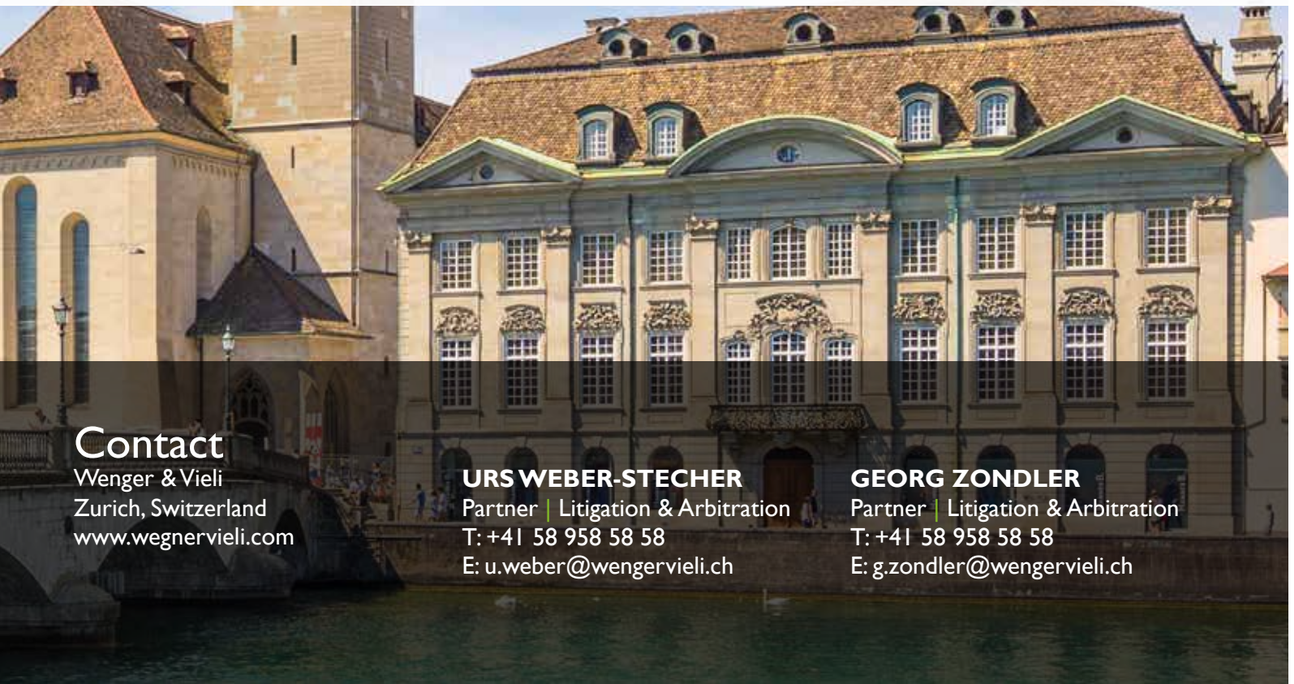
The same rules apply as in court (see above), but Arbitral Tribunal will typically not be act to settle a case.

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

Awards are enforced the same way as a Swedish court judgment. Foreign awards are enforceable under the 1958-New York convention as are Swedish awards. It may be noted that the Chinese government has long recognized awards rendered under the SCC Institute as enforceable.

An award may only be challenged on procedural grounds; if the dispute was not covered by a valid arbitration clause, if the arbitrators have exceeded their mandate, if the arbitration should legally not have taken place in Sweden, if the arbitrators were not correctly appointed or lacked legal capacity, or if the procedure was otherwise fundamentally flawed. But the award can then only be challenged if the procedural error affected the substantive. Historically, few challenge proceedings have been successful.

SWITZERLAND



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Civil Litigation

On 1 January 2011, the Swiss Civil Procedure Code (Zivilprozessordnung/ Code de procédure civile/Codice di diritto processuale civile, hereinafter "CPC") entered into force, replacing the respective cantonal laws on civil procedure of the 26 Swiss Cantons. However, the organization of the judiciary remains subject to cantonal legislation.

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

In general, the court proceedings in Switzerland are conducted in the official language of the respective canton where the court is located, i.e. either German, French or Italian. Should there be more than one official language, then the cantons decide on their own which language(s) is(are) to be used. For example, court proceedings taking place within the Canton of Zurich are held in German. Appeals procedures in front of the Swiss Federal Tribunal usually follow the language used in the lower courts. If someone involved in the proceedings does not speak the official language of the canton, translation/interpreter services may be called upon. Furthermore, a court may request translation of foreign language documents offered in evidence; quite often, translation of English documents is not necessary.

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

Before or after the start of (opdinary) proceedings, a party may request the court to grant interim measures ("vorsorgliche Massnahmen"), including ex-parte measures in case of urgency, according to Art. 261 et seq. CPC. An applicant must be able to show that his/her rights have been or are likely to be violated and that such violation threatens to cause not easily reparable harm. Under certain circumstances, for instance if the evidence is at risk, a prospective plaintiff may also have a right to preliminary procedures for taking of evidence ("*vorsorgliche Beweisabnahme*").

There is no requirement to send warning letters or similar notices to the other party before starting legal proceedings. It is, however, customary to contact the other party before issuing proceedings, in particular if both sides are represented by attorneys.

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

Court fees are regulated by cantonal legislation. When proceedings are initiated, the court will determine potential fees based on the value in dispute and require the plaintiff to advance those costs, failing which the case would not be admitted. A plaintiff with foreign domicile may also be required to post security for the indemnity to the defendant, if (i) so requested by defendant and (ii) no treaty or convention exists between Switzerland and the respective country which would free the residents of the contracting states from a granting such security in the other state (such as e.g. under the The Hague Convention on International Access to Justice from 1980, to which Switzerland is a party).

As a general rule, the losing party has to bear the costs of the court and to reimburse the winning party not only for the court fees but also for the attorney´s fees at a rate of the applicable tariff, which is governed by cantonal rules. Those rules are usually based on dispute value, but normally attorneys charge hourly rates for their services. In practice, the winner will often not be reimbursed for his full legal costs.

