



The Legal 500 Country Comparative Guides

Bulgaria

INTERNATIONAL ARBITRATION

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Bulgaria.

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BULGARIA

INTERNATIONAL ARBITRATION



1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The arbitration in Bulgaria is mainly governed by the International Commercial Arbitration Act (ICAA). The types of disputes which could not be subject to arbitration are set-out in the Civil Procedural Code (CPC). The statutory legislation is supplemented by the Rules of Procedure adopted by each relevant arbitral institution.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Bulgaria is a contracting state to the New York Convention (NYC). Bulgaria made one reservation – that it shall apply the Convention to recognition and enforcement of awards made on the territory of another contracting State. Regarding awards made on the territory of non-contracting States it will apply the Convention only to the extent to which these States have reciprocal treatment granted.

3. What other arbitration-related treaties and conventions is your country a party to?

Besides the NYC, Bulgaria is also party to the European Convention on International Commercial Arbitration, to the Energy Charter Treaty, and to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention).

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes, Bulgarian ICAA is based on the UNCITRAL Model Law, however, the Bulgarian ICAA does not differentiate

between domestic and international arbitration. Its rules apply to both, with some exceptions concerning the recognition and enforcement of arbitral awards and the setting aside of an arbitral award.

5. Are there any impending plans to reform the arbitration laws in your country?

There are no immediately pending reforms in the field.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The leading arbitral institution in Bulgaria is the Arbitral Court at the Bulgarian Chamber of Commerce and Industry (AC at BCCI). The latest revision of its rules is from 2022. Another well-known arbitral institution is the Court of Arbitration at the Bulgarian Industrial Association, with latest revision of its rules from 2013. There are also several smaller arbitral institutions.

7. Is there a specialist arbitration court in your country?

No.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Under Bulgarian law, the requirements for validity concern the form of the agreement (written) and the type of disputes that it may be concluded about (all monetary claims besides consumer or labor ones or disputes regarding ownership or possession of real estate properties or alimony). The written form for validity is considered fulfilled if the consent of both parties is expressed in written document, signed by the parties, or is included in letters, or other kinds of

exchanged messages.

The absent written arbitration agreement could be considered concluded also:

- by defendant's explicit written consent, the dispute to be handled by arbitration included in a statement to the arbitral tribunal, or in the record of the first open hearing.

- The defendant's active participation in the procedure (i.e. filing a written response to the statement of claim, submission of evidence, etc.).

9. Are arbitration clauses considered separable from the main contract?

Yes, pursuant to art. 19, Para. 2 of the ICAA the arbitration agreement is considered separate from the contract wherein it is included.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

Bulgarian courts do not apply a validation principle. If there is no choice of law, they apply Bulgarian one on such matters.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

The Bulgarian legislation lacks rules governing multi-party and multi-contract arbitrations, however upon the parties' consent these may be brought together for consideration within a single arbitration proceeding.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Bulgarian courts adopted controversial practice over the past several years on the question whether a third party, who substitutes one of the initial parties to the main agreement by virtue of assignment agreement or as co-debtor or co-creditor, will also become party to the

arbitration agreement incorporated therein. The question is subject to interpretative case No. 1 of 2023 which is currently pending before the Supreme Court of Cassation. The only case where a third non-signatory party shall indisputably be bounded by the arbitration agreement is if this third party is a universal successor to a party to the agreement.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

Pursuant to article 19 of the CPC any dispute concerning material rights may be subject to arbitration, except for consumer or labor ones or disputes regarding ownership or possession of real estate properties or alimony. The latest amendments were in 2017, when the consumer disputes were rendered non-arbitrable.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

There are no recent court decisions concerning the applicable law to the arbitration agreement in case no such is chosen. Generally, Bulgarian courts apply Bulgarian law in such cases.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

In international arbitration if the parties have not made any choice the applicable law to the substance of the dispute shall be determined by the arbitral tribunal pursuant to the conflict of law rules of either Regulation (EU) No 593/2008 or the Bulgarian International Private Law Code (IPLC), depending on the domicile of the parties and the subject-matter of the dispute. The leading principal is that applicable is the law of the State with which the relations subject to the dispute are most closely connected.

16. In your country, are there any restrictions in the appointment of arbitrators?

As per ICAA an arbitrator may be only an adult citizen (who has turned 18 years pursuant to the Bulgarian legislation) who is not been placed under guardianship,

has not been convicted of a crime of general nature, has a university education, has at least 8 years of professional experience and possesses high moral qualities. Additional restrictions are imposed by the application of the fundamental principles of impartiality and independence of the arbitrators.

