

Recognition and enforcement of foreign arbitral awards in commercial disputes



01 Serbia

02 Montenegro

03 Bosnia and Herzegovina

04 North Macedonia



Serbia



I Principal legislation

0 1	Arbitration Act (<i>Zakon o arbitraži</i> , "Official Gazette of the Republic of Serbia", no. 46/2006) (" Arbitration Act ")
0 2	Convention on the Recognition and Enforcement of Foreign Arbitral Awards (" New York Convention ")
0 3	Enforcement and Security Act (<i>Zakon o izvršenju i obezbeđenju</i> , "Official Gazette of the Republic of Serbia", nos. 106/2015... 10/2023) (" Enforcement Act ")
0 4	Non-Contentious Proceedings Act (<i>Zakon o vanparničnom postupku</i> , "Official Gazette of the Socialist Republic of Serbia", nos. 25/82 and 48/88, and "Official Gazette of the Republic of Serbia", nos. 46/95... 14/2022)
0 5	Civil Proceedings Act (<i>Zakon o parničnom postupku</i> , "Official Gazette of the Republic of Serbia", nos. 72/2011... 10/2023)

II The notion of "foreign arbitral award"

Foreign arbitral awards are enforceable in Serbia subject to being recognized in Serbia. According to Article 64(3) of the Arbitration Act, for the purpose of recognition and enforcement proceedings, the notion of "foreign arbitral award" extends to an award rendered by a tribunal seated outside Serbia and to an award rendered by a tribunal seated within Serbia if the arbitral procedure was governed by a foreign law.

III New York Convention v. national law

Serbia succeeded to the New York Convention from the former Yugoslavia, and as ratified treaty, the New York Convention is, by virtue of the Serbian Constitution, directly applicable in Serbia and supersedes the Arbitration Act as domestic law in case of inconformity.

Serbia maintains three reservations the former Yugoslavia had made to the New York Convention, as a result of which the New York Convention applies only to the awards (i) issued after the convention's entry into force (due to the passage of time, this reservation is without practical relevance), (ii) in the territory of another state party to the New York Convention (known as the reciprocity reservation), (iii) concerning commercial disputes. The Arbitration Act does not contain any such

reservation. Accordingly, foreign awards issued in a non-Convention state can be recognized and enforced in Serbia under the Arbitration Act regime, whose grounds for refusal and enforcement are substantially identical to those under the New York Convention.

IV Grounds for refusal of recognition of foreign arbitral awards

There are two groups of grounds for refusal of recognition of foreign arbitral awards under the Arbitration Act: those that can be involved only the respondent and those that may be invoked by the respondent as well as by the court *ex officio*.

The refusal grounds that can be invoked only by the respondent correspond to those listed in Article V.1 of the New York Convention:

- (i) the arbitration agreement is not valid under the law agreed upon by the parties or under the law of the country in which the award was made;
- (ii) the party against whom the award is rendered was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
- (iii) the award addresses a dispute not covered by the arbitration agreement or the award exceeds the limits of that agreement

(recognition will be partially granted and partially refused if only a part of the award exceeds the limits of the arbitration agreement and that part can be separated from the remainder of the award);

(iv) the arbitral tribunal or the arbitration proceedings were not in accordance with the arbitration agreement or, if there is no such agreement, in accordance with the law of the state in which the seat of the arbitration was located;

(v) the award has not yet become binding on the parties or has been set aside or suspended from enforcement by the court of the state in which or under the law of which the award was rendered.

Serbian courts have held that the burden of proof that any of the foregoing grounds is not present is on the respondent invoking it.

Two grounds for refusal that can be invoked by the respondent as well as by the court *ex officio* correspond to those listed in Article V.2 of the New York Convention:

(i) the subject matter of the dispute is not arbitrable under Serbian law; or

(ii) the effects of the arbitral award are contrary to the Serbian public policy.

Serbian courts have held that "public policy" is to be interpreted narrowly to relate only to the fundamental principles of Serbian legal system.

V Procedure for recognition and enforcement of foreign arbitral awards

V.1 Two avenues

Recognition and enforcement of a foreign arbitral award may be pursued in two ways:

(i) enforcement proceedings in which the issue of recognition is decided incidentally; or

(ii) stand-alone recognition proceedings which can be, if relevant, followed by separate enforcement proceedings.

V.2 Enforcement proceedings in which recognition is an incidental question

The award creditor may initiate proceedings for enforcement of the foreign arbitral award without having to pursue separate recognition proceedings first. Enforcement judge will decide on recognition of the foreign arbitral award as an incidental question. If the enforcement court recognizes the award, such incidental recognition will have the effect only in the pending enforcement proceedings and will not vest the award with a *res judicata* effect in Serbia.

The motion for enforcement of a foreign award must be accompanied with:

(i) the original or a certified copy of the foreign arbitral award, and its translation into Serbian certified by a sworn court interpreter; and

(ii) the original or a certified copy of the arbitration agreement or of a document on acceptance of arbitration, as well as its translation into Serbian certified by a sworn court interpreter.

The enforcement judge has eight days from the receipt of the motion for enforcement to decide on recognition and enforcement of the award. The judge may refuse recognition (and thus enforcement) only on the following two grounds which are monitored *ex officio*:

(i) the subject matter of the difference is not arbitrable under Serbian law; or

(ii) the effects the award are contrary to the Serbian public policy.

