Croatia


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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

Pursuant to Article 6 of the Croatian Arbitration Act (Official Gazette of Republic of Croatia 88/2001), an arbitration agreement must be in writing. It may be concluded by a separate agreement or as an arbitration clause within a contract.

The 'in writing' requirement includes agreements contained in documents signed by the parties or agreements reached in an exchange of letters, telex, facsimiles, telegrams or other means of telecommunication which provide a record of the agreement, whether signed by the parties or not. Also, the reference in a contract to a document containing an arbitration clause (general terms of a contract, text of other agreement or similar) constitutes an arbitration agreement, provided that the reference is such as to make that clause part of the contract.

The arbitration agreement is deemed concluded in writing if:

- it is contained in an written offer, or if a third party transmitted to both parties such an offer, against which no timely objection was raised;
- after an orally concluded arbitration agreement, a party communicates to the other a written communication, referring to the arbitration agreement concluded earlier orally, and the other party fails to object in a timely manner – and such failure, according to trade usages, may be considered to constitute acceptance of the offer; and
- a bill of lading is issued with an explicit reference to an arbitration clause in a charter party.

An oral arbitration agreement will be deemed valid if one party invokes the oral agreement in writing and the other party does not dispute the conclusion of an oral arbitration agreement (Article 6/3/2 of the Arbitration Act).

A formal defect in the arbitration agreement is cured if the respondent does not contest the jurisdiction of the arbitral tribunal prior to filing its statement of defence.

In consumer contracts, an arbitration agreement must be contained in a separate document signed by both parties that comprises no agreements other than those referring to the arbitral proceedings (the second condition does not apply if the agreement was drawn up by a notary public).

1.2 What other elements ought to be incorporated in an arbitration agreement?

It would be advisable to incorporate the following elements in an arbitration agreement:

- place of arbitration;
- language of arbitration;
- number of arbitrators and manner of their appointment;
- substantive law applicable to the dispute and to the arbitration agreement; and
- applicable arbitration rules.

An arbitration agreement can also contain other elements depending on the agreement of the parties, such as, for example, certain qualifications of the arbitrators or the right of the arbitrators to decide on the matter *ex aequo et bono*.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The approach of the national courts towards the enforcement of arbitration agreements is in general arbitration friendly.

According to Article 42 of the Arbitration Act, if the parties have agreed to submit a dispute to arbitration, upon the respondent's objection, the state court before which the same dispute was brought will deny jurisdiction, annul all actions taken in the proceedings and reject the statement of claim, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

Also, pursuant to the Arbitration Act, the validity of an arbitration agreement can be challenged under the rules of contract law, such as fraud, duress, etc.; however, any such defect must relate specifically and precisely to the agreement to arbitrate independently from the principal agreement, and invalidity of the principal agreement will not necessarily invalidate the arbitration agreement (since the principle of separability applies).

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

Arbitration proceedings are governed by the Arbitration Act.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

The primary domestic source of law relating to arbitral proceedings and recognition and enforcement of arbitral awards is the Arbitration Act, which covers arbitration proceedings having their seat in Croatia, recognition and enforcement of arbitral awards, and court jurisdiction and procedure regarding arbitration.

In the sense of the Arbitration Act, domestic arbitration has its seat in the territory of the Republic of Croatia; therefore, foreign (international) arbitration has its seat outside Croatia and is not regulated by the Act.

The Arbitration Act allows for such arbitration in disputes with an international element, unless there is a Croatian *lex specialis* provision which provides that the dispute can be resolved only before a Croatian court.

The Arbitration Act governs both domestic and international disputes; a dispute is considered international if at least one of the parties is a foreign person or a foreign legal entity.

Croatian residents and legal persons established under the laws of Croatia may agree on domestic arbitration only, whereas international arbitration is allowed in disputes with an international element (i.e., where at least one party resides outside Croatia).

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The Arbitration Act, which regulates domestic arbitration (with both domestic and international disputes), is based on the UNCITRAL Model Law, and thus takes its main features from such Law. However, there are some differences.

The Arbitration Act applies to both national and international disputes.