17. Are there any default requirements as to the selection of a tribunal?

If the parties have not agreed differently, the procedure shall be governed by the set of rules of the relevant arbitral institution, and for the matters ungoverned thereby the provisions of the ICAA shall apply. ICAA provides that as a default rule, the arbitral tribunal shall consist of three arbitrators.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, pursuant to ICAA, if the dispute is not arising from commercial agreement and one of the parties fails to designate an arbitrator or the two parties-appointed arbitrators may not consent on a third arbitrator, the Sofia City Court, upon request of one of the parties, should appoint the missing arbitrator.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Unless otherwise agreed, pursuant to the ICAA the appointment of an arbitrator may be challenged if there are circumstances which raise doubts as to the arbitrator's impartiality or the arbitrator lacks the qualifications agreed by the parties. If the parties have not consented otherwise, each of them may challenge an arbitrator's appointment within 15 days as of the acknowledgement of the relevant circumstances, upon written application to the relevant arbitral court. The latter is competent to rule on the challenging of the arbitrator's appointment. Pursuant to Art. 16 of the ICAA if the challenge is rejected, the party who have filed it is entitled to refer it to the Sofia City Court whose decision is final. The rule of Art. 16 of the ICAA may not be derogated by the parties' mutual consent.

20. Have there been any recent developments concerning the duty of independence and impartiality of the

arbitrators

There have not been any recent developments in the Bulgarian legislation on these matters. As a general principal the arbitrators must be independent and impartial, and are obliged to disclose any circumstances that may arise doubt regarding their independence and impartiality.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

According to Art. 17 of the ICAA, if the arbitrator is unable to perform his functions or is unreasonably inactive, his powers shall be suspended. In such cases, if the arbitrator does not renounce by his own initiative or if the parties do not reach an agreement on the suspension of the arbitrator's powers, each of the parties may request Sofia City Court to rule on the suspension of powers. The decision of the Sofia City Court is final. After the removal of the inactive arbitrator, he should be replaced with another one according to the rules for choice of arbitrators in order the proceedings to continue.

22. Are arbitrators immune from liability?

There is no set of rules regarding immunity of arbitrators, although generally their liability for rendering of an award could not be engaged unless it is proven that they have committed a crime. Pursuant to ICAA, arbitrator, who renders award on a dispute in which one of the parties is a consumer (non-arbitrable dispute), is imposed a fine. The Minister of Justice is entitled to issue mandatory prescriptions to the arbitration court and the arbitrators, where non-compliance with the prescriptions is also subject of imposing fines.

23. Is the principle of competence-competence recognized in your country?

Yes, the competence-competence principle is recognized in Bulgaria.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

The existence of arbitration clause does not derogate the competence of the general courts per se and the

courts does not apply arbitration clauses ex officio. The defendant must make an objection that the dispute is arbitrable within the term for answer to the claim, in order the state courts to terminate the case initiated before them.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Under Bulgarian law, the arbitration proceedings may still proceed even if the respondent fails to participate in the process. Of importance is that the respondent has been duly informed about the commencement of arbitration lawsuit (Art. 32 of ICAA).

However, the Supreme Cassation Court is competent to set aside an arbitration award in case the party seeking the setting aside, had not been duly notified of the appointment of an arbitrator or of the arbitration proceedings or due to reasons beyond its control was not able not participate in the proceedings.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Bulgarian arbitration law does not provide for explicit regulation regarding third parties voluntarily joining arbitration proceedings.

However, the Rules of the AC at BCCI provides for the possibility of intervention of and involvement of third parties only by virtue of consent by the parties and consent of the third party in case of involvement.

If, on the other hand, the parties do not agree, then the tribunal cannot allow participation of a third party, as this may be used as a legal ground for setting aside of the rendered award.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Art. 9 of ICAA envisages possibility for each of the parties in arbitration proceedings to request from a state court, before or during the arbitration proceedings, securitization of the claim or securitization of evidence.

Local court may impose the following interim measures also in cases before the arbitration claim is lodged: injunction on an immovable property; freeze of movables or receivables; other appropriate measures determined by the court, including suspension from operation of a motor vehicle and suspension of enforcement.