As an example, for a dispute value of Euro 1 million (or currently about CHF 1.1 million), court costs in Zurich could typically be about CHF 32,000 and party costs practically the same amount.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

Normally, each party submits the documents and other evidence in its possession when setting out the facts of the case to the court. The parties, as well as third persons, can be ordered by the court to produce all relevant documents. If a party fails to produce documents requested by the court, this may be taken into consideration in the evaluation of evidence and in the judgment. Compliance with disclosure duties may be refused for reasons such as the psychological integrity of the person or obligations/duties of secrecy (e.g. professional secrets), or if by the parties' involvement they would expose a closely related person to the danger of civil or criminal liability. If a disclosure duty exists, the storage medium is of little relevance. This means that e.g. emails, but also pictures or audio recordings etc. may have to be disclosed. In general, the produced documents are to be issued in "hard copy". Due to the fact that e.g., emails might easily be altered or forged, a mere print out may not be sufficient proof and additional evidence may be necessary.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?

The ordinary procedure for witness evidence is witness examination by the court, i.e., the witness is questioned by the judge only. Cross-examination is not possible. Additional questions by the parties have to be directed at the judge, they are not addressed directly to the witness. Should the court deem it unnecessary to interrogate the witness, it may obtain written statements instead. Any person has the civil duty to bear witness, and thus can be compelled by the court to attend a hearing and to give testimony. The duty of testimony can, however, be refused for the same reasons as referred to under question 4.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?

It is up to the parties and their counsels to decide whether and how to conduct settlement discussions, in or out of court, in writing or orally. If the settlement discussions and/or

correspondences are held with counsels, it is usually agreed that the content of such negotiations may not to be disclosed to a court. Before a plaintiff can file a claim with a court, compulsory conciliation procedures in front of a peace judge (*Friedensrichter*) must take place. There are numerous exceptions to the mandatory participation in this procedure, in particular if Swiss jurisdiction is based on the Convention of 30 October 2007 (or its predecessor, where still applicable) on jurisdiction and the enforcement of judgments in civil and commercial matters (hereinafter "Lugano Convention"). A judicial control of settlement procedures is rare. In case the parties reach a settlement, the document is handed over to the court for the record. However, the parties are not compelled to disclose the full content of the settlement to the court.

Settlement discussions in court find wide support throughout the Swiss judicial system, yet the customs of cantonal courts in this respect differ considerably. Zurich courts, for instance, regularly cite the parties to a settlement hearing after first legal briefs (statement of claim and response) have been exchanged and, after a first, non-binding assessment of the case by the court, try to get the parties to agree to a settlement.

7. What is the typical duration of a court procedure?

No rules exist as to how quickly a court must issue a judgment and there are also considerable differences from canton to canton. Civil and commercial cases are conducted mostly in writing and exchanges of legal briefs, two by each party, can take up to one year or more, in particular if a settlement hearing is held after the first exchange of legal briefs (see above at no. 6). If no witnesses are heard, a judgment may be expected within about 6 months after written procedures and hearings are over. Normally, a first instance procedure can be closed within maybe 18 to 24 months after filing of the claim. In complex cases, first instance procedures can last much longer.

Appeals procedures in front of the upper cantonal court are usually shorter and are often terminated within about a year and procedures before the Federal Tribunal normally last less than one year.

8. How can foreign judgments be enforced?

The recognition of a foreign judgment in Switzerland follows international treaties and conventions or, in the absence of these, national law. As mentioned above, regarding civil and commercial matters on a European level, the Lugano Convention is the most importance regulation. Subject to bilateral treaties with the origin state, other foreign judgments will be recognized pursuant to the rules set forth in the Federal Act on International Private Law of 1987 (hereinafter "IPLA"). Further, distinction must be made between the enforcement of judgments on monetary claims and non-monetary claims. Judgments regarding monetary claims are enforced within the framework of the Swiss Debt Enforcement and Bankruptcy Law, while judgments concerning non-monetary claims are enforced under the rules of the CPC. Enforcement under Debt Enforcement and Bankruptcy Law must always be made in Swiss Francs, even if the judgment claim is denominated in another currency.

Arbitration And Alternative Dispute Resolution

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

Mediation clauses and alternative dispute resolution clauses are considered binding upon the parties. Differently, the issue of enforceability of such clauses is highly controversial. In this context, the question arises whether mediation (and generally alternative dispute resolution) clauses are to be considered a condition precedent to state court procedures, or purely substantive in nature. In its decision from 15 March 15 1999, the Zurich Court of Cassation qualified an agreement not to sue (*pactum de non petendo*) as a question of substantial law, as opposed to a procedural requirement. The Swiss Federal Tribunal rejected an appeal against this decision on 23 August 1999. Therefore, an action before a court would not be rejected as inadmissible despite the existence of an ADR clause. The fact that mediation and conciliation proceedings are non-judicial may underline the substantive nature and consequently the non-enforceability of such an ADR clause. However, the issue remains disputed.

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

The new Swiss Civil Procedure Code explicitly addresses mediation procedures in Art. 213 et seq., according to which the organization and conduct of the mediation is subject to the parties agreement. The introduction and express establishment of mediation in the CPC indicates the growing tendency in business to resort to alternative dispute resolution mechanisms. However, in the current practice it is still rarely used.

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

Yes, arbitration clauses are considered to be binding upon the parties and are enforceable in Switzerland (NY Convention).

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

Both types of arbitration are frequently used. In international commercial disputes it is more popular to opt for institutional arbitration.

5. Which arbitration institutes are most popular?

The Swiss Chambers' Arbitration Institution (SCAI) administering arbitration proceedings under the Swiss Rules of International Arbitration (latest version of 2012) and the ICC are the most popular arbitration institutions used for international arbitrations located in Switzerland.

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

As part of the party autonomy, the parties are totally free in their choice of arbitrators, except for limitations introduced by the parties in the arbitration clause (e.g., specific qualification requirements) and the limitations deriving from the laws (and institutional rules) on the independence of arbitrators.

