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Croatia

Survey

Annexes

Law on Arbitration

The Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy (Zagreb Rules)

I Introduction

A A short survey of the development of arbitration law since 1990

1 Survey of legislation

The Republic of Croatia declared its independence in 1991, with effect from 8 October 1991. At the same date, a number of former Yugoslav federal laws were adopted as national legislation, with or without changes.[1] Among these laws also the Code of Civil Procedure (CCP) of 1977 *(Zakon o parničnom postupku)* was adopted, which governed, *inter alia*, procedural rules on internal and international arbitration, and the Conflict of Laws Act of 1982 *(Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima)* that provided national rules on recognition and enforcement of foreign arbitral awards.

Both laws remained unchanged in force until 2001, when they were repealed by the new Law on Arbitration that fully reformed the arbitration law in Croatia.[2]

2 Reasons for the reforms which have been carried out

The legislation that governed arbitration in Croatia until 2001 was generally rooted in the old Austrian arbitration rules from the Code of Civil Procedure of 1895 *(Zivilprozessordnung)*. It was adopted during the time of the communist government in accordance with the policy of the former socialist regime. In comparison to the other countries of the former Eastern Bloc, this legislation was more open and liberal, providing eg also for the possibility of domestic arbitration and (after 1990) arbitration in non-commercial matters, as well as arbitration with the participation of natural persons as parties. However, this regime was still far from being arbitration-friendly. International arbitration in ex-Yugoslavia was limited to only one arbitration institution, and domestic arbitration was allowed only at a limited number of arbitration institutions (arbitration courts at the chambers of commerce of ex-Yugoslav Republics and Provinces; arbitration institutions provided by special legislation). Many provisions of the CCP were outdated, or unnecessarily restrictive. Moreover, arbitration legislation was

1 See Narodne novine (Official Gazette of the Republic of Croatia, hereafter: Off Gaz) 53/1991.

2 See the Law on Arbitration (*Zakon o arbitraži*, hereafter: LA), Off Gaz 88/2001 of 11 October 2001. The Law on Arbitration came into force on 19 October 2001.

spread over two different acts that did not have arbitration as the main subject. Therefore, it was not transparent to parties that were not familiar with the specific features of national law. These were the reasons for undertaking a far-reaching reform of the national arbitration legislation that finally led to the adoption of a single, separate act on arbitration, based upon the UNCITRAL Model Law on International Commercial Arbitration of 1985.

3 Croatian Law on Arbitration 2001 and the UNCITRAL Model Law

The drafters of the new arbitration legislation wanted to follow international arbitration standards as defined in the UNCITRAL Model Law, adopting them where necessary to the national circumstances and the procedural tradition, without changing the main thrust of the Model Law approach. Their ambition was, therefore, to produce an act that would be familiar and easy-to-use to foreign and international arbitration experts, and yet enough precise, consistent and understandable to domestic lawyers that do not necessarily have a full knowledge of international arbitration instruments. As a result of comprehensive discussions of the various drafting committees, which started with the first initiative to reform arbitration legislation in 1996, the Law on Arbitration 2001 was finally adopted and recognised by the UNCITRAL as UNCITRAL-based arbitration legislation.

The deviations from the UNCITRAL Model Law are only minor; in fact, most of the "deviations" arise from the intention to extend the scope of application of the UNCITRAL Model Law, and thereby achieve the results that could not be a matter of consensus back in 1985. See the broadening of the scope of the law to national disputes and non-commercial disputes referred to *infra* under I B 2.

In some matters, the drafters of the law attempted to anticipate possible future revisions of the UNCITRAL Model Law, extending the current UNCITRAL provisions by addition of new rules from some of the current proposals voiced in the UNCITRAL Working Group for Arbitration. Examples of such elaboration of some UNCITRAL Model Law norms may be found with respect to the form of arbitral awards, or with respect to the provisional measures ordered by the arbitrators.

Most other deviations are only matters of style and language, and are sometimes result of the ambition to provide more systematisation and theoretical and practical coherence than the original UNCITRAL text, which was, at the time of its adoption, a matter of political compromise. In an effort to do so, drafters of the new Croatian law were often inspired by the similar approach of the new German arbitration law (revised Book X of the German ZPO). There are also occasional attempts to provide some original redefinitions of the basic notions (eg the definition of "domestic arbitration" as the "arbitration that takes place in the [national] territory", with its sub-species of "disputes with/without international element", ie international and national arbitration).

4 Other foreign models of importance

During the lengthy process of elaboration of several drafts of the Croatian Law on Arbitration, laws of various jurisdictions were consulted and sometimes reflected in the final text of the law. The principal sources of "cross-checking" in the process of adoption of the UNCITRAL models were the recent arbitration laws of Germany, Switzerland and England. Their influence can be found eg in a deviating definition of the law applicable to arbitration[3] or in the provision on the service of written communications.[4]

Finally, in a very few provisions, there was an attempt to establish a bridge between the past and the new legislation. For example, in the heavily discussed issue of the parties' right to invoke new facts and evidence in the setting aside procedure, a compromise solution was found: although this ground was by default deleted from current law, the parties may expressly agree on new facts and evidence as an additional ground for setting aside (and thereby by their consent extend the applicability of the old rule).[5]

5 Plans for reform

At the moment, it seems that the arbitration law in Croatia forms a good basis for the development of arbitration. Although many novelties only remain to be tested in future years of this relatively new legislation, it seems that the changes are generally accepted. Currently, there are no significant plans for reform, and some current suggestions for possible amendments made at the various meetings of arbitration experts only refer to minor jurisdictional issues, ie possible improvements of the provisions on court jurisdiction.[6]

B Legislation

1 Survey of arbitration-related legislation

As already stated, the most important (and practically the only relevant) source of the arbitration law in Croatia today is the Law on Arbitration 2001. It is the product of the legislators' wishes to concentrate all important legal provisions on arbitration in a single act, in order to promote a user-friendly approach and boost the use of arbitration. The orientation towards users, particularly those who reside outside of the country, was also demonstrated by the fact that already in the drafting phase the Law on Arbitration was translated into English and sent for comments. Also, immediately after its enactment, an annotated English translation was published in the most important Croatian arbitration periodical.[7] New, refined versions of the English translation were published in leading international arbitration journals[8] and on the web.[9] As to the translations into other languages, a German translation of the final draft of the LA is already available.[10]

For the sake of completeness, it should also be stated that some marginal matters are still regulated by separate laws, outside of the LA. The scope of application of these acts mostly concerns matters that are not typical for the "proper" arbitration practices, eg related to arbitration in collective disputes and some other disputes of labour law. As such "atypical" arbitrations are currently practically insignificant, we limit this report to the provisions of the LA.

2 Scope of application

In contrast with the UNCITRAL Model Law, the Croatian Law on Arbitration 2001 applies not only to commercial matters ("commercial arbitration"), but to all matters regarding rights of which the parties may freely dispose of (including civil and other dispositive non-commercial matters). Even more importantly, it does not apply only to "international" arbitration, but governs also arbitration of pure national disputes.

Consequently, the Croatian law was not faced with the UNCITRAL problems with the need to extend the definition of "international" disputes[11] in order to cover as much as possible, and left the more precise and customary objective distinction between national and international. The definition has only one criterion – the nationality of the parties: international disputes (disputes with an international element) are defined as "disputes in which at least one party is a natural person with domicile or habitual residence abroad, or a legal person established under foreign law", and national disputes (disputes without an international element) are defined as "disputes in which the parties are natural persons with domicile or habitual residence in Croatia, or legal persons established under the

3 See Art 27 (2) LA that provides a supplementary rule on the applicability of the "law considered to be most closely connected", as opposed to indirect choice of law rule from Art 28 (2) UNCITRAL Model Law ("law determined by the conflict of laws rules which [the arbitral tribunal] considers applicable").

4 See in particular Art 4 (2) LA, drafted under the influence of German law.

5 See Art 36 (5) LA.

6 This relates to an apparent inconsistency with respect to court jurisdiction in commercial matters (as opposed to the jurisdiction in other matters). Namely, in the same matters (eg on application of setting aside arbitral awards) in commercial matters a court of first instance would have jurisdiction (Commercial Court in Zagreb), whereas in civil matters such applications would be dealt by a court of general jurisdiction that otherwise has only appellate jurisdiction (County Court in Zagreb). Yet, even if the criticisms would be legitimate, due to a very small number of non-commercial arbitrations, this small inconsistency does not seem to be a burning problem.

7 Croatian Arbitration Yearbook, Vol 8 (2001) 145–170.

8 See ICCA Handbook (annex to the Croatian national report), edition 2003; ADR & the Law: Developments in ADR, A Report of the American Arbitration Association, Fordham International Law Journal and the Fordham Urban Law Journal, 18th edn (2001) 506-532.

9 See pages of the Permanent Arbitration Court at the Croatian Chamber of Commerce, http://www.hgk.hr/komora/sud/ (direct link currently at: http://hgk.biznet.hr/hgk/fileovi/180.pdf).

10 See *Sikirić*, Schiedsgerichtsbarkeit in Kroatien (2001) 314–332.

11 Art 1 (3) UNCITRAL Model Law.

law of the Republic of Croatia".[12] As almost all of the rules applicable to international arbitration also apply to national disputes,[13] the distinction has considerably lost its importance, although in certain matters (eg permissibility of submitting the dispute to the jurisdiction of a foreign arbitral tribunal) it remains to be relevant.

With respect to the distinction between arbitration proceedings that result in domestic arbitration awards ("domestic arbitrations" as defined in Art 2 (1) point 2 LA) and the foreign arbitrations, a pure territorial criterion is utilised: if the place of arbitration is in Croatia, arbitration is deemed to be domestic and results in domestic arbitral awards; if this is not the case, arbitration is deemed to be foreign and results in a foreign award. The additional criterion of the applied procedural law that existed under previous legislation was abolished in the LA (same as in the UNCITRAL Model Law). On the other hand, since the determination of the place of arbitration is crucial for the nationality of the award, a number of provisions contain cross-references to this criterion: in addition to the definition of domestic arbitration from Art 2 (1) point 2 LA, there is a provision on the place of arbitration (Art 19 LA), place of the award (Art 30 (2) LA), and obligation to state the place in the award (Art 30 (4) LA).

Thus, all arbitration proceedings carried out in the territory of Croatia have to result in an award issued in Croatia, and every such award has to be regarded as a domestic arbitral award. Yet, since the place of arbitration is a legal and not a factual concept, arbitrators may meet or hold hearings in any place in- or outside the country.[14] Technically, they may even issue an award in the place of arbitration without even visiting such a place; yet, such an award will be regarded as domestic. Other eventual "foreign" characteristics of arbitration (nationality of arbitrators, applicable procedural or substantive law, and language of arbitration) also do not affect the nationality of the award.

C Literature and case law

1 Literature

Arbitration is currently among the most popular subjects of scholarly writing in the area of civil law. A number of books, dissertations, master theses and articles have been written on the various issues of arbitration law. Here is a short selection of the most important editions.

12 See Art 2 (1) point 6 and Art 7 LA. Since it is possible that the same party can both satisfy requirements for "national" or "foreign" persons (eg an individual with Croatian citizenship and habitual residence abroad), for such cases Art 2 (1) point 6 provides the prevalence of international characteristics (ie a case between such a party and a "pure" Croatian party would be regarded as international).

13 Eg the rules on the language, nationality of arbitrators, applicable law etc. See *infra*.

14 See Art 19 (4) LA (adopted from Art 20 (2) UNCITRAL Model Law).

a Books

Arbitraža i alternativno rješavanje sporova [Arbitration and alternative dispute resolution] (2003);

Goldštajn/Triva, Međunarodna trgovačka arbitraža [International Commercial Arbitration] (1987) (in Croatian);

Sikirić, Schiedsgerichtsbarkeit in Kroatien [Arbitration in Croatia] (2001) (in German);

Triva/Belajec/Dika, Građansko parnično procesno pravo [Civil Procedural Law] (1986); see chapter on arbitration (in Croatian);

Triva/Sikirić/Uzelac (eds), Review of Arbitration in Central and Eastern Europe: Arbitration in Hungary and Croatia, Vol 1 (2000), Supplement to Croatian Arbitration Yearbook (in English);

Triva/Uzelac, Komentar Zakona o arbitraži [Commentary of the Law on Arbitration] (currently in print, in Croatian).

b Articles

It would be hard to quote all, or even a representative section, of articles that have been written on various issues of arbitration in Croatia. We will therefore restrict quotation to the most important sources where such articles may be found. These are:

- *Croatian Arbitration Yearbook:* the leading journal devoted exclusively to current issues of arbitration, with the main focus on arbitration in Croatia and the region. The language of this publication is English (a small number of papers was published in German, too), with summaries in Croatian language. The journal is published annually since 1994 (until now, 10 volumes are published with a total of over 1500 pages). *Croatian Arbitration Yearbook* is published by the Croatian Arbitration Association and the Croatian Chamber of Commerce.
- *Review of Arbitration in Central and Eastern Europe:* special edition – a supplement of the Croatian Arbitration Yearbook. Until now, one issue has been published (in 2000), devoted to arbitration in Hungary and Croatia.
- *Pravo u gospodarstvu* [Law in Economy]: one of the major Croatian legal journals devoted mainly to issues of commercial law. Published bimonthly by the national association of commercial lawyers. Annually at least one issue is concerned with international commercial arbitration, featuring mainly reports from the *Croatian Arbitration Days*. Papers are published in Croatian, with summaries in English.

c Events

The most important national arbitration event is the international arbitration conference organised every December by the Croatian Arbitration Association and the Croatian Chamber of Commerce in Zagreb. Initiated in 1993, the *Croatian Arbitration Days – International Zagreb Arbitration Conference* deal with topics of arbitration and alternative dispute resolution at the global, regional and local level. Many reports and papers pre-

sented at this conference subsequently form the basis of papers published in the *Croatian Arbitration Yearbook*. The languages of the conference are English and Croatian.

2 Case law

Some arbitral awards and court decisions on arbitration issues are published in the Croatian periodicals. A selection of the most important court decisions and arbitral awards is published in English in some issues of the *Croatian Arbitration Yearbook* and in the *Review of Arbitration in Central and Eastern Europe*. Arbitral awards are also published in some books that deal with issues of private international law.[15]

Court decisions had an important impact on the development of arbitration law and practice in Croatia. In the beginning of 1990's, during the war between Croatia and Serbia, some court decisions resolved the sensitive issue of the validity of arbitral clauses referring to the jurisdiction of the Foreign Trade Arbitration Court at the Yugoslav Chamber of Commerce in Belgrade.[16] Other decisions confirmed a modern attitude regarding the issue of severability of arbitration clauses from the validity of the main contract.[17] Even before the 1990's, courts in Croatia also resisted temptation to enter into the merits of requests to set aside arbitral awards regarded as foreign awards.[18] Throughout the 1990's, courts demonstrated a relatively arbitration-friendly attitude and rejected a number of unfounded applications to set aside arbitral awards based on the grounds that would lead to a *de novo* assessment of the claim.[19] Recent setting aside of several arbitral awards in high-profile privatisation cases decided in arbitration raised important issues of the understanding of public policy.[20] Courts have recently also given their opinion on some open

15 See eg *Sajko/Sikirić et al*, Izvori hrvatskog i međunarodnog privatnog prava (2001).

16 See Judgment of the High Commercial Court in Zagreb Pž-957/92 of 29 April 1992, Croatian Arbitration Yearbook, Vol 2 (1995) 209–211 (determining that the arbitration clauses providing jurisdiction of the former Foreign Trade Arbitration court at the Chamber of Economy of ex-Yugoslavia do no have legal effect after 8 October 1991). For a more comprehensive view of the impact of the state succession in former Yugoslavia on arbitral practice see *Uzelac*, Succession of Arbitral Institutions, Croatian Arbitration Yearbook, Vol 3 (1996) 71–89.

17 See Judgment of the High Commercial Court Pž-2202/93 of 21 September 1993 (Praxis iuridica mercatoria, Vol 1 (1994) 209; Review of Arbitration in Central and Eastern Europe, Vol 1 (2000) 323); Judgment of the High Commercial Court Pž-3317/93 of 11 January 1994 (Praxis iuridica mercatoria, Vol 1 (1994) 100; Review of Arbitration in Central and Eastern Europe, Vol 1 (2000) 325).

18 Court order of the High Commercial Court Pž-186/86 of 18 March 1986.

19 See on this development (with reference to court decisions) in *Uzelac*, Setting Aside Arbitral Awards in Theory and Practice, Croatian Arbitration Yearbook, Vol 6 (1999) 55–74.

20 See decisions of the Commercial Court in Zagreb P-1284/2002 of 17 April 2002; P-1339/02-11 of 28 November 2002; P-1283/02 of 16 October 2002 (setting aside); contrary the decision of the Commercial Court in Zagreb P-4587/02 of 13 May 2003 (claim to set aside rejected).

21 See decisions of the High Commercial Court Pž-676/2000 of 3 May 2000; Pž-2523/2000. Both decisions were reported at the Croatian Arbitration Days on 4–5 December 2003.

issues of the procedure of recognition and enforcement of foreign awards.[21]

D Practical development of arbitration

On the territory of the Republic of Croatia arbitration has a considerable tradition. In fact, in the year 2003, 150 years of the arbitration tradition were celebrated. Naturally, throughout this period, the use of arbitration had different shapes and intensity. Until World War II, arbitration was predominantly used as a method of dispute resolution of smaller claims between merchants and small businesses, in a domestic (fairly local) setting. During the times of communist government, arbitration practice was fully discontinued for about a decade (replaced partly by "compulsory" state arbitration courts of the Soviet model). After severance of the ties between the socialist Yugoslavia and Stalin's Soviet Union in mid-1950's, the practice of "proper", ie voluntary, arbitration was partly restored, first only in relations with foreign investors. Since mid-1960's and the introduction of the doctrines of "workers self-management" and "social property", internal ("non-international") arbitration was allowed between relatively autonomous domestic socialist enterprises. The scope of arbitrable matters and the selection of arbitral institutions were rather limited, but the practice of arbitration still experienced growth, supported by the growth of economic activities and foreign trade exchange in 1970's and 1980's. Thus, a number of economically important cases found its epilogue in arbitration, either at the only possible internal venue, the Foreign Trade Arbitration Court in Belgrade, or abroad (often before the ICC International Arbitration Court or other reputed arbitration *fora*).

Since 1990, arbitration continued to develop; this time with less normative limitations, but under difficulties of other kind. The instability and war events in the first half of 1990's did not encourage the economy. Pre-1990 arbitration clauses in contracts between Croatian companies could under Yugoslav law only provide for the jurisdiction of the arbitral institution in Belgrade, and after separation of Croatia from the dissolving Yugoslav federation and initiation of hostilities between Belgrade and Zagreb, such clauses were declared invalid by Croatian courts due to change of circumstances *(clausula rebus sic stantibus)*. An arbitral institution that existed before 1990 at the local chamber of commerce in Zagreb until 1991 had jurisdiction only for national (internal, "domestic") arbitration. Sudden changes in the political and social environment required its fast transformation into a *forum* for international arbitration as well. This process went at a surprisingly fast pace, and the Permanent Arbitration Court at the Croatian Chamber of Commerce soon had roughly the same part of national and international cases. As arbitration law prior to 2001 retained a restrictive attitude towards the formation of arbitral insti-

tutions, arbitral practice in Croatia remained mostly concentrated at that institution, although hearings did not only take place in Zagreb, but also at other industrial cities.

The concentration of arbitral practice at one institution during the 1990's enables a relatively good insight into the developments in this period. In average, the Permanent Arbitration Court at the Croatian Chamber of Commerce (PAC-CCC) had in the period 1990–2000 about 30–40 cases annually. About half of the cases were international, with participation of parties from 26 different states. The largest numbers of foreign parties were from Croatia's principal economic partners – Italy, Germany, Austria and post-Yugoslav states (in particular Bosnia and Herzegovina and Slovenia). An analysis of the number of cases demonstrates an increase: in 10 years such growth may be estimated to about 70 % (from an average of 20 cases annually in the beginning of the 1990's to about 35 cases at the end of the 1990's).

Although the figures with respect to the number of cases and their growth do not have monumental proportions, different conclusions may be drawn from the increase in disputes during the period 1990–2000. While there were always some cases of relatively smaller value (up to Euro 50,000), during time the average amount in dispute was considerably growing. In the beginning of the 1990's, the average claim was for about Euro 150,000; at the end of 1990's, the average amount climbed to over Euro 1,5 million. In 2001 and 2002, due to some large privatisation cases that were resolved by arbitration, this average was even larger. Altogether, in the period 1992–2002, the total amount in dispute in claims submitted to arbitration in Croatia was over Euro 500 million – an amount that is quite respectable for a country of Croatia's size.

Therefore, we may draw the conclusion that arbitration in Croatia today evolved to a respectable dispute resolution mechanism, both in domestic and in international disputes. Current arbitration cases are mainly of commercial nature – from simple sales and purchase agreements to complex construction disputes. The overwhelming part of the cases is fairly typical for global arbitration practice, but in recent times arbitration was also utilised in the context of less conventional relations – in particular in the context of privatisation disputes, with the direct or indirect participation of the state, and with large investment funds, media houses, banks etc. This has recently also attracted more interest for arbitration issues in the general public, sometimes bringing considerable (and not always helpful) publicity to some arbitration cases.

Yet, there may still be a large margin for the development of arbitration practice, in particular by broadening its basis that has currently embraced mainly some high-profile cases and a relative insignificant number of "regular" commercial litigation. In this context, further efforts have to be engaged, aimed primarily at the development of the culture of arbitration, education of lawyers as prospective users of arbitration, formation of a sufficient number of skilful arbitrators, improvement of integrity and speed of arbitral proceedings, and the promotion of arbitration.

II Relationship between arbitral tribunals and state courts

A General remarks

Arbitration, as a private dispute resolution mechanism, in its core represents a derogation from the state court authority. At the same time, arbitral tribunals render awards with the effect of final and binding court judgments that are recognisable and/or enforceable by the state authorities just like a court judgment. Because of such delegation of powers to a non-state authority the court must have a possibility to take part and intervene in arbitral proceedings, mostly in order to secure the right to due process and ensure observation of public policy. Such intervention and revision is even more secured in the process of recognition and/or enforcement of the award.

The Law on Arbitration determines its scope of application within introductory provisions. There are three main parts that also form chapters of the new Law: the Law regulates domestic arbitration, recognition and enforcement of arbitral awards, and court jurisdiction and procedure in domestic arbitration and other cases provided by the Law.[22]

The court is defined as "a body of state judicial power" (Art 2 (1) point 10 LA). As the intention of the writers of the Law on Arbitration was to follow the guidelines and solutions of the UNCITRAL Model Law, the same wording is provided in the same Article and point of the UNCITRAL Model Law where a court is defined as "a body or authority of the state judicial system".

The whole chapter (Part four) of the Law on Arbitration is dedicated to the court procedure, ie to the court intervention, submissions to the state court, jurisdiction regarding legal assistance in taking evidence and deposition of the award.[23]

1 Cases in which the state court performs functions of supervision and assistance

The main principle is that "no court shall intervene in matters governed by the Law on Arbitration except where it is so provided by that Law" (Art 41 (1) LA). At the same time, when assisting the arbitral tribunals, the national courts' proceedings shall be governed "by the rules of non-contentious procedure except upon application for setting aside the award" (Art 41 (2) LA), while procedure for setting aside is commenced by filing a claim before the state court and thus such procedure is governed by rules of litigation procedure.

a) Before the commencement of arbitration proceedings, the state court may, firstly, stay its own proceedings if arbitration was agreed by the parties. The Law on Arbitration regulates that the court shall also provide assistance and supervision in the following cases: appointment of arbitrators (Art 10 (4)–(7) LA), determination of arbitrators' expenses and fees (Art 11 (5) LA), jurisdiction of the arbitral tribunal (Art 15 (3) LA), interim

22 See Art 1 LA.
23 See Arts 41–46 LA.

measures before the commencement of arbitral proceedings (Art 44 LA), decision on the validity of an arbitration agreement in case the subject matter of a claim before a court of law might be subject to such an agreement (Art 42 LA).

b) Powers of the court while arbitration proceedings are pending are the most complex ones. According to the Law on Arbitration, the assistance and supervision is given through: challenge of arbitrators (Art 12 (7) LA), making decision regarding the termination of an arbitrator's mandate (Art 13 (1) LA), interim measures (Art 16 (2) LA), decision when the arbitration agreement and a claim on the merits submitted to a court of law are on the same matter (Art 42 LA), interim measures during the arbitral proceedings (Art 44 LA), legal assistance in taking evidence (Art 45 LA).

c) Powers of the state court in the aftermath of arbitration proceedings are the most important ones since the state court allows either enforcement of an award or setting aside the award. These powers are the following: service and deposition of the award (Art 30 (7) LA), application for setting aside (Art 36 LA), enforcement of a domestic award (Art 39 LA), recognition and enforcement of a foreign award (Art 40 LA), authentication and the deposition of the award (Art 46 LA), adjournment of proceedings for recognition and enforcement of a foreign award and appropriate decision on security (Art 48 LA), decision on claims for recognition and enforcement (Art 49 LA).

2 Exhaustive list of cases?

The Law on Arbitration, although the relevant provisions are not grouped in one or more consecutive articles, does exhaustively list cases in which the state court performs functions of supervision and assistance before, during or subsequent to the arbitration proceedings. This follows from the main principle that the court should not intervene, except expressly provided by the Law on Arbitration (Art 41 (1) LA).

3 The rules on competence of state courts regarding the intervention in arbitration proceedings

The whole chapter (Part four) of the LA is dedicated to the court procedure. For the first time, the arbitration law does concentrate first instance jurisdiction with only two courts – one in commercial and the other in non-commercial matters. The Commercial Court *(Trgovački sud)* in Zagreb shall have jurisdiction to rule on the jurisdiction of the arbitral tribunal (Art 15 (3) LA), deposition of the award (Art 46 LA), application for setting aside (Art 36 LA) and request for recognition and granting the enforcement of the award (Arts 39 and 40 LA), in the cases arising from the *ratione causae* competence of the commercial courts. In other cases, the County Court *(Općinski sud)* in Zagreb shall have jurisdiction. This provision on territorial jurisdiction was probably inspired by the intention of specialisation and knowledge of judges resolving certain types of disputes.

Regarding the subject matter jurisdiction according to the Code of Civil Procedure, the second instance courts – that is the High Commercial Court *(Visoki trgovački sud)* in Zagreb or Supreme Court *(Vrhovni sud)* – shall

decide on appeals against first instance court judgments. This means that the Supreme Court of the Republic of Croatia may decide the case in the council of five judges after certain requirements have been met.[24]

Jurisdiction for the enforcement of an award is provided by Art 43 (2) of the Law on Arbitration whereas "a court competent *ratione causae* designated by a separate law shall be competent to carry out the enforcement of the award". As previously mentioned, enforcement of an arbitral award should be asked either from the County Court or Commercial Court in Zagreb depending on the subject matter. The Law on Courts[25] specifies that the commercial courts shall have jurisdiction to carry out proceedings of "recognition and enforcement of foreign judgments and arbitral awards in commercial matters".[26] Here the law failed to mention recognition of domestic awards but in practice enforcement of all awards rendered in commercial matters is applied for before the Commercial Court and in all other disputes before the County Court in Zagreb.

As the party may refer only to these two courts for granting the enforcement, the enforcement itself shall be performed by the "court ... designated by separate law"[27] which is here the Law on Courts and Law on Enforcement.[28]

When the Commercial Court in Zagreb in the process of recognition and enforcement of a foreign arbitral award examines the arbitral award and decides upon recognition, such a ruling may be appealed. The Supreme Court of the Republic of Croatia shall have jurisdiction to decide upon an appeal against a decision rendered in the proceedings where recognition is the main issue within fifteen days from the delivery of the decision on recognition (Art 49 (5) LA). Here the power for second-instance decision is given to the Supreme Court and not to the High Commercial Court or County Court, both in Zagreb.

These provisions shall not affect the application of the provisions of the jurisdiction for the ordering and enforcement of provisional measures of the Law on Enforcement.[29]

Authentication and the deposition of the award shall be performed by the person or authority designated by the parties. If the parties designated a state court for authentication and deposition of the award, the court shall fulfil it duties in accordance with the rules for rendering legal assistance to arbitral tribunals (Art 46 LA). Here the Law on Arbitration specifies the competent court only for the deposition of an award (Commercial Court in Zagreb or County Court in Zagreb),[30] while it is silent about the authentication of an award. It could only be presumed that the same courts shall have the competence for authentication as well.

24 See Art 44 (3) CCP.
25 Law on Courts (*Zakon o sudovima*, hereafter: LC), Off Gaz 3/1994, 100/1996, 131/1997, 129/2000.
26 See Art 19 (5) LC.
27 Art 43 (2) LA.
28 Law on enforcement, Off Gaz 57/1996, 29/1998.
29 See Provisional measures under II B 5.
30 See Art 43 (1) LA.

Finally, unless parties have agreed otherwise, assisting activities shall be performed by an arbitral institution or some other appointing authority, the activity of appointment of arbitrators,[31] challenge of arbitrators,[32] nomination of a substitute arbitrator[33] and deciding jurisdiction of the arbitral tribunal[34] shall be performed by the president of the Commercial Court in Zagreb (in commercial matters[35]) or of the County Court in Zagreb (in all other matters) or the judges authorised by him (Art 43 (3) LA).[36]

4 Proceedings before the state court, oral hearings

Regarding the obligation to oral hearings in a proceeding before a state court (litigation) according to the Code of Civil Procedure,[37] oral hearings would generally have to take place if the court is to decide on the merits of the case (Art 4 CCP). There are, however, some exceptions to this rule. Default judgements and judgements based on admissions or waivers of the claim can be made without holding an oral hearing. After the 2003 amendments to the CCP, a judgement on the merits may also be made if the defendant admitted the facts of the case in his written reply, even if the claim was disputed (Art 332a CCP).

5 Recourse against state courts' decisions

Court decisions made in respect to arbitration proceedings generally may be challenged by legal remedies. The Croatian Constitution does recognise the right to appeal regarding all decisions on parties' civil rights and obligations. In legal theory and practice, it is considered that this also applies to court decisions regarding the assistance and intervention in arbitration matters.

The remedies that may be used depend on the type of proceedings. By stating that the applications for setting aside will be dealt with in the contentious proceedings, and other matters in extra-contentious, the Law on Arbitration has introduced two regimes, aiming to partly limit the previous overly extensive possibility to launch legal remedies. However, a number of legal remedies still have remained.

In the setting aside proceedings, the judgment may be challenged by an appeal. The competent appellate court is the High Commercial Court (for commercial matters) and the Supreme Court (for other matters). Special ("extraordinary") legal remedies may in some cases also be launched against the judgment. The secondary appeal ("revision", *revizija*)[38] may be

31 Provided in Art 10 (4)–(7) LA.
32 Provided in Art 12 (3) and (4) LA.
33 Provided in Art 14 LA.
34 Provided in Art 15 LA.
35 That is "in cases arising from *ratione causae* competence of commercial courts", Art 43 (1) LA.
36 For more see *Dika*, Arbitrability and exclusive jurisdiction of Courts of law, Croatian Arbitration Yearbook, Vol 6 (1999) 29–45.
37 Code of Civil Procedure 1977 (*Zakon o parničnom postupku*, hereafter: CCP), Off Gaz 53/1991, 112/199, 91/2002.
38 See Arts 382–400 CCP.

submitted to the Supreme Court within 30 days from the finality of the second instance judgment if the value of the appealed claim was over 100,000 kuna (about 15,000 Euro[39]). The reasons for revision are limited to the misapplication of the law in appellate proceedings, and to some grave procedural errors. In theory, the request for reopening the proceedings *(ponavljanje postupka)* before the same court would also be permissible against final court decisions. The reopening can be requested only for some grave irregularities (eg partiality of judges, criminal offences of witnesses, experts and other persons, legal incapacity of the parties, falsified documents) or for new facts and evidence. The time limits are 30 days from the receipt of the respective decision or information, within the objective five year time limitation from the finality of the judgment. It is important to note that all the reasons for reopening relate to court proceedings, not to arbitration proceedings. Therefore, a very few of them would be practically applicable (eg if the court would set aside the award upon an application that was based on falsified documents or false statements).

