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The New Rules of the Foreign Trade Court of Arbitration Attached to the Serbian Chamber of Commerce

(Pravilnik o spoljnotrgovinskoj arbitraži pri Privrednoj komori Srbije, Official Gazette of the Republic of Serbia No. 52/07)

On 24 May 2007, the Serbian Chamber of Commerce adopted the new Rules of the Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce (hereinafter referred to as the “**FTCA Rules**”). Together with the recently adopted Arbitration Act (*Zakon o arbitraži, Official Gazette of the Republic of Serbia No. 46/06*), the FTCA Rules create a procedural framework for conduct of arbitral proceedings before the only permanent arbitral institution in Serbia that administers international arbitration.

❖ *Organisation*

The bodies of the FTCA are: president, Presidium and Secretariat.

The members of the Presidium (including the president) are appointed by the assembly of the Serbian Chamber of Commerce. Depending on the issue involved, the Presidium acts and decides in inner or full composition.

❖ *International arbitration*

Unlike the former FTCA Rules of 1997, which prescribed that the FTCA was competent only for disputes where at least one of the parties was a foreign person or entity, the new Rules no longer define internationality in such a narrow manner but merely state that the FTCA is competent for “international business disputes”. The Arbitration Act of 2006 defines international arbitration broadly, in line with the ML.

❖ *Who can act as a FTCA arbitrator*

Arbitrators in a FTCA arbitration can be Serbian or foreign nationals. The Serbian Chamber of Commerce compiles a list of arbitrators every four years. The parties may also appoint arbitrators outside the list, in which case the Presidium decides on such nomination. However, the sole arbitrator and the chairman of the arbitral tribunal may only come from the list.

A person employed with a party, a person who regularly co-operates with a party or is a member of its corporate body, a party's representative or advisor may not act as arbitrator.

❖ *Decision on jurisdiction*

FTCA proceedings are initiated by filing a request for arbitration or a statement of claim to the Secretariat. In case the respondent challenges the existence of the arbitration agreement or fails to respond to the request for arbitration or the statement of claim within 30 days from the receipt of one of these submissions, the inner Presidium shall render a decision on the existence of the arbitration agreement. If the decision is affirmative, the proceedings may continue in the absence of the respondent, but the preliminary decision of the inner Presidium does not bind the arbitral tribunal, who may decide against its jurisdiction in the case. However, if the inner Presidium decides that there is no arbitration agreement, and if the respondent challenges the competence of the FTCA or fails to state its case on the issue within further 30 days, the Secretariat shall notify the claimant that the arbitration cannot continue.

When a party challenges jurisdiction of a FTCA tribunal in the course of proceedings, the issue is decided by an extended tribunal, which consists of the arbitrator(s) acting in the case and the president and vice-president of the FTCA.

Even when no party challenges the jurisdiction of the FTCA, the arbitral tribunal or the FTCA (if the tribunal is not appointed) may decline to proceed if the arbitration agreement or the underlying contract contain provisions which are inconsistent with the competences and principles of arbitration, or if the requests and actions of the parties during the proceedings render normal conduct of arbitral proceedings impossible

❖ *Withdrawal, challenge and replacement of arbitrators*

In harmony with the Arbitration Act of 2006, the Rules introduce provisions on withdrawal and termination of arbitral mandate in case of arbitrator's impossibility to perform his duty, his untimely performance of duties or for other justified reasons. Unless the arbitrator withdraws himself, the decision is taken by the inner Presidium. The Rules also provide that an arbitrator may be replaced in case he is prevented from further performing his duties.

Unlike the former FTCA Rules, which referred to application by analogy of the provisions of the general code of civil procedure on the challenge of judges, the new Rules prescribe detailed conditions and procedures for challenge of arbitrators and experts.

❖ *Language of proceedings*

The FTCA Rules prescribe that the parties may agree on one or more languages of the proceedings and determine Serbian as a default language. Initial communication of the Secretariat with a foreign party not represented by a Serbian counsel takes place in Serbian, accompanied with English translation. A request for arbitration and a statement of claim must be submitted in Serbian language and in the language of the parties' contract.

❖ *Evidence*

Arbitral tribunal decides on taking evidence upon party's motion or *proprio motu*. Experts are appointed and their scope of work is defined by the tribunal.

❖ *Interim and Conservatory Measures*

Unless the parties have agreed otherwise, the arbitral tribunal may order provisional measures upon a party's request.

❖ *Duration of proceedings*

The FTCA Rules prescribe that the proceedings should be terminated within one year from the date of establishment of arbitral tribunal. The arbitral tribunal, subject to a prior consent of the inner Presidium, may approve continuation of the proceedings beyond this deadline if the need for further evidence or the parties so require or in the presence of other justified reasons.

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CONTACT:

Law Office KOJOVIĆ Advokati/Attorneys at Law
E-mail: office@kojoviclaw.com
www.kojoviclaw.com

Until 1 July

Cara Dušana 48, Serbia – 11 000 Beograd
Tel: (+381 11) 3033 747; Fax: (+381 11) 2628 669

From 1 July

Gospodar Jovanova 83, Serbia – 11 000 Beograd
Tel: (+381 11) 3036 468; Fax: (+381 11) 3036 469