7. In what language is an arbitration proceeding conducted?

Arbitration proceedings can be conducted in any language the parties agree to.

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

In international arbitration, the arbitral tribunal has the parallel power to state courts to order interim measures. Since the enactment of the new CPC in 2011, also the arbitral tribunals in domestic arbitration proceedings are vested with the same competencies as the tribunals in international arbitrations. Still, only the state courts have coercive power.

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

The question of who bears the costs of arbitration may be subject to the parties' agreement. Absent such an agreement, it lies in the arbitral tribunal's discretion to allocate the costs of arbitration. In general, taking into account to the specific circumstances of the case, the costs for the arbitration proceedings will be borne by the unsuccessful party.

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

Disclosure and document production is rather formalized in the sense that the requesting party must show credibly that (i) the requested documents exist and (ii) that the opposing party is in possession of these documents and (iii) that these documents are of relevance for the decision in the case at hand; i.e., "fishing expeditions" are prohibited. The parties are free to determine the applicable rules to the arbitration proceedings, including the rules on the taking of evidence. In the absence of an agreement by the parties, in institutional arbitration, the rules of the relevant institution apply (e.g., Art. 24(3) Swiss Rules) and the arbitral tribunal may further determine which rules shall be applied for the evidence procedure. Often the IBA Rules on the taking of evidence in international arbitration are chosen as a source of reference.

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

The procedure for witness evidence is not explicitly regulated in Switzerland. It is subject to the parties' agreement. Generally, written statements are very common, as well as a subsequent examination of the witness, usually starting with cross-examination and followed by re-direct and re-cross-examination; witness conferencing usually conducted by the arbitral tribunal is also often used.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

In line with the above mentioned, the lex arbitri does not set forth specific provisions on the conduct of settlement discussions. Therefore, the parties are free to decide on whether they wish to have settlement discussions. Like other continental European countries, Switzerland traditionally is in favour of settlement efforts at any stage of the proceedings depending on the circumstances of the actual case

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

An arbitral award rendered in Switzerland enjoys the same status as a final judgment of a Swiss Court. In Switzerland a domestic arbitral award may be enforced according to Art. 381 et seq. CPC in conjunction with Art. 335 et seq. CPC. The parties may request a declaration of enforceability, which however only has declaratory character. Foreign arbitral awards will be enforced in Switzerland according to the New York Convention (Art. 194 IPLA). According to Art. 393 CPC, as well as Art. 190(2) IPLA, the arbitral award can be challenged only:

- If a sole arbitrator was designated irregularly or the arbitral tribunal was constituted irregularly.
- If the arbitral tribunal erroneously held that it had or did not have jurisdiction.
- If the arbitral tribunal ruled on matters beyond the claims submitted to it or if it failed to rule on one of the claims.
- If the equality of the parties or their right to be heard in an adversarial proceeding was not respected. In international arbitration, an award may further be challenged if the award is incompatible with Swiss public policy (ordre public), as set forth in Art. 190(2) lit. e IPLA. Similarly, according to Art. 393 CPC in domestic arbitration a party may further challenge the award:
- If the award is arbitrary because it reposes on obviously erroneous findings of facts or on a manifest violation of law or equity (lit. e).
- If the designated remunerations and expenses of the arbitrators are apparently too high (lit. f).

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Civil Litigation

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

   Turkish is the official language of the court, and the language used in hearings is Turkish. In case persons present at the hearing who need to actively participate (i.e., the defendant(s), witnesses, etc.) are not able to speak Turkish, a sworn interpreter is summoned by the court.

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

   There are no official pre-trial phases/proceedings in Turkey. Although it is not a requirement, the general practice in Turkey is to send to the future defendant (respondent) a warning letter through a Notary Public's office, before commencing legal action. The notice merely serves to put the other party on notice, and in cases where the action comprises a monetary claim, it could also serve as a default notice. The recipient is under no obligation to respond to such letter/notice. Failure to respond will often be deemed to be a denial of the allegations made therein.

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

   There are three types of legal costs: court fees, legal expenses (court-appointed expert fees, service fees, etc) and statutory attorneys' fees. The Turkish Code of Charges determines the ratios and amount of court fees and legal expenses. The court fees are determined in accordance with the value in dispute, based on the applicable fee-unit. Statutory attorneys' fees are calculated by multiplying the applicable fee-unit according to the value in dispute with the statutory number of fee-units for the attorney's specific activities. These are determined by the court based on the above formula, irrespective of the time spent on a matter. As a general rule, the party against whom a judgment is rendered has to bear the court costs and reimburse the opponent's statutory court fees (regardless of whether the opponent actually paid statutory or negotiated fees). In other words, the prevailing party will not be able to recover his/her actual costs, but rather only the statutory costs.

   The filing fee is calculated based on the claim in dispute. Therefore, the filing fee for a dispute of Euro 1 million would approximately be Euro 17,100. There would also be some additional expenses during the course of the proceedings, such as expert fees, costs for invitation of witnesses, service fees and some additional charges. These would approximately cost between Euro 2.000-3.000. If the plaintiff wins the case, the court orders this amount to be paid to plaintiff, by the defendant, together with the statutory lawyer's fee.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   In principle the parties are not forced to submit any evidence against their interests. However if this evidence is required by the court and the disclosing party refrains to submit such evidence then this evidence shall be deemed as an evidence against its interest. Currently there is no general practice in Turkey to disclose the documents electronically.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?**

   The usual process is witness examination. The witness is questioned by the judge; cross-examination is not available. The parties are allowed to put their questions to the judge, who then, at his discretion, asks the same of the witness. The witnesses responses are summarized by the judge and put on record. Verbatim recording is not available.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlement discussions can be conducted orally or in writing, in or out of court. But the final settlement should be in writing for purposes of meeting the burden of proof. This applies whether the parties are represented by lawyers or directly by the parties involved. There are no restrictions. If the settlement discussions are conducted out of court, there is no obligation to disclose the correspondence to the court. If a settlement is reached out of court, the plaintiff may chose not to continue with the proceedings, by failing to appear. In this case, the court would temporarily remove the case from its docket for two months, during which time the plaintiff may renew the case. In the absence of a renewal, the case is automatically dismissed at the end of the two month period. This is referred to as the abandonment method.