6 Party representation in the proceedings before state courts

As already mentioned, the amendments to the Croatian Code of Civil Procedure came into force on 1 December 2003. A part of the amendments does not apply to proceedings where the claim was filed after 1 December 2003. Since the Code of Civil Procedure dating from 1977 still applies to the currently (earlier) running proceedings regarding the provisions on party representation, first the current/old and then the future/new statutory regulation shall be discussed.

a) The 1977 Code of Civil Procedure generally accepted the attitude that there is no legal obligation to be represented by a lawyer before state courts *(Anwaltszwang)*. Any person could take legal actions before the court of law either personally or could give power to a third person to take actions in his name and on his behalf and this third person need not be a lawyer.[40]

Furthermore there are no legal requirements regarding professional qualifications of the representative. This means that the simple business capacity (capacity to enter into business transactions) is sufficient to be a representative before the court. This representative needs not be an attorney at law. The only exception is the case of professional "attorneys" *(Winkelschreiber, nadripisari)* and representation of legal persons in proceedings with higher value in dispute (over 50,000 kuna – 7,500 Euro), when the representative must have passed a bar exam.

Also, the given power of representation does not end with the death of a person but only the lawful inheritor can revoke/cancel the power of representation.

39 In commercial matters the value of appealed claim should be over 500,000 kuna (about Euro 70,000).
40 Even if the party has given power to the attorney, it could still take actions personally (directly) before the court.

Finally, the attorney at law trainees have the power to substitute before the courts only their own principals (attorneys at law), only before first instance courts and only if the value in dispute does not exceed 50,000 kuna (only in disputes where the party is a legal person).

b) In accordance with other procedural changes, the aim of the 2003 amendment of the Code of Civil Procedure was to redefine the position of party representatives in a direction that the party could be represented only by an attorney at law before the court proceeding. The argument behind was that attorneys are more practised, educated and serious in the representation of parties, they are professionals responsible for their work, and the court procedure shall be faster, simpler and more flexible.

This argument was not entirely accepted so that the amendments of the Code of Civil Procedure offer a certain compromise. Generally, there is no legal obligation to be represented by a lawyer before courts and there is no mandatory rule that the party must appoint a representative (ie there is no *Anwaltszwang* in the proper meaning of this term). But, if the party wishes to nominate a representative, this person must be an attorney at law.

Therefore Arts 45 and 252 of the amendment of the Code of Civil Procedure provide that the party can be represented only by an attorney at law, unless otherwise provided by the law.

The exceptions to this rule are the following cases:

- a person, who is an employee of the party (legal person or natural person – private employer) may represent this party;
- a person that is heir in direct blood line, brother, sister or spouse of the party;
- the legal representative of a worker in labour disputes may be an employee of the labour union; the same rule applies to employers that are members of the employers' associations.[41]

Regarding the time limit of representation, the death of a natural person – party in dispute – is a reason for the termination of the appointment of an attorney.[42] This automatically leads to the suspension of the procedure. The bankruptcy of a legal person has the same consequences.

Finally, regarding attorney at law trainees, a trainee with bar exam has the power to substitute before the court any attorney (not only their principals) without any limitations; trainees without bar exam can substitute an attorney in any dispute only if the value in dispute does not exceed 50,000 kuna.[43]

41 See Art 434a CCP.
42 See Arts 100 and 102 CCP.
43 See Art 95 CCP.

B Pre-arbitral phase

1 Decisions of the arbitral tribunal on jurisdiction

a Kompetenz-Kompetenz

The Law on Arbitration does recognise competence to rule on its own jurisdiction *(Kompetenz-Kompetenz)* of the arbitral tribunal. The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or the validity of the arbitration agreement.[44]

A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense in which the respondent raised issues related to the substance of the dispute.[45] A party is not precluded from raising such a plea by the fact that he has appointed or participated in the appointment of an arbitrator.

A plea that the arbitral tribunal is exceeding the scope of its authority shall be made as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified (Art 15 (1)–(2) LA).

In his objection to jurisdiction the respondent shall usually call upon questions of the existence and/or validity of the arbitration agreement. The validity of an arbitration agreement shall be implied unless objection to jurisdiction is raised. For that purpose a doctrine of the severability of an arbitration agreement is accepted. An arbitration clause that forms part of a contract shall be treated as independent from other terms of the contract. The decision of an arbitral tribunal that the arbitral agreement is null and void does not entail the invalidity of the arbitration clause.

If the respondent fails to object the jurisdiction of the arbitral tribunal at the latest before entering into the substance of dispute, it is deemed that he accepts to arbitrate *(prorogatio tacita)*. Such an agreement shall be deemed to be valid (Art 6 (8) LA). Therefore, a failure to raise objections within given time limits (before both tribunal and the state courts) is a reason for rejection of the objection. Such a plea shall not be rejected if the respondent objects that the subject matter is not capable of being settled by arbitration or that it is contrary to public policy. The court revises these two reasons *ex officio* not only at the beginning of the process but also in the setting aside procedure and the recognition and enforcement of the award.

Additionally, the tribunal may refuse to conduct a proceeding and to rule on the statement of claim if the dispute concerns rights which the parties may not freely dispose of (Art 3 (1) LA).[46]

44 See Art 15 LA.
45 See Art 6 (8) and Art 15 (2) LA.
46 Art 2 Zagreb Rules 2002 contains a similar provision: "The Board of the Court shall refuse to adjudicate a dispute even though the parties have agreed on the jurisdiction of the Court if the arbitration agreement concerns rights the parties may not freely dispose".

b Ruling on jurisdiction

The arbitral tribunal may rule on issues of jurisdiction either as a preliminary question or in an award on the merits. At the same time, unless otherwise agreed by the parties, the arbitral tribunal, besides a final award, can make a partial and an interim award.[47]

Some clarification in terminology might be necessary: the term "award" is defined as "decision on the merits of dispute",[48] while decisions on procedural and preliminary issues can be made in the form of a procedural order, and would not need the form of an award.

Besides a final award, the tribunal can also make partial or interim awards. The difference is that a partial award finally decides one or more of several claims in the dispute (but not all) or a part of one divisible claim and is considered to be final and independent, while an interim award decides on substantive issues related to a monetary claim and is not final and independent.[49]

Therefore, if the arbitral tribunal has ruled on the issue of jurisdiction as a preliminary question (not in the award), such a ruling may be challenged before the court (Art 15 (3) LA). Otherwise, state courts may not decide that arbitration is inadmissible before the arbitral tribunal has ruled on its own jurisdiction.

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 competent court to decide the matter. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award. Once the award is made, this claim would lose any sense, since the award could be attacked only by a new setting aside claim. In the light of this fact, court proceedings regarding the jurisdiction of the arbitrators (ie validity of their own ruling) shall be urgent (Art 15 (3)–(4) LA).

If the arbitral tribunal's ruling that it has jurisdiction is challenged, the consequences for the post-arbitration phase (recognition/enforcement, application for setting aside) depend on the ruling of the tribunal.

If a decision on jurisdiction is made in the form of a procedural order, such a decision would be considered as a procedural (and usually preliminary) question. Thus, it would not require enforcement, nor would it be possible to submit this decision to a setting aside procedure.

If a decision on jurisdiction is made within a partial or a final award, it could be subject to an independent setting aside procedure. This actually means that if the tribunal has ruled upon jurisdiction in a final award (or partial award), the objection of the lack of validity of the arbitration agreement may only be raised in the setting aside procedure. This is based on Art 41 (1) LA where it is stated that if a claim before the court of law is not provided by the Law on Arbitration, it is not admissible. These solutions have also been inspired by the UNCITRAL Model Law.

47 See Art 30 (1) LA.
48 See Art 2 (1) point 8 LA.
49 See Chapter IV S.

If the arbitral tribunal rules that it does not have jurisdiction, this decision may not be challenged before any further authority. As this is a final decision, the consequence is that the dispute may be submitted only to a court of law (or, eventually, to a different arbitration).

Under Art 15 LA, if the arbitral tribunal rules that it has jurisdiction, any party may request, within 30 days after having received notice of that ruling, the competent court to decide the matter.[50] While the state courts review the decisions of the arbitrators, the arbitral tribunal may continue the arbitral proceedings and issue an award (Art 15 (3) LA). It seems that the issuing of the final award would actually make the further reviewing of the arbitrators' decisions impossible, and the issue of jurisdiction could subsequently only be raised upon the application to set aside the award. Consequently, the party that has submitted the request to review the decision would have to change its petition and launch the claim for setting aside of the award.

2 Substantive claims before state courts

a An action before the state court in a matter that is subject of an arbitration agreement

For the case of a party that brings an action before a state court in a matter which is the subject of an arbitration agreement, the Law on Arbitration provides the following solution: "If the parties have agreed to submit a dispute to arbitration, the court before which the same matter between the same parties was brought shall upon respondent's objection declare its lack of jurisdiction, annul all actions taken in the proceedings and refuse to rule on the statement of claim, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed".[51]

The respondent's objection may be raised no later than at the preparatory hearing or, if no preparatory hearing is held, at the main hearing before the end of the presentation of the statement of defence.[52] This means that after this moment the respondent tacitly consents to the court's jurisdiction *(prorogatio tacita)*. If such an action is brought before the state court, the arbitral proceeding may still be commenced and continued and the award may be made while the issue is still pending before the state court.

The above provision of Art 42 LA was almost literally taken from Art 8 of the UNCITRAL Model Law. This is virtually the same position as the position of Art II (3) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

50 Art 42 LA.
51 See Art 42 LA.
52 Since this is governed by the rules of litigation, Art 285 of the CCP applies.

b Points that state court consider if a party invokes an arbitration agreement

When an objection to jurisdiction is raised before a state court, the court will first need to find out whether the respondent's objection is raised in due time. Then the court shall look at the validity of the arbitration agreement. If a court – upon a valid objection – finds that there is a valid arbitration agreement regarding the same dispute, it will declare its lack of jurisdiction and reject further decision-making on the merits. Although in national law it would not be possible for the court to automatically refer the case to arbitration (since arbitration courts do not belong to the state system), the consequence is that the claimant could only pursue his claim if it is submitted anew in the relevant arbitration procedure.

Furthermore the court controls *ex officio* the following two conditions: the subject matter in dispute must be capable of being settled by arbitration (arbitrability condition) and the agreement must not be contrary to the public policy of the Republic of Croatia (public policy condition).

Regarding the condition of arbitrability, the approach differs depending on the nature of the dispute and the place of arbitration. The parties may submit to arbitration all or certain disputes which have arisen or may arise in the future between them in respect of a defined legal relationship of a contractual or non-contractual nature (Art 6 (1) LA). This means that for arbitral proceedings taking place in Croatia there are almost no limits regarding the subject matter of dispute (including disputes of trademarks, patents and antitrust): the only requirement is the dispositive nature of disputed rights. For conducting arbitration proceedings outside the territory of the Republic of Croatia, another requirement must be met – an arbitration agreement will be valid "unless it is provided by the law that such a dispute may be subject only to the jurisdiction of a court in the Republic of Croatia". This requirement refers to exclusive jurisdiction of the courts in Croatia, and there are a number of disputes where such jurisdiction is provided, eg in all matters regarding property rights over immovable property, in disputes in which one of the parties declared bankruptcy etc. As such cases would be regarded in Croatia only as internally arbitrable (ie as arbitrable in domestic arbitration), in Croatian courts of law an arbitration agreement on such arbitration in Croatia would be regarded as valid, whereas the agreement on a foreign arbitration would be regarded as invalid.

On the condition of public policy see *infra* under the grounds for setting aside *(ordre public)*.

Regarding the circumstances in which it would be deemed unreasonable to refer a party to arbitration, there are no provisions in the Law on Arbitration. Neither consumer contracts, nor a party's poverty or the alleged need to obtain legal protection within reasonable time can be used as a pretext for avoiding the arbitration agreement.[53]

53 The issue of consumer contracts is dealt with in a different manner: The Law on Arbitration provides that, if a dispute has arisen or it could arise out of a consumer contract, the arbitration agreement must be contained in a separate written document signed by both parties (Art 6 (6) LA). No other agreements may be contained in this document than those referring to arbitral proceedings, except if this document was drawn up by notary public.

It is certainly true that the poverty of a party could have great influence on arbitral proceedings. There is no obligation to be represented by an attorney at law before the tribunal (so that there is no attorney's award), but there is no possibility for a party to be exempted from the costs of arbitration as it is possible in state court proceedings. However, as the arbitration agreement is entered into voluntarily, and the costs of the arbitrators are rather foreseeable, the costs cannot be used as an excuse for a breach of the arbitration agreement. Also, arbitrators may decide on costs taking into account the success in the arbitration proceedings and other relevant circumstances. Yet, in the initial stages of the arbitration, the lack of resources may be a problem; in this context, a more flexible approach to deposits may be required by the arbitration institutions (see more *infra* on costs of proceedings).

Eventual objections to the length of arbitration proceedings would also be rejected as unfounded. In comparison, arbitration proceedings are still faster than court litigation. During arbitration the parties may request interim measures by a competent court, and, after 2002, also by arbitrators. The arbitrators have a legal obligation to avoid any undue delays of proceedings, and may be liable for the breach of this obligation. Finally, by entering into an arbitration agreement, the parties waive a part of their right to access to court; this also includes the waiver of the right to challenge the length of (arbitral) adjudication by the instruments that would be at disposal in respect to length of court proceedings (constitutional complaint, application to the European Court of Human Rights in Strasbourg).

On the other hand, parties also have limited time at their disposal to invoke the arbitral agreement. Under Art 42 LA, the arbitration agreement may be invoked no later than at the preparatory hearing or, if no preparatory hearing is held, at the first main oral hearing before the end of the presentation of the statement of defence. If the respondent invokes the arbitration agreement in due time, the court must act upon the respondent's objection, declare its lack of jurisdiction, annul all actions and refuse to rule on the statement of claim. If the arbitration agreement is not invoked in due time, the court shall continue with the proceeding and rule on the statement of claim.

This means that after expiration of the mentioned time limits, it is considered that the respondent has given tacit consent to the jurisdiction of the court *(prorogatio tacita)* (Art 42 (2) LA).

Generally, the same principles on the jurisdictional issues apply irrespective whether the arbitration agreement provides for an arbitration that would be considered domestic (national or international) or foreign.[54] Some differences may still occur with respect to the assessment of validity

54 The Law on Arbitration makes a difference between domestic and foreign arbitration depending on whether arbitration takes place in the territory of Republic of Croatia ("domestic arbitration", Art 2 (1) LA) or outside the territory of Republic of Croatia ("foreign arbitration"). On differences regarding the arbitrability issues see *supra* in this paragraph.

of the arbitration agreement. *Inter alia*, the court of law would not recognise arbitration agreements that were not permitted, ie agreements that provided arbitration in non-arbitrable matters.

c *Res judicata* and suits pending elsewhere

Upon objections in the court proceedings in the same matter, control measures applied by the state court generally only employ a *prima facie* evaluation of the validity of the arbitration agreement. As the existence of an arbitration agreement is a negative procedural precondition for the adjudication on the merits, it is sufficient to prove it with the level of probability – certainty is not required. In principle, the court will also be bound by the facts and evidence submitted by the defendant. The level of control may be higher if the validity of the agreement is in itself the object of the proceedings, as in the cases of review of the procedural orders by which arbitrators decided that they have jurisdiction, or upon application for setting aside the award due to invalidity of the agreement. In such cases, the examination of formal and substantive validity of the arbitral agreement would require a higher standard of proof. Also, the (in)validity of the agreement may raise issues of public policy that have to be taken into account *ex officio* by the state court.

In litigation, it is according to the Code of Civil Procedure not possible to initiate and conduct litigation proceedings in a matter that has already been finally resolved or while a suit between the same parties and the same matter is still pending. In this case the court shall dismiss the complaint.[55] These violations are so serious that they represent grounds for absolute nullity of the procedure.[56] The first instance court and second instance court (appellate court) shall take up these reasons *ex officio*. The existence of a final judgment is a negative procedural requirement for a new process; while a suit is pending, new proceedings may not be initiated.[57]

If this is put into the context of arbitration, neither the Law on Arbitration nor the Zagreb Rules 2002 contain explicit provisions. Despite that, starting from the characteristic of arbitration that it is a private dispute resolution, this litigation principle is only partially adopted.

The state court does not need to take into account *ex officio* pending arbitration proceedings in the same matter. If the defendant has failed to raise the objection as to the courts' jurisdiction in due time, the court's jurisdiction is fully constituted irrespective of an eventual prior arbitration agreement.[58]

55 See Art 28 (2) CCP.

56 See Art 345 (2) point 11 CCP.

57 See *Triva/Belajec/Dika*, Građansko parnično procesno pravo [Civil procedural law] (1986) 334.

58 On the other side, the fact that the parties have entered into substantive arguments in arbitration proceedings without objecting to jurisdiction of the arbitrators may be used as a proof of a valid arbitration agreement when the defendant invokes such a jurisdictional objection in court proceedings. Naturally, he also has to raise this objection in due time, ie prior to arguments on the merits.

Additionally, since the Law on Arbitration provides that an "arbitral proceeding may nevertheless be commenced and continued", the Law indirectly provides room for two pending suits in the same matter, one before the court and one before the arbitral tribunal.[59] However, if the arbitrators have issued a final award while the court litigation is still pending, it may have impact on the court proceedings if the award is regarded to have the same power as *rei judicatae* in national courts.[60]

The Law on Arbitration provides for the duty of the state courts to respect domestic arbitral awards. If the proceeding has been initiated before the state court and issues in dispute have already been decided by the final and binding arbitral award, the court shall be bound by the decision on the issue contained in its dispositive part. There is no obligation for a court to monitor whether issues have already been decided finally by arbitration (that there is final award) but upon a party's objection.[61] The court shall not be bound by the final award only if it finds that reasons for setting aside of the award exist.[62]

In the opposite direction, the consequences are very similar. If an action is brought before the court, and the objection of jurisdiction is raised, the arbitral proceedings may nevertheless be commenced or continued if they were already commenced, and the award may be made while the issue is still pending before the court (Art 42 (3) LA).

Regarding *res judicata*, there is no obligation for the tribunal to respect a court judgment made in the same matter and between the same parties. Moreover, according to the provisions of the Law on Arbitration *res judicata* is not listed as a reason for setting aside or a reason for denial of recognition or enforcement of the award. This is justified since arbitration is a private dispute resolution process and the parties are free to agree on the procedure to be followed. Also, among the arbitrator's duties there is no obligation to monitor final court judgments.

Therefore it could be concluded that there is no provision to exclude two final decisions in the same matter being rendered: one by the arbitral tribunal and one by the state court. However, if the court has issued a final judgment prior to the arbitral award, the arbitrators will have to be aware of the fact that, at least in Croatia, the prior judicial *res judicata* would have precedence.[63]

59 See *Giunio*, Courts of Law and Arbitration, Croatian Arbitration Yearbook, Vol 9 (2002) 191–219.

60 Domestic awards have such an effect automatically, immediately after their enactment. Foreign awards would need to be subject to recognition in the Republic of Croatia.

61 Despite an *ex officio* duty of the court, in litigation practice the court usually acts only upon party objection.

62 See Art 39 (3) LA.

63 This situation is not clearly covered by the law; yet, it seems that the rendering of a final and binding judicial judgment in the same matter may make the mandate of the arbitrators to resolve the same issue obsolete if the enforcement of the award would have to take place in Croatia. On the other hand, in matters where enforcement may be sought abroad, and particularly if Croatian state court judgments cannot be recognised in the enforcement country (as is the case with most of the countries), it would make sense to continue the arbitration and render the award.

3 State courts and determination/formation of the arbitral tribunal

a Assistance in the constitution of the arbitral tribunal

The competence of the arbitral tribunal derives from the arbitration agreement and the parties are free to agree on the constitution of the arbitral tribunal. Only if the parties are not able to reach an agreement, they can ask the appointing authority to provide assistance in the appointment, challenge and substitution/replacement of the arbitrator.

Under the Law on Arbitration the appointing authority may be determined by the parties. Absent their agreement, the appointing authority will be the state court (Art 43 LA).[64] Under the Zagreb Rules 2002 (the Rules of Arbitration of the PAC-CCC), the default appointing authority is the President of the PAC-CCC if not otherwise agreed by the parties (Art 10 Zagreb Rules 2002).

If parties have only agreed on arbitration without designating any specific arbitration institution or particular arbitration rules, the Law on Arbitration directly determines the way of appointing the arbitrators. The appointed arbitrators then further determine the rules of the proceedings (see *infra*).[65] The default procedure for the appointment of an arbitral panel of three arbitrators is the following: every party appoints one arbitrator, and the appointed arbitrators appoint the presiding arbitrator. If a party fails to appoint an arbitrator within 30 days from receipt of request or if within 30 days from the last appointment two arbitrators fail to appoint the president (third arbitrator), the party may request appointment from the appointing authority. In the same way, an appointment from the appointing authority may be requested if the parties fail to appoint jointly the sole arbitrator.[66]

If the parties agreed on the institutional arbitration before the Permanent Arbitration Court at the Croatian Chamber of Commerce, the Zagreb Rules 2002 apply.[67] The Zagreb Rules provide for a similar appointment procedure; however, only the President of the PAC-CCC is acting as appointing authority.[68]

b Multi-party arbitration

The Law on Arbitration contains no specific provisions for multi-party arbitration regarding determination and formation of the arbitral tribunal.[69] The only special provision is contained in Art 9 of the Zagreb Rules 2002

64 The default appointing authority is the president of the court competent for the assistance and intervention (the President of the High Commercial Court or the County Court in Zagreb).

65 In this way, the state court does not have any subsidiary authority to determine the arbitration rules or institution.

66 See Art 10 (2) points 1, 2 LA.

67 See Chapter IV A and B.

68 See Zagreb Rules 2002 Arts 6, 7, 8, 10, 11.

69 See *Goldner*, Multy party arbitration, Croatian Arbitration Yearbook, Vol 8 (2001) 109–120.

where it is stated that if the case involves multiple claimants or respondents, such multiple parties shall prior to the appointment agree on the nomination of their joint arbitrator.

If multiple parties fail to nominate their joint arbitrator or if within an additional time of 15 days in their written submissions the parties fail to appoint or nominate the same person as an arbitrator, their arbitrator shall be nominated by the president of the PAC-CCC from the List of arbitrators of the PAC-CCC.[70]

c Challenge of an arbitrator

The challenging party may ask the tribunal to decide upon challenge of an arbitrator. This applies only if the challenged arbitrator does not withdraw from office after receipt of notice about the request for his removal. The arbitral tribunal may either accept or reject the challenge. If it rejects the challenge, the final recourse is the appointing authority (see *infra*).

The arbitrator may be challenged only because of circumstances that give rise to justifiable doubts as to his independence or impartiality or if the arbitrator does not possess qualifications agreed by the parties or he fails to fulfil his duties specified in Art 11 (2) of the Law on Arbitration.

Art 12 LA regulates the procedure for challenge. The parties may freely agree on the procedure for challenging an arbitrator and the arbitral tribunal, including the challenged arbitrator, shall promptly decide on the challenge (with the exception if the challenged arbitrator withdraws from his office or the other party agrees to the challenge). The written request stating the grounds of challenge should be made within 15 days after becoming aware of the grounds of challenge (unless other time limits are agreed by the parties).

The grounds for challenge are firstly assessed by the arbitrators. If they reject the challenge or do not decide upon the challenge within 30 days after the challenge was made, the challenging party may, within 30 days starting from the acceptance of the notice of the decision rejecting the challenge, request (within further 30 days starting from the expiration of mentioned time limits) the appointing authority to make a final decision on the challenge.

If the appointing authority is not agreed by the parties, the President of the Commercial Court in Zagreb (in commercial matters) or the President of the County Court in Zagreb (in non-commercial matters) shall have jurisdiction to decide upon challenge.

Since Art 43 (3) LA provides that the court should exercise the assisting activities "unless the parties have agreed that some or all of the assisting activities are to be performed by an arbitral institution or some other appointing authority", the question is whether the challenge activity could be considered as an assisting activity, and whether "internal" decisions on challenge may be reviewed by the courts. In practice, there was a case in which a party, after the challenge was rejected by the President of the PAC-CCC as a default appointing authority under the Zagreb Rules 2002, applied for challenge before the Commercial Court.

70 See Chapter IV C.

The President of the Commercial Court decided that he had no jurisdiction if the parties had designated a different appointing authority under the Arbitration Rules of the PAC-CCC. Therefore, according to our practice the court shall not review decisions on challenge made by arbitral institutions or by its appointing authority. Only through the procedure of setting aside the award the arbitrator's independence and impartiality could be put on review.

Additionally, according to the Law on Arbitration the performance of assisting activities shall not be considered as an administrative procedure and it does not involve decisions on rights and duties. Therefore, no appeal is allowed against decisions of the appointing authority in connection with the appointment of arbitrators (Art 10 (7) LA), challenge of arbitrators (Art 12 (7) LA) and replacement of arbitrators (Art 14 LA).

The Zagreb Rules 2002 offer no specific provision regarding the challenge of arbitrators assuming that the dispositive provisions of the Law on Arbitration shall be applied. The only difference is that Art 10 of the Zagreb Rules 2002 envisages the President of the PAC-CCC as the appointing authority. It is important to note that the decision on the appointment of an arbitrator (either by the court or by other authority) shall not be subject to appeal (Art 10 (7) LA).

While a request for challenge is pending, the arbitral tribunal, including the challenged arbitrator, may continue arbitral proceedings and make an award.

Finally, regarding replacement of arbitrators, the substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.[71]

4 Scope of assistance in the stage of constitution of the tribunal

The Law on Arbitration does not expressly deal with the question to which types of tribunals and in which proceedings the assistance in the formation of arbitral tribunals is granted. As the LA expressly regulates only domestic (national and international) arbitration proceedings and "court jurisdiction and procedure regarding arbitration from point 1 of this Article and in other cases provided by this Law" (Art 1 point 1 and 3 LA), it could be concluded that the assistance is given in national and international arbitral proceedings where the venue of arbitration is in the Republic of Croatia.

In foreign arbitration proceedings, there would be no obligation to assist tribunals under the LA. However, under the Law on Courts,[72] national courts are authorised to provide legal assistance to foreign arbitration courts according to the rules applicable to legal assistance for foreign national courts.[73] However, there are no practical experiences in this respect.

71 See Art 14 LA.

72 The Law on Courts, Off Gaz 3/94, 100/96, 115/97, 131/97, 129/00, 67/01 and 5/02, Art 11.

73 The provisions on legal assistance to foreign courts are to be found in Arts 181–183 of the Code of Civil Procedure. While some of the conditions (reciprocity, conformity with public policy) contained in these rules are appropriate, some other (use of diplomatic mail, existence of an international instrument) seem inapplicable.

When receiving the request for assistance, the courts should, as a preliminary procedural issue, check whether the conditions set by law are fulfilled, *inter alia*, whether there is a valid arbitration agreement. Regularly, a *prima facie* existence of the agreement, and its *prima facie* validity (ie absence of obvious faults) would suffice.

5 Court assistance to arbitral tribunals in taking evidence

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

The procedure for taking evidence before the commissioned Croatian court is governed by the provisions on taking evidence before a judge commissioned by a rogatory letter.

The arbitrators are entitled to participate in the procedure of taking of evidence before a commissioned judge and put questions to persons being examined by the court (Art 45 LA).

The assistance shall be rendered by the competent court in the same way and under the same rules as if it were requested from another state court. The competent court shall be the court competent *ratione causae* which has territorial jurisdiction according to the place where the particular activity has to be undertaken (Art 43 (5) LA). It seems that the provision of Art 45 LA is limited to the assistance to arbitral tribunals in proceedings with the seat in the Republic of Croatia,[74] but exceptionally the assistance may also be requested by foreign tribunals under the provisions of the Law on Courts.[75]

6 Interim Measures

a General

The interim measures under Croatian law cover a broad range of measures. Such measures have compulsory character and therefore transcend the pure voluntary limits of arbitration. Prior to enactment of the Law on Arbitration, the Croatian law was taking the traditional approach to interim measures, according to which only courts of law were empowered to grant interim relief.

This approach has changed. Now interim measures may be ordered both by the state courts and by the arbitral tribunals. There is neither exclusive jurisdiction of the state courts for the granting of interim measures nor does the arbitration agreement preclude such jurisdiction, in spite of the possibility to order. Following the solutions of the UNCITRAL Model Law, Croatian Law on Arbitration accepted a dual approach towards

74 See the same argument in respect to appointment of arbitrators, above under 6 (scope of assistance in the stage of the constitution of the tribunal).

75 See *supra*, note 30.

provisional measures.[76] The choice is up to the requesting party: the Law on Arbitration provides that the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may also require any party to provide appropriate security in connection with such a measure.[77]

At the same time the Law provides that a party to an arbitration agreement may apply to the court to grant interim measures for the protection of a claim. It is not incompatible with the arbitration agreement for a party to request from a court, before or during arbitral proceedings, an interim measure for the protection of a claim and for a court to grant such a measure.[78]

Since the wording of Art 16 of the Law is "unless otherwise agreed by the parties", the parties are free to regulate this issue differently. Undisputedly, the parties may agree that the arbitrators do not have power to order interim measures. It seems that an agreement that would derogate the jurisdiction of the state courts to grant interim measures would not be binding for the courts, but it may be binding for a party that would be liable for damages if this violated such an agreement. Even such a liability would not exist in case the court's interim measures were the only viable option, eg when the tribunal is not yet appointed.

The form and content of an interim measure is not provided by the Law. But, as already mentioned, an "award" is defined as a "decision on the merits of the dispute"[79] and it is clear that an interim measure would not fall within such a description.[80] Since the interim measure is not a question of the merits of a dispute but a question of a procedural nature, the form of a procedural order shall be sufficient. Even if a tribunal would issue the order under the title "award", this would still be regarded as a procedural order *(falsa nominatio non nocet)*.

b Enforcement of interim measures

Since the purpose of interim measures is to prevent imminent harm, eg preserve perishable goods, protect the claim etc, it is usually expected that the parties perform or undertake an interim measure ordered by the tribunal voluntarily. If the party does not wish to perform such a measure voluntarily, the opposite party may request the enforcement of the measure granted by the arbitral tribunal before the competent court.

The arbitral tribunal obviously cannot compulsory enforce its own measures. The enforcement in such cases must be asked from the state

76 See *Triva*, Privremene mjere osiguranja u arbitraži [Interim measures of protection in arbitration], Zbornik Pravnog fakulteta u Rijeci (Suppl 1998) 713–744.

77 See Art 16 (1) LA.

78 See Art 44 LA.

79 See Art 2 (1) point 8 LA.

80 Although the LA does provide that "the arbitral tribunal, besides final awards, can make partial and interim awards", the term interim award in this translation refers to a special type of the award *(međupravorijek, Zwischenurteil, Zwischenschiedsspruch)* that does not deal with interim measures.

court (since the arbitral tribunal does not dispose of any forceful means of enforcement). The approached court shall enforce an interim measure granted by the arbitral tribunal as if it is enforcing its own interim measure. The competence of the court and proceedings of the court shall be determined according to the general rules of the Law on Enforcement.