According to the Enforcement Act, a decision upon a motion for enforcement is rendered *ex parte*. No exception is provided for a motion for enforcement of a foreign arbitral award. However, even though the law does not explicitly require so, the courts preponderantly do send a motion for enforcement of a foreign unrecognized arbitral award to the respondent for a response within eight days, taking the view that the incidental question of recognition should be decided in adversarial proceedings.

The respondent may appeal the enforcement order within 30 days from the

receipt thereof, involving one the grounds for refusal of recognition of a foreign award (see [Section IV](#)) or one of the following general grounds for appealing an enforcement order:

(i) the decision in question is not a proper arbitral award that has the quality of an enforcement title;

(ii) the award has been set aside or modified, or is not yet enforceable;

(iii) the award claim is not yet due;

(iv) the obligation under the award is conditioned or dependent on a prior or a simultaneous fulfilment of an obligation of the award creditor or occurrence of another event;

(v) the award claim no longer exists;

(vi) the award claim was not properly assigned or transferred to the creditor who is not the award creditor, or the award debt was not properly assumed by or transferred to the debtor who is not the award debtor;

(vii) enforcement was declared on the assets wholly or partially exempted from enforcement by virtue of a law;

(viii) the award claim is time-barred;

(ix) the enforcement order designates a public bailiff who does not have territorial jurisdiction to conduct enforcement against the relevant asset (relevant e.g. in case enforcement is sought on an immovable).

The first-instance court has five days to decide whether the appeal is timely, complete and permitted. If the first-instance court concludes that the appeal is not timely, complete or permitted, it will reject the appeal. The rejection decision may be appealed within three days from the receipt thereof. If the appellate court considers the appeal admissible, it will forward it to the award creditor for a response and decide on the appeal within 30 days from the receipt of the file.

If the first-instance court determines that the appeal is timely, complete and permitted, it will, within five days from the receipt of the appeal, forward it to the award creditor for a reply. The award creditor has eight days to respond. If the first-instance court considers that the appeal is founded, it can itself approve the appeal, quash the enforcement order and undertaken enforcement actions and terminate the proceedings. Otherwise, it will send the file to the appellate court, which has 15 days to decide on the appeal. The appellate court must send its decision to the parties within further three working days.

The appeal of the enforcement order does not suspend enforcement. Accordingly, if the court follows the letter of the law and does not send the motion for enforcement to the respondent for a reply, the enforcement creditor can obtain an enforcement order and commence enforcement via public bailiff within 30 days from the submission of the motion for enforcement.

Foreign enforcement creditor must open a non-resident bank account in Serbia in order to collect the award claim in Serbia. In case enforcement is sought on the debtor's bank accounts, the creditor must open a bank account in Serbia even before filing the motion for enforcement, because in that case a designation of the creditor's bank account is a mandatory element of the motion for enforcement.

V.3 Stand-alone recognition proceedings

The party who obtained a favourable foreign arbitral award may initiate stand-alone proceedings for recognition of a foreign arbitral award in Serbia. Recognition is sought in non-contentious proceedings (*vanparnični postupak*). A decision on recognition of a foreign arbitral award vests the award with a *res judicata* effect in Serbia and integrates the award into the Serbian legal system, equating it with a domestic judgment.

The pursuit of separate recognition proceedings would be of relevance when the award grants declaratory or constitutive reliefs. When the award grants condemnatory relief, the pursuit of separate recognition proceedings, which involve lower costs than enforcement proceedings, would be an option if the party favoured by the award is, for any reason, interested at a given point in time only in vesting the award with *res judicata* effect in Serbia but not in collecting the moneys or otherwise enforcing the award in Serbia. In any event, if the award grants condemnatory relief, the

award creditor may, upon obtaining a decision on recognition, initiate separate proceedings for enforcement of the recognized foreign arbitral award at any time.

Stand-alone recognition proceedings are conducted pursuant to the rules regulating non-contentious proceedings. The motion for recognition must be accompanied with:

(i) the original or a certified copy of the foreign arbitral award and its translation into Serbian certified by a sworn court interpreter; and

(ii) the original or a certified copy of the arbitration agreement, or of a document on acceptance of arbitration, and its translation into Serbian certified by a sworn court interpreter.

The motion for recognition is delivered to the respondent for a response within 30 days.

There is no deadline for the court to decide on the motion.

The first-instance decision on the motion for recognition may be appealed within 30 days from the receipt thereof, on any of the grounds specified in [Section IV](#) above and also for specific procedural breaches committed in the first-instance recognition proceedings. The decision on the appeal must be rendered within nine months from the day the appellate court receives the case file. In practice, however, this deadline is often exceeded.

In commercial matters where the value of the awarded claim exceeds RSD equivalent of EUR 100.000, the party in recognition proceedings may seek extraordinary revision of the appellate decision within 30 days from the receipt of the latter. When this monetary threshold is not met, the Supreme Court of Serbia may nevertheless grant a certiorari for the revision if it assesses that the contentious issue is particularly important for the establishment of a uniform court practice. The remedy of revision does not suspend the *res judicata* effect of the affirmative recognition decision and does not prevent the award creditor from initiating separate enforcement proceedings, if applicable.

