

Arbitration in Albania

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The purpose of this article is to provide a snapshot of the legal framework of domestic arbitration, recognition and enforcement of foreign arbitral awards in Albania.

Domestic Arbitration

Arbitration is not a common means for resolving disputes arising between local businesses in Albania. They continue relying in local courts, which are slow and subject to continuous reforming process.

The sporadic use of arbitration among local businesses could explain the poor legal framework available in Albania for governing domestic arbitration and the lack of offering such services by chambers and/or arbitration institutions in Albania.

The Code of Civil Procedure of the Republic of Albania contained a chapter (art. 400 to art. 438) that was applicable to arbitration taking place in Albania between parties residing in Albania. In order that parties arbitrate their disputes they must have in their written contract a valid arbitration clause or a separate written arbitration agreement. The arbitration clause or agreement is valid if it is in writing and provides for the rules of appointing arbitrator(s). Unless otherwise agreed by the parties (in the arbitration clause or arbitration agreement) the dispute should be resolved within six (6) months from the moment

when the arbitral tribunal is duly established. The said term could, upon request of any of the parties or of the arbitral tribunal, be extended by the chairman of the first instance court of law of the district where the arbitration is taking place. The parties may agree to subject the arbitration to the rules of an arbitration institution.

The said provisions of the Code provide also for matters of appointment, challenge or replacement of the arbitrators, jurisdiction of arbitral tribunals, setting aside of the award and enforcement.

Currently, all the above-described chapter of domestic arbitration is repealed and Albania does not have law provisions to govern domestic arbitration. We hope that the Albanian parliament would pass soon the new law on arbitration. This does not mean that, until then, domestic arbitration cannot happen in Albania as the Code of Civil Procedure guarantees enforcement of the domestic arbitral awards. The parties should be careful when drafting the arbitration clause or agreement in order that they are very descriptive. The best would be to refer to rules of arbitration institutions such ICC or other institutions in the neighbour countries. However, due to the lack of specific law provisions, case law and to poor arbitration practice, domestic arbitration in Albania could be very unpredictable.

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International arbitration

In contrast to domestic arbitration uncertainties, Albania offers a well-established practice of recognition and enforcement of foreign arbitral awards.

Since November 2000 (law no. 8688, dated 9 November 2000), the Albanian Parliament has ratified the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958. Before that, specific provisions of the Code of Civil Procedure of the Republic of Albania, which are very similar to those of NY Convention, were applicable for recognition of foreign arbitral awards. These provisions are still applicable for those cases where the legal seat of arbitration is not in a state member of NY Convention.

In addition to that, on November 2000 (law no. 8687, dated 9 November 2000) the Albanian Parliament ratified the European Convention on International Commercial Arbitration of 1961. The provisions of this Convention are applicable to “[...] *arbitration agreements concluded for the purpose of settling disputes arising from international trade between physical or legal persons having, when concluding the agreement, their habitual place of residence or their seat in different Contracting States [...]*”.

Recognition of the foreign arbitral awards

The recognition of a foreign arbitral award is a procedure that the applicant should initiate by filing an application with the competent Albanian Court of Appeals. The application should have attached the documents listed in Article IV of NY Convention. The Court of Appeals will not make an evaluation of the merits of the case, but the recognition may be refused only for the reasons listed under Article V of NY Convention. Similarly, in case the arbitral award is made in a state which is not member of the NY Convention, the Albanian Court of Appeals would only examine only whether:

- (i) the arbitral tribunal had jurisdiction to resolve the dispute;
- (ii) the respondent has been duly notified of the proceedings in case the arbitral tribunal has proceeded in absence of the respondent;

(iii) the same dispute among the same parties has not been judged in Albania;

(iv) the arbitral award is final; and

(v) the arbitral award complies with the basic principles of the Albanian legislation.

The decision of the Court of Appeals can be appealed within thirty (30) days before the Supreme Court. The appeal with the Supreme Court does not stay automatically the enforcement of the arbitral award if recognized by the Court of Appeals decision, unless the Supreme Court orders differently.

Conclusion

In view of all the above, we may conclude that, despite the almost missing legal framework and undeveloped domestic arbitration, Albania offers a legal environment which is friendly to recognition and enforcement of foreign arbitral awards.