Additionally, Art 43 (6) LA provides that the provisions of the Law on Arbitration regarding court jurisdiction shall not affect the application of the provisions on the jurisdiction for the ordering and enforcement of provisional measures of the Law on Enforcement.

Regarding the content of the interim measure, the law does not specify types of interim and preliminary measures. The Law only states that it will grant such interim measures as considered necessary in respect of the subject matter of the dispute. This could include preservation of perishable goods, preservation of the value of a particular property and similar. It is questionable, whether the arbitrators may issue an order that would be directed towards third persons that are not covered by the arbitration agreement (eg request a bank to block an account of a party).

The Zagreb Rules 2002 provide in Art 26 (2) that an "interim measure shall be issued in the form of an order and shall be reasoned". Only in exceptionally urgent cases may an order for an interim measure be issued without reasons. If recourse to the court is required for the execution of an interim measure, or if the opposing party so requires, a reasoned written record of the order for the interim measure shall be made. If recourse to a court abroad is required to enforce the interim measure, the arbitral tribunal may issue the interim measure in appropriate form.[81]

c Right to be heard and interim measures

The general principle is that the parties before an arbitral tribunal shall be treated equally, and they shall have the rights to respond to statements and claims of their adversary. In order to secure due process and equal treatment of parties, the arbitrators shall attempt to disclose their opinions and give appropriate explanations in order to evaluate all relevant and factual legal issues (here necessity of an interim measure).[82]

In the context of granting interim measures, the Zagreb Rules 2002 offer a little broader solution since they provide that the "arbitral tribunal shall in principle order an interim measure only after the other party has been given an opportunity to respond to the request for interim measure".[83]

Exceptionally, the arbitral tribunal may order an interim measure without giving the other party an opportunity to respond to the request if the requesting party satisfies the arbitral tribunal that it is necessary to proceed in this manner in order to ensure the efficacy of the interim measure requested. In such cases the party requesting the interim measure must disclose to the arbitral tribunal all circumstances relevant to the arbitral tribunal's decision and shall give an undertaking to pay any damages

81 See Art 26 (2) Zagreb Rules 2002.

82 See Art 17 LA.

83 See Art 26 (1) Zagreb Rules 2002.

caused to the other party by reason of failure to disclose to the arbitral tribunal any relevant information that it knew or should have known. The arbitral tribunal shall in any case give the other party opportunity to respond to the request as soon as it would be possible in due course. After having received the response by the other party, the arbitrators shall reconsider its decision on the interim measure ordered.

Although the party has the possibility to ask interim measures from both the tribunal and the court, the arbitral tribunal is usually the better solution, particularly because the arbitrators are accustomed with all facts of the case and could probably better evaluate the necessity of an interim measure. At the same time the tribunal has no power to enforce such a measure, so in case of default the measure will have to be enforced by the court.

During the enforcement of an interim measure issued by the arbitral tribunal, the court of enforcement may, according to the opinions voiced in the doctrine, adjust and review the arbitrators' order on interim measures, limiting itself to the grounds that the court would examine if it would be directly requested to issue a preliminary measure.[84] However, the essence of the order would have to be preserved.

C Post-arbitral phase

1 Effects of an arbitral award

The award of the arbitral tribunal has the force of a final judgment *(res judicata)* towards the parties, unless they have expressly agreed that the award may be contested by an arbitral tribunal of a higher instance.[85] This means that the award has the same effect as a final and binding court judgment.

Since in a very few, if any, arbitrations parties agree on an appeal against the arbitral award, this means that an award becomes a *res judicata* in principle immediately after it is made. In order for an award to become enforceable, the award must be delivered to the defendant.

The Law on Arbitration also contains an express provision on the *ne bis in idem* effects of domestic awards in respect to later court proceedings. If an issue of existence of a right or a legal relationship occurs in court proceedings, and such issue was already decided in the dispositive (operative) part of a domestic award, the court shall be bound by the decision on this issue, unless it finds that the subject matter was not arbitrable or the award was contrary to public policy.[86]

The arbitral institutions keep the record of delivery of awards. The awards shall be delivered by mail with confirmation of delivery following the rules of written communications. The arbitral institutions may also have a separate internal review procedure in respect to the awards that has to

84 See *Triva*, Zbornik pravnog fakultete u Rijeci (Suppl 1998) 713–744.

85 See Art 30 LA.

86 See Art 39 (3) LA. The court, however, does not take into account the domestic awards *ex officio* but only upon a party's request.

be completed prior to the final making of the award – eg a scrutiny of the awards as provided in Art 30 Zagreb Rules 2002.

The Zagreb Rules 2002 state that the Secretary General may issue a certificate on the validity and enforceability of the award (Art 28 (2) Zagreb Rules 2002).

In order for the award to be effective, there is no legal requirement of deposition, registration or authentication of the award. But to ensure legal security, arbitral institutions almost always deposit at least one original copy of the award. The parties may also expressly agree on the need to deposit or certify an award (Art 46 (1) LA). In this case, the fulfilment of the contractually agreed conditions may be an additional condition for the validity and finality of the award.

2 Setting aside/review of an arbitral award

a Grounds for setting aside

The arbitral award may be contested by an application of a party for setting aside before a court of law. Setting aside procedure and the grounds for setting aside are provided in Art 36 of the Law on Arbitration. They mostly follow the UNCITRAL Model Law and Art V of the New York Convention.[87] The grounds for setting aside could be categorised in two main groups of reasons:

The party making an application must prove that:

a) there was no agreement to arbitrate or the agreement was not valid (invalidity of the arbitration agreement);
b) a party to the arbitration agreement was incapable of concluding the arbitration agreement (incapability of a party);
c) proper notice about commencement of the arbitral proceeding was not given, or the party was otherwise unable to present the case (refusal of the right to be heard);
d) the award deals with a dispute not contemplated by submission or decides upon matters beyond submission to arbitration, provided that the matters submitted to arbitration can be separated from those not submitted, so that only part of the award may be set aside (exceeding the scope of arbitration);
e) the composition of the arbitral tribunal was not in accordance with the Law on Arbitration or a permissible party agreement and this fact could have influenced the content of the award (improper composition of the tribunal);
f) the award has no reasons of statement, was not signed or has no formal requirements proscribed by the Law on Arbitration (invalid composition of the award).

Those grounds are reviewed only upon request of the party. The burden of proof is with the party making the application for setting aside.

87 This provision differs from the former provision of the Code of Civil Procedure.

The court shall *ex officio* review an award on the following grounds even if the party did not raise them in an application for setting aside:

a) the subject matter was not capable of being settled by arbitration;
b) the award is in conflict with the public policy of the Republic of Croatia.

There may be one more ground for setting aside that must be expressly agreed by the parties in their arbitration agreement. The arbitral award may be set aside on the basis of new facts and evidence, provided that the party – the claimant in setting aside procedure – could not use such facts or evidence in the previous arbitration proceeding for reasons beyond his fault.[88]

The application for setting aside is the only permissible remedy in court proceedings against arbitral awards. As seen from the mentioned grounds for setting aside, the aim of an application for setting aside is neither to revise the content of the award and to reopen the proceeding nor to review the arbitrator's decision on the merits. The grounds for setting aside involve in principle only the gravest fundamental errors that could occur during the arbitral proceeding. The only exceptions are the two grounds the court examines *ex officio*. Therefore, the court shall not enter into a retrial, discovering all factual errors, errors in application of the substantive law, or any errors in the composition and the content of the award, eg computational errors, clerical or typographical errors or errors of a similar nature.[89]

The application for setting aside shall be made to the Commercial Court in Zagreb (in commercial matters) and to the County Court in Zagreb (in all other matters). In that way territorial jurisdiction has been sustained. The Supreme Court of the Republic of Croatia shall decide upon challenge as a second instance court after filing an appeal against second instance judgments of the County Court in Zagreb (in non-commercial matters), while the High Commercial Court decides upon appeals against the decisions of the Commercial Court.[90]

b *Ordre public* – a ground for setting aside

Ordre public (or public policy) and arbitrability are the grounds for setting aside that the court must examine on its own initiative. The Law on Arbitration states that an arbitral award may be set aside if the court finds, even if the party did not raise this ground, that the award is in conflict with the public policy of the Republic of Croatia (Art 26 (2) point 2b). Through

88 Earlier, before the Law on Arbitration, setting aside could always be requested if the new facts and evidence were found on the basis of which an award more favourable to a party could have been made if these facts would have been known or evidence produced in the hearings. The earlier provision relied on the analogous application of the reasons for reopening of the proceedings in court litigation *(prijedlog za ponavljanje, Wiederaufnahmeklage)*. The current text practically abandons new facts and evidence as a reason for setting aside, since the clauses that would expressly permit this reason for setting aside will be rather rare.

89 See more in Chapter IV S.

90 See *Uzelac*, Croatian Arbitration Yearbook, Vol 6 (1999) 55–73.

public policy issues the state court may exercise the control over the merits of the dispute. Setting aside, recognition and enforcement of the award may be refused on this ground.

The question of the interpretation of the term "public policy" and the question how extensively it should be applied are always arguable. The general attitude in arbitration circles is that "public policy" should be applied as narrowly as possible especially in international cases. In practice there are only a few cases of a successful setting aside of an arbitral award because of this ground.[91]

If the court finds that the arbitral award is in conflict with the public policy or the subject matter of the dispute is not capable of being settled by arbitration, the court shall declare the arbitral award null and void. This proclamation may be made in a setting aside procedure or a procedure of recognition and enforcement where the court also take these two reasons into account *ex officio*. However, the declaration of nullity would only have the final force in setting aside proceedings where it is decided as a main issue, whereas in the recognition and enforcement proceedings it will only be a preliminary issue that does obtain the force of *res judicata*.

c Time limits for the application for setting aside

The time limits for application for setting aside experienced great changes in the recent reform of the arbitration law. According to the Law on Arbitration, the party has three months to make an application for setting aside to the court, starting from the date on which the party making the application received the award. In case of an additional award or the correction and interpretation of the award, the three months period starts from the date on which the party received the decision of the arbitral tribunal on either of the requests.[92]

After three months there are no more possibilities for an application for setting aside. The application itself shall be regarded as inadmissible regardless of the grounds.[93] The only ground that could be raised afterwards is public policy that could be raised in enforcement proceedings at any time. After expiry of the three months time limit, the domestic award could become irrefutable but at the same time unenforceable in the Republic of Croatia.

3 Re-opening of proceedings

An innovation in the arbitral proceeding is the possibility to reopen the arbitration proceeding during and after the setting aside procedure. When deciding upon application for setting aside, the court may, where appropriate and so requested, suspend the setting aside proceedings for a period of time determined by the court to give the arbitral tribunal an

91 See *Sikirić*, Arbitration and public policy, Croatian Arbitration Yearbook, Vol 7 (2000) 85–113.

92 See Art 36 (3) LA.

93 Previously the period for setting aside was 30 days (Art 486 (1) CCP) but within an absolute time limit of five years (former Art 486 (2) CCP).

opportunity to resume the arbitral proceeding or to take such other actions that could, in the tribunal's opinion, eliminate grounds for setting aside.[94]

This possibility to reopen arbitral proceedings is contrary to the principle that applies in litigation, ie that once the decision has been pronounced and dispatched, there is no more possibility to reopen proceedings.[95] Despite mentioned, this possibility corrects some provisions of the Law such as the ones that the award shall have the force of a final judgment unless the parties agreed that it may be contested by an arbitral tribunal of higher instance (Art 31 LA) or that the proceedings are concluded by final award (Art 32 (1) LA). The functions of arbitrators terminate upon conclusion of the proceeding except when either a correction, an interpretation, a special award on costs must be rendered, or when there are grounds for suspension of proceedings or setting aside of an award.

If the arbitral award is suspended for reasons other than existence and validity of the arbitration agreement, such an arbitral agreement shall be a valid legal base for a new arbitration in the same dispute. In that way the court may send back the case and decide that the tribunal should repeat the proceeding. In case of doubt, by request of a party, the court may issue a separate ruling to this effect (Art 37 (1) LA). The court could in the same way send the award to the arbitral tribunal for reconsideration.

In all other cases, if the award was set aside, the parties are free to conclude a new arbitration agreement and initiate a new arbitral proceeding in the same dispute (Art 37 (3) LA).

4 Other means of recourse

Setting aside is the only possible legal remedy against arbitral awards in Croatia. The Zagreb Rules 2002 explicitly provide that "no appeal to the arbitral tribunal of higher instance is allowed against the award".[96]

There have been some doubts whether a constitutional complaint may be filed with the Constitutional Court of the Republic of Croatia if the constitutional rights of a party were violated by the arbitral award. At the same time, a constitutional complaint is allowed only where no other remedies are available. The Constitutional Court ruled that such an action could be taken only against decisions of courts of law (court judgments in setting aside proceedings) but not against decisions of arbitral bodies – arbitral awards – as such.[97]

5 Enforcement of a domestic award

a General

Domestic awards are those where the designated place of arbitration (seat) is situated in the territory of the Republic of Croatia and therefore

94 See Art 36 (4) LA.
95 See Art 334 (1) CCP.
96 See Art 27 Zagreb Rules 2002.
97 See *Triva*, Constitutional Complaint as means for setting aside arbitral award, Croatian Arbitration Yearbook, Vol 8 (2000) 107–138.

domestic awards are those made and rendered in the territory of the Republic of Croatia. The difference in procedure between domestic and foreign awards is that a domestic award requires only enforcement while a foreign award requires recognition and enforcement.

Therefore, a domestic award does not need special leave for enforcement *(exequatur)*. Since the award has the power of a final and binding court judgment, the award shall be enforced through the application for enforcement before the competent court in the same way as a court judgment. Without entering into the subject of dispute, the competent court shall automatically order the enforcement of the award.

The court may refuse to order enforcement only for two reasons: if the subject matter was not capable of being settled by arbitration (arbitrability), or if the enforcement would be contrary to the public policy of the Republic of Croatia (public policy issues) (Art 39 (1) LA). During the enforcement procedure the competent court takes into account these two reasons *ex officio*.

In relation to the setting aside procedure, the court shall not take into account grounds for setting aside including arbitrability and public policy as grounds for refusing enforceability if an application for setting aside founded on the same reasons was already finally rejected.[98] This means that the court may not refuse enforcement of an arbitral award if those grounds were already raised in proceedings for setting aside and if the competent court found in a separate proceeding that these grounds did not exist.

According to Art 43 LA, the competent court for enforcement of awards when dealing with commercial cases is the Commercial Court in Zagreb and for other cases the County Court in Zagreb. Enforcement is governed by the provisions of the Law on Enforcement.

b Declaration of enforceability

As already noted, in domestic arbitration the awards are directly enforceable – no special leave for enforcement is needed. Whereas the enforceability is automatically presumed, the enforcement court may still refuse enforcement, but only for two reasons: lack of arbitrability and violations of public policy. This could lead to the possibility that an award, although irrefutable (due to the expiry of the time limits for setting aside) may still be unenforceable (at least in the Republic of Croatia).

All other legal remedies in the process of enforcement are outside the scope of arbitration law. Since the same rules as for the enforcement of court judgments apply, an appeal may be lodged only on very limited grounds. Appeals usually concern external and new circumstances like voluntary fulfilment of the claim or other ways of ceasing an obligation, or issues related to party capacity, or the method of enforcement. The possibility to appeal to a higher court is very limited and it applies only in rare cases. The appeal generally does not suspend the further course of enforcement.

98 See Art 39 (2) LA; the same solution is provided in § 1060 of the German ZPO.

The court conducting the enforcement proceedings shall not enter into the merits of the arbitral tribunal's decision. It should just examine whether formal requirements are met (sufficient number of copies, attached documents etc). The decision on enforcement should be made unless the court establishes the existence of the previously enumerated grounds that it examines *ex officio*.

c Procedure for the declaration of enforceability

The party seeking for enforcement of an award must enclose the original or a duly certified copy of the award. If the award was not made in the Croatian language, a duly certified translation of the award into Croatian language must also be enclosed.[99] No other documents are needed for enforcement of domestic awards. In particular, the requesting party is no longer required to submit the arbitration agreement, because the burden of proof on the issue of the lack or invalidity thereof lies on the other side. In the process of recognition and enforcement of a foreign award, however, the applicant should also supply the original arbitration agreement or its duly certified copy.[100]

If the proceedings for setting aside of an award or for the suspension of a foreign award have been commenced before a competent court, the enforcement court may, if it considers appropriate, adjourn its decisions until the termination of these proceedings and may, upon motion of the party requesting enforcement, order the opposite party to provide appropriate security.[101] In both cases the decision depends on the discretion of the enforcement judge.

d Determination of validity of domestic awards

In practice the parties who have obtained an award may sometimes wish to ascertain that their award will not face the eventual risk of non-enforcement due to the existence of the qualified grounds (violation of public policy, non-arbitrability). Therefore, the LA in Art 39 (4) authorises a party that has a legal interest to request a court to certify the non-existence of these grounds. Parties may have an interest in a declaration in particular as regards to condemnatory awards that require a longer period for voluntary performance. In such a way a confirmation of the validity of the award can be obtained before the moment when eventual enforcement may be requested. Some authors see this as a *sui generis* equivalent of the recognition of domestic awards.[102]

99 See Art 47 LA.

100 Naturally, this refers only to situations in which the parties have used the conventional written form for agreeing to arbitration. It should be noted that the LA now provides softened rules on the form of the arbitral agreement that sometimes exclude existence of a paper document.

101 See Art 48 LA.

102 See *Giunio*, Croatian Arbitration Yearbook, Vol 9 (2002) 191–216.

e Legal remedy

The enforcement proceedings follow the same procedure as the enforcement of a court judgment. When deciding upon a request for enforcement, the court shall examine whether the requirements for enforcement are met and whether all documents are submitted. The court may seek an explanation from the arbitral tribunal that rendered the award, the parties, a court or a notary public or some third persons with whom the award was deposited pursuant to the agreement of the parties.[103] The court may also exceptionally decide upon a request for enforcement *ex parte*.

In the enforcement proceedings, the court shall provide opportunity to the opposing party to be heard "unless this would jeopardise the successful implementation of enforcement".[104]

The Law on Arbitration does not provide for legal remedies against court decisions on the enforcement of domestic arbitral awards. This is logical since a decision on enforcement of an arbitral award is a decision of a state court and therefore outside the scope of arbitration law. Since the same principles apply to the enforcement of court judgments and to the enforcement of arbitral awards, also the same reasons for appeal apply. The reasons for appeal against court decisions on enforcement are limited. They usually concern external and new circumstances or issues related to the method of enforcement. The appeal regularly does not suspend the implementation of the enforcement measures.

6 Recognition and enforcement of foreign arbitral awards

a General

Arbitral awards have the nationality of the country in which the place of arbitration is situated (Art 38 LA). Therefore, a foreign arbitral award is an award made outside the territory of the Republic of Croatia. Different from domestic awards, foreign arbitral awards require a procedure for recognition and enforcement and therefore an *exequatur* is necessary.

The Republic of Croatia is a signatory of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It became member of the Convention after succession to the former Yugoslavia that ratified the Convention in 1981. According to the Decision on Sovereignty and Independence,[105] all international agreements that were in force in former Yugoslavia should apply or remain valid in the Republic of Croatia unless they were contrary to the Constitution of the Republic of Croatia and provided they were in accordance with international rules and principles. In respect to the New York Convention, the succession was notified in July 1993.[106]

103 See Art 49 (1) LA.

104 See Art 49 (3) LA. When deciding on recognition of the awards (eventually in combination with the claim for enforcement), the court should always give the opposing party the right to present its case. This in practice refers to foreign awards that need to be recognised before enforcement may be sought.

105 Decision No 31/95, point III of 8 October 1991.

106 See *infra* under III (Sources of private international law).

The Republic of Croatia, when notifying the succession to the Convention, did keep the reservations of the former Yugoslavia. The Convention shall apply:

1. only to the recognition and enforcement of awards made in the territory of another Contracting State (reciprocity reservation);
2. only to differences arising out of legal relationships, contractual or non-contractual which are considered as commercial under Croatian law (commercial matters reservation);
3. only to those arbitral awards which were adopted after the Convention came into force (no retrospective effect reservation).

In addition to the New York Convention, recognition and enforcement of foreign arbitral awards is also governed by the rules of the Croatian Law on Arbitration[107] and the Croatian Law on Courts.[108] Application for recognition and enforcement can be made before the Commercial Court in Zagreb. If the application and enforcement is sought under the provisions of the Convention, those provisions shall prevail over provisions of domestic legislation.

b Grounds for recognition and enforcement of an arbitral award

Art V of the New York Convention and the Croatian Law on Arbitration generally provide for the same grounds for denial of recognition and enforcement. There are only minor differences; eg Croatian Law on Arbitration provides expressly for refusal of recognition if the award contains no statement of reasons or lacks signatures as required by the Law on Arbitration.[109]

According to the Law on Arbitration, a foreign award shall be recognised as binding and shall be enforced in the Republic of Croatia unless the competent court establishes the existence of a ground for setting aside or it finds that the award has not yet become binding on the parties or it has been suspended or set aside by a court of the country in which, or under the law of which, that award was made (country of nationality of the award).

The reasons for the denial of recognition and enforcement of the award under Croatian law are the following:

a) there was no agreement to arbitrate or the agreement was not valid – invalidity of arbitration agreement;
b) a party to the arbitration agreement was incapable of concluding the arbitration agreement – incapability of a party;
c) proper notice about commencement of the arbitral proceeding was not given, or the party was otherwise unable to present the case – lack of fair trial;
d) the award deals with the dispute not contemplated by submission or decides upon matters beyond submission to arbitration, provided that the matters submitted to arbitration can be separated from those not submitted, so that only part of the award may be set aside – transcending the scope of agreement;
e) the composition of the arbitral tribunal was not in accordance with the Law or party agreement and this fact could have influenced the content of the award – improper composition of the tribunal;
f) the award has no reasons of statement, was not signed or has no formal requirements provided by the Law – improper composition of the award;[110]
g) the subject matter of dispute is not capable of being resolved by arbitration under the law of the republic of Croatia or;
h) the award is contrary to the public policy of the Republic of Croatia.[111]

Public policy issues provide a limited opportunity for the court to exercise control over the judgment of a arbitral tribunal and the merits of the dispute. In relation to foreign awards this question is even more important since international public policy is involved as well. In Croatia there have been no court decisions regulating this issue although it could be expected that the stricter rules should apply. Since the award shall be enforced in Croatia, an inclination towards Croatian public policy could be expected.

Only the questions of arbitrability and public policy as grounds for the refusal of recognition and enforcement shall be considered *ex officio* while all other grounds shall be considered only at a party's request.

Regarding the relation between application for setting aside and application for recognition and enforcement it could be said that if a party did not make application for setting aside of the award in due time in a foreign country, it could still make objections in the procedure for recognition and enforcement. Of course, the party may only do this under the provisions of the Croatian Law on Arbitration.[112]

During the procedure for recognition of a foreign award, the court should always give the opposing party the opportunity to be heard. The decision on recognition and/or enforcement must contain grounds of that particular decision – statement of reasons.[113]

There is no possibility for the parties to waive the consideration of the grounds for the refusal of recognition/enforcement by the state court before the arbitral tribunal has rendered the award (the only exception relates to new facts and evidence, since this reason – by default not applicable – depends on the will of the parties).

The Law states that if the proceedings for setting aside of an award or for suspension of a foreign award have commenced before a competent court, the court asked to recognise and enforce the award may suspend proceedings and adjourn its decision until the termination of these proceedings. Also, the court may, upon motion of a party requesting enforce-

107 See Art 43 (1) LA.
108 See Art 19 (5) Law on Courts.
109 In fact, this is not a significant departure, since these reasons may be viewed as one sub-instance of the procedural errors from the New York Convention.
110 These are the same reasons as for setting aside of the award, see Art 36 (2) point 1 LA.
111 See Art 40 LA.
112 If application for setting aside of an award is not made in due time in the Republic of Croatia, such an award shall become irrefutable but not enforceable.
113 See Art 49 LA.

ment, ask from the opponent to provide appropriate security.[114] The same rule is provided in the New York Convention.

c Procedure for declaration of enforceability

The procedure for recognition and enforcement of foreign awards shall be initiated by filing an application for recognition and enforcement of a foreign arbitral award *(prijedlog za priznanje i ovrhu)*. The original award or a duly certified copy together with the original arbitration agreement or a duly certified copy of the agreement must be attached to the application. If the award or the agreement were not made in the Croatian language, a duly certified translation of the award and the agreement into Croatian language must also be enclosed.[115]

The application shall be made to the Commercial Court in Zagreb as the competent court *ratione causae* (in commercial matters) while in all other proceedings application shall be made to the County Court in Zagreb.[116] In proceedings for recognition of the award, the court shall give the opposing party the opportunity to be heard. If the award was already recognised in separate proceedings, and only enforcement is being sought, the hearing of the other party will be provided by the court unless this would jeopardise the successful implementation of enforcement. If no reasons for annulment of the award from Art 40 LA (grounds listed above) are found, either at the request of a party or *ex officio*, the competent court shall recognise and enforce the foreign arbitral award.

As already mentioned, the court shall refuse to recognise and enforce the award if the party opposing the application proves that reasons for setting aside exist (reasons from Art 36 (2) point 1 LA), or if the award has not yet become binding on the parties or the award has been set aside or suspended by a court of the country in which, or under the law of which, that award was made, or if the court found *ex officio* that the subject matter was not arbitrable or that recognition and enforcement was contrary to the public policy.

Finally, the Law provides that a decision on recognition and/or enforcement must contain a statement of reasons.

d Legal remedies

A complaint against a decision on recognition (if such a decision was made in proceedings separate from the main issue) may be lodged with the Supreme Court of the Republic of Croatia. The time limit is 15 days from the delivery of the decision on recognition (Art 49 (5) LA). The legal remedies in enforcement proceedings are governed by the national law on enforcement. They are the same as in the process of the enforcement of domestic awards (see *supra*).

114 See Art 48 LA.

115 See Art 47 LA.

116 As Croatia has retained the reservation to the New York Convention regarding the commercial nature of disputes, it is obviously only possible to apply for recognition under the New York Convention before the Commercial Court.

III Private international law (PIL) in arbitration proceedings

A Sources of PIL

The choice of law rules applicable to arbitration proceedings are contained partly in national arbitration law, and partly in ratified international conventions. According to the provisions of the Constitution, ratified international conventions take precedence over the rules of national law, so that national law provisions apply only in the absence of special provisions of international conventions.

As to national law, the most important source for arbitration is the Law on Arbitration. Conflict of laws rules are also contained in the Conflict of Laws Act (CLA) and in some special statutes on maritime matters and air navigation.

Croatia ratified a large part of the relevant multilateral conventions, mostly by succession (effective from the date of state independence, ie of 8 October 1991). Here is the list of multilateral conventions concerning arbitration issues:

1. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958);
2. Geneva Protocol on Arbitration Clauses (1923);
3. Geneva Convention on the Execution of Foreign Arbitral Awards (1927);
4. European Convention on International Commercial Arbitration (1961);[117]
5. Washington Convention for the Settlement of Investment Disputes between States and Nationals of Other States (1965).[118]

There are also a number of relevant bilateral treaties, such as the treaties on legal aid in civil matters, as well as bilateral treaties for the protection of foreign investments, and trade agreements.[119] Only a few of them contain conflict of laws rules.[120]

Until 2001 rules of private international law were mainly the same for national courts and arbitration proceedings, partly due to the fact that they were contained in the same Act – the Conflict of Laws Act. However, after enactment of the Law on Arbitration this parallelism is increasingly being abandoned, so that now the most important rules for arbitration proceedings are regulated separately.

117 The accession to the multilateral instruments quoted from 1–4 was notified on 26 July 1993, with retrospective effect to 8 October 1991.

118 Croatia ratified the Washington Convention on 28 January 1998, and the convention entered into force in Croatia on 22 October 1998.

119 At the end of 2003, Croatia had signed 49 bilateral investment treaties (BITs), 25 of them at that time in force. There are also a number of bilateral trade agreements, among them treaties with Albania, Austria, Iran, Japan, Korea and Switzerland. The full status of bilateral instruments may be obtained from the Croatian Foreign Ministry (see http://www.mvp.hr).

120 See *Sajko*, The Substantive Law Applicable to International Commercial Disputes According to Croatian Law and Arbitral Practice, Croatian Arbitration Yearbook, Vol 1 (1994) 68.

B The law applicable to arbitration agreements

The Law on Arbitration 2001 has strongly affirmed the principle of party autonomy in the choice of applicable law. Under Art 6 (7) LA, the law applicable to the validity of an arbitration agreement *ratione materiae* will in the first place be the law designated by the parties. The parties may make their choice either expressly or by implication.[121] Some restrictions with the scope of choice of law may be imposed in special legislation – eg in rules on air transportation.[122] Limitations may concern cases that have only a slight international element, for protection of one contractual party, or for avoiding violations of the rules of public policy.[123]

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 (Art 6 (7) LA). This means that the agreement will be deemed to be valid either if it is valid under the applicable substantive law, or under the national rules that apply to substantive validity of contracts. The underlying policy was to favour the validity of the agreements, and thus support the will and intention of the parties.

The rules regarding the form of an arbitration agreement are generally excluded from the choice of law according to party autonomy. Being the most fundamental procedural provisions, they are provided by mandatory rules of Art 6 (1)–(6) LA. Admittedly, although the approach to protect legal certainty and require the written form for validity of the agreement has remained valid, these rules have been considerably softened, loosening even the standards set by the UNCITRAL Model Law.[124] However, parties are not allowed to deviate from these rules.

Regarding the capacity of the parties, the LA in Art 7 (1) provides that the capacity is governed by the law that is applicable to respective natural and legal persons and other entities. This will be in principle the law where the legal person was incorporated, or the national law of the state whose citizen the natural person is. If this is Croatian law, the LA in Art 7 (2) already contains a direct provision that declares Croatian natural and legal persons as capable of concluding arbitration agreements and being parties to arbitration, and, to exclude any doubt, also reconfirms the same rule for the state (Republic of Croatia) and its units of local and regional self-government.

The law that governs the power of attorney of agents concluding the agreement in the name of their principals is not specifically provided in the LA, but the regular rules of private international law will be applicable. Accordingly, the governing law for such contracts is primarily the law chosen by the parties. If parties have not selected the law applicable for the validity of the power of attorney, the applicable law will be the law that is most closely connected with the matter. Under Art 20 of the Conflict of

121 See for older law *Sajko*, Croatian Arbitration Yearbook, Vol 1 (1994) 69–70.

122 See Arts 176–184 of the Law on Obligations and Basic Property rights in Air Navigation of 1998 (Off Gaz 132/1998).

123 *Sajko*, Croatian Arbitration Yearbook, Vol 1 (1994) 69.

124 In this respect, Croatian law has followed the recent efforts of the UNCITRAL to reform the written form requirement for arbitration agreements.