V.4 Enforcement proceedings after stand-alone recognition proceedings

In those rare cases where condemnatory award creditor may decide to have the award first recognized in separate recognition proceedings, it may, upon obtaining final decision recognizing the award, initiate separate enforcement proceedings which evolves as described in [Section V.2](#) above, except that the enforcement judge will not deal with recognition of the award.

V.5 The effect of pending annulment proceedings in the country of the award on Serbian recognition or enforcement proceedings

If the proceedings for the setting aside of the arbitral award or for suspension of the award's enforcement are pending in the country of the award's origin or in the country under the law of which the award was made, the Serbian court may, but does not have to, stay the recognition or enforcement proceedings initiated before it. Upon the award creditor's request, it may, but does not have to, condition the stay upon the award debtor providing adequate security.



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Montenegro



I Principal legislation

0 1	Arbitration Act (<i>Zakon o arbitraži</i> , "Official Journal of Montenegro", no. 47/2015) (" Arbitration Act ")
0 2	Convention on the Recognition and Enforcement of Foreign Arbitral Awards (" New York Convention ")
0 3	Enforcement and Security Act (<i>Zakon o izvršenju i obezbeđenju</i> , "Official Journal of Montenegro", nos. 36/2011... 25/2019) (" Enforcement Act ")
0 4	Non-Contentious Proceedings Act (<i>Zakon o vanparničnom postupku</i> , "Official Journal of the Republic of Montenegro", no. 27/2006 and "Official Journal of Montenegro", nos. 73/2010... 123/2024)
0 5	Civil Proceedings Act (<i>Zakon o parničnom postupku</i> , "Official Journal of the Republic of Montenegro", nos. 22/2004... 76/2006 and "Official Journal of Montenegro", nos. 73/2010... 108/2021)

II The notion of "foreign arbitral award"

Foreign arbitral awards are enforceable in Montenegro subject to being recognized in Montenegro. According to Article 50 of the Arbitration Act, for the purpose of recognition and enforcement proceedings, "foreign arbitral award" is an award rendered by a tribunal seated outside Montenegro.

III New York Convention v. national law

Montenegro succeeded to the New York Convention from Serbia (at the time called the State Union of Serbia and Montenegro, which in turn succeeded to the same convention from the former Yugoslavia). As a ratified treaty, the New York Convention is, by virtue of the Montenegrin Constitution, directly applicable in Montenegro and supersedes the Arbitration Act as domestic law in case of inconformity.

Montenegro maintains three reservations the former Yugoslavia had made to the New York Convention, as a result of which the New York Convention applies only to the awards (i) issued after the convention's entry into force (due to the passage of time, this reservation is without practical relevance), (ii) in the territory of another state party to the New York Convention (known as the reciprocity reservation), (iii) concerning commercial disputes. The Arbitration Act does not contain any such

reservation. Accordingly, foreign awards issued in a non-Convention state can be recognized and enforced in Montenegro under the Arbitration Act regime, whose grounds for refusal and enforcement are substantially identical to those under the New York Convention.

IV Grounds for refusal of recognition of foreign arbitral awards

There are two groups of grounds for refusal of recognition of foreign arbitral awards under the Arbitration Act: those that can be invoked only by the respondent and those that may be invoked by the respondent as well as by the court *ex officio*.

The refusal grounds that can be invoked only by the respondent correspond to those listed in Article V.1 of the New York Convention:

- (i) the arbitration agreement is not valid under the law agreed upon by the parties or under the law of the country in which the award was made;
- (ii) the party against whom the award is rendered was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
- (iii) the award addresses a dispute not covered by the arbitration agreement or the award exceeds the limits of that agreement

(recognition will be partially granted and partially refused if only a part of the award exceeds the limits of the arbitration agreement and that part can be separated from the remainder of the award);

(iv) the arbitral tribunal or the arbitration proceedings were not in accordance with the arbitration agreement or, if there is no such agreement, in accordance with the law of the state in which the seat of the arbitration was located;

(v) the award has not yet become binding on the parties or has been set aside or suspended from enforcement by the court of the state in which or under the law of which the award was rendered.

Two grounds for refusal that can be invoked by the respondent as well as by the court *ex officio* correspond to those listed in Article V.2 of the New York Convention:

(i) the subject matter of the dispute is not arbitrable under Montenegrin law; or

(ii) the effects of the arbitral award are contrary to the Montenegrin public policy.

V Procedure for recognition and enforcement of foreign arbitral awards

V.1 Two steps in recognition and enforcement

Recognition and enforcement of a foreign arbitral award in Montenegro is two-state sequential process. First, the award must be recognized in non-contentious proceedings (*vanparnični postupak*). Second, once the award is recognized and the decision on recognition has become final, the award creditor can initiate enforcement proceedings.

V.2 Recognition proceedings

The award creditor must first apply for recognition of the award, by filing a motion for recognition in non-contentious proceedings (*vanparnični postupak*) with the Commercial Court of Montenegro based in Podgorica. A decision on recognition of a foreign arbitral award vests the award with a *res judicata* effect in Montenegro and integrates the award into the Montenegrin legal system, equating it with a domestic judgment.

The motion for recognition must be accompanied with:

(i) the original or a certified copy of the foreign arbitral award, and its translation into Montenegrin certified by a sworn court interpreter; and

(ii) the original or a certified copy of the arbitration agreement or of a document on acceptance of arbitration, as well as its translation into Montenegrin certified by a sworn court interpreter.