   The proper way to record a settlement would be for the same to be submitted to the court, and to ask for an order that incorporates the settlement. Unlike the abandonment method explained above, this would result in a court order that provides for court fees, charges, etc. For this reason, parties that settle a claim often choose the abandonment method over the settlement/waiver method.

7. **What is the typical duration of a court procedure?**

   The duration of the court procedure differs according to the complexity of the case and workload of the courts. However, in general, a court procedure of a civil or a commercial dispute would take 1,5 to 2 years, at first instance, whereas the appeal stage would normally take 1 to 1.5 years.

8. How can foreign judgments be enforced?

A foreign judgment can be enforced in Turkey in accordance with the provisions of Turkish Private International Law, known by its popular name: MÖHUK. The enforcement of judgments in civil matters rendered by foreign courts, which judgments have become final in accordance with the law of that country are contingent upon the entering of an order for enforcement of said judgments by the Turkish court of proper jurisdiction. The Turkish court does not analyse the relevant judgment on its merits, but rather on procedure. The number of defences that the relevant party can raise are limited: it can either allege that the conditions for enforcement have not been fulfilled; or that an event has occurred that rendered it impossible to enforce the foreign judgment. The conditions for enforcement are as follows:

- An agreement must exist between Turkey and the relevant country that provides for reciprocal enforcement of judgments by the courts of one other; or there must be codified law or case law in the relevant country that allows a Turkish court judgment to be enforced in that jurisdiction.
- The judgment should be one that is not within the exclusive jurisdiction of Turkish courts.

Arbitration And Alternative Dispute Resolution

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

The Turkish Mediation Law is still being reviewed by the legislature. Currently, Turkey does not have any specific statutory procedure for mediation. Mediation clauses can be stipulated in commercial contracts, but this does not limit the right to submit a dispute to the courts.

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

See above.

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

Arbitration clauses are binding and enforceable if they meet the requirements specified in Articles 407-444 of the Turkish Code of Civil Procedure ("HMK").

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

Both ad hoc and institutional arbitration are available in Turkey.

5. Which arbitration institutes are most popular?

ITO (Istanbul Chamber of Commerce)
ATO (Ankara Chamber of Commerce)
ICC UNCITRAL

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

There is no restriction in terms of the number of the arbitrators, except that there must be odd number of arbitrators. According to Article 415 of the HMK, the parties are free to determine the number of the arbitrators. In the absence of an agreement, a panel of three arbitrators is appointed. Each party appoints one arbitrator, who then appoint the third arbitrator, who will act as the chairman of the panel.

7. In what language is an arbitration proceeding conducted?

The parties are free to choose the language to be used in the arbitration proceedings.

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

There are no pre-arbitration phases/ measures required under Turkish law. If institutional arbitration (such as the ICC) has certain requirements, these would apply. It is not uncommon for a party to notify the other in writing through a notary public that it intends to submit a matter to arbitration, though this is not a requirement. Often, the written notice also serves to notify the other party of the election of an arbitrator, and as an invitation for such other party to appoint its own arbitrator.

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

The decision on the costs is subject to agreement. If no agreement has been made by the parties, the parties bear the cost, as determined by the tribunal, in ratio of their fault, which is also determined by the tribunal. In respect of International Arbitration Fee Tariff, the arbitrators' rates for the year 2016 are as follows :

Single - 3 or more arbitrator(s) / Claim Amount (TRL) 0 – 500,000 5% 8% ; 500,000.01 – 1,000,000 4% 7% ; 1,000,000.01 – 3,000,000 3% 6% ; 3,000,000.01 – 5,000,000 2% 4% 5,000,000.01 – 10,000,000 %5 2% ; 10,000,000 and above 0,1% 0,2%

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

The disclosure of documents must be dealt in the agreement.

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

There is no special provision of law with regard to witness evidence in arbitration; the general provisions of the Civil Procedure Law, also known as HMK, apply.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There are no statutory provisions for settlement in terms of arbitration procedure; general provisions apply. Settlement discussions can be conducted orally or in writing. As is the case with court proceedings, the final settlement should be in writing in order to meet the burden of proof. If the parties are represented by lawyers, settlement negotiations can also be carried out by said lawyers, or by any other representative. The settlement agreement should be disclosed to the arbitrators if it is to be used to end the arbitration proceedings. Other than that, its confidentiality is subject to the will of the parties, and thus to its own terms.

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

Article 60 of MOHUK states as follows: "[…] Foreign arbitration awards that are final and enforceable [in that jurisdiction] can be enforced in Turkey. The enforcement of a foreign arbitration award must be requested in writing from the Asliye [civil] court located at a jurisdiction that was agreed upon by the parties. In the absence of such agreement between the parties, the court located at the place of residence of the party against whom the award was rendered, has jurisdiction. If [such place] does not exist, the court located at the place where any assets (which can be made subject to enforcement) are located, has jurisdiction." Based on the foregoing:

- Only "final" foreign awards can be enforced in Turkey.
- Only awards that are enforceable in the jurisdiction where they have been rendered can be enforced in Turkey.
- Reciprocity is required.
- The Turkish court's review of the award is limited to the requirements of enforceability.
- Even if a foreign award is final and enforceable in the jurisdiction where it was rendered, and further even if there is reciprocity between Turkey and the State where the award has been rendered, the Turkish court can deny enforcement of such foreign arbitration award under certain circumstances that are set forth in Article 62 of MOHUK.

UNITED ARAB EMIRATES

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Civil Litigation

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

   All court proceedings are in Arabic. All documents must be submitted in Arabic and the party submitting non-Arabic documents must submit a version translated into Arabic by a legal translator. Interpreters are provided by courts who have a list of registered interpreters.