Laws Act this will be the law of the place where the attorney had his seat at the time of issuing the power of attorney.[125]

Croatian law provides rules applicable to the power of attorneys in various acts, such as the Law on Obligations, the Law on Attorneys and the Code of Civil Procedure. The LA does not contain any departing rules, except for a very important provision that abolished one of the most fatal restrictions that existed prior to 2001. Namely, the Law on Obligations provided that attorneys could not conclude arbitration agreements on behalf of the parties without an express power of attorney issued in writing. As this requirement did not correspond to the reality of a number of business transactions (making, *inter alia*, arbitration in maritime disputes practically impossible),[126] the Law on Arbitration has repealed this provision of the Law on Obligations and replaced it by a contrary rule stating that the "authority to conclude the main contract implies an authority to conclude an arbitration agreement".[127]

C The law applicable to arbitration proceedings

1. Unlike proceedings in national courts that are governed by the rules that the parties cannot derogate by their agreement, the principle of party autonomy also applies in arbitration proceedings. Echoing the approach of the UNCITRAL Model Law,[128] the Law on Arbitration provides that "parties are free to agree, directly or by reference to any established set of rules, a statute or in other appropriate manner, the procedure to be followed by the arbitral tribunal in the conduct of the proceedings".[129] This means that parties may either a) determine applicable procedural provisions in their arbitration agreement or in any later annex thereto (direct choice of procedural rules); b) refer in their agreement to a sufficiently defined set of arbitration rules (choice of institutional or *ad hoc* arbitration rules); c) define the applicable law by reference to a statute (certain legislative act that contains procedural rules or a corpus of national arbitration law); or d) make any other appropriate determination of rules applicable to proceedings.

In practice, parties use their freedom to determine the procedure mainly by reference to certain arbitration rules (alternative b)) and, to a much lesser extent, by inserting direct procedural rules in their arbitration clauses. It is really very rare that parties choose applicable procedural law by reference to any national arbitration legislation. Anyway, after 2001, selection of foreign procedural law does not any more affect the nationality

125 In legal writing a combination of criteria of closest connection and the characteristic action that follows the approach of Swiss and German legislation is detached. See *Dika/Knežević/Stojanović*, Komentar zakona o međunarodnom privatnom i procesnom pravu [Commentary of the Law on International Private and Procedural Law] (1991) 79.

126 See *Bravar/Obuljen*, Avoiding Arbitration in Maritime Disputes: the Third Person Syndrome, Croatian Arbitration Yearbook, Vol 4 (1997) 167–174.

127 See Art 8 and Art 50 point 4 LA (partly repealing Art 91 (4) of the Law on Obligations).

128 See Art 19 UNCITRAL Model Law.

129 Art 18 (1) LA.

of arbitration proceedings: eg an arbitration conducted in Croatia under procedural rules of Swiss arbitration law does not result in an award that is deemed foreign.[130]

Procedural rules defined by the parties should not violate mandatory provisions of the Law on Arbitration. However, there are only a few such rules applicable to arbitration proceedings – in the first place the chosen procedural rules may be in conflict with basic procedural fairness, ie the rules on equal treatment of the parties and the right to be heard.[131]

As the Law on Arbitration applies both to national and international arbitrations, the right to choose procedural rules applies irrespective of an "international" nature of the proceedings. Thus, even in arbitration proceedings regarded as "national", it would be possible to select foreign procedural law. While this, rather hypothetical situation, may make sense if there is at least an economic "foreign" factor (eg in disputes between domestic companies owned by foreigners), it may be disputable whether such a choice would violate public policy in "pure" national disputes.

2. In the absence of either express or implied choice of procedural law by the parties, the procedural rules that will govern the arbitration proceedings have to be selected by the arbitrators. The arbitral tribunal has considerable freedom in this selection: it may conduct the arbitration "in such a manner as it considers appropriate". Arbitrators may use the same method of determination of procedural rules as the parties, ie they may determine the rules of procedure either directly or by reference to a set of rules, a statute or in other appropriate manner.[132] For the avoidance of doubt, it is also provided that their right to determine procedural rules in the absence of the agreement by the parties also includes the power to determine the admissibility, relevance and weight of any evidence.[133]

D The law applicable to the subject matter of the arbitration proceedings

1 Choice of law by the parties

The principle of party autonomy in the choice of law is epitomised in the right to select the law applicable to the subject matter of the arbitration proceedings. This is also the most common optional choice that parties use in the arbitration practice.

The Law on Arbitration has provided a rather extensive possibility to choose the applicable law, fully in accordance with international standards.[134] In Art 27 (1) LA it is provided that "the arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute".

This provision enables the parties to choose either a particular national substantive law, or a combination of various legal provisions of the legal systems of different states. The phrase "rules of law" is extensive enough to cover also international and transnational legal sources, such as the UNIDROIT Principles of International Commercial Contract Law or the Principles of European Contract Law (Lando-Principles). Parties could also opt for the application of *lex mercatoria*.[135] However, the selected rules need to have a legal character and have to be sufficiently precise in order to be qualified as "rules of law". Deciding "in equity" *(ex aequo et bono)* does not fall into this category (see *infra*).

There are no specific rules as to the limits of the parties' freedom to select the applicable law. According to the practice, there is no need for the selected law to have any concrete link to either parties, or the subject matter: it could be any law, even fully remote to the present dispute. Furthermore, it often happens that parties choose some law "neutral" to their national legislation (eg selection of Swiss law in a dispute between a domestic party and a French or German party). However, although Art 27 LA does not expressly invoke matters of public policy, it should be concluded that the law chosen for the merits may not lead to violations of *ordre public* because an award made under such rules of law would run the risk of being set aside *ex officio*,[136] or of being refused enforcement in Croatia.[137]

Another issue not precisely defined by law regards the timing of the choice – ie whether parties may choose the law applicable after the substantial contract is entered into, or whether they may later alter their choice of law. In practice, selection of the applicable law happens by far most often already in the main contract (or in the arbitration clause). However, it is accepted that parties may subsequently change their choice, or – if there was no choice – agree on the applicable law even during the arbitration proceedings.[138] An additional argument for this opinion may be found in the fact that Art 27 LA is placed in the chapter on

130 Prior to the LA 2001, such a rule was contained in Art 97 (3) of the Conflict of Laws Act (repealed by Art 50 point 2 LA).

131 See Art 17 (1)–(2) LA.

132 See Art 18 (2) LA.

133 As the law of evidence may be considered in some jurisdictions as a strict procedural law, this is the rule that was provided in UNCITRAL Model Law in Art 19 (2) *in fine*. Although Croatian law generally does not have strict rules of evidence and prefers the doctrine of the free evaluation of evidence, this rule was retained from the UNCITRAL Model Law.

134 Art 27 LA exactly mirrors the provision of Art 28 UNCITRAL Model Law.

135 A rather positive attitude towards the application of *lex mercatoria* was expressed even in the older legal writing. See *Goldštajn/Triva*, Međunarodna trgovačka arbitraža [International Commercial Arbitration] (1987) at 1.2.4; 1.2.32-54; 1.2:85-87; 1.2.177. However, under Art 19 CLA (repealed by the LA), parties could only opt for application of foreign "law". This was interpreted as an exclusion of the possibility to opt for multiple national legislations, and did not clearly resolve the issue whether *lex mecatoria* could be opted for.

136 Upon application, an award shall be set aside if the court finds, even if none of the parties has raised this ground, that "the award is in conflict with the public policy of the Republic of Croatia" – Art 36 (2) point 2 b) LA.

137 See Art 39 LA.

138 *Dika/Knežević/Stojanović*, Komentar 75; *Matić* in *Goldštajn/Vedriš/Matić*, Obvezno pravo (1979) 379. See also FTAC decision T-74/75, recognising the choice of law of the parties expressed only at the main hearing.

the award and the termination of proceedings, and refers to the applicable law having in mind the moment when the arbitral tribunal is about to make its decision on the merits. The law does not stipulate whether parties may restrict their choice to particular parts of the contract, or to a derogation of the law applicable according to objective connection. Under the general rule of party autonomy, it seems that such partial or negative choice of law would be permissible. In our opinion, if parties have only excluded a particular law (eg law applicable according to a certain objective connection), the arbitral tribunal would have to act as if no (other) choice has been made and find the (next) law which it considers to be most closely connected with the dispute.

The law does not provide any specific rules on the method of selection of the applicable law, either.[139] In national arbitration practice, there is a well established rule that parties may choose the *lex contractus* by reference, impliedly, or even tacitly.[140] Some arbitration clauses pointing to the "law of the defendant party" were regarded to be valid, irrespective of the fact that it was not known in advance which party would be the defendant. The same applies in cases in which parties made an alternative choice of two or more laws.[141] If parties have not expressly determined the applicable law (eg by express reference in the arbitration clause that "the dispute will be decided by arbitration applying the rules of Croatian substantive law"), the arbitrators have to draw a conclusion on a possible implied choice by a careful evaluation of a number of possible indicators. Among such indicators the following are enumerated in legal writing: common nationality of parties, usage of formal (type) contracts of a particular national law, language and currency of the contract, usage of particular terms, *forum* of the arbitral tribunal etc. None of these indicators may be looked at in isolation from the whole context of arbitration, especially not only the fact that parties have opted for a Croatian *forum*/award (as often in court proceedings in the older practice of international trade litigation).[142] In arbitral practice, arbitrators have in particular evaluated the conduct of the parties during arbitration proceedings, concluding eg that if both parties have invoked arguments based on a particular national statute, they have tacitly accepted the application of its rules of law.[143]

Parties may also confer upon arbitrators the power to decide the case in equity *(ex aequo et bono* or *en qualité d'amiable compositeur)*. However, for such decision-making arbitrators need to have an express authorisation of the parties – no implied or tacit choice is permissible.[144]

It appears that Art 27 LA would not allow the parties to confer the choice of applicable law to third persons (court, institution or some other outside authority except the arbitral tribunal). Failing any designation of the applicable rules of law by the parties, the obligation to designate the applicable law is *ex lege* transferred to the arbitrators.

The parties' agreement on the applicable law is most often contained in the arbitration clause. It is an element of the parties' autonomy to agree on the method and modalities of the resolution of their dispute. Arbitral institutions usually suggest it in their model arbitration clauses, as an optional clause.[145] Thus, the substantive validity of the parties' choice would also be governed by the rules on the formation and validity of the arbitration agreement, ie the applicable law would be the law to which the parties have submitted it. If parties did not designate the law applicable to their agreement, applicable would be the law applicable to the substance of the dispute or the law of the Republic of Croatia.[146] There are no special formal requirements for the validity of the parties' agreement on the applicable law. As the parties' choice of law may be both express and implied, it appears that the written form requirement for arbitration agreements from Art 6 LA would not apply.

2 Choice of law by the arbitrators

In the absence of an agreement by the parties, the applicable law will be determined by the arbitrators. As this is the default provision of the law,[147] there is no need for the parties to confer this authority to arbitrators either by express or implied statement of their will. If parties make such an agreement conferring on the arbitrators the choice of law, such an agreement would be redundant; as already stated, different designation of the authority for determining the applicable law would not be permissible.

If arbitrators make the choice of law instead of the parties, the Law on Arbitration does not refer to the application of the provisions of the national choice of law rules that would otherwise be applicable to courts of law (rules contained in the Conflict of Laws Act). Here, the Law on Arbitration also departs from the UNCITRAL Model Law approach, contained previously in some arbitration rules,[148] which would refer to the application of law determined by the conflict of laws rules the arbitrators consider applicable. Instead of an indirect link (pointing to certain national choice of law rules), the Law provides a direct link, ie expressly determines the applicable choice of law rule. This is the criterion of the closest connection

139 Except for an interpretative provision, adopted from the UNCITRAL Model Law, according to which "any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules" (Art 27 (1) LA *in fine*).

140 *Dika/Knežević/Stojanović*, Komentar 77.

141 *Dika/Knežević/Stojanović*, Komentar 77 (referring to the practice of the former Foreign Trade Arbitration Court in Belgrade).

142 *Dika/Knežević/Stojanović*, Komentar 74.

143 FTAC decision T-111/74 (referred to in *Dika/Knežević/Stojanović*, Komentar 77).

144 See Art 27 (3) LA. More on *ex aequo et bono* arbitration in *Sikirić*, Arbitration in Equity, Croatian Arbitration Yearbook, Vol 2 (1995) 125–145.

145 See model arbitration clause of the PAC-CCC in Zagreb Rules 2002 – appropriate supplementary provisions: "(b) The substantive law of _____ shall be applicable".

146 See Art 6 (6) LA.

147 See Art 27 (2) LA.

148 See Art 38 (1) of the Zagreb Rules 1992.

(application of the law that the arbitrators consider to be most closely connected with the dispute).[149]

Although the criterion of closest connection may be interpreted as an objective connection,[150] the wording of the law provides considerable discretion in the interpretation of the "most closely connected" clause. Arbitrators do not have to find an absolutely objective connection – they are due to apply the law they consider to be most closely connected. As failure in the application of substantive law is not *per se* a reason for setting aside, any *bona fide* finding of the closest connection – irrespective of eventual failure to establish an objectively closer (closest) link – will do. However, arbitrators in practice still tend to elaborate extensively their choice of law, and their finding of the closest connection is usually well-grounded in some national or international standards. The establishment of the law of closest connection may follow from a careful assessment of all relevant circumstances. It may also concur with some of the typical links, eg the theory of characteristic performance that is contained in concrete choice of law rules of national law.[151] In the arbitration practice of the PAC-CCC, several arbitration tribunals used this theory, concluding that "Croatian law will be applicable if the characteristic performance – production of goods, their delivery and supply of equipment – had to take place in Croatia".[152]

The choice of the arbitrators is considerably flexible, but there are still some limitations. First, it appears that the arbitrators do not have the same freedom as the parties with respect to the scope of their choice. While parties may designate "rules of law", the arbitrators have to apply the "law". According to customary interpretation of the same rule contained in the UNCITRAL Model Law, this would require that arbitrators designate only one national legal system. The combination of several systems, ie designation of the national law of different states as applicable to various aspects of the parties relationship *(dépeçage)*, selection of international conventions not yet in force, or choice of *lex mercatoria* seem to be

149 This choice of law rule was adopted from some recent national arbitration legislation (eg German arbitration law) and international acts (see European Convention on the Law Applicable to Contractual Obligations from 1980).

150 Eg arbitrators may (but are not obliged to) construe the closest connection for contractual relations in the sense of Art 20 of the Conflict of Laws Act (defining closest connection for particular types of contracts).

151 The examples mostly refer to the seat or residence of the party that has to undertake the action characteristic to the legal relationship: eg for sales contracts the law of the seller's seat or residence would applicable; for construction contracts the law of the seat or residence of the contractor; for work contracts the law of the seat or residence of the employee etc. In a few cases the law of the characteristic contract would be the law of the place where the characteristic performance is taking place, eg for money claims from labour contract the law of the place where work is (was) taking place would be applicable. See Art 20 CLA.

152 Arbitral awards of the PAC-CCC IS-P-5/93 of 24 May 1994; IS-P-12/93 of 13 April 1994 (excerpts published in Croatian Arbitration Yearbook, Vol 2 (1995) 213).

excluded.[153] As to the decision-making *ex aequo et bono* ("reasonable discretion of the arbitrator"), it has already been stated that the arbitrators do not have such authority without an express authorisation by the parties.

3 Other issues – general questions

a Trade usages

Irrespective of the method of determination of the applicable law (direct choice by the parties, designation by the arbitrators), in all cases the applicable usages of trade (or other relevant usages) have to be taken into account by the arbitrators.[154]

b *Renvoi*

Croatian national law recognises *renvoi*. Art 6 of the Conflict of Laws Act applicable to court proceedings provides that, in the application of the law of a foreign state, its conflict of laws rules will be taken into account; if they refer back to Croatian law, this law will be applicable.[155] However, the approach of the Law on Arbitration minimises the possibility of *renvoi*, since the parties' designation of the applicable law by default does not refer to the conflict of laws rules, but to substantive law of a particular state.[156] If arbitrators have to make the choice of law, they do not have to determine the conflict of laws rules either, but directly designate the law of the closest connection.[157] Thus, eventual instances of *renvoi* would come into question in arbitration proceedings only in rare cases, eg when the parties have failed to determine the applicable substantive rules, but have agreed on the application of particular conflict of laws rules.

c *Ordre public* and internationally cogent rules

Obligation to observe public policy *(ordre public)* is provided in several norms of the Law on Arbitration.[158] A domestic arbitral award that violates public policy will be set aside even if the parties have not raised that ground in setting aside proceedings.[159] Both domestic and foreign awards

153 For legislative history of this "cautions approach" in respect to arbitrators while discussing the same UNCITRAL Model Law provision see *Holtzmann/Neuhaus*, A Guide to the UNCITRAL Model Law on International Commercial Arbitration (1994) 764–807.

154 Art 27 (4) LA.

155 *Amplius* on *renvoi* in *Dika/Knežević/Stojanović*, Komentar 23-30; *Sajko*, Međunarodno privatno pravo (1982) A.III.2.

156 Art 27 (1) *in fine*.

157 See *supra*.

158 Before 2001, in national law the notion of public policy also existed, but was expressed in a different phrase: Art 485 (1) point 6 CCP provided that an award shall be set aside "if it is contrary to the Constitution and the constitutional foundations of the social order". The LA has replaced this expression by the internationally recognised term "public policy".

159 Art 36 (2) point 2 b).

will not be enforced in Croatia if the court finds that enforcement would be contrary to public policy.[160] Thus, if either arbitration or possible enforcement takes place in Croatia, in order to ensure effectiveness and enforceability of the award, arbitrators would have to take into account the public policy of the Republic of Croatia. If an arbitral award would have to be recognised and enforced in a foreign country, the arbitral tribunal would, as the case may be, also have to take into account the public policy of that country.

The concept of public policy is currently being questioned in Croatian law and legal practice. Although it cannot be simply equalised with the totality of national cogent rules, some most important cogent rules may fall under the term public policy. There is no separate and independent obligation on behalf of the arbitral tribunal to observe cogent rules, but if violation of such rules would amount to a violation of public policy, arbitrators would have the same duties (see preceding paragraph).

d Methods of finding the content of foreign law and applying foreign law

The law does not contain rules expressly applicable to methods of establishing the concrete provisions (content) of the applicable foreign law. It is assumed that arbitrators as experts already possess sufficient knowledge, and that they were even selected by the parties because they have relevant knowledge. However, it may happen that this is not always the case, and that arbitrators have to undertake investigations in order to find out the content of the applicable legal rules. As there are no limitations in the law, arbitrators may use all appropriate methods, eg undertake their own research into statutes and legal writing, informally contact experts and other sources etc. They may also invite parties to submit pleadings with arguments on foreign law.[161] It seems that the wording of the CLA that empowers "courts and other organs" to request information on foreign law by the Ministry of Justice would not apply to arbitrators as private persons. Yet, if national authorities in Croatia or abroad would be willing to help and provide the needed information, using such information would not be undesirable. As for Croatian authorities, a general provision of the Law on Courts may indicate that such assistance would not be unimaginable.[162]

The rules of foreign law would generally have to be applied in the same way as they would be applied in the national legal system of their origin. Exceptionally, if their application would not be possible in such a way, or if it would not be permitted, in our opinion the arbitrators could make the

160 See Art 39 (1) LA for domestic awards and Art 40 (2) point b) LA for foreign awards.

161 Even in court proceedings, parties may supply evidence in the form of relevant public documents that would prove the content of the applicable law. Since a judge has to find the law (both domestic and foreign) *ex officio*, parties do not have the burden of proof with respect to the content of law. Their failure to prove does not exculpate the judge, and he has to continue his efforts aimed at establishing the content of the applicable law. See Art 13 CLA.

162 Under Art 11 of the Law on Courts, national courts may provide assistance to arbitral tribunals under certain conditions.

necessary adjustments in order to ensure validity and enforceability of the award.

IV Institutions and arbitration rules

A Institution

1 About arbitration institutions

The main arbitral institution in the Republic of Croatia is the Permanent Arbitration Court attached to the Croatian Chamber of Commerce (hereafter: the Court of the PAC-CCC). It is considered to be one of the oldest arbitral institutions in this part of Europe. The first arbitral institution attached to the Chamber of Commerce was founded in 1852, dealing mostly with small commercial disputes and merchant disputes.[163] At the beginning of the twentieth century the arbitration court had several hundred cases, dealing mostly with disputes among members of the Chamber.

After World War II and during socialist times the development of arbitration was suspended since private dispute resolution was not permitted. In socialist countries under the influence of the Soviet regime only arbitration at the international level between socialist enterprises was allowed.[164] Such arbitration was governed by the provisions of the Moscow convention and was practiced between the CMEA countries.[165] Yugoslavia, and therefore Croatia, never became a member of the Moscow Convention and – different from the CMEA Arbitration – both domestic (between Republics) and international arbitration was allowed. The arbitration practice was finally revived in 1965. The Foreign Trade Arbitration Court (FTAC) with seat in Belgrade was the governing institution for international arbitration while on the domestic level each of the ex-Yugoslav Republics had separate arbitration courts attached to the Chambers of Commerce. Although *ad hoc* arbitration was allowed in international cases, it was usually not practised.

After the dissolution of Yugoslavia in 1991, the Permanent Arbitration Court at the Croatian Chamber of Commerce has become the main arbitral institution in Croatia and is now dealing with both domestic and international disputes. As a consequence arbitral awards made by the

163 See *Dika*, Arbitral settlement of Disputes according to the 1852 Provisional Civil Procedure Code, Croatian Arbitration Yearbook, Vol 5 (1998) 187–206.

164 For several years after 1953, *Glavna državna arbitraža pri vladi SFRJ* [The Main State Arbitration Tribunal at the Government of the FPR Yugoslavia] was the highest court for commercial matters in socialist Yugoslavia. See *Zuglia*, Rješavanje imovinskih sporova putem državne arbitraže [Resolution of property disputes by State Arbitration tribunal], Zbornik Pravnog Fakulteta u Zagrebu 1948, 293–331.

165 Convention on settlement by arbitration of Civil law disputes resulting from economic, scientific and technical co-operation ("Moscow Convention"), signed in Moscow on 26 May 1972 by the former countries of Council for Mutual Economic Assistance ("CMEA" or "COMECON"): Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Romania and Soviet Union. Cuba joined later in 1977.

FTAC in Belgrade and other Yugoslav Republics are now considered to be foreign and are enforceable in accordance with the New York Convention. Although the FTAC still exists physically according to scholarly opinions, according to *clausula rebus sic stantibus* the arbitration clauses of this institution are no longer operative.[166]

Today the Permanent Arbitration Court at the Croatian Chamber of Commerce is the main arbitral body dealing with both domestic and international arbitration. Address and contact details of the institution are the following:

Permanent Arbitration Court at the Croatian Chamber of Commerce
(Stalno izbrano sudište pri Hrvatskoj gospodarskoj komori)
Rooseveltov trg 2
HR-10000 Zagreb
Telephone: +385 (0)1 4848622, 4848623
Fax: +385 (0)1 4848624
E-mail: sudiste@hgk.hr
Website: www.hgk.hr/[167]

The Court maintains the Presidency and the Secretariat of the Court. The Presidency performs general supervision of work, proper application of the Law and Rules, it makes some of the decisions on the jurisdiction of the Court, decides upon financial matters and the yearly plan of work as well as some other tasks. The Presidency is represented by the President and two Vice-presidents. The main task of the President of the Court is to act as appointing authority of the Court in accordance with the Rules[168] and to promote development of arbitration and maintain friendly co-operation with other institutions. The members of the Presidency are:

Mihajlo Dika – President
Jakša Barbić – Vice-president
Krešimir Sajko – Vice-president
Miljenko Giunio
Ivo Grbin
Hrvoje Sikirić
Petar Sindičić
Jasminka Trzun
Arno Vičić

The Secretariat of the Court performs administrative assistance and ensures that the decisions of the President and the Presidency are carried out. The Secretariat manages the work of the institution, offers administrative and technical assistance, prepares annual and other reports, but also issues certain decisions in accordance with the Rules. *Jasnica Garašić* is the present Secretary of the Court.

166 See decision Pž-957/92, 22 April 1992, Croatian Commercial Court, *Uzelac*, Croatian Arbitration Yearbook, Vol 3 (1996) 71–89.

167 The Secretariat of the Court is physically situated at Dalmatinska 10, HR-10000 Zagreb; direct link to the website is: http://hgk.biznet.hr/hgk/tekst.php?page=tekst&id=245.

168 See Art 10 Zagreb Rules 2002.

2 Practice of arbitration

a Statistics

As already mentioned, the practice of arbitration from 1991 shows an increasing tendency.[169] From 1990–2004 the PAC-CCC dealt with an average number of 30–40 cases annually; about half of cases were international. The exact data on the number of cases can be seen in the following chart:

Year	Domestic	International	Total
1992	8	7	15
1993	14	12	26
1994	21	13	34
1995	8	10	18
1996	15	12	27
1997	14	16	30
1998	21	8	29
1999	22	4	26
2000	9	25	34
2001	36	10	46
2002	16	21	37
2003	15	13	28
2004	17	9	26
Total	**216**	**160**	**376**

Various types of cases are submitted to the Court. They range from sales and pure commercial contract, payment orders, complicated construction disputes and disputes related to the process of privatisation. The range of parties is also various (from 26 countries), though the majority originates from neighbouring trading partners – Austria, Germany, Italy, Hungary and ex-Yugoslav Republics. The prevailing language is Croatian, English, German and Italian.

Unfortunately, exact statistics regarding applicable substantive law, the origin of parties, nationality of arbitrators and appointment by the parties or the institution respectively are not available since this data are not published by the PAC-CCC.

b Regular conferences held by or with the participation of the institution

Since 1993 an annual conference under the name *Croatian Arbitration Days – International Zagreb Arbitration Conference* has been organised by the Permanent Arbitration Court at the Croatian Chamber of Commerce and the Croatian Arbitration Association. The conference is held in Zagreb

169 See Chapter I D.

during the first week of December. It is one of the central events in the region. It offers a unique opportunity for the exchange of opinions in the field of domestic and international commercial arbitration and alternative dispute resolution, as well as for discussion of most important legal questions in practice (especially domestic practice). The conference is bilingual – in Croatian and English language.

c Publications by the institution – Journals

The Permanent Arbitration Court at the Croatian Chamber of Commerce in cooperation with the Croatian Arbitration Association publishes annually the arbitration journal *Croatian Arbitration Yearbook*. The journal has been published since 1994 in predominantly English language (with summaries in Croatian language) and offers a range of articles from the field of mostly domestic as well as international arbitration. The journal also provides for legislation (Statutory law, Rules etc), other legal texts and materials as well as extracts from the most important arbitral awards.

The Journal is usually presented at the annual conference – the *Croatian Arbitration Days* – that regularly takes place in the first week of December.

In the year 2000 the PAC-CCC also published the *Review of Arbitration in Central and Eastern Europe No. 1* as a supplement to the *Croatian Arbitration Yearbook*. The Review was published in cooperation with the T.M.C. Asser Instituut, The Hague and the Central European University Budapest and offers national reports together with a survey of legislation and practice in Croatia and Hungary.

3 Publication of awards and other decisions of the institution

The Permanent Arbitration Court at the Croatian Chamber of Commerce preserves confidentiality of the proceedings. Arbitration is a private resolution mechanism and therefore neither awards nor other decisions of the institution are being published. Sometimes important extracts from the awards are published but without naming the parties and arbitrators, particularly when arbitrators are challenged.

A most important selection of arbitral awards and decisions of the PAC-CCC are being published in the *Croatian Arbitration Yearbook* and the *Review of Arbitration in Central and Eastern Europe*, usually at the end in a form of a supplement. With the approval of the PAC-CCC some of the awards and decisions could be presented and put into discussion in the *Croatian Arbitration Conference*.[170]

4 Acting as appointing authority under UNCITRAL Rules and other rules and parties' agreements

Until 2002, the PAC-CCC only had provisions on appointment of arbitrators under its own Rules. For the first time, the Zagreb Rules 2002 expressly provide for only partial engagement of the arbitral institution, eg by

170 See Chapter I C 1 d.

limiting the services provided to the appointment of arbitrators. The new rule on such situations is contained in Art 1 (4) of the Zagreb Rules 2002 that authorises the institution to "carry out only some of the activities prescribed in the [Arbitration] Rules, especially to act as appointing authority in *ad hoc* arbitration and arbitration conducted by other arbitration institutions, and to offer administrative and other services, organise hearings and make premises and equipment available for the conduct of arbitration and conciliation subject to rules different from these Rules". Of course, this provision would enable the PAC-CCC to act as appointing authority under the UNCITRAL Rules; however, there are still no practical experiences in this respect.

5 Cooperation agreements

One of the main orientations of the PAC-CCC is the promotion of arbitration and preservation and development of friendly cooperation with other arbitral institutions. Until today the PAC-CCC has concluded cooperation agreements with the following institutions:

- Agreement of cooperation with the American Arbitration Association (AAA), New York, 27 October 1993;
- Agreement on cooperation with Vienna Arbitral Centre (Wirtschaftskammer Österreich), Vienna, 31 January 1996;
- Cooperation Agreement with the Swiss Arbitration Association (ASA), Zürich, signed 25 November 1993 and came into effect 1 December 1993;
- Agreement on cooperation with the German Institute of Arbitration (DIS), Bonn, signed 3 June 1995 and came into effect 1 July 1995;
- Agreement of cooperation with the China International Economic and Trade Arbitration Commission (CIETAC), Zagreb, Beijing, 16 May 1997;
- Agreement of cooperation with the Court of International Commercial Arbitration at the Chamber of Commerce and Industry of Romania and the Permanent Arbitration Court at the Croatian Chamber of Commerce, Bucharest;
- Agreement of cooperation with the Permanent Arbitration Court at the Chamber of Commerce of Slovenia (SA-GZS), Ljubljana, 24 March 1997;
- Agreement of cooperation with the Permanent Arbitration Court at the Chamber of Commerce of the Republic of Macedonia (PIS-SKRM), Skopje, 14 April 1997;
- Agreement of cooperation with the Gulf C.C. Commercial Arbitration Centre, Bahrain;
- Agreement of cooperation with the Permanent Arbitration Court at the Yugoslav Chamber of Commerce (STA-PKJ), Belgrade, 28 June 2002;
- Agreement of cooperation with the Arbitration Court at the Bulgarian Chamber of Commerce and Industry, Sofia, 5 July 2002.

B Arbitration Rules

1 General

Following the solution of the new Law on Arbitration (2001), the PAC-CCC revised and harmonised its rules of procedure. The new, revised version of rules came into effect on 25 December 2002 under the name Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Commerce – also called Zagreb Rules 2002.[171] This revised version is now offering the same procedure for disputes with and without international element.

Previously the PAC-CCC held two sets of rules, one for domestic arbitration and one for international arbitration, that is Rules of International Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Commerce[172] (for international disputes) and Rules of Arbitration in Domestic Disputes[173] (for domestic arbitration).

These two sets of rules still apply to arbitration proceedings in which the arbitration agreement was concluded prior to 25 December 2002 and the Zagreb Rules 2002 apply to proceedings where the agreement to arbitrate was concluded after the Rules came into force unless the parties agree differently.[174]

As a revision of the Rules was already performed in 2002 and the Rules are harmonised with the Law on Arbitration, there are no plans for any further revision.

The Zagreb Rules 2002 are binding only in the Croatian version, but the non-binding translation into English language is available.[175] Both versions can be found on the website of the Court. They can also be obtained in written form from the Court free of any fees and charges together with some other brochures about the PAC-CCC.

The English translation of the Zagreb Rules 2002 (in a version that is distributed by the institution) is enclosed as Annex to this report.

2 Scope of application

The parties are free to decide on rules of procedure. They can either specify some set of Rules (like Zagreb Rules 2002 or ICC Rules) or they can choose a set of rules for *ad hoc* arbitrations (like UNCITRAL Arbitration Rules). Parties are limited only by the mandatory provisions like equal treatment of parties (Art 17 LA) or denial of the right to agree on appeal to the arbitral tribunal of a higher instance against an award (Art 27

171 Published in Off Gaz 150/2002 of 17 December 2002.

172 Enacted on the II. Session of the Assembly of the Croatian Chamber of Commerce on 15 April 1992, Off Gaz 25/92 of 15 April 1992, in force as of 7 May 1992 (Zagreb Rules 1992).