Croatia does not have a specific law governing international arbitration – i.e., arbitration that does not have its place in the territory of the Republic of Croatia.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

Although parties in arbitration are generally free to agree on the rules of procedure, the Arbitration Act contains mandatory provisions from which the parties may not deviate. These relate primarily to the: arbitrability of the dispute; equality of the parties; obligation that all information or documents supplied to the tribunal by one party must be communicated to the other party; impartiality of the arbitrators and their independence; legal capacity of parties; written form of the arbitral award; grounds on which the award can be challenged; and the rule that parties may not waive in advance their right to challenge the award.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

The Arbitration Act considers any dispute in which the parties can freely dispose of their rights to be arbitrable. In this sense, neither status-related disputes (such as certain family law disputes, establishment of maternity disputes, and marital disputes) nor criminal matters are arbitrable.

In disputes with an international element, parties can agree on arbitration outside the territory of Croatia, except if such dispute may be subject only to the jurisdiction of the Croatian courts (e.g. disputes over ownership and other property rights, disputes over trespass on real estate, disputes arising during or as a result of bankruptcy proceedings, etc.).

There is a limitation that two Croatian legal entities or citizens cannot submit their dispute to arbitration having its seat abroad.

The Arbitration Act does not regulate the question of arbitrability of intra-company disputes; however, it may be concluded that such disputes are not arbitrable.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

An arbitral tribunal can rule on its own jurisdiction.

An objection challenging the tribunal's jurisdiction has to be raised by the respondent no later than in the submission of the statement of defence, in which the respondent raises issues related to the substance of the dispute. The fact that a party has already appointed an arbitrator does not prevent it from filing such an objection.

An objection that the arbitral tribunal is exceeding the scope of its authority has to be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may allow delayed objections if it finds the reasons for delay justified, in regard to both objections.

The arbitral tribunal can decide on the jurisdictional objection either as a preliminary question or in an award on the merits. If it decides the objection to be a preliminary question, each party can request the competent court to re-examine the decision within 30 days of the receipt of the decision (the competent court is the Commercial Court in Zagreb for commercial disputes, or the County Court in Zagreb for other disputes).

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

According to Article 42 of the Arbitration Act, if the parties have agreed to submit a dispute to arbitration, upon the respondent's objection, the state court before which the same dispute was brought will deny jurisdiction, annul all actions taken in the proceedings and reject the statement of claim, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. Also, the Croatian Civil Procedure Act also prescribes that the court shall take care with regard to whether the resolution of a particular dispute falls within the court's jurisdiction; therefore, if from the documentation filed it derives that the parties agreed to the arbitration for settlement of certain disputes, the court should deny jurisdiction upon the respondent's objection.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

The arbitral tribunal may rule on its jurisdiction either as a

preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within 30 days after having received notice of that ruling, the national court to decide the matter. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and issue an award, although such court proceedings are urgent.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

As a general rule, only the parties who signed the arbitration agreement (as well as their universal successors) are bound by the same, whereas third parties can be bound by the arbitral agreement by way of singular succession. Also, in case an arbitration agreement is contained in a contract in favour of a third party, it will be binding upon such third party if the third party exercises its rights under such contract.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

The Arbitration Act does not prescribe limitation periods for the commencement of arbitration in Croatia; however, Croatian substantive law contains various limitation periods for initiation of proceedings that depend on the nature of the claim in question.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

Pursuant to the Croatian Insolvency Act, all proceedings in which the debtor is a party are interrupted by the commencement of insolvency proceedings.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

The arbitral tribunal must apply the substantive law chosen by the parties. Should the parties fail to choose the substantive law, the arbitral tribunal must apply the law it considers to be most closely connected with the dispute.

A decision on the grounds of *ex aequo et bono* is admissible only if the parties have expressly authorised the arbitral tribunal to do so.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

The parties' autonomy to choose the applicable substantive law is limited by mandatory provisions, such as, for example, in cases of protection of consumers.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

The law applicable to the validity of an arbitration agreement *ratione materiae* is the law designated by the parties. If the parties failed to designate such applicable law, the applicable law will be the law applicable to the substance of the dispute or the law of the Republic of Croatia.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

The tribunal is appointed by agreement of the parties. In the absence of such agreement, the tribunal may be appointed by the arbitration institution or by the appointing authority.