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

   In all emirates except Dubai, when a case is filed it is filed before the Conciliation Committee. The Conciliation Committee's role is to try to settle the dispute amicably. If no settlement can be reached, the dispute is referred to court. A warning letter or a legal notice is not a prerequisite for filing a case except for very specific cases.

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

   The cost of civil and commercial proceedings differs from one emirate to another. In Dubai, court costs are as follows:

   - Court of First Instance fees are a percentage of the claimed amount capped at AED40, 000
   - Court of Appeal fees are capped at AED20, 000
   - Court of Cassation fees depend on what requests are made and do not exceed AED 10,000.

   All Court fees are borne by the losing party. The losing party bears the professional fees as well, however, courts do not award more than AED 3, 000 to AED 5,000 as a maximum for all stages as professional fees.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   Rules of disclosure as applied in the United States and common law jurisdictions are not applicable in the UAE. Pursuant to the UAE's Civil Procedures Code, both parties can submit documents supporting their claims. However, there are certain conditions which must be considered in order for a document to stand in court. As for electronic disclosure of documents, again rules of disclosure do not apply in the UAE. However, electronic documents such as emails can be submitted in court to support a party's claims.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?**

   At any stage of a case before a judgment, both parties can request the court to notify a witness to attend and give a statement on an examination/ cross examination basis. Witness evidence is not allowed to refute the contents of written evidence except for very specific cases. The court has the sole and absolute authority to oblige a witness to attend and give a statement or to dismiss the witness' statement.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?**

   Settlements are only binding if executed in writing. Settlements may be disclosed to the court.

7. **What is the typical duration of a court procedure?**

   The duration of any court action will depend on many factors such as complexity of the dispute, notification procedures and whether or not the court refers the matter to an expert to examine the matter. As an estimate, usually the duration is as follows:

   Court of First Instance: 8- 14 months

   Court of Appeal- 3-8 months

   Court of Cassation: 3 to 12 months

   Additionally, the winning party must also take into consideration the execution of the judgment, which can also be a lengthy process.

8. **How can foreign judgments be enforced?**

   Foreign judgments are enforced/ executed by filing a case before the Court of Appeal with the same procedures for filing a normal case (civil or commercial claims). The provisions relating to enforcement of foreign judgments are contained in articles 235 to 237 of Federal Law number 11 of 1992, known as the Civil Procedures Code (the "CPC"), and are applicable provided that:

   - The UAE courts do not have jurisdiction over the dispute and the court that issued the judgment does have such jurisdiction;
   - The parties have appeared in the legal proceedings;
   - No further judicial appeal or challenge is possible in the country where the judgment was issued (the judgment is final); and
   - The foreign judgment is not in conflict with any order or judgment previously issued in the UAE and does not contradict the public order or morals of the UAE. However, the most significant obstacle to enforcement has traditionally been article 235(1) of the CPC which requires reciprocity of enforcement between the respective countries. In other words, foreign judgments could only be enforced in the UAE on the same conditions as applied in the foreign country for enforcement of judgments issued in the UAE. In practice, this meant that, unless the foreign country had entered into a bilateral agreement with the UAE, or was a party to a common multilateral convention with the UAE, the relevant provisions of CPC would be of no assistance and the enforcement would be denied.

Arbitration And Alternative Dispute Resolution

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

Mediation clauses in commercial contracts are binding and enforceable to the extent that they must be complied with as a precursor to further dispute resolution processes. In circumstances where a dispute resolution clause refers to arbitration/litigation being preceded by mediation, the claimant party must demonstrate at least that an attempt to refer the dispute to mediation was made. Any failure in this regard may result in the arbitration/litigation being considered as premature.

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

Mediation is unpopular in the UAE as it is not a binding process and the parties cannot be required to settle their disputes. As a result, few institutions in the UAE offer mediation services; those which do are:

a. the Dubai Chamber of Commerce and Industry; and

b. the Dubai International Financial Centre ("DIFC") in association with the London Court of International Arbitration ("LCIA"), which combined to create the DIFC/LCIA Arbitration Centre in Dubai.

The procedure for mediation will depend upon the agreement of the parties and the rules of the institution offering the mediation services.

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

Arbitration clauses are binding and enforceable in commercial contracts except for commercial agency disputes, which include distributorship disputes. Such disputes are not arbitrable, pursuant to article 6 of Federal Law No 18 of 1981 (as amended), known as the Commercial Agency Law, which states that resolution shall be achieved through the UAE courts and that no effect shall be given to any agreement to the contrary.

As a general rule, where a corporate entity is a contractual party, only its general manager will be authorised to execute an arbitration agreement on its behalf. If the arbitration agreement is signed by a person who is not specifically empowered to agree to arbitration, then it may be considered as invalid.

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

Both ad hoc and institutional arbitration are used in the UAE, however, the use of institutional arbitration is more common. Where an arbitration is administered on an ad hoc basis, this may require the involvement of the UAE courts in certain circumstances. An example of the court's involvement being required is where one of the parties refuses to appoint an arbitrator, in which case the court can make the necessary appointment.

5. Which arbitration institutes are most popular?

The most prominent arbitration centres in the UAE are:

a. the Dubai International Arbitration Centre (DIAC)

b. the DIFC/LCIA Arbitration Centre in Dubai; and.

c. the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC).

In all cases the parties are free to agree upon an arbitral institution, regardless of their location.

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

Whilst many arbitration agreements contain details of the method of appointing the tribunal, in reality the rules of the agreed arbitral institution will override this. Institutional rules often permit the parties to nominate arbitrators who will then be appointed by the institution itself, provided that the arbitrator is independent of the dispute and the parties. In ad hoc proceedings, the parties themselves will appoint their chosen arbitrators who will then appoint a chairman in accordance with the arbitration agreement. Where the parties cannot agree upon a sole arbitrator, or the party appointed arbitrators cannot agree upon a chairman, the appointment would be carried out by the court upon the application of one of the parties in accordance with article 204(1) of the Civil Procedures Code (the "CPC"). The court's appointment cannot be challenged (article 204(2) of the CPC).