173 Originally published in Off Gaz 19/85; amended in Off Gaz 1/89, 15/90, 69/91, 25/92, 53/96; revised text published in Off Gaz 113/93.

174 Parties have a right to agree on application of the Zagreb Rules 2002 in already pending cases.

175 Translations into German, Italian and French (available for Zagreb Rules 1992) are currently still not available.

Zagreb Rules 2002). In cases without an international element as well as in cases in which some form of exclusive jurisdiction is provided, parties have to select a place of arbitration in Croatia.[176]

If the parties have agreed on the Zagreb Rules 2002, their scope of application is defined in Art 1 of the Rules. As already mentioned the Rules apply to disputes with and without an international element. The PAC-CCC and the tribunal shall have jurisdiction if the parties have agreed so and if the matter concerns rights the parties may freely dispose of.[177]

The tribunal may have discretion to administer disputes outside this scope only if the parties have explicitly agreed so. Particularly, the Court may perform some of the duties arising out of the Zagreb Rules 2002 when acting as appointing authority in *ad hoc* arbitration and in proceedings before other arbitral institutions or the Court shall provide administrative or other services and secure premises for arbitration and conciliation conducted under the rules other than Zagreb Rules 2002 and Rules of Conciliation and Arbitration of the Croatian Chamber of Commerce.[178]

On behalf of the institution, the President of the Court has the power to make certain decisions while the proceeding is pending (eg appointment of arbitrators, issuing payment order etc). The default appointing authority under Zagreb Rules 2002 (as well as under the previous rules) is the President of the PAC-CCC. The parties may select another appointing authority (Art 10 Zagreb Rules 2002); such clauses were already encountered in practice.

The majority of the powers in directing the course of procedure, however, are in the hands of the arbitral tribunal. The arbitral tribunal decides eg upon jurisdiction, taking of evidence, hearing of witnesses, oral hearings, interim measures, closure of hearings etc.

Some authorities are also in the hands of the Secretary General who provides administrative services, monitors delivery of the statement of claim, the statement of defence and other submissions; he also communicates with parties, arbitrators, witnesses or experts if necessary and takes care whether costs and fees have been paid by the parties. In such financial issues he may decide upon extension of time limits. He also issues a declaration of validity and enforceability of the award and may be present at oral hearings and draw attention to certain legal issues. Generally, the Secretariat of the Court provides assistance and help to the arbitral tribunal as required.

Regarding preliminary decisions on jurisdiction, the tribunal may decide on its own jurisdiction. If an action between the same parties and in the same matter is brought before a state court, the tribunal may make a

176 Art 4 Zagreb Rules 2002 does not exclude agreement on the place of arbitration outside the Republic of Croatia, but so far there were no cases in which this actually happened.

177 This solution is broader since the previous Rules applied only to commercial matters considering rights the parties may freely dispose of (Art 1 Zagreb Rules 1992).

178 Published in Off Gaz 81/2002.

decision to stay the proceeding until decision is made before the state court (Art 3 Zagreb Rules 2002). The tribunal shall make such decision only if it finds that there is an especially important reason for it.

Moreover, the Board of the Court may refuse to adjudicate even if the parties have agreed on the jurisdiction of the Court in their arbitration agreement if the arbitration agreement concerns rights which the parties may not freely dispose of (Art 2 Zagreb Rules 2002).

The Secretary General of the Court has the power to be present at any oral hearing conducted before an arbitral tribunal. This power/duty is obligatory if the sole arbitrator or all members of the tribunal do not have a degree in law. The Secretary General may also draw the arbitrators' attention to legal issues relevant to the decision and also to the form and content of procedural actions taken by the tribunal. All of this must be performed without affecting the arbitral tribunal's right to decide the substance of the dispute (Art 29 Zagreb Rules 2002).

With these activities, the arbitral institution indirectly exercises control and reviews procedural or any other decision of the arbitral tribunal while proceeding is still running.

On the other hand, direct review of arbitral decisions is given when the award is submitted for approval. The arbitral tribunal must submit a draft of the award to the Court before signing it. The Court has the power to make modifications with regard to the form of the award. Regarding the substance of the dispute, it may only draw the tribunal's attention to certain issues without affecting the tribunal's right to decide on the merits. Such review of an award is regularly performed by the President (in the name of the Court) or a Board member to whom the Board confers this task (Art 30 Zagreb Rules 2002).

The award shall not be delivered to the parties without the Court's consent as to the form. Also, the final award shall be delivered to the parties only after the parties have paid all costs of the proceedings.

3 Specific rules and due process during the arbitration proceedings

The Rules contain no provision explicitly guaranteeing due process during the arbitral proceeding. Such a provision is contained in the Law on Arbitration where it is stated that "the parties to proceedings before an arbitral tribunal shall be treated equally" (Art 17 LA). The parties shall also have the right to respond to the statement of claim and the statement of defence and in order to secure due process the arbitrators shall disclose to parties their opinions and give appropriate explanations in order to evaluate all relevant factual and legal issues.

Even in the absence of explicit provisions, the right to due process may be recognised in many provisions of the Rules. The parties are free to decide upon arbitral proceedings and depart from the Rules except in respect of the mandatory provision on exclusion of appeal against the award by the Court (Art 27 Zagreb Rules 2002). This means that parties are free to agree on the number and appointment of arbitrators, place and language of arbitration. The claims, counterclaims and other submissions must be delivered to the parties; time limits are broad enough that the

parties can be heard. Arbitrators have to disclose all relevant circumstances that could have an influence on their independence and impartiality. The provisions about submissions, oral hearings, evidence, witnesses, experts, provisional measures and all other procedural questions are always trying to reach and maintain procedural balance between the parties. If an arbitrator has been replaced, oral hearings must be repeated. The proceeding itself is always under the auspices of the Court and the award is always under review by a Court since there is no appeal to a higher instance ("appellate arbitral tribunal").

C Arbitrators

1 Requirements for arbitrators

There are no specific requirements for arbitrators listed either in the Law on Arbitration or in the Zagreb Rules 2002. The parties are free to agree on qualifications they expect from an arbitrator in their arbitration agreement. The lack of agreed requirements could be a reason for challenge of an arbitrator.

The only restriction exists with respect to active judges of Croatian courts of law. They may be appointed only as sole arbitrators or presiding arbitrators. They cannot act as party-appointed arbitrators (Art 10 (2) LA).

Regarding nationality of arbitrators, the Law provides that "no person shall be precluded by reason of his nationality from acting as an arbitrator".[179] This provision is not mandatory and there is still a possibility for the parties to agree differently (Art 10 (1) LA).

Moreover, there is no mandatory provision that a sole arbitrator or a chairman must be of different nationality from any of the parties. The appointing authority (Court or President of the PAC-CCC) shall in a dispute with an international element (and especially if the parties are of different nationalities), in the case of a sole or presiding arbitrator, take into account the advisability of appointing an arbitrator of a nationality other than that of the parties. Usually, a sole arbitrator or the chairman shall be of a nationality different from the parties (Art 11 (3) Zagreb Rules 2002; Art 10 (6) LA).

This lack of detailed requirements actually means that every person with full age and capacity to enter into business transactions (in Croatia persons over 18 years) can be an arbitrator. The law does not pose any particular requirements regarding education, experience, legal degree, bar exam or any other skills as a prerequisite for acting as an arbitrator.

At the same time, the law provides that arbitrators have a duty to "conduct arbitration with due expeditiousness, act in a timely manner and ensure no delay of proceedings occurs" (Art 11 (2) LA). The parties also have a right to discharge by their consent an arbitrator who does not

179 Until 2001 there were no such specific rules. The Law on Arbitration adopted this provision from the UNCITRAL Model law. Although the wording of the UNCITRAL Model Law and the Croatian Law on Arbitration is the same, the application in Croatia is broader since Croatian Law on Arbitration applies to both domestic and international arbitration.

perform his duties and especially does not act in a timely manner. Like the lack of requested qualifications, this could also be a reason for challenge of an arbitrator.

One of the most important questions and duties is the obligation of the preservation of due process. Arbitrators should not be biased and should act impartially and independently. The question of independence and impartiality is the core guarantee of due process and equal treatment of parties as guaranteed in Art 17 of the Law on Arbitration. The arbitrators should disclose any requirements that could give rise to justifiable doubts to their impartiality or independence. An arbitrator shall take care about disclosure throughout the whole procedure and shall without delay inform parties about such circumstances unless they have been previously informed by him (Art 12 (1) LA). Lack of impartiality and independence is the main reason for challenge.

An arbitrator must be capable to perform his duties and have command over the case, all with adequate speed and legal expertise. Therefore, the arbitrators are usually highly educated persons with good legal and professional knowledge and experience. They are usually among the most important names in their field and almost in all cases have legal experience and expertise.

2 List of arbitrators

The Permanent Arbitration Court at the Commercial Chamber of Commerce keeps a List of arbitrators. There are two sets of Lists: one List for domestic disputes and the other for disputes with an international element.[180]

The Lists are not binding; the parties are free to appoint an arbitrator not listed on the List of arbitrators kept by the Court. Although the parties are not obliged to nominate persons from the List, it is considered as preferable since those arbitrators are accustomed to the Rules and practice of the institution. However, in practice there were also instances of "outside" arbitrators.

The List is modified every four years. The names of possible candidates for the Lists are presented to the Board (Presidency) of the PAC-CCC. Usually, the person that wishes to be listed sends to the Court a request with a *curriculum vitae*, specifying the List where he wishes to be appointed. The Members of the Board review all applications and decide on the List that is sent as a proposal to the Management Board of the Chamber of Commerce; the latter is competent to make a final decision on the List. See Rules of the Permanent Arbitration Court, Art 4 (2).

3 Statement of independence and impartiality

When a person is approached in connection with the appointment as an arbitrator, it is the arbitrator's duty to disclose any circumstances that are likely to give rise to justifiable doubts as to his independence and impartiality. The arbitrator shall, throughout the whole procedure, without delay inform the parties about such circumstances unless the party have been previously informed by him (Art 12 (1) LA).

Circumstances that should be disclosed are especially the ownership of a share or shares in the legal person that is a party to proceedings, family relationship or working relationships with the parties or any other circumstances that would have an influence on the conduct of proceedings. This obligation continues during the whole procedure and does not cease with the appointment. The failure to inform about potentially relevant circumstances may be a reason for the challenge of an arbitrator.

Unlike in Art 9 of the ICC Rules, there is no obligation for the Court to confirm the appointed arbitrators. The Court cannot revise statements of independence and impartiality and confirm or not confirm the selected arbitrator. The sole exception is the one concerning nomination of arbitrators that serve as judges of the state courts. Judges of Croatian Courts may be appointed only as sole arbitrators or presiding arbitrators. This provision is mandatory and cannot be changed by agreement of the parties.

The Zagreb Rules 2002 contain no specific provision on the process of appointment of arbitrators, but usually when an arbitrator is approached in connection with his appointment, a statement of independence and impartiality shall be sent to him (usually together with other documents related to the dispute). If an arbitrator accepts his appointment a signed statement shall be sent to the Secretariat of the Court. All circumstances that give rise to justifiable doubts to his independence and impartiality must be disclosed.

Although customary, signing the statement is not a mandatory requirement of the Zagreb Rules 2002. But the Law on Arbitration states that an arbitrator has to accept his appointment in writing (eventually by signing the arbitration agreement or by other methods, such as the one used by the PAC-CCC).[181]

4 Selection and appointment of arbitrators

The general rule is that the parties are free to agree on the procedure of appointment of arbitrators. Arbitral proceedings are usually running before the arbitral institution (eg the PAC-CCC) under the Rules of that institution; however, the Croatian Law on Arbitration offers a slightly different solution. Therefore there are two different ways of selection and appointment of arbitrators.

According to the Law on Arbitration, the parties are free to determine the number of arbitrators by their agreement. If they fail to do so, an arbitral panel of three arbitrators will be appointed (Art 9 LA). Previous legislation required an odd number of arbitrators. This rule is no more contained in the Law on Arbitration, but in practice it is difficult (though not impossible) to find arbitrations with an even number. The Zagreb Rules 2002 apparently only recognise two options – a sole arbitrator or a panel of three arbitrators.

180 Both Lists can be found at the website of the PAC-CCC together with the arbitrators' *curriculum vitae*.

181 See Art 11 (1) LA.

When appointing a panel of arbitrators, each party shall appoint one arbitrator and these two shall appoint the third one – the president of the tribunal. The president does not enjoy more authority; he is just the first among equals *(primus inter pares)*. Usually the appointment is performed within the statement of claim and statement of defence, although the parties are free to do that in separate submissions, but within the set deadlines.

If the arbitrators are not nominated within 30 days from the receipt of the notification of the appointment by the other party accompanied by a request to appoint an arbitrator, or if two arbitrators fail to agree on the third arbitrator within 30 days from the appointment of the last appointed of them, the appointment of the arbitrator shall be made, upon request of a party, by the appointing authority – this is the President of the Commercial Court in Zagreb or a judge designated by him.

If the parties agreed on a sole arbitrator, nomination has to be made jointly. If parties fail to agree and the procedure of nomination has not been agreed by the agreement, the nomination shall be performed by the appointing authority – by default by the President of the Commercial Court in Zagreb or a judge designated by him, at the request of a party.

Such decisions of the court on the appointment of arbitrators shall not be subject to appeal (Art 10 (7) LA).

According to the Zagreb Rules 2002 the parties may also agree on the number of arbitrators. If they fail to agree on the arbitral tribunal within 15 days after delivery of the statement of claim to the respondent, in proceedings where the value of the dispute is not exceeding Euro 50,000 one arbitrator (sole arbitrator) shall be appointed, and for all other proceedings three arbitrators shall be appointed (Art 6 Zagreb Rules 2002).

If the parties have agreed on a sole arbitrator, the name of that person shall be communicated to the Secretariat of the Court. The time limit shall not be less than 15 days from the delivery of the statement of defence or after the expiry of the period fixed for the respondent to deliver a statement of defence. If the parties fail to nominate a sole arbitrator, the arbitrator shall be nominated by the appointing authority – the President of the PAC-CCC (Art 7 Zagreb Rules 2002).[182]

The appointing authority shall apply a so-called list procedure unless the parties have agreed differently or the appointing authority considers that a list procedure is inappropriate for that particular case and that the appointment shall be performed without delay. Under the list procedure, identical lists of proposed arbitrators are sent to the parties, who then have to, within a period of 15 days, cross out the names they do not accept and list the other names by number according to their preferences. After the time period has elapsed, the appointing authority shall perform nomination in accordance with the returned lists and preferences of the parties. If the appointment could not be made following this procedure because of any reason,[183] the appointing authority may exercise discretion in appointing

182 According to the Law on Arbitration the appointing authority is the court named in Art 43 (Commercial Court in Zagreb) and according to the Zagreb Rules 2002 the appointing authority is the President of the PAC-CCC.

183 Eg if the list is not returned or the party did not state preferences.

an arbitrator (Art 11 Zagreb Rules 2002). The same shall apply if two arbitrators fail to appoint the third one within a period of 30 days. In practice, the list procedure is not often used by the appointing authority due to its relative length and the need of participation by both parties.

Different from the Law on Arbitration, the Zagreb Rules 2002 contain a provision regarding multy-party arbitration. As already mentioned,[184] multiple claimants or multiple respondents shall prior to the appointment agree on the nomination of their joint arbitrator and shall communicate the name to the PAC-CCC by written submissions. Failing to do so, within an additional period of 15 days, the President of the PAC-CCC shall appoint an arbitrator from the List of arbitrators kept by the Court (Art 9 Zagreb Rules 2002).

Finally, both the Law on Arbitration and the Zagreb Rules 2002 contain mandatory provisions regarding appointment. In making the appointment, the appointing authority shall have due regard to all considerations that are likely to secure the appointment of independent and impartial arbitrators as well as have due regard to qualifications required from the arbitrator by the agreement of the parties. In international disputes, the appointing authority shall also take into account the advisability of appointing an arbitrator who does not have the same nationality as the parties (Art 11 (3) Zagreb Rules 2002 and Art 10 (6) Law on Arbitration). The decision on appointment of an arbitrator is not subject to any appeal.

5 Challenge of arbitrators

The arbitrator may be challenged only:

- because of circumstances that give rise to justifiable doubts as to his independence or impartiality;
- if the arbitrator does not posses qualifications agreed by the parties;
- if an arbitrator fails to fulfil his duties specified in Art 11 (2) of the Law on Arbitration, ie to conduct arbitration with due expeditiousness, act in a timely manner and avoid any delay of proceedings.[185]

The parties may freely agree on the procedure for challenging an arbitrator. A party may challenge an arbitrator appointed by him or an arbitrator in whose appointment he has participated only for reasons that occurred and of which the party became aware after the appointment has been made.

The challenge shall be initiated upon a party's application within 15 days after appointment has been made or within 15 days after becoming aware of the reasons for challenge, unless other time limits are agreed by the parties. The application shall be a written statement specifying reasons of challenge and shall be submitted to the arbitral tribunal.

The arbitral tribunal, including the challenged arbitrator, shall promptly decide on the challenge (with the exception if the challenged arbitrator withdraws from his office or the other party agrees to the challenge).

184 See Chapter II.

185 See Art 12 (2) LA.

If the application for challenge is rejected or the tribunal does not decide about the challenge within 30 days after the challenge was made, the challenging party may, within 30 days starting from the acceptance of the notice of the decision rejecting the challenge, or within 30 days starting from the date when challenge was made, ask the appointing authority specified in Art 43 (3) LA to make a final decision on the challenge.

If the parties do not agree on the appointing authority, the President of the Commercial Court (for commercial matters) or the President of the County Court in Zagreb (in non-commercial matters) shall have jurisdiction to decide upon challenge.

It is important to point out the wording of Art 43 (3) LA: "Unless the parties have agreed that some or all of the assisting activities are to be performed by an arbitral institution or some other appointing authority". The question arises whether the final decision on challenge may be considered as an assisting activity. In practice, the President of the Commercial Court decides that he has no jurisdiction if the parties have designated a different appointing authority under the Arbitration Rules of the PAC-CCC. Therefore, the state court shall not review decisions on challenge made by an arbitral institution or by its appointing authority.[186]

If the state court refuses to review a decision on challenge made by some other appointing authority other than the state court (eg the President of the PAC-CCC), the arbitrator's independence and impartiality could be put on review only through the procedure of setting aside the award.

The Zagreb Rules 2002 offer no specific provision regarding the challenge of arbitrators assuming that the dispositive provisions of the Law on Arbitration shall be applied. The only difference is that Art 10 of the Zagreb Rules 2002 nominates the President of the PAC-CCC as the appointing authority.

While a challenge is pending, the arbitral tribunal – including the challenged arbitrator – may continue the arbitral proceedings and issue an award. But if a challenge is made at the end of the proceedings and as consequence one of the arbitrators is replaced, oral hearings shall be repeated unless the parties have agreed otherwise. At the same time, if a sole arbitrator is being replaced, oral hearings must be repeated. This is a mandatory provision and the parties may not agree otherwise (Art 12 Zagreb Rules 2002).

6 The replacement of an arbitrator

If an arbitrator has been challenged or fails to perform his duties and therefore his mandate terminates by agreement of the parties, or in any other case of termination of his mandate, the substitute arbitrator shall be appointed under the same rules that were applicable to the appointment of the arbitrator being replaced (Art 14 LA).

186 Such appellate solution was inspired by Art 13 (3) of the UNCITRAL Model Law, but the wording is slightly different. Unlike the Croatian Law on Arbitration, the UNCITRAL Model Law provides "Court or other authority specified in Art 6" allowing in that way to review decisions on challenge made by some other institution.

The Zagreb Rules 2002 additionally stipulate the consequences of a replacement of an arbitrator; the result is the same as if an arbitrator was successfully challenged: if the composition of the tribunal has been changed, the hearings must be repeated unless the parties have agreed otherwise; if a new sole arbitrator has been appointed, the hearings must be repeated.

7 Control mechanisms ensuring the quality of the work of the arbitrators and the institution and liability of arbitrators

Apart from the mentioned rights and duties of arbitrators, there are no specific provisions ensuring the quality of an arbitrator's work. Of course, feedback from the parties can always be received (but in more informal ways), and the institution may always look at the internal statistics in relation of arbitrators, cases, performance, time limits or some other factors.

The quality of work could also be influenced through the presence of the Secretary General at the oral hearings where he can draw the attention of arbitrators to certain legal issues, but only to the extent that it has no influence on the decision-making. The same could be performed by the Court at the revision of an award.

Except for the above-mentioned means, the institution does not have any means to control the work of arbitrators. Therefore, it itself cannot in any way guarantee (and/or be liable for) the quality of an arbitrators' work. But unsatisfied parties may always initiate a procedure for setting aside and/or replace an arbitrator.

A provision about liability can be found neither in the Law on Arbitration nor the Zagreb Rules 2002. There is no case law on this issue, either. On the one hand, the relationship between arbitrator and party (and/or arbitral institution) is of a contractual nature. By sending the agreement or statement of independence and impartiality or other notice of appointment, the party/institution makes an offer to the arbitrator. The arbitrator accepts his appointment in writing and also his rights and duties towards the parties. Assuming this, an arbitrator may be held liable and sued for damages caused by his inability, lack of requirements, impartiality and dependence and similar. On the other hand, an arbitrator is a "judge", he makes a decision and performs a jurisdictional activity that results in an award that has the effect of a final and binding court judgement that is enforceable. Therefore, he should be subject to the same rules of immunity as state court judges.

D Costs

The costs of proceedings are regulated by the regulation of the PAC-CCC that has been changed several times. The last revision of this regulation dates back to July 2003.[187] The tariff contained in this regulation makes the administrative charges and the arbitrators' fees primarily dependent on the material interest of the case (the amount in dispute). However, the

187 See the Decision on costs in arbitration and conciliation proceedings, Off Gaz 108/2003, in force as of 8 July 2003.

costs also depend on the number of arbitrators (sole arbitrator or an arbitral tribunal),[188] and the complexity of the case may also play a certain role. While some of the previous versions of the rules did not discriminate domestic and international cases,[189] the last tariffs again make more favourable arrangements for domestic cases where the applicable administrative charges and arbitrators' fees are approximately one half of the respective costs in international cases.

Here is the estimate of administrative costs and arbitrators' fees for certain amounts in dispute for arbitrations with and without international element (for sole arbitrator and an arbitral tribunal of three arbitrators):

Amount in dispute (in Euro)	International arbitration			
	Sole arbitrator		Tribunal	
	Admin	Fees	Admin	Fees
100,000	840	4,200	1,050	10,500
1,000,000	2,140	10,700	2,675	26,750
10,000,000	6,340	31,700	7,925	79,250

Amount in dispute (in Euro)	Domestic arbitration			
	Sole arbitrator		Tribunal	
	Admin	Fees	Admin	Fees
100,000	420	2,100	525	5,250
1,000,000	1,070	5,350	1,337	13,375
10,000,000	3,180	15,900	3,975	39,750

In all cases, a non-refundable registration fee of 200 Euro has to be paid to the Court. The registration fee, as well as the administrative charges and the arbitrators' fees, will be increased by 10 % for each additional party that participates in the proceedings (ie in a multi-party proceedings in which 3 parties are involved, costs are increased by 10 %, if there are 4 parties, the increase is 20 % etc).

Although the administrative charges regularly cover the basic logistical needs of arbitration proceedings (office space, hearing rooms, administrative support) in cases that take place at the seat of the Court (ie on the premises of the Croatian Chamber of Commerce), parties have to pay further material costs of the proceedings. Among such costs are the travel and other expenses of the arbitrators, fees and costs of expert witnesses, costs of translation and interpretation and other supplemental costs.

If arbitration proceedings are terminated by an award on the merits, no reimbursement is given to the parties, irrespective of the length and complexity of the proceedings. On the contrary, if arbitration proceedings are not concluded by an award, upon a decision of the President of the PAC-CCC, the administrative charges and arbitrators' fees will be determined in an appropriate amount, and the rest of the paid advances will be returned to the parties.[190]

188 Under Tariff no 4, if an arbitral tribunal of three arbitrators is appointed, the amounts from the tariffs are increased by two and half times in relation to the arbitrations with sole arbitrators (in complex cases this increase may be up to three times).

189 Eg the previous regulation on costs from July 2002, Off Gaz 81/2002.

190 See Tariff no 5 (1) of the Decision on costs (2003).

It is generally required that the parties pay advances of every type of costs to the arbitration institution. After filing of the statement of claim, as soon as it is possible (ie after determination of the amount in dispute and the number of arbitrators), the Court should estimate the expected costs and request payment of appropriate advances.

The PAC-CCC has several times changed its practice with respect to the procedure of requesting the deposits (advances). Under the newest regulation, the initial advances of costs are being requested exclusively from the claimant.[191] The deadline for payment of advances is 30 days from the service of the payment order issued by the Secretary of the Court. If the requested sum is not paid within this period, the claim may be deleted from the Court registry; a deleted statement of claim may be filed again, but subject to repayment of the registration fee.[192]

The practice of charges and fees of the Court has also been changing in recent times. Motivated by an ambition to provide a more user-friendly approach, the Court introduced a rule in 2002 according to which payment of the advance in two or more instalments would be tolerated. Namely, the President of the Court could, at his discretion, transmit the file to the arbitrators if a substantial part of the advance was paid (half or more), subject to the notice to arbitrators that full advance was not paid.[193] A year later, this rule was changed, and the regulations on costs now again provide strict and inflexible provisions.[194] It remains to be seen whether the practice will settle with the present Rules – certain changes in the near future are likely to happen.

E Timing

It is often stated that one of the major advantages of arbitration is the speed of proceedings. However, in Croatian arbitral practice (as in the practice of many other jurisdictions) this statement is not necessarily always true. Some problems may occur with arbitrators, who discharge their duty overburdened with many other obligations, with inexperienced arbitrators, or simply with those who tend to simulate the practice of ordinary courts in the arbitration proceedings.

During the reform of the Croatian arbitration law, some support was voiced in favour of introducing fixed time limits (eg like in Art 24 ICC Rules). However, the majority opinion was that fixed time limits are not appropriate for arbitration. As a result, the Croatian Law on Arbitration has

191 While this solution may have a certain impact on efficiency of proceedings in cases where defendants reject any invitation to participate in the costs of proceedings, it may seem unfair and incorrect in cases in which both parties are active and cooperative with the court.

192 See Art 6 of the Decision on costs (2003).

193 Art 5 (5) of the Decision on costs (2002).

194 It may be that the Court intended to compensate for these rules with a decrease of charges and fees by half in pure national cases (cases "without a foreign element") but such a change is partly contrary to the ambitions of the Law on Arbitration to provide the same rules for national and international arbitration, and partly may lead to an unequal and inappropriate compensation of arbitrators.

introduced in 2001 only a general obligation of arbitrators to "conduct arbitration with due expeditiousness and undertake measures on time in order to avoid any delay of proceedings".[195] It is also expressly provided that the parties may discharge by their consent an arbitrator, who "does not perform his duties in timely manner", although such a rule would also follow from the general principle of party autonomy. As a relative novelty, failure to perform the duties in a timely manner is provided also as a ground for challenge of arbitrators (Art 12 (2) LA). If an arbitrator would be challenged for such a ground, the decision on his eventual removal would be made by the full arbitral tribunal, including the arbitrator subject to the challenge.

Eventual introduction of specific time limits is by law left to the arbitral institutions. The PAC-CCC, on its part, did not make use of this possibility: the latest revision of the Zagreb Rules does only speak of the right of arbitrators to set and prolong time limits for the performance of certain procedural actions, "taking care to prevent undue delays of the proceedings".[196] As the Court and its Secretariat do not have any powers to control the length of proceedings, there are no sanctions that may be imposed by the institutions against arbitrators who fail to undertake their duties in a timely manner.[197]

The currently published statistical data of the PAC-CCC do not fully reveal the actual timing of the current cases. However, from the data on pending and finished cases, it may be concluded that the majority of cases is resolved within the period of two years from filing of the statement of claim. Still, there are also individual cases that last longer, sometimes for five or six years.[198]

F Language

As to the language of proceedings, the parties are free to agree on the language or languages to be used in the arbitral proceedings (Art 21 (1) LA). This rule applies not only to international, but also to national arbitration. If parties fail to agree, the language or languages of the proceedings will be determined by the arbitral tribunal. The LA has followed the UNCITRAL Model Law rule according to which a language agreement or determination by the arbitral tribunal, unless otherwise specified therein, applies to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.[199]

The LA also provides a solution for languages that may be used in communication until the language or languages of the proceedings have

195 See Art 11 (2) LA.

196 Art 18 (2) Zagreb Rules 2002.

197 Except if the failure to undertake actions would be of such a scope that it could be construed as a *de jure* or *de facto* inability to perform the functions of an arbitrator. In such cases, an appointing authority (by default: the President of the Court) may be requested to decide on the issue – see Art 13 LA.

198 Eg out of 27 cases initiated in 1996, two were concluded in 2000, and one in 2002; out of 30 cases initiated in 1997, four were resolved in 2001, two in 2002 and one was still pending in the beginning of the 2003.

199 Compare Art 21 LA and Art 22 of the UNCITRAL Model Law.

been determined. In such cases (eg if the parties failed to agree on the language in their arbitration agreement), until the arbitral tribunal's determination, "a claim, a defence and other deeds can be submitted in the language of the main contract, of the arbitration agreement or in the Croatian language" (Art 21 (3) LA). Another default provision provides for the use of Croatian language if no agreement on language can be reached either by the parties or by the arbitrators.

After the enactment of the LA, the last revision of the Zagreb Rules has fully abandoned any rules on the language of the proceedings, relying exclusively on the default rules in the LA. The Secretariat of the PAC-CCC may assist the arbitrators in providing interpreters of translation facilities, and it could also communicate with the parties and arbitrators in several foreign languages (eg English and German). Ultimately, the agreement on translation services and the choice of interpreters and logistics remains on parties and arbitrators.

G Applicable procedural rules

In arbitration proceedings, the parties are free to select the applicable procedural rules. This is both the approach of the LA[200] and the Zagreb Rules. In PAC-CCC proceedings, the parties may, under Art 1 (3) of the Zagreb Rules 2002, agree to depart from the provisions of the Rules. There are only two conditions for the admissibility of the parties' agreement: the parties' agreement may not be contrary to mandatory provisions of Croatian law, and the parties may not agree on a secondary appeal against PAC-CCC awards (ie depart from Art 27 Zagreb Rules 2002).

If parties have not agreed on any applicable rules, or if a particular situation was not envisaged by the selected rules, the arbitral tribunal is authorised to "conduct the arbitration in such a manner as it considers appropriate". This means that the arbitrators may determine the rules of procedure by any appropriate manner, either directly, or by reference to a set of rules (Art 18 (2) LA). Neither the LA nor the Zagreb Rules 2002 require the parties to be heard on the intended rules, but such a practice is customary and recommendable. It would also be in line with the general rule that the arbitrators should "to the extent necessary and possible, attempt to disclose to the parties their opinions and give appropriate explanations in order to evaluate all relevant factual and legal issues" (Art 17 (3) LA).

Under Art 33 Zagreb Rules 2002 the new procedural rules apply only to those arbitrations in which the arbitral agreement was concluded after coming into force of the Rules. This may generally be taken to be the view of the PAC-CCC: the rules to be applied are the rules that were in force at the time of the conclusion of the arbitration agreement. If the rules have subsequently changed, the old rules apply unless the parties have expressly agreed on the application of the new rules.