The motion for recognition must be served on the debtor for a response. The deadline for reply is set by the judge at their discretion. The judge can, but does not have to, schedule a hearing.

The decision on recognition can be appealed to the Appellate Court of Montenegro within 15 days from the receipt thereof, on general grounds: (i) material breach of the procedure; (ii) incorrectly or incompletely established facts; and/or (iii) misapplication of substantive law. A challenge related to the satisfaction of the grounds for recognition referred to in [Section IV](#) above would be a challenge based on misapplication of substantive law.

The enforcement stage cannot commence before the decision on recognition becomes final. The decision on recognition becomes final when the deadline for the appeal lapses without an appeal being filed. If an appeal is filed and the appellate court either confirms or modifies the first instance decision, the recognition decision becomes final when the appellate decision is rendered. This means that there is no shortcut to recognition as recognition proceedings may take several years, especially if the first-instance decision is appealed and the appellate court quashes it and remands it to the first instance court.

Extraordinary revision against an appellate decision on recognition of a foreign award which resolves the recognition matter in a final manner is available if the award claim in issue exceeds (in case of a commercial matter) EUR 40,000. If the value of dispute

is below EUR 40,000 but not below EUR 7,000, the Supreme Court of Montenegro may grant a certiorari for the revision if it assesses that the contentious issue raised in the request for revision is of particular importance for the establishment of uniform court practice in Montenegro. A request for revision can be filed within 30 days from the receipt of the appellate decision. The remedy of revision does not suspend the *res judicata* effect of the affirmative recognition decision and does not prevent the award creditor from initiating enforcement proceedings of a recognized condemnatory award.

V.3 Enforcement proceedings

Once the award is recognized by a final court decision rendered in separate recognition proceedings, the award creditor can file a motion for its enforcement to the Commercial Court of Montenegro in Podgorica. The motion for enforcement must be accompanied with:

- (i) the original or a certified copy of the foreign arbitral award, and its translation into Montenegrin certified by a sworn court interpreter (the decision on recognition is not necessary, because it was rendered by the same court); and
- (ii) the original or a certified copy of the arbitration agreement or of a document on acceptance of arbitration, as well its translation into Montenegrin certified by a sworn court interpreter.

According to the Enforcement Act, an enforcement order is always rendered *ex*

parte. However, the Arbitration Act provides that the court must serve the motion for enforcement to the debtor for a response unless that would endanger the success of enforcement by allowing the debtor to dissipate its assets or similar. Because of this discrepancy between the two statutes, no statutory deadline for response is prescribed. In practice, the courts set a very short deadline for response.

The enforcement order or, as the case may be, the decision rejecting or dismissing the motion for enforcement, can be appealed within five days from the receipt thereof. The respondent may appeal the enforcement order on the following general grounds:

- (i) the court that issued the order lacks jurisdiction;
- (ii) the decision in question is not a proper arbitral award that has the quality of an enforcement title;
- (iii) the award has been set aside or modified, or is not yet enforceable;
- (iv) the award claim is not yet due;
- (v) enforcement was declared on the assets wholly or partially exempted by law from enforcement;
- (vi) the award claim no longer exists, due to a fact that occurred either after the decision became enforceable, or before it became enforceable, but in the latter case only if the

debtor had been objectively prevented from invoking that fact in the course of the proceedings which gave rise to the enforcement title;

(vii) the conduct of enforcement was temporarily suspended upon the request of the enforcement creditor and the suspension period has not yet expired;

(viii) the award claim/debt was not transferred to the enforcement creditor or, as the case may be, enforcement debtor (in a situation where the motion for enforcement is filed by a person other than the award creditor or against the person other than the award debtor).

The enforcement debtor has the right to respond to the appeal within five days from the receipt thereof.

If the appeal is not timely, complete or permitted, it will be rejected by the judge who acted in the first instance proceedings. The rejection decision may be appealed within five days from the receipt thereof. Otherwise, if the first-instance judge does not itself quash the enforcement order and enforcement actions undertaken since and terminate enforcement proceedings, he will send the case file to a three-member bench of the same court, which has 15 days to decide on the appeal.

The appeal of the enforcement order does not suspend conduct of enforcement activities pursuant to the order, such as collection of the awarded monetary claim.

V.4 The effect of pending annulment proceedings in the country of the award on Montenegrin recognition or enforcement proceedings



If the proceedings for the setting aside of the arbitral award or for suspension of its enforcement are pending in the country of the award's origin or in the country under the procedural law of which the award was made, the Montenegrin court may, but does not have to, stay the recognition or enforcement proceedings initiated before it. Upon the award creditor's request, it may, but does not have to, condition the stay upon the award debtor providing adequate security. A failure to provide security would result in the court denying the request for stay.