7. In what language is an arbitration proceeding conducted?

Commonly, under most UAE based institutional rules, unless otherwise agreed by the parties, the initial language of the arbitration shall be the language of the arbitration agreement. Where the arbitration is administered by the UAE courts, Arabic may be imposed as the language of the arbitration, in the absence of any express agreement to the contrary.

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

The availability of pre-arbitration measures will depend upon the arbitral rules applicable to the proceedings. Where the relevant arbitral rules provide for preliminary measures to be applied by the tribunal, these can only be enforced by application to the UAE courts. Whilst a tribunal's directions on preliminary issues may support any application to the court, in practice it may be more expedient to bypass the tribunal and file an application to the court directly, with evidence that the application relates to an ongoing arbitration process.

The process of applying to the UAE courts for interim relief, and the subsequent formalities in the event the application is successful, are complex in nature. As a result, where any requirement for pre-arbitration measures is identified, advice must be obtained from UAE qualified advocates as soon as possible.

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

The tribunal has the ultimate discretion over apportionment of their fees and the other costs of the arbitration, although either party may challenge the decision in this regard before the court when it comes to validating the award. In the UAE, the tribunal has no jurisdiction to award legal costs, other than with the consent of the parties. Even, in such instances however, whether tribunals decide to exercise such power very much depends on their cultural background, with tribunals of middle eastern origin tending to shy away from awarding legal costs and preferring the application of high interest rates (often in the region of 9%) on sums awarded, in lieu of monetary compensation for a given party's success on the merits.

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

Rules of disclosure as applied in common law jurisdictions are not applicable in the UAE. Notwithstanding this point, the parties may agree to apply rules which provide for disclosure, such as the IBA Rules on the Taking of Evidence in International Arbitration.

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

The procedure will be as set out in the applicable arbitral rules or as agreed between the parties in the terms of reference. Where witness evidence is adduced, the witness will usually be required to attend the hearing for examination failing which that witness' written statement may be disregarded. Witnesses must swear an oath in relation to their evidence, in accordance with Article 211 of the CPC.

Where the DIFC is chosen as the seat of arbitration, the proceedings will not be subject to the CPC, but to the DIFC Arbitration Law (Law No. 1 of 2008) ("DIFC Arbitration Law"), which does not mandate that witnesses must swear an oath in relation to their testimonies.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?

There is no standard practice in the UAE with regard to settlement negotiations, which may be conducted by the parties, their legal representatives, or both. The concept of "without prejudice" communications is not recognised in the UAE, as a result there is no legal preclusion to disclosing settlement correspondence to the tribunal. However, the background of the tribunal should always be considered before any without prejudice correspondence is adduced, as arbitrators with a common law background may react negatively to such conduct.

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

Enforcement

A domestic award becomes enforceable once it is validated by the Court of First Instance, provided that no application for nullification of the award is made to the superior courts. The UAE courts operate under a triple tiered system culminating with the Court of Cassation. Consequently, where an award is challenged, it is unlikely to be enforced before the Court of Cassation issues its final judgment ratifying the award.

As an alternative, enforcement of an arbitral award may also be pursued before the DIFC courts, which can issue an order of recognition and enforcement, regardless of whether there is any nexus between the parties/dispute and the DIFC. The order of the DIFC courts may then be enforced outside of the DIFC, through the UAE courts. Using the DIFC courts for the ratification of arbitral awards may be beneficial as there are only two levels of court which may result in a more expedient final result. An additional benefit is that the proceedings will be conducted in English.

Challenging and Annulling

The general rule is that arbitrators' rulings may not be contested in any way (article 217(1) CPC). However, article 216(1) of the CPC sets out the circumstances whereby an application for the annulment of an award may be made.

In practice the main grounds for challenging an award are that the arbitration agreement was invalid, or that procedural irregularities occurred in the process which undermined the integrity of the arbitration.

Where the enforcement proceedings are heard before the DIFC courts, the grounds for challenging the ratification of an award are located in Article 44 of the DIFC Arbitration Law. The grounds listed Article 44 are based on those specified in the UNCITRAL Model Law on International Commercial Arbitration 1985.

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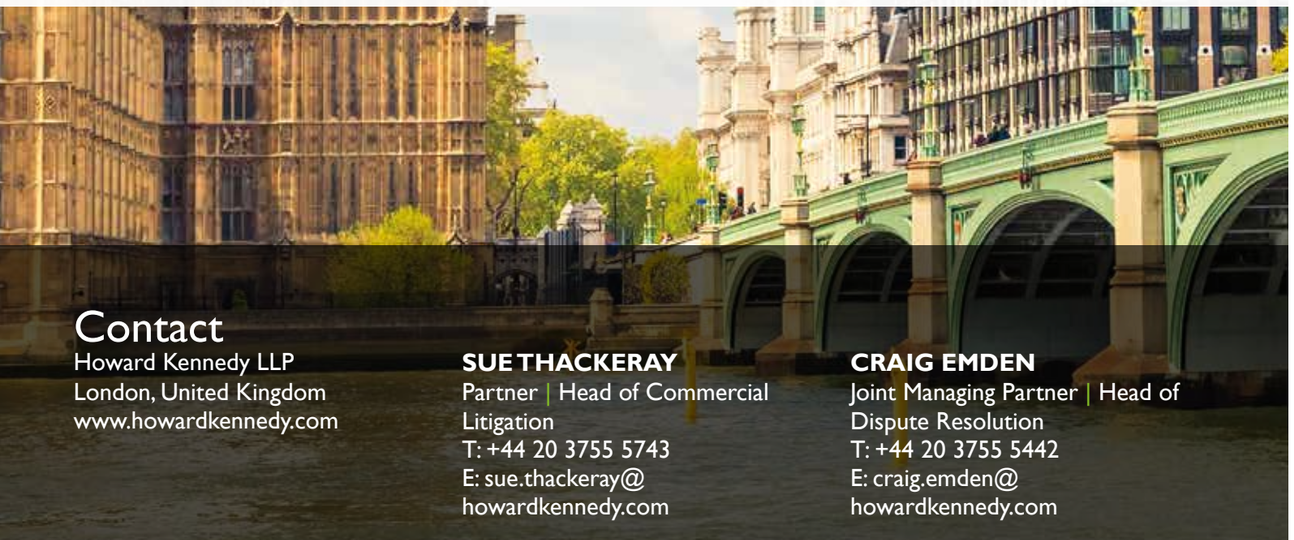