200 The LA here follows the UNCITRAL Model Law approach – see Art 18 LA and Art 19 UNCITRAL Model Law.

H Counsel

There is no obligation for a party to be represented by a legal representative or attorney at law in arbitral proceedings. This means that every natural person with business capacity (adult over 18 years) has the capacity to conclude an arbitration agreement and is also capable to personally defend his own rights and interests before an arbitral tribunal. Only if the person is not capable to enter into business and other transactions (minor) or take legal actions, he must be represented by a lawful representative. Lack of proper representation is a reason for setting aside (Art 36 (2) point 1 b) LA).

Legal persons and other entities also have the capacity to conclude arbitration agreements and be parties to an arbitration dispute. Such legal persons are represented by their authorised person (director) whose name must be registered in the Court Registry of the Croatian Commercial Courts. Such persons may also engage in-house counsels, lawyers or other experts.

The representatives in proceedings should be able to enter into business dealings or otherwise must be represented by a proxy. If the validity of the power of attorney is governed by Croatian law, the authority to conclude the main contract implies an authority to conclude an arbitration agreement (Art 8 LA).

Although there are no mandatory rules regarding representation, if a party wishes, it may, according to the Zagreb Rules 2002, nominate representatives and assistants of his choice. The name of these persons has to be communicated to the PAC-CCC and to the other party in writing. The nomination must specify whether it is made for purposes of representation or assistance (Art 5 Zagreb Rules 2002).[201]

If the party nominates a representative, it should also enclose a written power of attorney or power of representation. There is no explicit rule regarding the form and substance of a valid power of attorney/representation, but usually it must state that power is given to that particular person and in that particular dispute and it must be signed and stamped (legal persons). The presentation of a valid written power of attorney/representation is in practice sufficient for identification, authorization and capacity of the representative.

Neither the Law on Arbitration nor the Zagreb Rules 2002 contain restrictions for a party's counsel and especially restrictions with regard to the number of counsels or their legal education. It is not required either that they are attorneys at law and admitted to the Bar. However, if the party nominates a Croatian attorney, the latter must fulfil general requirements and is subject to restrictions in accordance with the Law on Attorneys. Lawyers in Croatia have to be members of the Croatian Bar Association as the only national bar.[202]

201 This rule was adopted from Art 4 of the UNCITRAL Arbitration Rules and was also contained in earlier versions of the Zagreb Rules.

202 See Croatian Bar Association, website: www.odvj-komora.hr.

Under the Law on Attorneys,[203] only attorneys with a bar exam are capable to represent their clients without restrictions. The trainee without a bar exam may substitute an attorney only if the value of the dispute does not exceed 50,000 kuna.[204] Foreign attorneys may, however, represent their clients in arbitration cases with an international element. As there are no restrictions with regard to foreign representatives, in such cases they may also be in-house counsels, experts or other persons that are not lawyers.[205]

Finally, regarding the difference of the appointment for representation and appointment only for assistance, the Zagreb Rules 2002 make such a difference in Art 5, stating that "the communication must specify whether nomination is being made for purposes of representation or assistance". Therefore, a party nominating a representative must state the purpose of nomination. In practice, when an attorney at law is nominated, the standard power of attorney entitles attorneys to take all legal actions in order to defend interests of a party and comprises both representation and assistance. If the party wishes to narrow these powers, this must be said so, and the given special power of attorney must list exactly which legal actions could be taken by the attorney(s).

The Law on Arbitration, reversing previous law, provides that under national law the authority to conclude a main contract also implies an authority to conclude an arbitration agreement (Art 8 LA).

I Communication

1 Submission of documents by the parties

The statement of claim, the statement of defence and their attachments and other submissions and attachments shall be delivered to the Court or arbitral tribunal in a number sufficient for the Court, each party and the arbitrator. One copy of every party's submission and tribunal's decision must always remain with the arbitral institution (Art 21 Zagreb Rules 2002).

This means that in arbitration before a sole arbitrator, three copies of all submissions and documents must be delivered – one for arbitrator, one for the counter party and one for the institution. In arbitration before three arbitrators, five copies must be delivered – three for the arbitrators, one for the counter party and one for the institution. If expert opinion is requested, one extra copy for the expert must be provided.

If the parties choose the language of proceedings, all submissions and documents must be made in that particular language. Otherwise, if the parties fail to reach agreement, the tribunal shall make such a decision and all submissions and other documents, written statements by a party, hearings and any award, decisions any other communication must be made in the language decided by the arbitral tribunal. If a foreign language is agreed, all submissions and evidentiary documents must be delivered in

203 Law on Attorneys *(Zakon o odvjetništvu)*, Off Gaz 9/94.

204 See Chapter II A.

205 See *Porobija*, Foreign Atttorneys as Party Representatives in Arbitration Proceedings, Croatian Arbitration Yearbook, Vol 2 (1995) 185–194.

translation in t[illegible]required number of copies. Usually, it is requested that such translation[illegible]s certified by a certified court interpreter, although such a rule exists ne[illegible]r in the Law nor in the Rules.

Until the [illegible]nal reaches its decision, the language that may be used for communi[illegible]on purposes is either the language of the main contract or the langua[illegible]of the arbitration agreement or Croatian language. If the tribunal fai[illegible]o reach a majority decision on the language (ie if all three arbitrators [illegible]sagree), the language of arbitration will be Croatian language (Art 21 LA).

The arbitral tribunal may also set time limits for the delivery of documents or other evidence which could support a statement of claim and defence. The tribunal may also set deadlines for these other actions (Art 22 (2) and (3) Zagreb Rules 2002).

Regarding the delivery and preservation, all submissions and documents must be delivered in written form and in paper version. Also, all communications on behalf of the institution are kept in written form (in the case file) as well as in computer files. Exact data about preservation of files are not available.

2 Rules on written communications

The principal rule on written communications in arbitration is provided in Art 4 of the Law on Arbitration. All written communications shall be deemed to be delivered on the date when they were delivered to the mailing address of the addressee or other person designated to receive written communications.

The mailing address is considered to be the address where the designated addressee regularly receives his or her mail. If no such address exists, it shall be the address of habitual residence of a natural person, or the seat or the branch office of the legal person.

If no such address exists, the delivery shall be deemed to have been served on the day when the delivery was attempted to the last known address. The evidence of attempted delivery (registered mail receipt) has to be preserved. The delivery will also be deemed to have been served if the addressee refuses to receive written communication.

These rules are not applicable to state court proceedings, but are designed solely for arbitration.

3 Serving of notices and documents, summons and transcripts

In institutional arbitration, all documents shall be delivered to the Secretariat of the Court and the Secretariat shall communicate all relevant documents and notices to the parties and arbitrators.

Sometimes the Secretary General of the Court and tribunal may direct each party to communicate directly to the opposing party their submissions and attachments at the address stated in the file of the Court with registered mail and with the receipt of delivery. A copy of the receipt evidencing such delivery to the other party shall be attached in original or in a copy to the submissions for the Court. At the request of the Secretary General or the tribunal, the party may also attach notice of receipt evi-

dencing such delivery (Art 20 Zagreb Rules 2002). These are rules on the personal delivery of submissions.

When serving the summons, the Zagreb Rules 2002 provide that the parties shall be given notice on time, date and place of hearings well in advance. This actually means that the parties have to be given sufficient time for preparation. This is especially so if witnesses need to be heard.

Transcripts are also to be delivered at the request of a party. The Rules state that the court shall have at least one copy of every submission on which the tribunal has deliberated and decided. The transcript or copy of the documents kept in the Court's file shall be supplied upon request of the parties (Art 21 Zagreb Rules 2002).

Service of notices and documents, summons, transcripts, and awards are subject to the provisions on service of written communications.

4 Serving the award on the parties

The Law provides that in institutional arbitration the arbitral institution shall deliver and serve the arbitral award to the parties. The Court shall always keep one copy of the award together with receipts of delivery to the parties. In *ad hoc* arbitration, the service of the award to the parties shall be made by the arbitral tribunal (Art 30 (6) LA). There is no obligation for an *ad hoc* tribunal to deposit an award with the state court, but parties may agree on such deposition if they wish.[206] In both ways the award shall be served under the same rules on service of written communications.

If the party so requests, the award may be served by a public notary or via court competent *ratione causae* which has territorial jurisdiction according to the place where the award needs to be served (Art 30 (7) LA).

J Statement of claim

1 Formal requirements concerning the contents and attachments of the statement of claim

The arbitral proceedings are regularly initiated by submitting a statement of claim to the arbitral institution.[207] In *ad hoc* arbitrations, arbitral proceedings are initiated when a statement of claim that submits to arbitration or a notice of the appointment of an arbitrator or a proposal for a sole arbitrator is received by the respondent together with the invitation to appoint the other arbitrator or make a declaration on a proposed sole arbitrator. Departure from these requirements is possible if the parties agreed on some other ways of initiating the procedure.

The formal requirements concerning content and form of the statement of claim are set down in the Zagreb Rules 2002. The statement of claim must contain the following:

a) names and addresses of the parties;
b) relief sought;
c) a statement of facts supporting the claim;

206 See former Art 485 of the Code of Civil Procedure.
207 Art 20 of the Law on Arbitration and Art 13 (1) of the Zagreb Rules 2002.

d) a statement and summary of the evidence submitted;
e) a statement on the arbitration agreement, if any;
f) a proposal concerning the appointment of arbitrator(s);
g) an indication of the amount claimed.[208]

Additionally, the Law on Arbitration provides that the statement of claim must contain facts that support the claim, other points of issue and the relief sought. All documents that are considered to be relevant by the parties or reference to such documents or any other evidence in support of a claim or factual allegations by the parties shall be attached to the statement of claim (Art 22 LA).

The statement of claim must always be accompanied with a copy of the contract out of or in relation to which the dispute arises and the arbitration agreement (if the arbitration clause is not contained in the main contract).

The proof of the existence of an arbitration agreement (either as an arbitration clause or a submission) actually serves as a confirmation of the parties' intention to submit the dispute to arbitration. If no arbitration agreement exists, the tribunal shall not have jurisdiction and shall refuse to decide the case.[209] However, under Art 6 LA the agreement may also be concluded by actions (eg failure to object to a written offer) or even tacitly in the stage of exchange of the statement of claim and defence. If a statement of claim is delivered to the respondent and he fails to object the jurisdiction of the arbitral tribunal, raising issues related to the substance of the dispute in his statement, this is considered as a tacit consent to arbitration.

2 Failure to observe formal requirements, correction and delivery of the statement of claim

If the claimant fails to communicate his statement of claim in accordance with the legal requirements, ie if he fails to present facts and points of issue that support the claim and state the relief sought, the arbitral tribunal shall terminate proceedings.[210]

Sometimes, the claimant may fail to observe some formal and substantive requirements regarding the composition of the claim, even by mistake. In such a case, the claimant may during the course of proceedings, supplement or amend the statement of claim. Usually, the tribunal will give additional time limits to the party to satisfy the missing requirements, although this depends on the tribunal's own discretion. Arbitrators may refuse to grant additional time for corrections if this is considered inappropriate with regard to the delays of procedure or if the parties have agreed otherwise.[211]

If the party fails to produce documentary evidence within the time limit provided, the tribunal may still make a decision to continue proceeding and issue the award on the evidence before it (Art 24 LA).

208 See Art 13 (2) Zagreb Rules 2002.
209 See Chapter II B.
210 See Art 22 (1) LA.
211 Note that the tribunal must act in timely manner and ensure that no delay of proceedings occurs.

If the lack of requirements concerns the non-existence of an arbitration agreement, the tacit consent of the respondent may supplement the lack of agreement. Otherwise, no jurisdiction of the tribunal or arbitral institution exists.

There are no specific provisions and rules with regard to the delivery of the statement of claim. Like any other written submission, the delivery of the statement of claim shall be subject to the rules of service of written communications in Art 4 of the Law on Arbitration.[212] However, since the delivery of the statement of claim has a special importance, it is essential for the statement of claim to be delivered by registered mail and with certificate of acceptance. The statement of claim is deemed to be delivered on the date stated on the certificate of acceptance signed by the addressee. The moment of delivery is a key moment since afterwards a duly notified party may be in default.

K Reply to the statement of claim

1 Formal requirements concerning the reply to the statement of claim

The reply to the statement of claim or statement of defence (hereinafter: the defence) is subject to the same provisions and requirements as the statement of claim. Therefore, the defence must contain:

a) names and addresses of the parties;
b) relief sought;
c) a statement of facts supporting the reply to the claim;
d) a statement and summary of the evidence submitted;
e) a statement on the existence of the arbitration agreement;
f) a proposal concerning the appointment of arbitrator(s).[213]

The procedure of submission is as follows: after receiving the statement of claim, the Secretariat of the Court shall deliver it to the respondent together with its attachments. The Secretary shall also fix the time limit for delivery of the statement of defence. The statement of defence with all attachments must also be delivered to the Secretariat of the Court who will forward all documents to the arbitrators and the other party.

According to the Law on Arbitration, the respondent shall state his defence in respect of the claimant's statements, proposals and claims (as presented in the statement of claim). Moreover, all other documents that are considered to be relevant by the respondent or reference to such documents or any other evidence in support of a reply to claim or alleged facts will have to be submitted in the reply to the statement of claim (Art 22 LA).

212 See Chapter IV I.
213 See Art 14 (2)–(3) Zagreb Rules 2002; the indication of the amount claimed will also be necessary if the respondent raises his own separate counterclaims.

All other rules regarding the form, language, delivery and substance that are applicable to the statement of claim are also applicable to the reply of the statement of claim.

2 Failure to observe formal requirements

If the respondent fails to communicate his statement of defence or if he fails to state his defence in respect of certain claimant's statements, proposals and claims, such failure shall not be treated as admission of the claimant's allegations. Accordingly, the tribunal will have to continue with proceedings and establish the facts or decide on such claims and proposals. If the respondent fails to appear at the hearing or to produce documentary evidence within the time limits for its production, such action does not prevent the tribunal from continuing proceedings, so that the award shall be based on the available documents and evidence in the file.[214] If there are only minor omissions with respect to formal requirements (eg insufficient number of copies or lack of translations), the tribunal may provide a party with a time limit to heal the error, but has no obligation to do so. Occasionally, some of the failures may be healed by the tribunal or the institution itself at the expenses of the failing party (eg if an insufficient number of copies is provided, the tribunal may order copies to be made, and order the party to reimburse the expenses).

After expiry of the time limits (either the initial or the extended ones), the tribunal will at its own discretion decide whether a party is in default, ensuring that no delays of procedure occur. Although this discretion is given to the tribunals, in practice the arbitrators are rarely prepared to use it fully. Therefore, in practice delays of procedure do not occur infrequently. The Zagreb Rules 2002 only state that the tribunal shall decide, taking into account all the circumstances, whether to consider procedural steps performed by a party after the expiry of any fixed time limits. This also includes delivery of the statement of claim and defence. In the past few years, the arbitrators' duty to act timely was given a stronger emphasis both by legislation and by the relevant rules, so in practice we may expect that the future tribunals will more often try to avoid delays of proceedings.[215]

3 Failure to reply to the statement of claim and objections to jurisdiction

Failure to respond to the statement of claim does not prevent arbitrators to continue with arbitral proceedings. A duly notified party shall be in default unless the parties have agreed otherwise (Art 24 LA).

If the statement of claim was delivered in accordance with the rules of delivery of written communications in Art 4 of the Law on Arbitration and if the tribunal holds "clean" proof of delivery (certificate of registered mail and/or certificate of delivery with signature, stamp and date), it shall continue with proceedings and make an award based on the statements, documents and evidence provided.

Once the statement of claim is being communicated to the respondent, the jurisdictional objections may be raised no later than in the statement of defence in which the respondent raised issues related to the substance of the dispute; entering into substantial arguments by the respondent will be construed as a tacit consent to arbitration. The mere fact that the respondent participated in the appointment of arbitrators does not preclude him from raising such a plea at a later stage.

However, if the respondent fails to respond to the statement of claim at all, the arbitrators will have to decide as a preliminary issue whether there was a valid arbitration agreement or not. If arbitrators find that such an agreement existed, they will continue with the proceedings, provided that the respondent was duly notified.

4 Making objections and counterclaims

The respondent may file a counterclaim or raise objections in the form of claims for set-off until the closure of hearings if the relief sought by counterclaim or set-off falls within the scope of the relevant arbitration agreement (Art 15 Zagreb Rules 2002).

If the counterclaim or the set-off objection does not fall within the scope of the legal relationships covered by the same arbitration agreement, it would not be admissible to raise them in the pending arbitration. Instead, the respondent would have to seek relief in separate court or arbitration proceedings.

The counterclaim, if admissible, will be communicated to the other party and the tribunal. The arbitrators should try to hear arguments and make a decision on claim and counterclaim simultaneously, in order to preserve time and resources. It is, however, also possible to make a partial award on either claim or counterclaim, and continue the hearings with regard to remaining claims.

L Modification of the claim

The Law on Arbitration regulates modifications of the claims within broader norms that allow parties to amend or supplement their claim or defence during the arbitral proceedings (regularly until the closure of the hearings), unless the tribunal considers it inappropriate to allow such amendment, taking into consideration the delay in making it.[216]

The Zagreb Rules 2002 only contain provisions on the consolidation of proceedings. If the parties to dispute file separate claims against each other arising out of different legal relations for which they have agreed the jurisdiction of the PAC-CCC, the Secretariat of the Court shall endeavour to consolidate the claims, and proceed with the hearings and deliberation before the same tribunal. In case of multiple respondents, where a case is suspended against one or more of them, the proceeding shall be split until

214 See Art 24 (2)–(3) LA.

215 See Art 24 of the Law on Arbitration and Art 18 (3) of the Zagreb Rules 2002.

216 See Art 22 (2) LA.

the reasons for suspension are removed and the proceedings among remaining parties may continue separately.[217]

The role of the institution in cases of amendments and supplementation of claims relates only to technical assistance; it does not enter into the substance of modifications. Such decisions are left to the tribunal. The Court only has a duty to forward all statements, documents and other information to the other party and the arbitrators following the rules on written communications. The only substantive task of the Secretariat is to ensure that, if the claim was increased or a new claim was raised, the increased costs are calculated and that appropriate deposits are paid. If the respondent does not pay the required deposits for the counterclaim, the arbitrators would not be able to decide on such a counterclaim. They may, however, take into account the factual allegations from the counterclaim as if this was only a reply to the claim.

In practice, modifications and supplements did occur relatively frequently, mostly concerning the modifications regarding the value of dispute, change of names of the parties, relief sought, counterclaims, set-off objections, separate claims on the same issues, same claims in regard to different parties etc. However, the practice on such procedural details is rarely, if ever, published in law reviews and other sources of arbitral jurisprudence.

M Participation of third parties

In principle, arbitration proceedings take place only between the parties that have concluded the arbitration agreement. Although the national procedural law does recognise the institute of intervening parties (*umješači*, interveners) in court proceedings, the possibility of an intervention in arbitration proceedings is rather limited. Due to the confidential nature of the arbitration proceedings and the need to have agreement by the parties, participation of third parties is rather unlikely. In the Zagreb Rules 2002 it is provided that persons who have a legal interest to join one of the parties in the dispute may intervene only if both parties agree to this (Art 17 Zagreb Rules 2002). In practice, this rule was closely followed – without full consent of the parties participation of third parties was not allowed.

N Hearings

Basically, the conduct of the proceedings is at the discretion of the arbitral tribunal. The arbitrators should find the most appropriate and effective methods of adjudication. They also have to strike a balance between the written and oral elements in the proceedings. Therefore, in Art 23 (1) LA it is provided that the arbitral tribunal shall decide whether to schedule and hold oral hearings for the presentation of evidence or for oral arguments, or whether the proceedings shall be conducted on the basis of documents. However, as the oral hearing is at the heart of the adversarial principle, the arbitrators may decide to limit their proceedings to documents only (ie decide that no hearings will be held) if there is a unanimous consent by

217 See Art 16 Zagreb Rules 2002.

the parties. Upon request by either party, the arbitrators are obliged to hold an oral hearing at an appropriate stage of the proceedings (Art 23 (2) LA).[218]

The arbitral proceedings, in particular the oral hearings, are not public, unless parties agree to the contrary. Thus, the circle of those who may be present at the hearings is limited. Naturally, the arbitrators as well as the parties and their representatives and counsels can be present at the hearings. From the side of the arbitral institution, if the administrative support is provided to arbitrators, the court reporters (typists of the protocol) will attend the hearings, as well as interpreters and those administrative assistants that may be invited (and authorised) by the arbitrators and the parties. The Zagreb Rules 2002 expressly provide that all hearings may also be attended by the Secretary of the Court, and there is even the obligation of the Secretary to take part in the hearings if the sole arbitrator is not a lawyer, or – if there is a panel – if none of the members of the panel is a lawyer (Art 29 (1)–(2) Zagreb Rules 2002). Of course hearings will be attended, as the case may be, by witnesses and/or experts.

The number of hearings is not limited; neither by the law nor by the relevant arbitration rules. The actual number of hearings may depend on many factors – complexity of the case, availability of the parties and/or arbitrators, evidentiary problems and other external and internal circumstances. If the majority of arbitrators and parties (or their counsel) resides at the seat of the Court (in Zagreb), it will be easier to hold a greater number of hearings within shorter periods. If the participants in the proceedings have to travel from large distances to the hearings, the need to concentrate the hearings is greater. In practice, the number of hearings vary from only one to more (sometimes even five or six) hearings.

As to the transcripts of the hearings, the Law on Arbitration does not contain any specific rules, except the general provision that leaves the conduct of the proceedings to the parties' agreement and the arbitrators' discretion. The Zagreb Rules provide a flexible approach to the transcripts. The arbitral tribunal will have to arrange keeping minutes of the hearings "if it feels this is necessary in view of the circumstances of the case or if the parties have so agreed and informed the arbitral tribunal at least 15 days before the hearing is held".[219]

In practice, transcripts are being held in most of the arbitrations. The most customary method is the one that is also used by the national courts of law: the president of the tribunal or the sole arbitrator would dictate to a typist a short summary of the statements and decisions made during the proceedings. In some arbitrations there is no typist at the hearings, but the presiding arbitrator holds notes and supplies a written summary based on such notes to the parties after the hearing. Occasionally, with permission of all participants, the course of the hearings would be tape-recorded, but such a recording would generally be only informal, intended to ensure a more accurate written summary. To our knowledge, there have been no proceedings before the PAC-CCC so far that did have a full literal

218 Compare also Art 24 of the UNCITRAL Model Law.

219 See Art 25 (2) Zagreb Rules 2002. The same rule also applies to interpretation (translation) of oral testimonies.

transcript of statements based either on shorthand, a recording, or a court reporter that would take literally all of the words of the participants in the proceedings.

Among the permanent employees of the Court (ie the Croatian Chamber of Commerce), there is usually at least one professional typist that is provided free of charge as an option for typing the abbreviated transcripts during the hearings held at the seat of the Court (see above). The Court also provides a hearing room at the seat of the Court in Zagreb equipped with a computer and a printer. Upon request of the arbitrators, the arbitral institution may arrange other transcript services, subject to covering the expenses of such services, including the sound recording.[220]

The hearings may be adjourned for a number of reasons. In most cases, hearings are adjourned if the course of proceedings reveals the need for the taking of additional evidence. Problems in the service of summons to witnesses and other participants may also lead to adjournments. The failure of parties to appear at the hearings or submit evidence within a time limit does not in itself lead to adjournment,[221] but arbitrators may use their discretion to prolong the time limits and still grant the adjournment even in such cases.[222]

O Security for costs

Neither legislation nor the arbitration rules do contain an express provision on a security for parties' costs. In practice, the claims for security have been raised in the PAC-CCC proceedings. Already in 1992, the Presidium of the PAC-CCC decided to issue a general view on the claims for security, and came to the conclusion that such requests cannot be granted. The Presidium stated, *inter alia*, that "arbitration means a voluntary jurisdiction" and that "it is presumed that the parties, by agreeing on arbitration, waive some other privileges that they may eventually have in the process before public courts"; that "granting security for costs to domestic parties would be contrary to the principle of equal treatment of the parties" and that "requesting such security is also not in line with the comparative practice".[223]

220 See Art 22 (5) of the Zagreb Rules 2002: "The Secretary of the Arbitration Court shall make the necessary arrangements to provide shorthand notes, sound recordings and minute taking in a foreign language on the presentation of evidence if one of the parties requests it or if the arbitral tribunal so orders and if a monetary deposit is given to meet the costs incurred". As already stated, the shorthand transcripts or sound recordings are not customary in the practice of the Court.

221 See Art 24 point 3 LA. See also the PAC-CCC Award IS-P-9/95 of 7 July 1996, Croatian Arbitration Yearbook, Vol 5 (1998) 243.

222 See also Art 18 of the Zagreb Rules 2002 on time limits.

223 See Decision of the Presidium of the PAC-CCC of 17 November 1992, Croatian Arbitration Yearbook, Vol 5 (1998) 247–248.

P Evidence

1 General remarks, admissibility, restrictions

The Croatian law has adopted the UNCITRAL Model Law approach, according to which the evidence is also covered by the principle of party autonomy. Thus, the parties may also agree on the particular rules on the admissibility and weight of evidence. If parties have not made such an agreement, the power of the arbitral tribunal to determine the rules of proceedings includes the "power to determine the admissibility, relevance and weight of any evidence".[224] In practice, the vast majority of PAC-CCC arbitrations do follow the continental style and the principle of free evaluation of evidence, according to which evidence may be submitted and presented on a very broad basis, with a very few (if any) restrictions.

2 Presentation of evidence, witnesses

The presentation of evidence also depends on the parties' agreement and the discretion of the arbitrators. As for the witnesses, the law provides only a few general rules – eg that the witnesses will be in principle heard at the main hearing, but exceptionally also outside the hearings, subject to their consent. A practice of written depositions customary for common law jurisdictions is also permitted by the new law: "the arbitral tribunal can also request from witnesses to answer questions in writing within a certain period of time" (Art 25 (2) LA). In arbitration proceedings witnesses may not be required to take an oath.[225] The Zagreb Rules also provide that the arbitration court may order the witnesses to leave the room whilst other witnesses are heard (Art 23 (2) Zagreb Rules 2002). Everything else is in the hands of the arbitrators. In practice, the manner of examining witnesses has both inquisitorial and adversarial elements, ie witnesses are questioned both by the members of the arbitral tribunal and by parties and their counsels.

3 Experts

The use of experts is also subject to the parties' agreement, as noted in Art 26 LA. However, the default rule provided by law is that the experts may be appointed by the arbitrators who will also determine their mandate and set the relevant facts and questions that have to be elaborated in the experts' opinion. As a rule, such neutral experts would submit their findings in a written form. Upon the request of a party or by the arbitral tribunal, the expert should also take part in an oral hearing. At such an oral hearing, the expert will be required to clarify the relevant points of his expert opinion. The parties are expressly authorised to put questions to the expert. But they can also invite their own, party appointed experts, who

224 See Art 18 (2) LA (and Art 19 (2) UNCITRAL Model Law). See also Art 22 Zagreb Rules 2002.

225 See Art 25 (3) LA.

may supply their findings to the arbitrators, thus challenging the opinion of the expert appointed by the arbitrators.[226]

4 Party as a witness

Unlike the rules of civil proceedings applicable to state courts, the Law on Arbitration and the relevant arbitration rules do not contain specific provisions on hearing parties in the proceedings as the source of information. The conclusion may be, in our view, that there should be no differences in treatment of party representatives and the witnesses in the proceedings. Whether witnesses or party representatives will be invited to testify and in which order depends on the discretion of the arbitrators as well as the assessment of the weight of evidence that is given. There will be no oath in either case, and the power of the arbitrators to compel them to give evidence generally is the same. Eventual differences may occur only if the arbitrators use the assistance of national courts in providing testimony – the court may, in such a case, use the means available in the Code of Civil Proceedings only against the witnesses, not against the party representatives.

5 Written witness statements

As already stated above (see at VI P 2), an arbitral tribunal may request witnesses to answer questions in writing. There are no further rules on the treatment and use of such written witness statements. It is assumed that fair treatment would require the option of questioning the witness by the parties about his or her statements at the oral hearings, if only possible and practicable. However, in any case the arbitrators will generally evaluate at their own discretion the weight that has to be attached to such a statement, just as with any other written document supplied to the tribunal. Of course, this weight would generally be much greater if the written statement was presented and defended at the hearing, in which case it forms a part of the broader assessment of the value of the information presented by this witness, including the picture of his credibility.

6 Producing documents

There are no rules in law regarding the power of the arbitral tribunal to order one party to submit documents at the request of the other party. The only rule on the production of documents refers to the power of arbitrators to order the parties to provide the expert with "any relevant information or to produce or to provide access to any relevant documents ... ".[227] The Zagreb Rules generally authorise the arbitrators to order the parties, within the limits of their powers, to furnish documents within a time limit set by the tribunal.[228] It should be assumed that such a request will be made only upon the request of the other party (see the following point). However, the arbitrators do not have any compulsory means at their disposal if the party

226 See Art 26 (2) LA.

227 Art 26 (1) point 2 LA.

228 Art 22 (3) Zagreb Rules 2002.

refuses to supply the document. In this case, arbitrators may only take this into account when finding the disputed facts.

7 Taking of evidence *ex officio*?

The arbitration law does not specifically deal with the question whether arbitrators may take evidence on their own initiative or upon the request of a party only. If parties have not agreed otherwise, in our opinion the arbitrators would have to be bound by the party initiative. This would follow from the principle of party autonomy and the adversarial nature of the arbitration proceedings. Another argument in support of this submission may be found in the latest reform of the Croatian procedural law[229] that has abandoned the authority of judges in court proceedings to take evidence on their own initiative in every litigation, with a very few exceptions. *A fortiori*, in arbitration proceedings the arbitrators would not have inquisitorial powers in respect to evidence-taking, at least not in the classical commercial disputes.

Q Illegality

The arbitration legislation does not specifically deal with the eventual reaction of the arbitral tribunal to situations in which it discovers some illegality (eg the purpose of the underlying contract was tax evasion or corruption). However, it is provided that no award will be enforced if it violates public policy. Domestic awards are also subject to setting aside for the same reason, and foreign awards will not be recognised if the recognition would be contrary to public policy.[230] The mandate of arbitrators includes respect for the validity and enforceability of awards, so the arbitrators would have to react appropriately and not issue awards that would violate public policy (as would certainly be the case if the arbitrators would knowingly assist the fraudulent intents of the parties). On the other hand, except in the case of grave illegality that would include a danger for the public safety, it would be preposterous to expect from arbitrators the actions that would transcend the limits of the arbitration (eg reporting of illegality to state authorities). The arbitrators, as persons of the parties' confidence, have in our view a similar position in respect to potential illegality as the parties' lawyers (including the obligation to preserve the confidentiality). This is, however, a personal opinion, and there is currently no practice in this respect.

229 See Amendments to the CCP of July 2003, Off Gaz 117/2003, effective from 1 December 2003, in particular the changes to Art 7 CCP.

230 Compare Art 39 LA (enforcement of domestic awards); Art 40 LA (recognition and enforcement of foreign awards); Art 36 (2) LA (reasons for setting aside). Another typical instance of the respect for public policy is the obligation of the arbitrators to abstain from making an award on the agreed terms if the parties' settlement violates public policy (Art 29 (2) LA).

R Termination and suspension

The arbitration proceedings can be terminated either by award or by a procedural decision, without issuing a decision on the merits.