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Bosnia and Herzegovina

I Principal legislation

The principal sources of law in the matter of recognition and enforcement of foreign arbitral awards in Bosnia and Herzegovina ("BiH") are numerous due to decentralised legislative powers in the country. The substantive conditions for recognition and enforcement are regulated centrally, at the BiH level, while the procedure is mainly regulated at the level of sub-sovereign constituent entities, Federation of Bosnia and Herzegovina ("FBiH") and Republic of Srpska ("RS"), with very limited regulation at the central level.¹ Principal sources include:

0 1

Act on the Resolution of Conflict of Laws with Regulations of Other Countries in Certain Relations (*Zakon o rješavanju sukoba zakona sa propisima drugih zemalja u određenim odnosima*, "Official Gazette of the Socialist Federal Republic of Yugoslavia", nos. 43/082 and 72/82-1645, "Official Gazette of the Republic of BiH", nos. 2/92-5 and 13/94-189) ("**Conflict of Laws Act**")

0 2

Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**")

0 3

Enforcement Proceedings Act of FBiH (*Zakon o izvršnom postupku FBiH*, "Official Gazette of FBiH", nos. 32/2003... 46/2016, "Official Gazette of BiH", nos. 15/2012 and 42/2018)

¹ Brčko District has its own procedural laws. However, due to its size, Brčko District has little relevance to the topic and its regulations are not reviewed in this publication.

0 4	Enforcement Proceedings Act of RS (<i>Zakon o izvršnom postupku RS</i> , "Official Gazette of RS", nos. 59/2003... 66/2018)
0 5	Non-Contentious Proceedings Act of FBiH (<i>Zakon o vanparničnom postupku FBiH</i> , "Official Gazette of FBiH", nos. 2/1998... 11/2021)
0 6	Non-Contentious Proceedings Act of RS (<i>Zakon o vanparničnom postupku RS</i> , "Official Gazette of RS", nos. 36/2009... 27/2024)
0 7	Civil Proceedings Act of FBiH (<i>Zakon o parničnom postupku FBiH</i> , "Official Gazette of FBiH", nos. 53/2003... 98/2015)
0 8	Civil Proceedings Act of RS (<i>Zakon o parničnom postupku RS</i> , "Official Gazette of RS", nos. 58/2003... 27/2024)

II The notion of "foreign arbitral award"

BiH does not have national legislation on arbitration specifically. Recognition and enforcement of foreign arbitral awards is regulated by the Conflict of Laws Act, which is an old general legislation on private international law.

According to Article 97 of the Conflict of Laws Act, "foreign arbitral award" is an arbitral award that was not made in BiH. This is interpreted to refer to an award rendered in an arbitration seated outside BiH. Exceptionally, an arbitral award issued in an arbitration with its seat in BiH in which procedural law of a foreign state was applied is considered a "foreign arbitral award".

III New York Convention v. national law

BiH is a party to the New York Convention by way of succession from the former Yugoslavia. Consequently, BiH maintains three reservations the former Yugoslavia had made to the New York Convention, as a result of which the New York Convention applies only to the awards issued (i) after the convention's entry into force (due to the passage of time, this reservation is without practical relevance), (ii) in the territory of another state party to the New York Convention (known as the reciprocity reservation), (iii) concerning commercial disputes.

As a ratified treaty, the New York Convention is, by virtue of the BiH Constitution, directly applicable in BiH and supersedes the national law.

The grounds for refusal of recognition of foreign awards under the Conflict of Laws Act are broader than those under the New York Convention. Accordingly, the Conflict of Laws Act will not be relevant to the recognition of awards rendered in commercial arbitration in a country party to the New York Convention, as far as the grounds for refusal of recognition are concerned. The national law, however, remains relevant with respect to the procedure applicable to recognition and enforcement.

IV Grounds for refusal of recognition of foreign arbitral awards

IV.1 New York Convention

In respect of the awards that fall under the purview of the New York Convention, recognition can be refused on the grounds stated in Article V of that convention. Article V.1 prescribes the grounds for refusal that can be invoked by the respondent party:

(i) the parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law

of the country where the award was made;

(ii) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

(iii) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;

(iv) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;

(v) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Article V.2 prescribes grounds for refusal that can be examined *ex officio*:

(i) the subject matter of the difference is not capable of settlement by arbitration under the law of BiH;

(ii) the recognition or enforcement of the award would be contrary to the BiH public policy.

IV.2 Conflict of Laws Act

Recognition and enforcement of foreign arbitral awards that fall outside the scope of the New York Convention (for example because they are rendered in a non-Convention state, see [Section III](#) above), can be recognized in BiH in accordance with the Conflict of Laws Act. According to this legislation, a foreign (non-Convention) award can be refused recognition in BiH if:

(i) under BiH law, the subject matter of the dispute is not arbitrable;

(ii) there is exclusive jurisdiction of a BiH court or another state body;

(iii) the recognition or enforcement of the award would be contrary to the constitutional foundations of the social system in BiH;

(iv) there is no reciprocity;

(v) the arbitration agreement is not concluded in writing;

(vi) the arbitration agreement is not valid;

(vii) the party against whom recognition and enforcement is sought was not properly notified of the appointment of the arbitrator or of the arbitration proceedings, or was

otherwise prevented from exercising its rights in the proceedings;

(viii) the composition of the arbitral tribunal or the arbitration procedure were not in accordance with the provisions of the arbitration agreement;

(ix) the arbitral tribunal has exceeded the limits of its authority as defined in the arbitration agreement (if the part of the decision that is within the tribunal's authority is separable from the exceeding part, that part can be recognized and enforced);

(x) the award has not yet become final and enforceable for the parties, or the award has been annulled or suspended by the competent authority of the state in which it was made or of the state under whose law it was made;

(xi) the operative part of the arbitral award is incomprehensible or contradictory.