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Civil Litigation

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

The official language used in court is English. An interpreter will be provided by the Courts Service for deaf and hearing impaired litigants. If the case is privately funded, you must supply your own foreign language interpreter. The Courts Service will provide a foreign language interpreter if a person involved in the proceedings:

- Cannot speak or understand the language of the court well enough to take part in the hearing.
- Cannot get public funding.
- Cannot afford to privately fund an interpreter, and has no family member, or friend, who can attend to interpret for them and who is acceptable to the court.
- Or where the Judge directs that an interpreter must be booked as the case cannot proceed without one.

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

The rules state that the parties to a dispute should, before starting proceedings, exchange sufficient information about the matter to allow them to understand each other's position and make informed decisions about settlement.

There are pre-action protocols for different types of disputes (for example, personal injury, construction and engineering, clinical negligence and professional negligence). However, even in cases not covered by the protocols, the court expects the parties to exchange information and attempt to resolve the claim without litigating.

Additionally, parties should consider whether negotiation or some other form of ADR might enable them to settle their dispute without commencing proceedings. If the court concludes that proceedings were commenced precipitously, then it can mark its disapproval with an adverse costs award at the appropriate time.

The claimant should send a "Letter of claim" to the defendant and the defendant should be allowed to respond within a "reasonable period of time." This can be up to three months in complex cases, but is usually 14 to 28 days.

However, where there is a potential limitation period which may expire if proceedings are not issued, a party will not be criticised for issuing a "protective" claim if a "standstill agreement" cannot be agreed.

In certain cases (e.g., fraud) a party can apply to the civil court without telling the intended defendant(s) to obtain powerful orders directed towards preserving assets (freezing orders) or preserving evidence (search and seizure orders). The court can supplement such orders with orders requiring the delivery up of passport(s) and prohibiting them from leaving the jurisdiction. Such a without notice application may be obtained quickly and is intended to give the defendant(s) no opportunity to dissipate assets or destroy evidence.

A party may apply for pre-action disclosure of documents, where disclosure before proceedings have started is desirable in order to dispose fairly of the anticipated proceedings, assist the dispute to be resolved without proceedings, or save costs. Such an application would be made on notice to the prospective defendant and should be preceded by a request in correspondence.

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

Court fees are regulated by Her Majesty's Courts Service. A variety of court fees are payable within the civil and family courts and these are set out in Statutory Instruments.

Each party is primarily responsible to pay their own lawyer. Many lawyers charge for their services on the basis of hourly rates.

The general principle is that the loser pays the winner's costs. However, in practice, the winner will often only be awarded a percentage of his actual legal spend (a rule of thumb is 60 percent to 70 percent) because the loser can challenge the proportionality and reasonableness of the work (and the cost of that work) done by the winner's lawyers in separate costs proceedings called "assessment."

Conditional Fee Agreements ("CFA") and contingency fee agreements for costs may be available, depending on the dispute.

For example, assuming a dispute value of Euro 1 million, the Court issue fee is £10,000. As set out above, the general principle is that the loser pays the winner's legal costs, where they are proportionate and reasonably incurred or reasonable in amount. The actual costs will generally depend on the approach taken by the parties to the litigation, the amount of evidence and the issues involved.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

Ordinarily, parties will be required to disclose documents which assist or harm the case of any of the parties to the dispute (including their own case).

The opponent has the right to inspect original documents and/or take copies of disclosed documents.

Privileged documents must be disclosed (i.e., the fact of their existence revealed) but the content need not be revealed. Commercially sensitive information can be blanked out if it is irrelevant and it would not be appropriate to disclose it.

A "document" includes all media on which information is recorded - this includes electronic information, and can extend to deleted data and metadata. Parties are expected to make electronic disclosure. The parameters of the extent of electronic disclosure can be decided by the court, if the parties cannot agree.

It is open to a litigant to apply to the court for "specific disclosure" if it believes that particular documents exist that should be disclosed, but the other side has refused disclosure.

A party is entitled to any document that is referred to or identified in a statement of case (also referred to as a pleading) or witness statement or affidavit.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross- examination)? Can a witness be compelled to attend to give evidence?

The general rule is that any fact which needs to be proved by the evidence of a witness is proved by written evidence at an interim application (CPR 32.2(1)(b)) and by oral evidence at trial (CPR 32.2(1)(a)). In both circumstances a witness statement should be served in advance.

In interim applications the witness will usually not be called to give oral evidence and the hearing will proceed on the basis of the written evidence and oral submissions.

At trial the witness statement sets out the "evidence in chief" of the witness. Oral evidence from the witness will be generally limited to the replies given under cross-examination by the opposing party at trial.

A summons requiring a witness to attend court to give evidence can be issued:

- In circumstances when a witness is reluctant to appear.
- Where a witness needs to satisfy an employer they need time off work.
- Where a witness feels their relationship with a party will be compromised if they give evidence without being compelled.
- To ensure a busy expert witness will be available to give evidence at trial.

It is not possible to serve an effective witness summons on a person outside the jurisdiction.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e. may not be disclosed to the court)?

The parties are free to decide how they conduct settlement discussions and negotiations.

Many disputes are resolved through the process of lawyer to lawyer negotiation and agreement through a combination of oral and written exchanges.

Negotiations are almost uniformly conducted "without prejudice" (i.e., without prejudice to the position that is being adopted in the litigation) and as such are protected from disclosure in the litigation process if no agreement is reached.

If an agreement is reached, the without prejudice communications are no longer privileged.