Not every award will terminate the proceedings but only the final award.[231] Even after issuing the final award, the mandate of the arbitrators may be extended, eg if they have overseen that they have failed to decide all of the issues (Art 33 LA), if after the final awards the costs of the proceedings still have to be decided upon (Art 35 (3) LA), or in the case of a need for corrections or clarifications of the award (Art 34 LA). The mandate of the arbitrators also revives if the court of law (upon application for setting aside) suspends the proceedings and remits the case to the arbitrators in order for them to undertake actions that would avoid nullification of the award (Art 36 (4) LA). The case may also be returned to arbitrators if the award was set aside for reasons that did not affect the (continuing) validity of the arbitration agreement (Art 37 LA).

The arbitration proceedings will be terminated by a procedural order of the arbitral tribunal if the claimant withdraws his claim, "unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final award in the dispute" (Art 32 (1) point 1 LA). The arbitrators will also issue an order on termination of the proceedings if the parties have agreed so or if the tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible (Art 32 (1) points 2, 3 LA). A settlement reached outside of the arbitration would generally be the most frequent reason for such terminations,[232] but the parties do not need to inform the arbitrators about the reasons for withdrawal or joint application for termination of the case.

As the arbitration proceedings in administered arbitration commence by submitting the statement of claim to the institution,[233] the authority to make the procedural orders on termination of the proceedings cannot be exercised by the arbitral tribunal until its constitution. If parties settle the claim before and request termination, such decision will be made by the arbitral institution.

The arbitral institutions will also terminate the proceedings in case of non-payment of charges or fees. For example, the PAC-CCC Rules on costs provide that the President of the Court will decide on deletion of the statement of filed claims from the registry of disputes if the advance is not paid in time.[234]

The Law on Arbitration does not regulate the possibility of suspending the arbitral proceedings. The Zagreb Rules 2002 provide only one situation of suspension: under Art 3, the arbitrators may suspend the proceedings if there is pending court litigation *(lis pendens)* in the same matter between the same parties, but only "if there are especially important reasons to do so". In all other situations there are no express rules on the suspension of arbitral proceedings. This does not necessarily mean that the arbitrators would not have the power to suspend the proceedings since the power to suspend the proceedings should be inferred from the general authority of arbitrators to conduct the proceedings in an appropriate manner. Some arbitrators may find inspiration (and they do so in practice) in the procedural rules of Croatian civil proceedings in respect to suspension of court proceedings and stay the proceedings eg if the procedural balance is temporarily jeopardised (eg if a party is unable to act due to death, opening of bankruptcy proceedings or special outside circumstances).[235] Of course, the tribunal should take into account its duty to conduct the proceedings at an appropriate speed when deciding on suspension and continuation of suspended proceedings.

231 See Art 32 (1) LA. Partial awards (Art 33 LA) and interim awards (see Art 30 (1) LA) do not terminate the proceedings.

232 See eg Art 29 (1) LA: "If the parties settle the dispute during arbitral proceedings, the arbitral tribunal shall terminate the proceedings upon their request, unless the parties request to record the settlement in the form of an arbitral award on the agreed terms." In latter case, the case is not terminated by a procedural order, but by a final and enforceable decision on the merits.

233 See Art 20 (1) LA.

234 Decision on Costs, Off Gaz 108/2003, Art 6.

S Award

1 Distinction between an award and other decisions of the arbitral tribunal and types of award

The Law on Arbitration defines an award *(pravorijek)* as a "decision of the arbitral tribunal on the merits of dispute" (Art 2 (1) point 8). Therefore, the award deals with the substance of the dispute and decides on the merits of the claim. During the arbitral proceedings the tribunal may often have to decide upon some questions of procedural nature or some preliminary questions that require no form of the award (eg on provisional measures, jurisdictional issues or determination of applicable law). Therefore, a decision on such issues is often made in the form of a procedural order *(zaključak)*. Such procedural orders do not require enforcement before the competent court, nor could it be possible to submit them to the procedure for setting aside.[236]

Unless otherwise agreed by the parties, the arbitral tribunal may make not only final, but also partial and interim awards (Art 30 (1) LA). The difference between final and partial awards is that partial awards finally decide one or more of several claims in the dispute (but not all), or a part of one divisible claim. Just as final awards, partial awards are considered to be final (but only in respect of the decided claims) and independent. Unlike these awards, interim awards *(međupravorijek)* do not relate to interim measures but to substantive decisions regarding the basis of a monetary claim (eg decision on the responsibility for damages whereas the amount of damages would be left for the final award).

235 In the beginning of 1990's, a number of arbitration cases was suspended due to war circumstances that prevented certain parties from participating in the proceedings (eg if a party was on the occupied territory with no possibility to travel to hearings).

236 Exceptionally, the provisional measures issued in the form of a procedural order may be enforced with the assistance of state courts.

Since partial awards are deemed to be independent awards (Art 30 (1) LA), they finally "terminate the proceedings on the issues decided by it". Thus, like the final awards, they are capable of direct and independent enforcement and, of course, they could be subject to an independent setting aside procedure.

An interim award is not capable of direct enforcement, and it could be enforced only when a final award in dispute is made. Subsequently interim awards can only be challenged within the application for setting aside the final award (Art 36 (1) LA).

The tribunal may also issue additional awards regarding claims presented in arbitral proceedings but omitted from the award. Additional awards may be made only if a party makes such a request within a period of 30 days of the receipt of the award and with notice to the other party, provided that the tribunal considers such request to be justified. Once the additional award has been rendered, the same provisions as to the final award shall be applied (Art 33 LA).

Awards may also be made on the basis of the parties' settlement (award on agreed terms). If the parties reach settlement during the arbitral proceeding, the arbitral tribunal has to be informed about it. The parties may request from the tribunal to record the settlement in the form of an award. The tribunal will issue the award on the agreed terms unless it finds that the content of such an award violates public policy. An award made on agreed terms has legal force and effects of an award. Otherwise, if parties do not wish to have their settlement recorded in the form of an award, upon the parties' request, the tribunal will terminate the proceedings.[237]

2 Making of an award

The award shall be made at the place (seat) of arbitration agreed by the parties. If the parties did not agree on the place of arbitration, the arbitral tribunal shall itself determine the place of arbitration taking into consideration the circumstances of the case and convenience for the parties. The award shall have the nationality of the country in which the place of arbitration is situated.

The time limits for making an award are provided neither in the Law on Arbitration nor in the Zagreb Rules 2002.[238] Unreasonable delays in the making of an award are only covered by the general norm that "an arbitrator must conduct arbitration with due expeditiousness and undertake measures on time in order to avoid any delay of the proceedings" (Art 11 (2) LA). The tribunal shall make an award when the issues are ripe for decision-making. As stated in the Zagreb Rules 2002, "when the arbitral tribunal is satisfied that the matter has been litigated sufficiently for

237 See Art 29 (1) and (2) LA.

238 The Arbitration rules of the CARNET (Croatian Academic Research Network) regarding domain name disputes within the Croatian national Internet domain (.hr) represent an exception since under Art 21 the arbitral award has to be made within sixty days from the transfer of the file to the arbitrator; see http://www.dns.hr.

a decision to be rendered, it shall announce that the hearings are concluded" (Art 19 Zagreb Rules 2002).

The decision-making process is simple where there is a sole arbitrator. If a panel of arbitrators makes the award, the procedure is slightly more complicated. Unless otherwise agreed by the parties, any decision of the arbitral tribunal (including the one on the award) has to be made by the majority of votes. If majority cannot be achieved, the arbitrators have to repeat the deliberations about reasons of each opinion, and should vote again in an attempt to reach a decision. If the majority still cannot be achieved, the award shall be made by the presiding arbitrator. Certain procedural decisions may also be decided by the presiding arbitrator outside joint sessions of the arbitral tribunal, unless this is contrary to the parties' agreement. The tribunal may also entrust certain undertakings to one of it members.[239]

Both legislation and arbitration rules are silent with respect to dissenting opinions. The current position of the arbitral practice requires arbitrators to act as one towards the parties and leave the details of the decision-making process as an internal question far from the eyes of the parties. In the reasoning of an award it is regularly not stated whether an arbitral decision was made unanimously or by majority of votes.[240]

Regarding the form and content, an award must be made in writing and must state the place (seat) where it was made and date when the award was made. It must state reasons upon which it is based, unless the parties have agreed that no statement of reasons shall be given or unless the award is made on agreed terms (Art 30 (3) and (4) LA).

The original of the award and all three copies must be signed by all members of the arbitral tribunal (sole arbitrator or panel of arbitrators). If one of the arbitrators refuses or fails to sign the award, the award shall still be valid provided that it was signed by the majority of all members of the panel of arbitrators, and that omission of signature is stated in the award (Art 30 (5) LA).[241] If this provision is connected with dissenting opinions, it can be seen that the law actually recognises the case of arbitrators who wish to express their strong dissent by their refusal to sign an award.

3 Rendering of an award

In institutional arbitration, the arbitral institution itself should serve the arbitral award to the parties after the process of reviewing the award and harmonising the formal elements with the practice of the institution (eg by use of cover pages, stamps and regular forms of the institution). Otherwise, in *ad hoc* arbitration, the service of the award to the parties shall be

239 See Art 28 LA.

240 In the practice of the PAC-CCC, the requests of the arbitrators to have their eventual internal written dissenting opinions transmitted to the parties were so far rejected, with the explanation as stated above.

241 It should be noted that the law does not require any more a statement of reasons why the signature is refused – a simple note that a certain arbitrator did not sign the award will be sufficient. However, stating reasons – although not required – will in most cases be recommendable.

made by the arbitral tribunal. In both cases delivery is subject to the provisions on serving written communications. The award shall be delivered by registered mail and return receipt will be requested. Sometimes, upon request of both parties, the award may be served by a public notary or by the competent court. Territorial jurisdiction for such delivery is determined according to the place where the award needs to be served.

4 Correction and interpretation of the award

The correction and interpretation of the award is possible either at the request of a party or the tribunal itself may correct any type error within 30 days from the date of the award.

The party may request from the tribunal, within 30 days of receipt of the award (unless some other time has been agreed by the parties) and upon notice to the other party, to:

- correct any errors in the computation of award, any clerical or typographical errors or any error of similar nature;
- give an interpretation of a specific point or part of the award.

The tribunal shall satisfy the party request only if it considers the request justified. Any correction and interpretation will form part of the award and all provisions as to the final award have to be applied to the correction and interpretation of an award (Art 34 LA).

T Preservation of files

1 Term and conditions for preservation of files and awards

When the award is rendered in institutional arbitration, the institution itself delivers to each party the original of the award and preserves all other files and originals and/or copies of the award. In *ad hoc* arbitrations, the tribunal itself may deliver an award to parties directly or by mail. There is no more obligation to deposit the award with the state court (as was previously the case).[242] Therefore, the award is legal and binding without any further legal requirement of deposition or authentication. However, in order to avoid the risk of loss or destruction of their originals, the parties may ask from public notary to deposit a copy of the award. As a matter of legal certainty, they may also ask for authentication of signatures, although this is not required by law. Also, the law expressly provides that the parties may deposit an award with the state court; such a norm is important because it also creates the obligation on behalf of the court to respond positively to such requests.[243] In commercial matters the competent court for deposition of the award would be the Commercial Court in Zagreb and for other matters the County Court in Zagreb. The competent state court shall act according to the rules for granting legal assistance (Art 46 LA).[244]

242 See Art 482 of the Code of Civil Procedure.

243 See Art 43 (3) LA.

244 Art 11 of the Law on Courts provides that the courts shall give assistance to arbitral tribunals "if their request is legally grounded, if the requested action is admissible and if the court is competent to undertake it".

2 Access to files for the parties, third parties, government bodies and others

Since arbitration is a private dispute resolution mechanism, it depends on the parties whether information about their proceedings will be public or not. By default, the proceedings are confidential. This means that only the parties are free to disclose documents and files regarding their dispute. They may also authorise the arbitral institution to provide access to the files. However, since parties dispose of all relevant documents contained in the file, they may also furnish such documents directly to the court. Some rare documents that exist in only one copy in the files of the institution (eg receipts of deliveries) may also be requested by parties who can forward them to the state court. In spite of this, with the consent of the parties the institution would sometimes upon requests by the state courts directly supply certain documents.

U Confidentiality

Although it is broadly recognised that confidentiality is one of the main features of arbitration, the Croatian law contains very few rules on confidentiality. The new Law on Arbitration in fact contains only one provision, stating that, unless parties have agreed otherwise, the arbitral proceedings are not public (Art 24 (5) LA). The Zagreb Rules 2002 only provide that oral hearings will not be public unless parties have agreed otherwise.[245]

Still, even in the absence of an express rule, it is recognised that the arbitrators have an obligation to preserve the confidentiality if proceedings did not take place in public. This obligation would generally both involve the duty to keep silence about the particulars of the arbitration cases, as well as about the mere fact that there is an arbitration going on between the parties. As this is a part of the arbitrators' duties, the arbitrators could be sued for damages incurred by breach of this obligation. In practice, there were apparently no cases in which the parties would allege the breach of this obligation. The confidential nature of arbitration proceedings should not be an obstacle for a careful publication of arbitral jurisprudence (without revealing the names of the parties). The arbitrators may also be released from this obligation, eg by a joint declaration by all parties to proceedings. In our view, the arbitrators are also released by the obligation to preserve the confidentiality if the confidential information has already become part of the public domain, eg if particulars of the case were already published, or if there was a public trial regarding setting aside of the arbitral award.[246] The arbitrators' duty to ensure enforceability of the award has precedence over the duty to keep information confidential; upon the

245 Art 25 (4) Zagreb Rules 2002. Interestingly, the last edition of the Rules (considerably shrunken in size due to an attempt to avoid duplication of the provisions of the Law on Arbitration) did not reproduce the previously existent rule that the awards may be made public only with the consent of both parties (Art 36 (4) Zagreb Rules 1992).

246 Naturally, the arbitrators would only be released from the duty to keep confidential data that is already made public, not from the duty to keep silence about the other facts and circumstances.

request of the enforcing authority arbitrators may, to the extent necessary, furnish information that is required.

The confidentiality of the arbitration proceedings also infers the duty of the parties and other persons in the proceedings to refrain from the disclosure of confidential facts and statements. There is no practice in this respect, but it is clear that the breach of this duty may, under the general rules of the law on obligations, lead to claims for compensation of eventual damages. However, the confidential nature of the proceedings cannot exclude other legitimate rights of the parties, eg to request setting aside, recognition and enforcement of the award.

The duty of witnesses, experts, counsels, administrative assistants and the staff of the arbitral institutions to preserve confidentiality has generally the same nature. Anyway, it is essential that the obligation to keep confidentiality and the extent of this obligation is known to the participants. It would be desirable to regulate the confidentiality duty by appropriate contracts and written statements. So far, the PAC-CCC has only recently started to introduce, still on a low scale, such written declarations.

Annexes

Law on Arbitration*

Part One: General Provisions

Scope of application
Article 1

This Law governs:

1. domestic arbitration,
3. recognition and enforcement of arbitral awards, and
2. court jurisdiction and procedure regarding arbitration from point 1 of this Article and in other cases provided by this Law.

Definitions and rules of interpretation
Article 2

1. For the purposes of this Law:
   1. "arbitration" means any arbitration before an arbitral tribunal, whether or not organized or administered by an arbitration institution;
   2. "domestic arbitration" means arbitration that takes place in the territory of the Republic of Croatia;
   3. "arbitral tribunal" is a private (non-state) tribunal that draws its mandate to arbitrate from the agreement of the parties;
   4. "arbitral institution" means a legal entity or a part of a legal entity that organizes and administers the activities of arbitral tribunals;
   5. "arbitrator" means a sole arbitrator or a presiding arbitrator, or a member of a panel of arbitrators;
   6. "dispute without an international element" means a dispute in which the parties are natural persons with domicile or habitual residence in Croatia, or legal persons established under the law of the Republic of Croatia, unless the dispute meets the requirements of point 7 of this paragraph;
   7. "dispute with an international element" means a dispute in which at least one party is a natural person with domicile or habitual residence abroad, or a legal person established under foreign law;
   8. "award" means a decision of the arbitral tribunal on the merits of the dispute;

* Translated by Prof. Dr. *Alan Uzelac*. The Law was published in Off Gaz 88/2001 of October 11, 2001 and came into force on October 19, 2001. The translation can be accessed on the website of the Permanent Arbitration Court at the Croatian Chamber of Commerce (http://www.hgk.hr/komora/eng/eng.htm).

9. "final award" means an award on the basis and the amount of an individual claim;
10. "court" means a body of the state judicial power;
11. "mediator (conciliator)" means a person that conducts a separate conciliation procedure on the basis of a written agreement between the parties.

2. Where a provision of this Law refers to an agreement or possibility of agreement between the parties on a certain issue or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules contained or referred to in that agreement.
3. The provisions of this Law which refer to the statement of claim also apply to the counterclaim and the provisions which refer to the statement of defence also apply to the reply to the counterclaim, save for the provisions of this Law on default of a party (Article 24, paragraph 1) and withdrawal of the statement of claim (Article 32, paragraph 1, point 1).

Part Two: Arbitration in the Republic of Croatia

Chapter One. General Provision

Arbitrability
Article 3

1. Parties may agree on domestic arbitration for the settlement of disputes regarding rights of which they may freely dispose.
2. In disputes with an international element, parties may also agree on the place of arbitration outside the territory of the Republic of Croatia, unless it is provided by law that such a dispute may be subject only to the jurisdiction of a court in the Republic of Croatia.
3. Parties may agree to submit the disputes referred to in paragraph 1 of this Article to arbitration, regardless of whether or not the arbitration is administered by an arbitral institution.

Service of written communications
Article 4

1. Unless otherwise agreed by the parties, any written communication shall be deemed to have been delivered on the day when it is delivered to the mailing address of the addressee or to the person designated to receive written communications.
2. Mailing address is the address at which the addressee regularly receives his mail. If the addressee has not expressly provided any other address or if the circumstances of the case do not indicate otherwise, the mailing address shall be the address of the seat or the branch office of the addressee, his habitual residence or the address referred to in the main contract or in the arbitration agreement.
3. If none of the addresses referred to in paragraph 2 of this Article is known, a written communication shall be deemed to have been served on the day when its delivery has been attempted to the last known

address, provided it has been properly forwarded by registered mail with return receipt or in any other way that can provide evidence of attempted delivery.
4. A written communication shall be deemed to have been served if the addressee to whom delivery was attempted in the above described manner refuses to receive it.
5. Provisions of paragraph 1 of this Article shall not apply to delivery of communications in court proceedings.

Waiver of the right to object
Article 5

A party who knew or should have known that any provisions of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeded with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.

Chapter Two. Arbitration Agreement

Arbitration agreement: definition, form and applicable law
Article 6

1. An arbitration agreement is an agreement of the parties to submit to arbitration all or certain disputes which have arisen or which may arise in the future between them in respect of a defined legal relationship of a contractual or non-contractual nature. An arbitration agreement may be concluded in the form of an arbitration clause in a contract or in the form of a separate arbitration agreement.
2. The arbitration agreement shall be in writing. An agreement is in writing if it is contained in documents signed by the parties or in an exchange of letters, telex, faxes, telegrams or other means of telecommunication which provide a record of the agreement, whether signed by the parties or not.
3. An arbitration agreement shall be deemed to be concluded in writing if:
    1. it is contained in one party's written offer, or if a third party transmitted to both parties such an offer, provided that against such offer no objection was timely raised, and such failure to object, according to usages in transactions, may be considered to constitute acceptance of the offer,
    2. 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 timely, and such failure, according to usages in transactions, may be considered to constitute acceptance of the offer.
    4. 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.

5. An arbitration agreement may also be concluded by the issuance of a bill of lading, if the bill of lading contains an express reference to an arbitration clause in a charter party.
6. Notwithstanding the provisions of Articles 1–5 of this Law, if a dispute has arisen or could arise out of a consumer contract, the arbitration agreement must be contained in a separate document signed by both parties. In such a document no agreements may be contained other than those referring to the arbitral proceedings, except if the document was drawn up by a notary public.
7. 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.
8. An arbitration agreement shall also be deemed to be valid if the claimant files the statement of claim to arbitration and the respondent fails to object to the jurisdiction of the arbitral tribunal at the latest in his statement of defence in which he raised issues related to the substance of the dispute.

Capacity of the parties
Article 7

1. Capacity of natural and legal persons and other entities to conclude an arbitration agreement and be parties to an arbitration dispute is governed by the law that is applicable to them.
2. Citizens of the Republic of Croatia and legal persons of Croatian Law, including the Republic of Croatia and units of local and regional self-government, may conclude arbitration agreements and be parties to arbitration.

Power of attorney for the conclusion of an arbitration agreement
Article 8

If the validity of a power of attorney is governed by Croatian law, the authority to conclude the main contract implies an authority to conclude an arbitration agreement.

Chapter Three. Arbitral Tribunal

Number of arbitrators
Article 9

If the parties have not determined the number of arbitrators by their agreement, three arbitrators shall be appointed.

Appointment of arbitrators
Article 10

1. No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
2. Judges of Croatian courts may only be appointed as presiding arbitrators or as sole arbitrators.
3. Parties are free to agree on the procedure of appointing the arbitrator or arbitrators, provided they observe the provisions of paragraphs 4 and 5 of this article.
4. Failing such agreement,
   1. in an arbitration conducted by three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator as presiding arbitrator. If a party fails to appoint the arbitrator and inform the other party of this appointment within thirty days of receipt of the notification of the appointment and request to appoint the arbitrator, or if two arbitrators fail to agree on the third arbitrator within thirty days of the appointment of the last appointed of them, the appointment of the arbitrator shall be made, upon request of a party, by the appointing authority specified in Article 43, paragraph 3 of this Law;
   2. in an arbitration conducted by a sole arbitrator, if the parties fail to agree on the arbitrator, such arbitrator shall be appointed, upon request of a party, by the appointing authority specified in Article 43, paragraph 3 of this Law.
5. Where, under an appointment procedure agreed by the parties,
   1. a party fails to act as required under such procedure, or
   2. the parties or arbitrators are unable to reach an agreement required of them under such procedure, or
   3. a third party, including an institution, fails to perform any function entrusted to it under such procedure,

   any party may request the appointing authority specified in Article 43, paragraph 3 of this Law to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
6. The appointing authority specified in Article 43, paragraph 3 of this Law, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator, and, in a dispute with an international element, in the case of a sole or presiding arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.
7. A decision on a matter that is, pursuant to paragraphs 3 or 4 of this Article entrusted to the appointing authority specified in Article 43, paragraph 3 of this Law, shall not be subject to appeal.

Rights and duties of arbitrators
Article 11

1. An arbitrator must accept his appointment in writing. Such acceptance may be made by signing the arbitration agreement.
2. An arbitrator must conduct arbitration with due expeditiousness, act in a timely manner and see to it that no delay of proceedings occurs.
3. Unless agreed otherwise, the parties may discharge by their consent an arbitrator who fails to perform his duties, or does not perform them in timely manner.
4. An arbitrator has the right to reimbursement of his expenses and a fee for the work completed, unless he has waived these rights in writing. The parties shall be jointly and severally liable for the payment of such expenses and fees.
5. If an arbitrator has determined the amount of his own expenses and fees, his decision does not bind the parties unless they accept it. If the parties do not accept this decision, the expenses and fees will be determined, upon request of an arbitrator or of a party, by the authority specified in Article 43, paragraph 3 of this Law. The decision made by such authority is a title for enforcement against parties to the arbitral dispute.

Challenge of arbitrators
Article 12

1. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. An arbitrator, from the time of his 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.
2. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or if the arbitrator does not posses qualifications agreed to by the parties or if he fails to fulfil his duties specified in Article 11, paragraph 2 of this Law.
3. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons that occurred after the appointment or reasons of which he becomes aware after the appointment has been made.
4. The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph 7 of this article.
5. Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the appointment of the arbitrator or after becoming aware of any circumstances referred to in paragraph 2 of this Article, send a written statement of the reasons for the challenge to the arbitral tribunal.
6. Unless the challenged arbitrator withdraws from his 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.

7. If a challenge under the procedure specified in paragraphs 4 and 6 of this Article is not successful, the challenging party may, within thirty days after having received notice of the decision rejecting the challenge, or if the arbitral tribunal does not decide on the challenge within thirty days after the challenge was made, request within a further thirty days from the moment of the expiration of the first thirty days the appointing authority specified in Article 43, paragraph 3 of this Law to make a decision on the challenge. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Failure to perform arbitrator's duties
Article 13

1. If an arbitrator becomes *de jure* or *de facto* unable to perform his functions, his mandate shall be terminated if he withdraws from his office or the parties agree on the termination. If a controversy remains concerning any of these grounds, any party may request the authority specified in Article 43, paragraph 3 of this Law to decide on the termination of the mandate.
2. If under this Article or Article 12, paragraph 6, an arbitrator withdraws from his office or parties agree to terminate his mandate, this does not imply existence of any ground referred to in this Article or Article 12, paragraph 2 of this Law.

Appointment of substitute arbitrator
Article 14

Where the mandate of an arbitrator terminates under Articles 12 or 13 of this Law, or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties, or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

Jurisdiction of arbitral tribunal
Article 15

1. The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or the validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the validity of the arbitration clause.
2. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence in which the respondent raised issues related to the substance of the dispute. A party is not precluded from raising such a plea by the fact that he has appointed or participated in the appointment of an arbitrator. A plea that

the arbitral tribunal is exceeding the scope of its authority shall be made as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 of this Article 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 thirty days after having received notice of that ruling, the court specified in Article 43, paragraph 1 of this Law to decide the matter. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.
4. The court proceedings arising from paragraph 3 of this Article shall be urgent.

Interim measures in arbitral proceedings
Article 16

1. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.
2. If a party to which interim measures relate does not agree to undertake them voluntarily, the party that made the motion for such measures may request their enforcement before the competent court

Chapter Four. Arbitral Proceedings

Equal treatment of parties
Article 17

1. The parties to proceedings before an arbitral tribunal shall be treated equally.
2. The parties shall have the right to respond to statements and claims of their adversary.
3. For the purpose of compliance with the provisions of paragraphs 1 and 2 of this Article, arbitrators shall, to the extent necessary and possible, attempt to disclose to the parties their opinions and give appropriate explanations in order to evaluate all relevant factual and legal issues.

Rules of procedure
Article 18

1. Subject to the provisions of this Law, parties are free to agree, directly or by reference to any established set of rules, a statute or in other appropriate manner, the procedure to be followed by the arbitral tribunal in the conduct of the proceedings.

2. Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The powers conferred upon the arbitral tribunal include the power to determine the rules of procedure either directly or by reference to a set of rules, a statute or in other appropriate manner, and the power to determine the admissibility, relevance and weight of any evidence.

Place of arbitration
Article 19

1. The parties are free to agree on the place of arbitration.
2. Failing such agreement, the place of arbitration will be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience for the parties.
3. If the place of arbitration is not determined pursuant to paragraphs 1 and 2 of this Article, the place of arbitration shall be deemed to be the place designated in the award as the place where the award was made.
4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods or documents.

Commencement of arbitral proceedings
Article 20

Unless otherwise agreed by the parties, the arbitral proceedings commence:

1. if the arbitral proceedings are organized and administered by an arbitral institution B on the date when such institution receives the claim;
2. in any other event (*ad hoc* arbitration) B on the date on which a notification of the appointment of arbitrator or proposal for appointing a sole arbitrator, accompanied by an invitation to appoint the other arbitrator or declare whether he accepts the proposed sole arbitrator, and the statement of claim that submits dispute to arbitration is received by the respondent.

Language
Article 21

1. The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination by the arbitral tribunal, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

2. The arbitral tribunal may order that any documentary evidence shall be accompanied by translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.
3. Until the language of the proceedings had been determined, a claim, a defence and other deeds can be submitted in the language of the main contract, of the arbitration agreement or in the Croatian language.
4. If neither parties nor arbitrators can reach an agreement on the language of arbitration, the language of arbitration shall be the Croatian language.

Statements of claim and defence
Article 22

1. Unless otherwise agreed by the parties, the claimant shall in his statement of claim state the facts supporting his claim, the points at issue and relief or remedy sought, and the respondent shall in his statement of defence state his defence in respect of the claimant's statements, proposals and claims. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
2. Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Hearings and written proceedings
Article 23

1. Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to schedule and hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents.
2. Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
3. The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of goods, other property or documents.
4. All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to each of the parties.
5. Unless otherwise agreed by the parties, the arbitral proceedings are not public.

Default of a party
Article 24

Unless otherwise agreed by the parties, if, without showing sufficient cause,

1. the claimant fails to communicate his statement of claim in accordance with Article 22, paragraph 1 of this Law, the arbitral tribunal shall terminate the proceedings;
2. the respondent fails to communicate his statement of defence in accordance with Article 22, paragraph 1 of this Law, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
3. any party fails to appear at a hearing or to produce documentary evidence within the time limit provided for their production, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Witnesses
Article 25

1. As a rule, witnesses shall be examined in oral hearings.
2. Subject to their consent, witnesses may be examined outside oral hearings; the arbitral tribunal can also request from witnesses to answer questions in writing within a certain period of time.
3. Witnesses shall be examined without taking an oath.

Experts
Article 26

1. Unless otherwise agreed by the parties, the arbitral tribunal:
   1. may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
   2. may require a party to give the expert any relevant information or to produce or to provide access to any relevant documents, goods or other property for his inspection.
2. Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties shall have the opportunity to put questions to him and to present other expert witnesses in order to testify on the points at issue.
3. The provisions of Article 12, paragraphs 1 to 6 of this Law, shall appropriately apply to the challenge of experts.

Chapter Five. Award and Termination of Proceedings

Applicable law
Article 27

1. The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
2. Failing any designation by the parties under paragraph 1 of this Article, the arbitral tribunal shall apply the law which it considers to be most closely connected with the dispute.
3. The arbitral tribunal shall decide *ex aequo et bono* or *en qualité d'amiable compositeur* only if the parties have expressly authorized it to do so.
4. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the applicable usages.

Decision making by panel of arbitrators
Article 28

1. Unless otherwise agreed by the parties, the arbitral tribunal shall make any decision by a majority of all its members.
2. If a majority has not been achieved, arbitrators shall repeat deliberations on reasons for each opinion. If after repeated voting a majority still cannot be achieved, the award shall be made by the presiding arbitrator.
3. Outside joint sessions of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator, unless it is contrary to the parties' agreement or to the arbitral tribunals decision.
4. The panel of arbitrators may entrust to one of its members to undertake certain fact-finding activities.

Settlement
Article 29

1. If the parties settle the dispute during arbitral proceedings, the arbitral tribunal shall terminate the proceedings upon their request, unless the parties request to record the settlement in the form of an arbitral award on the agreed terms.
2. The arbitral tribunal shall upon the request of the parties record the settlement in the form of an arbitral award, unless it finds that its content violates the public order of the Republic of Croatia.
3. An award on agreed terms shall be made in accordance with the provisions of Article 30 of this Law and shall have legal force and effects of the award (Article 31 of this Law).

Award
Article 30

1. Unless otherwise agreed by the parties, the arbitral tribunal may make partial and interim awards. A partial award is deemed to be an independent award.
2. The award shall be made in the place of arbitration (Article 19).
3. The award shall be made in writing. It shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or if the award is an award on agreed terms under Article 29 of this Law.
4. The date when the award was made and place where it was made shall be stated in the award pursuant to Article 19, paragraphs 1 and 2 of this Law and paragraph 2 of this article.
5. The original of the award and all copies thereof shall be signed by the sole arbitrator or all members of the panel of arbitrators. The award shall be valid even if some arbitrators failed to sign it, provided that it was signed by the majority of all members of the panel of arbitrators, and that the omission of a signature or signatures is stated in the award.
6. The awards made in an institutional arbitration shall be served upon the parties by the arbitral institution. In all other cases, the service of the award to the parties shall be made by the arbitral tribunal.
7. Unless otherwise agreed by the parties, the service of the award shall be made pursuant to provisions of Article 4 of this Law. If both parties so request, service of the award may be carried out by the court designated in Article 43, paragraph 5 or by a notary public.