Also, pursuant to the Arbitration Act, an arbitration may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality, if the arbitrator does not possess the qualifications agreed to by the parties, or if they fails to fulfil their duties; this represents a limitation of the parties' autonomy to select arbitrators.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

If there are three arbitrators, each party will choose one arbitrator, who will then choose the third arbitrator. If a party fails to appoint its arbitrator within 30 days of notification to do so, or if the two appointed arbitrators cannot agree on who should serve as president of the tribunal:

- a third party appointed by the parties or the president of the Zagreb Commercial Court will appoint the missing arbitrator in commercial disputes; and
- the president of the Zagreb County Court will appoint the missing arbitrator in non-commercial disputes.

If there is one arbitrator, the parties will choose him or her by agreement. If the parties cannot reach agreement in this regard:

- a third party appointed by the parties or the president of the Zagreb Commercial Court will appoint the missing arbitrator in commercial disputes; and
- the president of the Zagreb County Court will appoint the missing arbitrator in non-commercial disputes.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

The national court can intervene in the selection of arbitrators pursuant to the Arbitration Act upon the request of a party to the arbitration agreement after the prescribed procedure has been obeyed.

The parties are free to agree on a procedure for challenging an arbitrator; failing such agreement, a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the appointment of the arbitrator or after becoming aware of any circumstances for challenging, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the arbitral court, including the arbitrator subject to the challenge, shall promptly decide on the challenge.

If a challenge under the above prescribed procedure is not successful, the challenging party may, within 30 days after

having received notice of the decision, reject the challenge; or if the arbitral tribunal does not decide on the challenge within 30 days after the challenge was made, in a further 30 days from the moment of the expiration of the first 30 days, the challenging party may request the competent court to decide on the challenge.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

According to the Arbitration Act, a person approached with a request for his/her possible appointment as an arbitrator is obligated to disclose any circumstances likely to give rise to justifiable doubts as to his/her independence or impartiality. The Arbitration Act prescribes that an arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall, without delay, disclose any such circumstances to the parties unless they have been previously informed of them by him/her.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

The Arbitration Act provides for rules governing the procedure of arbitration, and the parties are free to agree, directly or by reference to any established set of rules, a statute or in any other appropriate manner, the procedure to be followed by the arbitral tribunal in the conduct of the proceedings, except in regard to mandatory rules.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

In Croatia, there are no particular procedural steps to be taken; however, mandatory provisions such as equality of the parties have to be met.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

There are no specific rules that govern the conduct of counsel in arbitral proceedings. Generally, all attorneys in Croatia are bound by the provisions of the Croatian Attorney's Act and Code of Conduct.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

According to the Arbitration Act, the main duty of an arbitrator is to conduct the arbitration expeditiously and to undertake measures on time in order to avoid any delay to proceedings. Also, arbitrators must disclose any circumstances likely to give rise to doubt as to their impartiality or independence.

Furthermore, arbitrators have the power: to determine the rules of procedure either directly or by reference to a set of rules, a statute or in any other appropriate manner, in cases when the parties have not agreed on the set of rules of procedure; and to determine the admissibility, relevance and weight of any evidence in such cases.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

Pursuant to the Attorney's Act in arbitration proceedings, parties can be represented by lawyers from other jurisdictions.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

The Arbitration Act contains no explicit provisions concerning the immunity of arbitrators from liability. If the arbitrator fails to fulfil his or her obligations, he or she can be held liable for the damages incurred owing to such failure according to the general rules on indemnification of damages.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The parties to an arbitration may request the intervention of a court in the following matters:

- appointment, refusal or revocation of arbitrators, if there is no agreement of the parties as to the appointing authority;
- competence of the arbitral tribunal;
- enforcement of interim measures ordered by the arbitral tribunal;
- ordering interim measures;
- certification and deposition of the arbitral award;
- setting aside of the arbitral award; and
- recognition and enforcement of the arbitral award.