The arbitration tribunal may not impose any interim measures. Theoretically, upon request of one of the parties, unless otherwise agreed, the arbitration tribunal may compel the other party to undertake appropriate measures for securing the rights of the claimant but none of the institutional arbitrations apply this in practice due to practical lack of leverages for enforceability.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

No anti-suit and anti-arbitration injunctions are available and enforceable in Bulgaria.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Generally, the arbitral tribunal governs the evidentiary matters in the arbitration proceedings and may collect any type of evidence admissible before the general courts. As per. Art. 37 of ICAA the arbitral tribunal or the party concerned upon tribunal's approval may request from the competent state court to collect evidence which is hard to be collected by the tribunal, including to summon witnesses, and the court is obliged to cooperate.

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Bulgarian ICAA does not set forth other specific requirements to arbitrators in terms of professionalism than those outlined under p. 16 above. As regards ethical rules and standards, each arbitration in Bulgaria has adopted its own Ethical Code, obligatory for the arbitrators in its lists. The counsels, if registered under the Bulgarian BAR, are bound by its ethical codes of

conduct.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

In Bulgaria confidentiality is not expressly stipulated in arbitration law, but rather contained in arbitration rules of the institutional arbitrations. Thus, under Art. 24, para. 4 of the Rules of the AC at BCCI arbitration proceedings are confidential. Materials regarding the dispute are provided only to a participating party, its legal representative or counsel.

32. How are the costs of arbitration proceedings estimated and allocated?

ICAA does not regulate explicitly the matter of costs. Each arbitration court adopts its own Tariff concerning the administrative and arbitration fees for reviewing disputes. The arbitration fees are determined depending on the material interest of the certain case.

As regards the allocation, initially costs are to be borne by the party which has requested a specific action, such as witness summoning, assignment of expert, etc. and in amount, determined by the tribunal.

In the award, the arbitral tribunal decides on the allocation of all costs incurred, including on the paid counsel fees and arbitration fees, depending on the outcome of the case and the losing party bears proportional part of the costs of the winning party depending on the percentage of the claims being awarded or rejected.

Pre and post award interest could be included on the principal claim, but not on the costs.

33. Can pre- and post-award interest be included on the principal claim and costs incurred?

Question answered above.

34. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The enforcement of domestic arbitral award is executed

under the provisions of CPC, whereby the district court, in the region of which the permanent address or the seat of the debtor is located, issues, at the request of the interested party, a writ of execution based on the entered into force arbitral award.

As regards to the recognition and enforcement of foreign awards, the provisions of NYC shall apply. In addition, ICAA refers to the provisions of IPLC. Requests for recognition and admission to enforcement of foreign arbitral awards and of settlements reached before foreign arbitration courts on arbitration cases are brought before Sofia City Court.

Foreign arbitral award is recognized and its enforcement is permissible when:

1. the foreign court or authority is competent according to the Bulgarian law, except if the only ground for foreign competence in the dispute has been the nationality of the claimant or its registration in the state of the court;
2. the respondent was served with a copy of the claim, the parties have been duly summoned and no imperative principles of Bulgarian law related to their defence have been violated;
3. there is no other act with res judicata on the matter preceding the award;
4. there is no lis pendens on the same matter before Bulgarian court, when the proceedings in Bulgaria started before the arbitration proceedings;
5. the recognition or the admission to enforcement do not contradict the Bulgarian public order.

Within the above procedure the Bulgarian court may not review the merits of the dispute.

35. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

There is no legally prescribed timeframe. In practical terms it might take between 6 months and 1.5 – 2 years depending on the actions of the defendant in the proceedings. No ex parte recognition or enforcement proceedings are allowed.

36. Does the arbitration law of your

country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Under ICAA the domestic award becomes effective and binding upon handing in to the parties and becomes immediately subject to enforcement proceedings without need of procedure for recognition.

As regards to the enforcement of a foreign award, there are two stages: i) recognition and admission to enforcement, and ii) enforcement. The enforcement stage does not differentiate from the enforcement of a domestic award – under the NYC the enforcement of a foreign award is carried out as per the procedural rules applicable on the territory of enforcement.

37. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

Bulgarian law does not impose limits on remedies, but they should be enforceable under Bulgarian law and not contrary to the Bulgarian public order – for example, the enforcement agent under Bulgarian law cannot enforce remedy for specific action when it could be performed solely by the defendant by any other means save from imposing fines in small amounts (EUR 100 per failure to comply) to convince the defendant to perform the action. The same applies for obligations to abstain from certain actions.

38. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitration awards are final and cannot be appealed. However, pursuant to Art. 47 of ICAA an arbitral award may be set aside by the Supreme Court of Cassation in one-instance proceedings initiated within 3 months as of the day on which the applicant was served with the decision, on the following exhaustive legal grounds:

- a. the party requesting setting aside was did not have the legal capacity to conclude the arbitration agreement;
- b. there was no arbitration agreement or it has been invalid according to the law chosen by the parties or, in the absence of a choice, according to the ICAA;
- c. the party requesting setting aside was not duly notified of the appointment of an arbitrator or of the arbitration proceedings or, for reasons beyond its

control, was unable to take part in the proceedings;

d. the award resolves a dispute not provided for in the arbitration agreement or contains a ruling on matters outside the subject matter of the dispute;

e. the formation of the arbitral tribunal or the commencement of the arbitral proceedings is not in accordance with the arbitration agreement of the parties unless it contradicts the imperative provisions of the ICAA, and if there is no agreement – the provisions of the ICAA were not applied.

39. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

Under the Bulgarian legislation such preliminary waiver of rights is null and void.

40. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Only if the third party is legal successor of a party under the arbitration dispute and the succession occurred after initiation of the arbitration proceedings. A third party may challenge the award only in case of universal succession due to merger, de-merger, etc.

41. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

Third party funding is not regulated under Bulgarian law. It is generally permissible under freedom of contract rules.

42. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Emergency arbitrator relief is not regulated in Bulgarian law.

43. Are there arbitral laws or arbitration institutional rules in your country

providing for simplified or expedited procedures for claims under a certain value? Are they often used?

The Bulgarian arbitration law does not differentiate the procedure under which disputes are reviewed according to the value of the claim. However, the BCCI implemented in 2017 a set of rules for expedited arbitration proceedings which shall apply by agreement of the parties irrespective of the value of the claim.

44. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

No specific rules in this direction have been implemented, however the Bulgarian legislation prohibits any discrimination on the grounds of gender, age origin, etc. Simple example for aimed diversity is the provision of Art. 14, para. 2 of the Rules of BCCI, under which when one of the parties is a foreign person/entity or a local entity with major foreign participation, the latter can choose a foreign arbitrator to be appointed as a member of the tribunal examining the case.

45. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

There have been some recent Supreme Court of Cassation rulings (from 2022), according to which foreign arbitral awards are denied recognition and enforcement in Bulgaria if the signatures of the arbiters under the award and the signature of the secretary of the arbitration under the certificate that the award is final and enforceable are not notary attested and apostilled (where necessary). This practice should be taken into account when a recognition of foreign arbitral awards is sought.

46. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Bulgaria has implemented high standards of anti-corruption and anti-money laundering measures.

However, all the corruption matters are subject to examination by state courts in criminal procedures, not by arbitral tribunals, where corruption as a criminal offense shall be prosecuted and proven, with the prosecution bearing the burden of proof. The corruption within the context of the arbitration may be considered as a circumstance for challenging his appointment. In practical terms, no such cases have reached the courts.

47. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

Some of the bigger institutional arbitrations increased the digitalization of proceedings, including electronic submission of evidence and possibility for conduct of hearings and cross-examination of witnesses via video conference.

48. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

In 2020- 2021 both AC to BCCI and the Court of Arbitration at the Bulgarian Industrial Association implemented new set of rules for digitalization of the arbitral proceedings, allowing the parties to monitor the development of the case online, to exchange documents electronically, to question witnesses, to conduct hearings via video conferences, etc. similarly.

49. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Generally, such disputes are not arbitrable under Bulgarian law. As a side note, on 05.09.2023 European court of Human Rights in Strasbourg, in its case (non-arbitrable) "Koilova and Babulkova v. Bulgaria", rendered an award, according to which Bulgaria shall be obliged to establish a legal framework for the one-gender couples irrespective of them being married or not.

50. Do the courts in your jurisdiction consider international economic sanctions

**as part of their international public policy?
Have there been any recent decisions in
your country considering the impact of
sanctions on international arbitration
proceedings?**

There are no recent court or arbitral decisions concerning the implementation of the international economic sanctions. In theory they should be considered

part of the public policy of the court.

**51. Has your country implemented any
rules or regulations regarding the use of
artificial intelligence, generative artificial
intelligence or large language models in
the context of international arbitration?**

Not at the time being.

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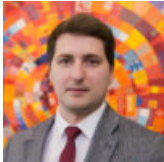
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