Legal effect of the award
Article 31

The award of the arbitral tribunal shall have, in respect of the parties, the force of a final judgment *(res judicata)*, unless the parties have expressly agreed that the award may be contested by an arbitral tribunal of a higher instance.

Termination of the proceedings
Article 32

1. The arbitral proceedings shall be terminated with respect to the issues decided in the final award or by an order of the arbitral tribunal, if:
    1. the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final award in the dispute;
    2. the parties agree on the termination of the proceedings;
    3. the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
2. The mandate of the arbitral tribunal shall cease with the termination of the arbitral proceedings, except in cases provided by the provisions of Articles 33, 34, 35 (3), 36 (4) and 37 of this Law. In such cases, the

tribunal's mandate will be terminated when the respective decision is rendered.

Additional award
Article 33

1. Unless otherwise agreed by the parties, each party may, within thirty days of the receipt of the award, and with notice to the other party, request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the arbitral tribunal considers the request to be justified, it shall make the additional award.
3. The provisions of Article 30 of this Law shall apply to such an additional award.

Correction and interpretation of award
Article 34

1. Within thirty days of receipt of the award, unless another period of time has been agreed by the parties:
   1. a party, upon notice to the other party, may request the arbitral tribunal to correct any errors in the computation of the award, any clerical or typographical errors or any error of similar nature;
   2. if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.
2. If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation, which shall form part of the award.
3. The arbitral tribunal may correct any error of the type referred to in paragraph 1, point 1 of this Article on its own initiative within thirty days of the date of the award.
4. The provisions of Article 30 of this Law shall also apply to a correction or interpretation of an award.

Decision on costs
Article 35

1. Upon a request by a party, the arbitral tribunal shall determine in the award or an order for the termination of the arbitral proceedings which party and in which proportion has to reimburse the other party the necessary costs of arbitration, including costs of party representation and the fees of arbitrators, and/or has to bear its own costs.
2. The arbitral tribunal shall decide on the costs of the proceedings according to its free evaluation, taking into account all circumstances of the case, especially the outcome of the dispute.
3. If the arbitral tribunal fails to decide on costs of proceedings, or if such decision is possible only after termination of the arbitral proceedings, the arbitral tribunal will make a separate award on the costs of proceedings.

Chapter Six. Legal Remedy against the Award

Application for setting aside
Article 36

1. An arbitral award may be contested by an application for setting aside in accordance with the provisions of this Article. Recourse against an interim award may be made only in an application to set aside the award in which the claim in respect of which the interim award was made was finally settled. No other legal remedies in court jurisdiction are permitted.
2. An arbitral award may be set aside by the court specified in Article 43, paragraph 1 of this Law only if:
   1. the party making the application furnishes proof that:
      a. there was no agreement to arbitrate pursuant to Article 6 of this Law, or such agreement was not valid;
      b. a party to the arbitration agreement was incapable of concluding the arbitration agreement or could not have been a party to an arbitration dispute (Article 7) or that a party was not duly represented;
      c. the party making the application for setting aside was not given proper notice of the commencement of the arbitral proceedings or was otherwise unable to present his case before the arbitral tribunal;
      d. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
      e. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Law or a permissible agreement of the parties and that fact could have influenced the content of the award; or
      f. the award has no reasons or has not been signed in accordance with the provisions of Article 30, paragraphs 3 and 5 of this Law; or
   2. the court finds, even if a party has not raised these grounds, that:
      a. the subject matter of the dispute is not capable of settlement by arbitration under the laws of the Republic of Croatia; or
      b. the award is in conflict with the public policy of the Republic of Croatia.
3. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application

received the award or, if the application is made in a case under Arts 33 or 34 of this Law, from the date on which the party making that application received the decision of the arbitral tribunal on either of the requests referred to in those articles.

4. The Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other actions as in the arbitral tribunal's opinion could eliminate the grounds for setting aside.
5. If the parties in a dispute expressly so agree in the arbitration agreement, an application against the arbitral award may also be made on the ground that the party applying for setting aside found new facts or has the opportunity to present new evidence on the basis of which an award more favourable to him could have been made if these facts would have been known or evidence produced in the hearings that preceded the making of the challenged award. This ground may be raised only if the applying party could not have used it in the arbitration proceedings without his fault.
6. The parties cannot derogate in advance their right to contest the award by an application for setting aside.

Arbitral proceedings after setting aside the award
Article 37

1. If an award made on the basis of a valid arbitration agreement not specifying the names of the arbitrators has been set aside on the grounds other than those related to existence or validity of the arbitration agreement, such arbitration agreement shall be a valid legal basis for new arbitration in the same dispute. In case of doubt, upon request by a party, the court may issue a separate ruling to this effect.
2. Upon a request by a party, when the court asked to set aside an award finds it possible and appropriate, it shall, after setting aside, remit the case to the arbitral tribunal for reconsideration.
3. In all other cases, a new arbitration in the same dispute shall be possible if the parties conclude a new arbitration agreement after the setting aside of the award.

Part Three: Recognition and Enforcement of Awards

Nationality of the award
Article 38

The award of an arbitral tribunal shall have the nationality of the country in which the place of arbitration is situated (Article 19 of this Law).

Enforcement of a domestic award
Article 39

1. The court shall enforce a domestic award, unless it establishes the existence of any of the grounds for setting aside arising from Article 36 paragraph 2, point 2 of this Law.
2. The court shall not take into account those grounds for setting aside arising from Article 36 paragraph 2, point 2 of this Law for which an application for setting aside was already finally rejected.
3. If an issue arises in court proceedings relating to the existence of a right or legal relation and such an issue was already finally decided in a dispositive part of a domestic award, upon a request by a party and within the boundaries of the final decision, the court shall be bound by the decision on this issue contained in the dispositive part, unless it establishes the existence of a ground for setting aside arising from Article 36 paragraph 2 point 2 of this Law with respect to this part of the arbitral award.
4. If a party to an arbitral dispute has a legal interest in a determination that no reasons for setting aside referred to in Article 36 paragraph 2 point 2 of this Law exist, it may request a decision on this issue from the court referred to in Article 43 of this Law.

Recognition and enforcement of a foreign award
Article 40

1. A foreign award shall be recognized as binding and shall be enforced in the Republic of Croatia unless the court establishes, upon a request by the opposing party, the existence of a ground referred to in Article 36, paragraph 2, point 1 of this Law, or if it finds that the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.
2. Recognition and enforcement of a foreign award shall be refused if the court finds that:
   a. the subject matter of the dispute is not capable of settlement by arbitration under the law of the Republic of Croatia.
   b. the recognition or enforcement of the award would be contrary to the public policy of the Republic of Croatia.

Part Four: Court Procedure

Chapter One. General Provisions

Court intervention
Article 41

1. No court shall intervene in matters governed by this Law, except where it is so provided in this Law.

2. Court proceedings shall be governed by the rules of non-contentious procedure, except upon applications for setting aside the award.

Arbitration agreement and a claim on the merits submitted to a court of law in the same matter
Article 42

1. If the parties have agreed to submit a dispute to arbitration, the court before which the same matter between the same parties was brought shall upon respondent's objection declare its lack of jurisdiction, annul all actions taken in the proceedings and refuse to rule on the statement of claim, unless it finds that the arbitration agreement is null and void (Article 6), inoperative or incapable of being performed.
2. The respondent may raise the objection referred to in paragraph 1 of this Article no later than at the preparatory hearing or, if no preparatory hearing is held, at the main hearing before the end of the presentation of the statement of defence.
3. Where an action referred in paragraph 1 of this Article has been brought to the court, arbitral proceedings may nevertheless be commenced or continued if they were already commenced, and an award may be made while the issue is still pending before the court.

Court jurisdiction
Article 43

1. The Commercial Court in Zagreb shall have the jurisdiction to rule on the jurisdiction of the arbitral tribunal (Article 15, paragraph 3), deposition of the award (Article 46), application for setting aside (Article 36) and requests for recognition and granting the enforcement of the award (Articles 39 and 40), in the cases arising from the *ratione causae* competence of the commercial courts. In other cases, the County Court in Zagreb shall have jurisdiction.
2. A court competent *ratione causae* designated by a separate law shall be competent to carry out the enforcement of the award.
3. Unless the parties have agreed that some or all of the assisting activities are to be performed by an arbitral institution or some other appointing authority, the activities provided in Article 10, paragraphs 4 to 7, Article 12, paragraphs 3 and 4, Article 14, paragraph 7 and Article 15 of this Law shall be performed by the president of the court designated by paragraph 1 of this Article or a judge authorized by him.
4. Activities of the president of the court referred to in paragraph 3 of this Article shall not be construed as activities in a court or administrative procedure.
5. Legal assistance in the taking of evidence (Article 45) and the service of the awards (Article 30, paragraph 6) shall be rendered by a court competent *ratione causae* which has territorial jurisdiction according to the place where the particular activity has to be undertaken.
6. The provisions of this Article shall not affect the application of the provisions on the jurisdiction for the ordering and enforcement of provisional measures of the Law on Enforcement.

Interim court measures for protection of claims
Article 44

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 a measure.

Legal assistance in taking evidence
Article 45

1. The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request legal assistance from a competent court in taking evidence which the arbitral tribunal itself could not take.
2. The procedure for taking evidence before the commissioned Croatian court is governed by the provisions on taking evidence before a judge commissioned by a rogatory letter.
3. The arbitrators are entitled to participate in the procedure of taking of evidence before a commissioned judge and put questions to persons being examined by the court.

Authentication and deposition of the award
Article 46

1. The parties may agree whether and how the award shall be authenticated and deposited.
2. If the agreement referred to in paragraph 1 of this Article refers to authentication and deposition with a court, the court shall complete the authentication and deposition pursuant to rules for rendering legal assistance to arbitral tribunals.
3. If parties so agree, the court shall transmit to one or both parties the transcripts of the award deposited in the court.

Chapter Two. Procedure of Recognition and Enforcement

Documents to be attached to a request for recognition and enforcement
Article 47

1. The party seeking recognition and enforcement of an award or relying upon an award in proceedings shall attach to the request the original award or a duly certified copy thereof.
2. A party seeking recognition or enforcement of a foreign award, or relying on such award, shall attach to his request the original arbitration agreement or a duly certified copy thereof.
3. If the award or agreement referred to in paragraphs 1 and 2 of this Article were not made in the Croatian language, the party shall also supply a duly certified translation thereof into the Croatian language.

Adjournment of proceedings for recognition and enforcement of a foreign award
Article 48

If proceedings for the setting aside of an award or for the suspension of a foreign award have commenced before a competent court, the court requested to recognize or enforce the award may, if it considers it appropriate, adjourn its decision until the termination of the proceedings for setting aside or suspension and may, upon the motion of the party seeking the recognition or enforcement of the award, subject the termination to the other party's provision of appropriate security.

Decision on claims for recognition and enforcement
Article 49

1. While ruling on claims for recognition or enforcement, the court shall confine itself to determining whether the requirements referred to in Arts 39, 40, 47 and 48 of this Law have been met, and if it considers it necessary, it may seek an explanation from the arbitral tribunal which rendered the award, from the parties, or from a court or a notary public or other person with which the award was deposited pursuant to an agreement referred to in Article 46, paragraph 1 of this Law.
2. The court shall provide an opportunity to the opposing party to be heard in the proceedings where recognition of the award is the main issue.
3. The court shall provide an opportunity to the opposing party to be heard with regard to a claim for enforcement on the basis of an award unless this would jeopardize the successful implementation of enforcement.
4. A decision on recognition and/or enforcement shall contain grounds for the decision.
5. An appeal against a decision rendered in the proceedings where recognition is the main issue may be submitted to the Supreme Court of the Republic of Croatia within fifteen days from the delivery of the decision on recognition.

Part Five: Transitory and Final Provisions

Repealing of particular laws
Article 50

By enactment of this Law, the provisions of the following Laws shall be repealed:

Articles 468a to 487 of the Code of Civil Procedure, adopted as a Law of the Republic of Croatia by an Adoption Act ("Off Gaz", no 53/91);

Articles 97 to 100 of the Conflicts of Laws Act, adopted as a Law of the Republic of Croatia by an Adoption Act ("Off Gaz", no 53/91);

Article 1, paragraph 2 and Articles 101-109 of the Conflicts of Laws Act, adopted as a Law of the Republic of Croatia by an Adoption Act ("Off Gaz", no 53/91), as far as they are concerned with the procedure of recognition and enforcement of foreign arbitral awards;

Article 91, paragraph 4 of the Law on Obligations, adopted as a Law of the Republic of Croatia by an Adoption Act ("Off Gaz", no 53/91, 73/91, 111/93, 3/94, 7/96, 91/96 and 112/99), as far as it regulates the authority to conclude an arbitration agreement.

Article 51

1. Effectiveness of arbitration agreements concluded prior to the coming into force of this Law shall be governed by the legislation previously in force.
2. Pending arbitration proceedings which have not been completed at the time of the coming into force of this Law shall be conducted according to legislation previously in force. Settlements already made will be replaced, upon a joint proposal of the parties, by the arbitral award referred to in Article 29 of this Law. Parties may agree on the application of the new Law to pending proceedings.
3. Judicial proceedings pending at the time of coming into force of this Law shall continue under regulations previously in force.

Entry into force
Article 52

This Law shall come into force on the eighth day following its publication in the "Official Gazette" of the Republic of Croatia.

The Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy (Zagreb Rules)*

published in Narodne novine (Off Gazz), no 150/2002 of 17 December 2002, entered into force on 25 December 2002

General Provisions

The Jurisdiction of the Arbitration Court
Article 1

1. The Rules of Arbitration at the Permanent Arbitration Court of the Croatian Chamber of Economy (hereinafter: the Rules) regulate the jurisdiction of the Permanent Arbitration Court of the Croatian Chamber of Economy (hereinafter: the Arbitration Court), the composition of the arbitral tribunal and the rules of arbitration before arbitral tribunals in disputes with or without an international element.
2. The arbitral tribunal at the Arbitration Court has jurisdiction if the parties have so agreed and if it is a matter of rights of which the parties may freely dispose.
3. The parties may agree not to apply the provisions of the Rules, apart from the provisions of Article 27 of the Rules, unless such agreement is contrary to mandatory law of the Republic of Croatia.
4. If the parties have so agreed, the Arbitration Court shall carry out only some of the activities prescribed in the Rules, especially:
   - act as appointing authority in *ad hoc* arbitration and arbitration conducted by other arbitration institutions;
   - offer administrative and other services, organise hearings and make premises and equipment available for the conduct of arbitration and conciliation subject to rules different from these Rules and the Rules on Conciliation of the Croatian Chamber of Economy ("Narodne novine" no 81/2002).

Refusal of Jurisdiction
Article 2

The Presidency of the Arbitration Court shall refuse to hear certain dispute even if the jurisdiction of the arbitration court has been agreed if the arbitration agreement concluded relates to rights of which the parties may not freely dispose.

* Translated by Prof. Dr. *Alan Uzelac*. The translation can be accessed on the website of the Permanent Arbitration Court at the Croatian Chamber of Commerce (http://www.hgk.hr/komora/eng/eng.htm).

Article 3

If in the same matter between the same parties civil contentious proceedings have been instituted before a court, the arbitral tribunal, if it finds that there are especially important reasons to do so, may order that the arbitration proceedings be stayed until the civil contentious proceedings before a court are concluded.

The venue of Arbitration
Article 4

If the parties have not come to a different agreement, the venue of arbitration shall be at the seat of the Arbitration Court.

Representation and Counseling
Article 5

The parties may appoint representatives and counsels of their own choosing. The names and addresses of these persons shall be communicated to the Arbitration Court and the other party in writing. In this communication it must be stated whether they are appointed for representation or counselling.

The Composition and Appointment of an Arbitration Court

The Number of Arbitrators
Article 6

1. The parties may agree for the arbitration to be conducted by an arbitration panel or a sole arbitrator.
2. If the parties have not come to a prior agreement on the number of arbitrators and if within fifteen days after the respondent has been served with the statement of claim, the parties do not agree on the composition of the arbitral tribunal in disputes where the foreign currency (equivalent) value of the subject of the dispute does not exceed 50,000 EUR, the arbitration shall be conducted by a sole arbitrator, whilst in other disputes, the arbitration shall be conducted by an arbitration panel of three arbitrators.

The Appointment of a sole arbitrator
Article 7

1. If the parties agree to appoint a sole arbitrator, they shall inform the Secretariat of the Arbitration Court of the name of the sole arbitrator.
2. If within an appropriate time limit set by the Secretary of the Arbitration Court, which may not be shorter than 15 days from the day the answer to the statement of claim is filed with the Arbitration Court, or from the day of failing to file an answer to the statement of claim the parties do not act in accordance with the provisions of Paragraph 1 of this Article, a sole arbitrator shall be appointed by the appointing authority.

Persons who may be Appointed Arbitrators
Article 8

The parties may appoint persons to be arbitrators who are not on the list of arbitrators of the Arbitration Court (Article 4 of the Rules of the Arbitration Court).

Multi-Party Arbitration
Article 9

1. If in one dispute several claimants or respondents are taking part in the same party role (co-litigants), they shall previously come to an agreement on the appointment of a common arbitrator.
2. If the co-litigants fail to reach an agreement as in Paragraph 1 of this Article or if in their filings they do not appoint or nominate the same person as arbitrator even after an additional period of 15 days, the arbitrator shall be appointed by the President of the Arbitration Court instead, from the list in Article 4 of the Rules of the Arbitration Court.

The Appointing Authority
Article 10

1. The parties may agree on the appointing authority.
2. If the parties do not agree on the appointing authority or if the agreed appointing authority refuses the function entrusted to him/her, the appointing authority shall be the President of the Arbitration Court.

Procedure by the Appointing Authority
Article 11

1. The appointing authority shall appoint an arbitrator without delay. In carrying out the appointment of an arbitrator the appointing authority shall apply a list procedure unless the parties have agreed that the list procedure is not to be applied or if the appointing authority assesses that the application of the list procedure is not appropriate for the case concerned.
2. When applying the list procedure:
   a. At the request of one of the parties or both parties the appointing authority shall send both parties an identical list containing at least three names.
   b. Within 15 days of receiving the list each party may return the list to the appointing authority having crossed out the name or names he/she does not accept and marked with numbers the remaining names on the list according to his/her order of preference.
   c. After the expiration of the time limit in point b) the appointing authority shall appoint an arbitrator from the persons whose names were approved on the returned lists according to the order indicated by the parties.

   d. If the appointment cannot be conducted in the manner described, the appointing authority may appoint an arbitrator according to his/her own judgement.
3. When appointing an arbitrator, the appointing authority shall take into consideration all the circumstances which ensure the appointment of an independent and impartial arbitrator and the advisability of appointing an arbitrator who does not have the same citizenship as the parties.
4. If within 30 days after the appointment of another arbitrator the two arbitrators appointed do not agree on the choice of the chairman of the arbitral tribunal, he shall be appointed by the appointing authority in the manner prescribed in Paragraphs 1 and 2 of this Article.

Repetition of Hearing if there is a Change in the Composition of the Arbitral Tribunal
Article 12

1. If the composition of the arbitral tribunal changes, the hearings shall be repeated. The arbitration court may decide that the hearings will not be repeated if the parties agree.
2. If a new sole arbitrator is elected or appointed, the hearings must be repeated.

Arbitration Proceedings

The statement of claim
Article 13

1. Arbitration proceedings are instituted by a statement of claim unless the parties come to a different agreement.
2. The statement of claim shall be filed with the Arbitration Court and must contain:
   a. the name and address of the parties;
   b. the claim;
   c. a statement of the facts on which the claim is based ;
   d. statements and motions regarding evidence;
   e. a statement on the arbitration agreement if it has been concluded;
   f. a statement on the appointment of an arbitrator;
   g. an indication of the value of the subject of the dispute.
3. A copy of the main contract and the arbitration agreement (if it is not included in the main contract) must be enclosed with the statement of claim, if these documents exist.

The Answer to the Statement of Claim
Article 14

1. The Secretariat of the Arbitration Court shall serve the respondent with the statement of claim and its enclosures and set a time limit for filing a written answer to the statement of claim. The answer shall be filed with

the Arbitration Court, and the Secretariat of the Arbitration Court shall forward it, together with its enclosures, to the claimant and each arbitrator.
2. The provisions of Paragraphs 2 and 3 of Article 13 of the Rules shall be applied as appropriate to the answer to the statement of claim.

Counterclaim
Article 15

The respondent may file with the Arbitration Court right up to the conclusion of the hearings a counterclaim or file a request for setoff in the form of a counterclaim, if the counterclaim or the request for setoff arises from a legal relation covered by the arbitration agreement concluded.

Merger and Separation of Proceedings
Article 16

1. If the parties to a dispute bring independent statements of claim against each other from different legal relations for which they have agreed the jurisdiction of the arbitral tribunal at the Arbitration Court, the Secretariat of the Arbitration Court shall endeavour to merge the litigation and adjudication of these claims before the same arbitrators.
2. If proceedings are being conducted against several respondents, but in relation to one or more of them the arbitration proceedings cannot be conducted for the time being, the proceedings which may run without delay shall be separated from those in which activities are temporarily stayed until the difficulties are removed.

Intervenor
Article 17

A person who has a legal interest to join one of the parties in the dispute as an intervenor may join that party if both parties agree to this.

The Limits
Article 18

1. The parties may agree to prolong the time limit for the performance of certain procedural actions by the parties determined by the Rules or by a ruling of the arbitral tribunal.
2. The Secretary of the Arbitration Court and the arbitral tribunal are authorised in justified cases, within the limits of their jurisdiction, to extend the time limits for the performance of certain procedural actions determined in the Rules or by a conclusion of the arbitral tribunal, taking care to prevent undue delays of the proceedings.
3. The arbitrators, taking all the circumstances into consideration, shall assess whether they can recognise the procedural actions the parties have undertaken after the expiration of the time limits fixed.
4. The provisions of Paragraph 2 of this Article do not relate to failure to meet time limits for filing objections against an order for payment.

The Conclusion of the Hearing
Article 19

1. When the arbitration court finds that the matter has been litigated sufficiently for a decision to be rendered, it shall announce that the hearings are concluded.
2. The arbitration court may decide to re-open hearings that have been concluded if this is necessary to supplement the proceedings or to clarify important issues.

Special Provisions on the Direct Service of Communication
Article 20

1. The Secretary of the Arbitration Court and the arbitral tribunal may order that each party should send a copy of their filings and their enclosures intended for the opposing party by registered mail with a return note directly to their opponent at the address given in the files.
2. Along with the filing sent to the Arbitration Court, a party who is acting according to the provisions of Paragraph 1 of this Article shall enclose the original or a copy of the certificate of mailing the registered letter to the opponent, and, at the request of the Secretary of the Arbitration Court or the arbitral tribunal, also the return note, to prove the orderly completion of service.

The Number of Counterparts of Filings and Enclosures
Article 21

1. The statement of claim, the answer to the statement of claim, the enclosures with the statement of claim and with the answer to the statement of claim and other filings, which the parties send to the Arbitration Court or the arbitral tribunal during the proceedings, shall be filed with the Arbitration Court in a sufficient quantity of counterparts for the Arbitration Court, for all the opponents and all the arbitrators.
2. In the file kept at the Arbitration Court there should be at least one counterpart of each communication on the basis of which the arbitral tribunal heard the case and rendered decisions. At the request of the parties or the arbitral tribunal, the Secretary of the Arbitration Court shall issue a copy of certain documents from the file kept at the Arbitration Court.

Evidence
Article 22

1. The arbitral tribunal shall decide on the admissibility, importance, significance and evidentiary strength of evidence offered and presented, and on which party the burden lies to prove the truth of certain factual allegations.
2. The arbitral tribunal may, if it finds this to be appropriate, request a party to give the arbitral tribunal and the other party, within a time limit set by the arbitral tribunal, a summarized overview of the documents

and other evidence which that party intends to present to establish disputed facts presented in the statement of claim or in the answer to the statement of claim.

3. During the arbitration proceedings, the arbitral tribunal, within the limits of its powers, may order the parties to furnish documents or other evidence within the time limit it sets.
4. The arbitral tribunal may decide that the presentation of certain evidence should be entrusted to the chairman of the tribunal or one of the co-arbitrators.
5. The Secretary of the Arbitration Court shall make the necessary arrangements to provide shorthand notes, sound recordings and minute taking in a foreign language on the presentation of evidence if one of the parties requests it or if the arbitral tribunal so orders and if a monetary deposit is given to meet the costs incurred.

Witnesses
Article 23

1. The arbitral tribunal may determine the manner in which the witnesses are to be heard.
2. The arbitral tribunal may determine that a witness or witnesses shall leave the room whilst other witnesses are heard.

Expert Witnesses
Article 24

1. When it receives reports by expert witnesses, the arbitral tribunal shall send a copy of the reports to the parties and allow them to make written observations about them. The parties are authorised to examine all documents referred to by the expert witness in the report.
2. The arbitral tribunal may appoint experts for certain legal issues and ask them to give their opinion.

Oral Hearing
Article 25

1. The arbitral tribunal shall inform the parties in good time of the scheduling of oral hearings with information on the date, time and place of the hearing to be held.
2. If it is necessary to hear witnesses, each party shall furnish the arbitral tribunal and the other party with the names and addresses of witnesses they intend to propose at least fifteen days before the hearing, and communicate the subject of the testimony and the language in which the hearing of the witness will take place.
3. The arbitral tribunal shall be responsible for the interpretation of oral testimonies at the hearing and for keeping minutes of the hearing if it feels this is necessary in view of the circumstances of the case or if the parties have so agreed and informed the arbitration court of this at least fifteen days before the hearing is held.

4. Oral hearings shall be held without the public present, if the parties have not agreed otherwise.

Interim Measures
Article 26

1. The arbitral tribunal shall issue an interim measure as a rule only after it has allowed the other party to provide observations on the motion to issue it. The arbitral tribunal may issue an interim measure before the other party has been allowed to make observations on the motion only if the party seeking the interim measure makes it probable that this is necessary for the efficiency of the interim measure. In this case the party moving for the issuing of an interim measure is obliged to inform the arbitral tribunal of all the circumstances relevant for the decision by the arbitral tribunal and a statement that he/she will be liable for damage caused by failure to inform of any circumstances which he/she knew about or which he/she must have known. In any case, the arbitral tribunal shall allow the other party to provide observations on the motion as soon as possible in the circumstances and after receiving the observations of the other party it shall re-examine the decision rendered on the interim measure.
2. Interim measures are issued in the form of a conclusion and must include a statement of reasons. In especially urgent cases, interim measures may be issued without a statement of reasons. If it is necessary to file a motion with a court for the enforcement of an interim measure or if the opposing party so moves, a written decision on the interim measure with a statement of reasons shall be drawn up. If for the enforcement of the interim measure it is necessary to apply to a court in another country, the arbitral tribunal may issue the interim measure in another appropriate form.
3. The parties shall inform the Secretary of the Arbitration Court immediately of specific security measures.

The Award
Article 27

There is no legal remedy permitted before a higher instance arbitration court against the award.

Service of the Award
Article 28

1. The final award shall be served to the parties when the Secretary of the Arbitration Court establishes that they have paid to the Arbitration Court all the costs of the arbitration proceedings.
2. The certificate of the legal validity and enforceability of the award shall be issued by the Secretary of the Arbitration Court.

The Powers of the Secretary of the Court
Article 29

1. The Secretary of the Arbitration Court may attend the hearings.
2. The Secretary of the Arbitration Court is obliged to take part in the hearings if the sole arbitrator or at least one member of the arbitral tribunal is not a lawyer.
3. The Secretary of the Arbitration Court, whilst respecting the right of decision-making of the arbitral tribunal on the merits of the dispute, is authorised to draw the arbitrators' attention to legal issues of importance for decision-making and especially issues relating to the content and form of the procedural actions which are being undertaken.

The Powers of the Arbitration Court
Article 30

1. Before signing the award, the arbitral tribunal is obliged to present the Arbitration Court a draft of the award.
2. The Arbitration Court may order alterations to the form of the draft presented. The Arbitration Court, whilst respecting the right of decision-making of the arbitral tribunal on the merits of the dispute, is authorised to draw the attention of the arbitral tribunal to issues related to the merits of the dispute.
3. The examination of the draft award shall be carried out on behalf of the Arbitration Court by the President or a member of the Presidency of the Arbitration Court to whom the Presidency entrusts this task.
4. The award of the arbitration court may not be served to the parties before it has been approved in terms of its form by an authorised member of the Presidency of the Arbitration Court.

Order for Payment
Article 31

1. If the conditions are fulfilled on the basis of which an order for payment may be issued according to the provisions of the Civil Procedure Act of the Republic of Croatia, the President of the Arbitration Court shall issue an order for payment as the sole arbitrator.
2. The order, together with the statement of claim, shall be served to the respondent.
3. The respondent may lodge an objection against the order for payment within eight days or, in the case of promissory notes or cheques, within three days from the service of the order. In the objection the respondent shall appoint an arbitrator in accordance with the provisions of the Arbitration Act and these Rules.
4. If within the time limit in Paragraph 3 of this Article the respondent does file an objection, the Secretary of the Arbitration Court shall make the necessary arrangements to constitute an arbitration tribunal and the regular proceedings shall continue before the arbitration tribunal or the sole arbitrator for a final decision to be rendered.

Article 32

By concluding an arbitration agreement about an arbitration which is to be conducted by the arbitral tribunal at the Arbitration Court, the parties accept the provisions of these Rules.

Article 33

1. These Rules shall apply to arbitration proceedings when the arbitration agreement was concluded after they have come into force.
2. If the parties do not agree for these Rules to be applied to proceedings already pending, the arbitration rules on which the parties agreed earlier shall apply to these proceedings.

Costs
Article 34

The Rules on the Costs of the Proceedings before the Arbitration Court (arbitrators' fees, administrative costs, advance payments of costs, presentation of evidence and other costs) shall be determined by a decision of the Management Board of the Croatian Chamber of Economy.

Entry into Force
Article 35

These Rules shall enter into force on the eighth day from the date of their publication in "Narodne novine".

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Herausgegeben von

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unter Mitarbeit von

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Meinem akademischen Lehrer
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zum 60. Geburtstag

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Recht

Die Schiedsgerichtsbarkeit spielt im Rechtsverkehr mit den zentraleuropäischen Staaten eine wichtige Rolle. Damit rückt auch das Schiedsverfahrensrecht dieser Länder ins Blickfeld des Interesses. Der vorliegende Band präsentiert die Ergebnisse eines Forschungsprojekts, das sich auf drei spezifisch relevante Schwerpunktthemen konzentriert hat, nämlich das Verhältnis zwischen Schiedsgerichtsbarkeit und staatlichen Gerichten, das Kollisionsrecht sowie Recht und Praxis der Schiedsinstitutionen. Landesberichte stellen die einschlägige Rechtslage in Kroatien, Polen, Slowenien, Tschechien und Ungarn dar; vier Generalberichte analysieren die Entwicklung in diesen Staaten aus der Perspektive der internationalen Schiedspraxis und des (heutigen und künftigen) österreichischen, deutschen und europäischen Rechts.

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