Furthermore, the arbitral tribunal, or a party with the approval of the arbitral tribunal, may request legal assistance from a competent court in taking evidence that the arbitral tribunal itself could not take.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

The provisions of the Arbitration Act in this regard are quite general in scope, as it is determined that the arbitral tribunal may order a party to take any measure the arbitral tribunal deems appropriate considering the subject matter of the dispute or to order a party to provide appropriate security regarding such measure. Arbitral tribunals do not have to seek assistance from the court.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

A party to arbitral proceedings may apply to the court to grant interim measures for protection of a claim. It is not incompatible with an arbitration agreement for a party to request from a court, before or during arbitral proceedings, an interim measure for protection of a claim and for a court to grant such measure.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

With regard to requests for interim relief by parties to arbitration agreements, the practice of the national courts is the same as applies to requests by parties not bound by arbitration agreements.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

Croatian law does not provide for anti-suit injunctions.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

The Arbitration Act does not regulate the rights and duties of the arbitrators to order security for costs, so this issue will depend on the parties' agreement or the procedural rules they have selected. The Croatian Civil Procedure Act allows for such possibility.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

A party to arbitral proceedings may apply to the court to grant interim measures for protection of a claim, as prescribed by the Arbitration Act. A possible issue may arise if a certain interim measure requested is not prescribed by Croatian law, in which case the courts will not be able to grant such measure.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

Parties are free to agree on the rules of procedure, subject to mandatory provisions of the Arbitration Act. Witnesses, experts, documents and inspection are considered admissible evidence.

As a general rule, witnesses provide oral testimony, and it is possible to cross-examine the witnesses. The arbitral tribunal may request that witnesses answer the questions in writing. In addition, the tribunal may hear parties or a party's officers.

Unless otherwise agreed by the parties, the arbitral tribunal has the power to appoint experts to provide reports on specific issues and to require the parties to give the expert any relevant information or to produce or provide relevant documents, goods or other property for inspection.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

The Arbitration Act does not regulate the disclosure of documents, i.e. an arbitral tribunal seated in Croatia does not have statutory power to compel the parties to comply with such an order. This implies that in general, the parties bear a burden of collecting evidence in support of their cases.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

The national courts could assist if requested by the party; however, this has limited practical purpose, as such procedural decisions to disclose documents cannot be enforced.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

Witnesses are generally heard at hearings without taking an oath. The arbitral tribunal may request that witnesses answer the questions in writing. Cross-examination is not explicitly prescribed in the Arbitration Act, and depends instead on the rules of procedure the parties have agreed to; the parties may agree on an evidentiary hearing within the terms of reference at the beginning of the procedure.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

The Arbitration Act does not contain any privilege rules.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contains reasons or that the arbitrators sign every page?

Under the Arbitration Act, an award has to be made in writing.

As to content, an award must contain grounds for the award (unless otherwise agreed by the parties or if the award is based on the parties' settlement), date, venue, and the arbitrators' signatures.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

The arbitral tribunal has the power to correct and interpret the award at the party's request, but on its own it may only correct clerical, typing, arithmetical or other similar errors.

A party may request the correction or interpretation of the arbitral award within 30 days from its receipt, whereas the tribunal may make the corrections it is authorised to make within 30 days from rendering the award.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

Arbitral awards may only be challenged before the competent court, by filing a claim (motion) to set aside the award.

The award may be set aside if the party filing the motion to set aside proves that:

- there was no arbitration agreement or that the agreement was not valid;
- a party to the proceedings did not have the legal capacity to enter into an arbitration agreement and have legal standing, or that the party was not properly represented;
- the party filing the motion to set aside was not duly informed of the initiation of arbitration proceedings or was otherwise prevented from participating in the proceedings before the arbitral tribunal;
- the award pertains to an issue not covered by the arbitration agreement or not included in its provisions, or that the award contains decisions on issues exceeding the scope of the arbitration agreement (if those decisions may be separated from the remainder of the award, only those may be set aside);
- the constitution of the arbitral tribunal or course of the proceedings were contrary to the Arbitration Act or the parties' agreement in a way that could influence the contents of the award;
- the award does not contain grounds or signatures as provided by the Arbitration Act; or
- if the court finds, irrespective of a party's allegations:
  - that the matter is not arbitrable under Croatian law; and
  - that the award is against public order.

