

# Changes in the Arbitration Law: Greater Certainty for Consumers Comes with Greater Control over Arbitration in Bulgaria

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Since the end of January 2017, a new law amending and supplementing the Code of Civil Procedure became effective (the "Law"). It also provides for amendments to the International Commercial Arbitration Act ("ICAA") and to the Consumers Protection Act ("CPA"). Below is a summary of some of the key changes introduced by the Law.

## **Consumer disputes out of the jurisdiction of the arbitral tribunals**

The Law proposes that a dispute in which one of the parties is a consumer is non-arbitrable. The arbitration clause in a consumer contract is void, except for cases where such clause provides for settlement of dispute in accordance with the procedure for alternative dispute resolution under the CPA. If an arbitral tribunal renders an award in a non-arbitrable dispute, the award is *ex lege* deemed void and the arbitrators are sanctioned with a fine.

The changes aim to introduce guarantees for protection of consumers. They respond to frequent abuse by debt collection corporations, monopolistic companies, public service providers that, among others, take advantage of arbitration proceedings by including arbitration clauses not subject to negotiation

in their standard contracts and general terms. For their part, consumers have no choice but to sign them. Thus, the dispute is usually resolved by an arbitral tribunal chosen by the company. Some companies even create their own arbitral institutions (so-called “pocket arbitrations”) which render awards predominantly in their favor. Often consumers are communicated arbitral awards against them without even having been informed in advance about the existence of the proceedings, without having concluded a valid arbitration clause, or for non-existing debts. Since the award is not subject to appeal, the last chance for consumers to protect themselves is to seek annulment of the award on limited grounds.

The amendments have *ex nunc* effect and apply to future disputes arising after the Law’s entry into force (and not to pending proceedings). Proceedings in relation to consumer disputes are to be terminated *ex lege*.

### **Control over the writ of execution based on arbitral award**

Pursuant to the Law, the district court where the domicile or seat of the debtor is located has jurisdiction to issue writs of execution for enforcement of arbitral awards. Such competent district courts is entitled to examine whether the underlying dispute is arbitrable. If the court finds that the arbitral award is issued in a non-arbitrable dispute and thus it is void, it will refuse to issue a writ of execution. Until such finding is made, this additional form of control by state courts may nonetheless arguable leave the parties uncertain whether the award will be enforced or not.

### **Public order is no longer a ground for setting aside arbitral awards**

The Law proposes a repeal of one of the most common grounds for setting aside of arbitral awards – infringement of public order of the Republic of Bulgaria. It is not clear what the aim of this change is, especially given the fact that arbitral awards are not subject to appeal and can only be annulled on grounds explicitly and exhaustively listed in the ICAA.

Considering that Bulgaria is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, enforcement of a foreign arbitral award may be refused if it is contrary to international public order.

### **Control by the Ministry of Justice**

The Law also provides for control over the arbitrators and the arbitral institutions by the Ministry of Justice through a special Inspectorate. The Inspectorate examines the compliance with the ICAA by arbitrators and arbitral institutions *ex officio* or upon complaints. In case of established non-compliance, the Minister of Justice gives mandatory instructions. The arbitrators and the institutions that do not comply with such instructions are subject to monetary sanctions. It is still questionable to what extent the Inspectorate will exercise this form of control and whether it has the capacity to do so effectively.

### **Minimum requirements for the arbitrators - for the first time in Bulgarian law**

Not everybody can be an arbitrator under the Law. In order to be an arbitrator, a person should (i) be a legally capable citizen, who has not been sentenced for a premeditated publicly indictable offence, (ii) have higher education, (iii) have at least eight years of professional experience, and (iv) possess high moral qualities. These conditions are exhaustive.

These amendments are driven by the fact that in some cases the persons who serve as arbitrators have questionable qualifications and reputation. However, the requirements for arbitrators' qualifications to some extent limit and complicate the parties' choice in appointing an appropriate arbitrator.

### **More transparency for the parties to arbitration proceedings**

As provided for in the Law, in order for the parties to be aware of the development of the arbitration proceedings at any time, each party will have remote access to the case files and be able to check all the necessary information on the website of the arbitral institution.

Furthermore, each arbitral tribunal should keep all the documentation for completed cases for a period of ten years in its archives. After this period, only the awards and the settlements should be kept.

### **Concluding remarks**

The amendments are designed to better protect the consumers and any intention in this direction is welcomed. Consumers are traditionally the weaker party in

disputes and the introduced changes are without a doubt a positive legislative step. However, the amendments that provide for more control over the arbitration proceedings go beyond the intention to protect consumers. Only time will show whether such approach is beneficial or if the new provisions create more obstacles than solve any problems.

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