All aforementioned grounds for refusal of recognition of a foreign arbitral award can be invoked both by the respondent and by the court *ex officio*.

V Procedure for recognition and enforcement of foreign arbitral awards

V.1 Two avenues

Recognition and enforcement of a foreign arbitral award may be pursued in two manners:

(i) enforcement proceedings in which the issue of recognition is decided incidentally; or

(ii) stand-alone recognition proceedings which can be, if relevant, followed by separate enforcement proceedings.

V.2 Enforcement proceedings in which recognition is an incidental question

The award creditor may initiate proceedings for enforcement of a foreign arbitral award without having to pursue separate recognition proceedings first. Enforcement judge will decide on recognition of the foreign arbitral award as an incidental question. If the enforcement court recognizes the award, such incidental recognition will have the effect only in the pending enforcement proceedings and will not vest the award with a *res judicata* effect in BiH.

The motion for enforcement of a foreign award must be accompanied with:

(i) the original or a certified copy of the arbitral award, and its translation into one of the official languages before the court by a sworn court interpreter; and

(ii) the original or a certified copy of the arbitration agreement, and its translation into one of the official languages before the court by a sworn court interpreter.

The legislations on enforcement proceedings stipulate that enforcement order is rendered *ex parte* within 8 days

from the filing of the motion. However, in practice, in the proceedings for enforcement of foreign arbitral awards, the BiH courts do solicit the respondent's reply to the motion for enforcement before proceeding to issuing an enforcement order.

The respondent may file an objection to the enforcement order within 8 days from the receipt thereof, on any ground prescribed by the New York Convention or, as the case may be, the Conflict of Laws Act for refusal of recognition (see [Section IV](#)), or on any of the following specific grounds prescribed by local enforcement legislation:

- (i) the award is not an enforceable document, or has not become enforceable;
- (ii) the award has been set aside or otherwise invalidated, or if it has otherwise lost its effectiveness or been found to be ineffective;
- (iii) the parties have agreed, in the form of a notarized document, not to seek enforcement on the basis of the award;
- (iv) enforcement has been determined on assets that are exempt from enforcement, or on which enforcement is limited;
- (v) the creditor is not authorized to seek enforcement based on the award, or against the debtor;
- (vi) a condition specified in the award has not been met, unless otherwise provided by law;

(vii) the award claim has ceased to exist due to a fact that arose at a time when the debtor could no longer assert it in the arbitral proceedings;

(viii) the fulfilment of the award claim has been deferred, prohibited, modified, or otherwise prevented due to a fact that arose at a time when the debtor could no longer assert it in the arbitral proceedings;

(ix) the award claim has become time-barred.

The objection to the enforcement order is communicated to the award creditor for a response, which can be filed within three days from the date of receipt of the objection. Upon receipt of the response to the objection or upon the expiration of the deadline for the response, the court that has rendered the enforcement order will decide upon the objection within 15 days. When deciding on the objection, the enforcement court may, but does not have to, schedule a hearing.

In case of an objection, collection can proceed only with respect to the funds on the debtor's bank accounts, while enforcement against other assets will be suspended until a decision upon the objection is rendered.

If the court grants the objection to the enforcement order, it will terminate the enforcement proceedings and annul the enforcement order.

A decision on the objection to the enforcement order can be appealed to the

second-instance court within 15 days from its service. The opposing party has the right to respond to the appeal.

V.3 Stand-alone recognition proceedings

The award creditor can also seek recognition in stand-alone non-contentious proceedings (*vanparnični postupak*). A decision on recognition of a foreign arbitral award vests the award with a *res judicata* effect in BiH and integrates the award into the BiH legal system, equating it with a domestic judgment.

The pursuit of separate recognition proceedings would be of relevance when the award grants declaratory or constitutive reliefs. When the award grants condemnatory relief, the pursuit of separate recognition proceedings, which involve lower costs than enforcement proceedings, would be an option if the party favoured by the award is, for any reason, interested at a given point in time only in vesting the award with *res judicata* effect in BiH but not in collecting the moneys or otherwise enforcing the award in BiH. In any event, if the award grants condemnatory relief, the award creditor may, upon obtaining a decision on recognition, initiate separate proceedings for enforcement of the recognized foreign arbitral award at any time.

The motion for recognition of a foreign award must be accompanied with:

(i) the original or a certified copy of the arbitral award, and its translation into one of

the official languages before the court by a sworn court interpreter; and

(ii) the original or a certified copy of the arbitration agreement, and its translation into one of the official languages before the court by a sworn court interpreter.

The motion for recognition is served on the respondent who can reply within 30 days from the receipt of the motion. The court may, but does not have to, schedule a hearing before rendering a decision on the motion for recognition. There is no deadline for the court to decide on the motion.

The first-instance decision on recognition may be appealed within 15 days from its receipt on any of the grounds for refusal of recognition (see [Section IV](#) above) and also for specific procedural breaches committed in the course of the first-instance proceedings. An appeal to the recognition decision suspends enforcement of the award.

Extraordinary revision against an appellate decision on recognition of a foreign award which resolves the recognition matter in a final manner is available if the award claim in issue exceeds (in case of a commercial matter) BAM 50.000 (approx. EUR 25.000). If the value of the dispute is below this threshold, the revision court may grant a certiorari for the revision if it assesses that the contentious issue raised in the request for revision is of particular importance for the establishment of uniform court practice.