If expressly agreed by the parties in the arbitration agreement, the award may be challenged if a party learns of new facts or is able to produce new evidence that would lead to a more favourable outcome for the party concerned had they been presented in the previous proceedings. This applies solely if the party was unable to present these facts or evidence in previous proceedings for reasons beyond its control.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

No, the parties may not waive the right to challenge the arbitral award on any of the grounds in advance.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

No, the parties are not allowed to expand the scope of appeal of an arbitral award.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

An arbitral award can be challenged by a motion to set aside, which has to be submitted to the Commercial Court or County Court in Zagreb, respectively, depending on the subject matter of the case. Against the first instance decision, an appeal can be submitted to the High Commercial Court of Croatia or the Supreme Court of Croatia, respectively. Finally, as a third level, there is the possibility of judicial review by the Supreme Court of Croatia.

Recent practice of the Croatian Constitutional Court shows that a constitutional action can also be raised in certain conditions. Although it is unclear whether constitutional action may be filed against an arbitral award, such action may be filed against rulings of commercial courts for a violation of constitutional rights.

The anticipated duration of the first instance proceedings can, in the best-case scenario, be estimated at one year, and of the second instance approximately three years; however, it should be noted that no precise estimate can be made due to a variety of factors that may influence the duration of the proceedings – availability of the parties, service, applicable law, case load of the judge in question, etc.

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Croatia is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention was primarily adopted by the former Socialist Federative Republic of Yugoslavia in 1982 and entered into force on 8 October 1991. By notification on succession of 26 July 1993, the Convention became a part of the Croatian legal system.

Croatia adhered to the reservations made by the former Yugoslavia that the Convention will only apply to:

- recognition and enforcement of awards made in the territory of another contracting state;
- differences arising out of legal relationships, whether contractual or not, that are considered commercial under national law; and
- arbitral awards that were adopted after the entry into effect of the Convention.

In this regard, the Convention only applies to arbitral awards adopted in the territory of another contracting state, and to disputes that are considered commercial under national law.

Additionally, Croatia has formulated a reservation with regard to retroactive application of the Convention.

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Croatia is a party to:

- Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965);
- European Convention on International Commercial Arbitration of 1961;
- Geneva Convention on the Execution of Foreign Arbitration Decisions of 1927; and
- the Geneva Protocol on Arbitration Clauses of 1923.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

When deciding on the recognition and enforcement of the

award, the procedure for domestic awards differs from that prescribed for foreign awards.

As for domestic awards, they need not undergo a separate recognition process. Rather, based on a domestic award, the court is to order enforcement unless:

- it finds that that the matter is not arbitrable under Croatian law;
- it finds that that the award is against public order; or
- a claim for setting aside the award on these grounds has previously been denied.

A foreign award may be recognised and enforced in Croatia unless:

- based on the objection of the opposing party, the court finds that there are reasons to set aside as prescribed in the Arbitration Act (see question 4.2);
- the court finds that the award is not yet binding on the parties; or
- the court at the place of arbitration or in the country whose law applies to the dispute has set aside the award or delayed its entry into effect.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

An arbitration award has the legal effect of a final binding decision between the parties.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

Refusal to enforce an award is possible on the grounds of public policy. Pursuant to court practice, not every breach of mandatory provisions will have an effect on public policy; rather, only breach of the mandatory provisions that are of importance to public policy will have an effect. Interpretation of such depends on the discretion of the court.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

The Arbitration Act does not contain specific provisions regarding confidentiality of the proceedings, except so as to state that arbitration proceeding are closed to the public unless otherwise explicitly agreed by the parties. Bearing this in mind, confidentiality rules will be governed by the agreement of the parties or the procedural rules selected to govern their arbitration.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Unless the parties have agreed otherwise, information disclosed in arbitral proceedings can be referred to or relied on in subsequent proceedings.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

The Arbitration Act has no provisions on the types of remedies available in arbitral proceedings. The remedies are in general governed by the substantive law chosen by the parties, and there are no strict limits on the types of remedies that can be sought in arbitration proceedings.