A party may refer to without prejudice communications if there is a dispute as to whether settlement was actually reached.

It is possible to negotiate on a "without prejudice save as to costs" basis whereby communications can only be revealed (unless the parties agree otherwise) at the conclusion of the litigation, when the court considers the question of costs.

7. What is the typical duration of a court procedure?

The typical duration of court proceedings is 12 to 18 months, depending on the court used. The English Courts are trialling a speedy, 10 month procedure for suitable cases.

8. How can foreign judgments be enforced?

There are three regimes for the enforcement of foreign judgments in England and Wales, depending on where the judgment originates from:

- The European regime – judgments from EU and certain EFTA countries.
- The statutory regime – judgments from most commonwealth countries.
- The common law regime – judgments from other countries, such as the USA.

There is a simplified mechanism for the recognition and enforcement of judgments of courts in EU member states, making the enforcement procedure less time consuming and costly.

Under the statutory regime, an application for recognition of the foreign judgment must be made, after which, if registered, it is enforceable as an English judgment.

Under the common law, fresh proceedings must be commenced. The judgment creditor will generally be able to obtain summary judgment in those proceedings on the basis that there is no defence to the claim. Thereafter, it is enforceable as an English judgment.

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Arbitration And Alternative Dispute Resolution

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

   Mediation clauses are binding and enforceable.

   It should be noted that mediation itself differs from litigation and arbitration in that the parties cannot be forced to settle.

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

   The parties can agree among themselves with the mediator on the format. Typically, the parties commence by exchanging position papers in advance of the mediation. During the mediation, the mediator meets privately with each party to discuss the problem confidentially. This allows each party to be frank with the mediator and have a realistic look at their case in private, without fear that any weaknesses discussed will be communicated to other parties. The mediator shuttles back and forth seeking to identify and narrow the issues between the parties. The mediator can call plenary sessions where all the parties meet around the table to discuss their differences.

   Generally the parties themselves should attend the mediation. They are usually accompanied by their lawyer. In the case of a party that is a company or association, its representative will need to have authority to reach a binding settlement at the mediation.

   It is a condition of mediation that the parties will treat all discussions and documents as confidential and "without prejudice."

   Mediation is an accepted method of resolution, but can be expensive because of the need to prepare in advance, and the parties have to pay for the mediator, as well as for their own advisers.

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

   Arbitration clauses are binding and enforceable if in writing.

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

   Institutional arbitration is generally preferred due to reputation, familiarity with proceedings, understanding of costs and fees and the convenience of the process.

   However, corporations in sectors, such as shipping, construction or commodities, that have a tradition of arbitration, often adopt ad hoc arbitration.

5. **Which arbitration institutes are most popular?**

   The main institutions used are:

   - The London Court of International Arbitration("LCIA")
   - The International Chamber of Commerce ("ICC")
   - The London Maritime Arbitration Association (LMAA)
   - The LCIA and ICC are regarded as the leading international arbitral institutions because of the volume of cases and the significance of disputes heard.

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

   The parties are able to determine the number of arbitrators and their identities. If parties fail to agree, the arbitration clause may provide for powers of appointment to be exercised by a third party, for example, the president of the Law Society.

7. **In what language is an arbitration proceeding conducted?**

   Usually English, although the parties may agree on the language to be used.

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

   Some institutional arbitration rules permit the appointment of an emergency arbitrator before the arbitration is commenced, in order to obtain an order or an interim award for interim measures, pending the full hearing of the dispute and the final award. Under English arbitration law, a tribunal has power to make orders requiring a party to preserve evidence or property.

   The English Arbitration Act 1996 recognises that in some cases, the English courts can intervene to support the arbitral process, by making orders for the preservation or sale of evidence or property, or granting a freezing injunction or other form of injunction. It may do so only where the tribunal has no power or is unable for the time being to act effectively. Save for cases of urgency, the court may intervene only with the permission of the tribunal or the agreement of the parties.

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

   The parties are free to agree how costs are to be allocated between them, subject to two exceptions:

   - Section 60 of the Arbitration Act 1996 provides that an agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen. This means that parties may not provide in the arbitration agreement itself that each party shall pay its own costs in any event, nor provide that one party shall pay the other party's costs whatever the outcome of the arbitration. This is so as not to deter either party from commencing arbitration proceedings because it will be liable for its own costs in any event.
   - The tribunal will not uphold an agreement where the parties have agreed an irregular allocation or quantification of costs.

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

    Disclosure is subject to agreement between the parties, or the institutional arbitration rules adopted. It is generally less extensive than disclosure in English court proceedings. The requirements of confidentiality restrict the disclosure of documents produced during or for the purposes of arbitration.

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

    The procedure for witness evidence is subject to agreement between the parties, or the institutional arbitration rules adopted. Witness evidence is generally given by witness statement and subsequently by cross examination at the hearing.

12. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e. may not be disclosed to the Arbitrator)?**

    There is no particular rule as to how settlement discussions are usually conducted and they can be either oral, written, between the parties direct or through their representatives or any combination. The parties can reach agreement as to whether the settlement correspondence is privileged, or if it can be disclosed to the arbitrator.

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

    An Arbitration Award is equivalent to a judgment in litigation. It is "final and binding" in that it provides a final determination of the dispute, subject only to closely defined statutory rights of challenge. With permission of the High Court, an English award may be enforced in the same manner as an English court judgment or order.

    In respect of awards from a foreign seat, England is a signatory to the New York Convention, which requires courts of contracting states to give effect to an arbitration agreement, and recognise and enforce awards made in other states, subject to specific limited exceptions.

    The time limits for appealing, or challenging, an English award are strict. Normally an application must be made within 28 days of the date of the award (although the position is different if any other arbitral process of appeal or review exists). An award may be appealed on a point of law, assuming this right has not been excluded by the arbitration agreement or the institutional arbitration rules, as most do. An award may be challenged for serious irregularity, or on the basis of lack of substantive jurisdiction, neither of which grounds can be excluded.