A request for revision can be filed within 15 days in RS, and within 30 days in FBiH, from

the receipt of the appellate decision. The remedy of revision does not suspend the *res judicata* effect of the affirmative recognition decision and does not prevent the award creditor from initiating enforcement proceedings to collect under a recognized condemnatory award.

V.4 Enforcement proceedings after stand-alone recognition proceedings

In those rare cases where condemnatory award creditor may decide to have the award first recognized in separate recognition proceedings, it may, upon obtaining final decision recognizing the award, initiate separate enforcement proceedings which evolves as described in [Section V.2](#) above, except that the enforcement judge will not deal with recognition of the award.

V.5 The effect of pending annulment proceedings in the country of the award on BiH recognition or enforcement proceedings

If proceedings for the setting aside or suspension of a foreign arbitral award have been initiated before the competent authority of the state in which it was rendered, or the state on whose law it is based, the BiH court may, but does not have to, stay the recognition or enforcement proceedings, and at the request of the creditor or debtor, it may condition such stay upon the award debtor providing adequate security.

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North Macedonia



I Principal legislation

0 1	International Private Law Act (<i>Закон за меѓународно приватно право</i> , "Official Gazette of the Republic of North Macedonia", no. 32/2020) (" IPL Act ")
0 2	International Commercial Arbitration Act (<i>Закон за меѓународна трговска арбитража</i> , "Official Gazette of Republic of North Macedonia", no. 39/2006) (" ICA Act ")
0 3	Convention on the Recognition and Enforcement of Foreign Arbitral Awards (" New York Convention ")
0 4	Enforcement Act (<i>Закон за извршување</i> , "Official Gazette of the Republic of North Macedonia", nos. 72/2016... 154/2023)
0 5	Non-Contentious Proceedings Act (<i>Закон за вонпарнична постапка</i> , "Official Gazette of the Republic of North Macedonia", nos. 9/2008 and 77/2018)
0 6	Civil Proceedings Act (<i>Закон за парнична постапка</i> , "Official Gazette of the Republic of North Macedonia", nos. 79/2005... 124/2015)

II The notion of "foreign arbitral award"

Foreign arbitral awards are enforceable in the Republic of North Macedonia subject to being recognized in North Macedonia. According to Article 37(1) of the ICA Act, for the purpose of recognition and enforcement proceedings, "foreign arbitral award" is an award rendered in arbitration which has its seat outside the Republic of North Macedonia.

III New York Convention v. national law

North Macedonia succeeded to the New York Convention from the former Yugoslavia. The New York Convention is, by virtue of the Macedonian Constitution, directly applicable in North Macedonia and supersedes the national laws in case of inconformity.

Since 2009, North Macedonia maintains two of the three reservations the former Yugoslavia had made to the New York Convention, having abandoned the so-called reciprocity reservation made by the former Yugoslavia. This means the New York Convention applies in North Macedonia only to foreign arbitral awards (i) issued after the convention's entry into force (due to the passage of time, this reservation is without practical relevance) and (ii) concerning commercial disputes.

Article 37(3) of the ICA Act stipulates that "recognition and enforcement of foreign

arbitral awards shall be carried out according to the provisions of the [New York Convention]". Accordingly, there is no difference between the New York Convention regime and the national regime under the ICA Act.

The IPL Act prescribes its own set of the conditions for refusal of recognition of foreign arbitral awards, which are somewhat different from the conditions under the New York Convention.

IV Grounds for refusal of recognition of foreign arbitral awards

IV.1 New York Convention

There are two groups of reasons under the New York Convention for refusal of recognition and enforcement of a foreign arbitral award, which are directly applicable by virtue of the ICA Act: those that can be invoked only by the respondent and those that can be invoked by the respondent as well as by the court *ex officio*.

The refusal grounds that can be invoked only by the respondent are listed in Article V.1 of the New York Convention:

(i) the parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;

(ii) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

(iii) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration (if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced);

(iv) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;

(v) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Two grounds for refusal that can be invoked by the respondent as well as by the court *ex officio* are listed in Article V.2 of the New York Convention:

(i) the subject matter of the dispute is not capable of settlement by arbitration under the laws of North Macedonia; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of North Macedonia.

IV.2 IPL Act

The grounds for refusal of recognition and enforcement of a foreign arbitral award stipulated under the IPL Act and invocable both by the respondent and the court *ex officio* are as follows:

(i) an original or a certified copy of the foreign arbitral award, with the confirmation of finality and enforceability, as well as its translation into Macedonian certified by a sworn court interpreter, is not submitted;

(ii) the subject matter of the dispute falls under the exclusive jurisdiction of a court or other authority of the Republic of North Macedonia;

(iii) a court or other authority of the Republic of North Macedonia has rendered a final decision in the same matter between the same parties, or a foreign court/arbitral decision dealing with the same matter between the same parties has been already recognized in the Republic of North Macedonia (if the proceedings on the same matter and between the same parties are pending before a court of the Republic of North Macedonia at the time the motion for recognition of the foreign award is filed, the recognition proceedings will be stayed);

(iv) the effects of the arbitral award are manifestly contrary to the domestic public order.