Croatian law does not recognise concepts of punitive or exemplary damages.

13.2 What, if any, interest is available, and how is the rate of interest determined?

The issue of awarding interest for principal claims and costs is subject to the substantive law agreed on by the parties as the applicable law. The Arbitration Act does not contain any provisions in this regard.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

The costs of arbitral proceedings are allocated at the discretion of the tribunal, taking into consideration all relevant circumstances, in particular the outcome of the proceedings. Therefore, costs are in most cases allocated in proportion to a party's success in an arbitration, even if the Arbitration Act does not prescribe so explicitly; this rule is also applicable in domestic litigation proceedings (i.e., the unsuccessful party will bear the costs).

As for recoverable costs, the Arbitration Act defines these as "costs necessary for the proceedings", including representation costs and arbitrators' fees. When it comes to representation costs or attorneys' fees, Croatian law does not recognise negotiated fees, only statutory fees – those regulated by the Tariff on Attorneys' Fees rendered by the Croatian Bar Association.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

An award is not subject to tax.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

A lawyer's tariff is prescribed by the Tariff on Attorneys' Fees. Remuneration in the form of contingency fees can be applied only in certain types of dispute (i.e. in property law cases).

14 Investor-State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Yes, Croatia signed the ICSID on 22 October 1998.

14.2 How many Bilateral Investment Treaties ("BITs") or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

Croatia has signed more than 50 BITs with other countries.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example, in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

There is no noteworthy language used by Croatia.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

As a rule, Croatian regulations do not impose restrictions on the state's ability to be a party to international arbitration proceedings should it enter into an arbitration agreement.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the types of dispute commonly being referred to arbitration?

In Croatia, in recent years there has been a strong campaign to direct parties towards alternative dispute resolution, primarily conciliation and arbitration, mainly because of long and inefficient judicial proceedings.

The results of this effort are still not satisfactory, but the trend towards alternative dispute resolution is growing.

The Permanent Court of Arbitration at the Croatian Chamber of Commerce endeavours to promote arbitration by organising an annual international conference, Croatian Arbitration Days, where trends in arbitration, challenges for parties and the quality of the arbitration service are discussed.

Commercial disputes are more often referred to arbitration.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

In order to address time and cost issues, the Croatian Zagreb Rules, which regulate arbitration proceedings before the Permanent Court of Arbitration at the Croatian Chamber of Commerce, provide for the possibility to file submissions in electronic form, which expedites proceedings. Furthermore, tribunals may draw up terms of reference, which also serve the purpose of facilitating procedure.

15.3 What is the approach of the national courts in your jurisdiction towards the conduct of remote or virtual arbitration hearings as an effective substitute to in-person arbitration hearings? How (if at all) has that approach evolved since the onset of the COVID-19 pandemic?

As a result of the COVID-19 pandemic, Croatian courts conduct virtual hearings, during which witnesses can also be heard.

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His main areas of practice are commercial and banking law, M&A, and dispute resolution/litigation.
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Vukić and Partners is one of the top four law firms in Croatia, with a team of 50 lawyers and support staff. The firm deals with financial and corporate issues, banking, M&A, corporate restructuring, competition, insolvency, mortgages, and individual and corporate borrowers. In connection to corporate restructurings and M&A, the firm has extensive experience in the conduct of legal due diligence and provides up-to-date advice and assistance on all aspects of law relevant to each particular M&A transaction.
Apart from purely corporate issues, the firm's clients benefit from expertise in complementary areas such as employment law, real estate law (relating to the acquisition of property of all sizes and the leasing of offices), taxation law, public tenders and dispute resolution.
The firm collaborates closely with several law firms in Italy and Slovenia, and is also part of an international legal network, TerraLex.

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