Additional IPL Act grounds that can be invoked by respondent only are:

- (i) the party was not able to present its case due to a procedural irregularity;
- (ii) the document initiating the proceedings was not personally served on the party, unless the party engaged in the merits of the dispute despite this irregularity;
- (iii) the party was not given enough time to prepare its defence.

Even though there has been no explicit court pronouncement to that effect so far, it should follow from the constitutional order that if the petitioner relies on the NYC, the NYC should prevail over the national law to the extent the latter imposes tougher conditions for recognition and enforcement of foreign arbitral award.

V Procedure for recognition and enforcement of foreign arbitral awards

V.1 Two steps in recognition and enforcement

Foreign awards can be recognized in North Macedonia in the so-called non-contentious proceedings (*vonparnična postapka*).

This means that the creditor of a foreign condemnatory award, *i.e.* an award imposing a payment obligation or an injunctive relief, cannot initiate enforcement proceedings before it secures recognition

of the award in separate non-contentious proceedings.

However, if a party to a litigation procedure pending in North Macedonia wants to rely on a foreign award in the context of an incidental issue, it may seek from the court seized of the main proceedings to have the award recognized as an incidental matter only for the purpose of the pending proceedings. Such recognition of a foreign award will not have a *res judicata* effect.

V.2 Recognition proceedings

The award creditor must first apply for recognition of the award by filing a motion for recognition in non-contentious proceedings (*vonparnična postapka*) in front of the competent court.

The motion for recognition must be accompanied with:

- (i) the original or a certified copy of the foreign arbitral award (containing confirmation of finality and enforceability) and its translation into Macedonian certified by a sworn court interpreter; and
- (ii) the original or a certified copy of the arbitration agreement or of a document on acceptance of arbitration, as well its translation into Macedonian certified by a sworn court interpreter.

A sole judge examines the existence of any *ex officio* refusal grounds. In case no such ground is found, the judge renders a decision on recognition of the foreign

arbitral award *ex parte*, which is delivered to the opposing party with an instruction that it may file an objection against it within 30 days. If no objection is filed against the decision on recognition within that period, the decision becomes final. Otherwise, if an objection is filed, a bench of three judges of the same court holds an oral hearing at which it makes a decision on the objection. The decision of the bench on the objection, as well as the decision of the sole judge dismissing the motion for recognition on one of the grounds for refusal that are examined *ex officio*, can be appealed to the competent appellate court within 15 days from the receipt thereof.

In either case, a decision granting or refusing recognition can be appealed on the following grounds: (i) material breach of the procedure; (ii) incorrectly or incompletely established facts; and/or (iii) misapplication of substantive law (such as misapplication of the grounds for refusal of recognition).

The enforcement stage cannot commence before the decision on recognition of the foreign arbitral award becomes final. The decision on recognition becomes final when the deadline for the appeal lapses without an appeal being filed or when the appellate court confirms or modifies the first instance decision.

Hence, there is no shortcut to recognition as recognition proceedings may take several years, especially if the first-instance decision is appealed and the appellate

court quashes it and remands it to the first instance court.

Extraordinary revision against an appellate decision on recognition of a foreign arbitral award is not allowed.

V.3 Enforcement proceedings

Once the award is recognized by a final court decision rendered in separate recognition proceedings, the award creditor can file a motion for enforcement of the award. Such motion is filed to a public bailiff under the jurisdiction of the court that has recognized the award.

The motion for enforcement must be accompanied with:

- (i) the original or a certified copy of the foreign arbitral award (containing confirmation of finality and enforceability) and its translation into Macedonian certified by a sworn court interpreter;
- (ii) the original or a certified copy of the arbitration agreement or of a document on acceptance of arbitration, as well its translation into Macedonian certified by a sworn court interpreter; and
- (iii) the final court decision on recognition of the foreign arbitral award.

An enforcement order is always rendered *ex parte*. No particular deadline is prescribed for the rendering of the enforcement order.

The enforcement order or, as the case may be, the decision rejecting or dismissing the motion for enforcement, can be challenged by filing an objection to the court competent for the territory where the enforcement is sought to be carried out. Such objection can be filed by the debtor, by the creditor, and even by an interested third party, within three days from the receipt of the public bailiff's decision, for any reason pertaining to the legality of enforcement. The counterparty does not have the guaranteed right to respond to the objection. The objection does not suspend the conduct of enforcement activities, such as collection of moneys.

The public bailiff has the right to respond to the objection within 24 hours from the receipt thereof.

A sole judge of the first-instance court is obliged to make decision on the objection within 72 hours from the receipt thereof.

The party which is dissatisfied with the first-instance court decision can appeal it within 3 days from the receipt thereof. A timely and complete appeal is served to the opposing party for a reply which is due within further 3 days. Once the case file is delivered to the appellate court, that court has to decide on the appeal within 5 days. The appeal does not suspend the conduct of enforcement.

Extraordinary revision against the appellate decision is not allowed.

V.4 The effect of pending annulment proceedings in the country of the award on Macedonian recognition or enforcement proceedings

If the proceedings for the setting aside of the arbitral award or for suspension of the award's enforcement are pending in the country of the award's origin or in the country under the law of which the award was made, the Macedonian court may, but does not have to, stay the recognition or enforcement proceedings initiated before it. Upon the award creditor's request, it may, but does not have to, condition the stay upon the award debtor providing adequate security.

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