

Substantial Amendments to Arbitration Rules in Bulgaria

The Bulgarian Ministry of Justice recently published a draft set of amendments aimed at improvement of the arbitration legal framework in the country. While the primary purpose of the draft is to eliminate the conditions allowing certain acts of malpractice, in particular against individuals, the amendments go beyond that and we present below those aspects we find most important.

- *Higher Requirements for Arbitrators and Registration*

The draft amendments introduce certain additional requirements on the persons allowed to act as arbitrators in institutions seated in Bulgaria, e.g., they can't be deprived of the right to occupy certain positions or the right to exercise certain activities; they can't be in pending insolvency proceedings, etc.

What is more significant, arbitration institutions seated in Bulgaria shall be subject to registration with a register kept by the Ministry of Justice. Arbitration institutions seated abroad and *ad hoc* arbitrations dealing with disputes with a place of arbitration in Bulgaria shall be obliged to register with the same register each relevant arbitration proceedings initiated before them.

An award issued by an arbitrator that is not registered as per the above shall be null and void. A claim for declaration of the invalidity of such award could be filed before the Supreme Court of Cassation, with no time limitation.

- *Arbitration and Individuals*

Currently, under Bulgarian law, consumers cannot validly enter into arbitration agreements.

The draft law takes this one step further by eliminating also the possibility for individuals (who do not act in a commercial, professional or similar capacity) to accept, silently, the competence of arbitral tribunals, e.g., by answering to a statement of claim, submitting evidence, etc.

Certain special rules related to service of documents are also envisaged to be introduced with respect to individuals.

- *Annulment of Awards*

The draft provides the introduction of violation of Bulgarian public policy among the grounds for a potential revocation of an arbitral award. While such ground actually existed in the past until 2017; it was then repealed. It is now suggested by the Ministry of Justice to re-instate it into law.

The draft also introduces the possibility for a revocation of an arbitral award in certain specific circumstances, e.g., where the award is based on a document or witness testimonies that have been found to be untrue/false in court proceedings.

- *Enforcement*

Under the draft, before an arbitral award may proceed to enforcement, it would be required from the court which is competent for the issuance of a writ of execution to verify *ex officio* certain elements, i.e., whether the award has been duly announced and served to the parties and whether it is not invalid due to a violation of the rules for registration described above or due to the fact that the dispute is not subject to arbitration at all.

Awards in *ad hoc* arbitrations or awards of arbitration institutions seated abroad would have to be announced in the same register kept by the Ministry of Justice where the initiation of the respective arbitration proceedings would have to be registered in the first place.

As per the rules currently in force, there is a possibility for a party to request suspension of the enforcement of an arbitral award only in the case of the provision of collateral. The draft envisages the possibility for a suspension even without collateral where the party submits convincing evidence, in writing, supporting a revocation claim.

- *Termination of Certain Existing Arbitration Agreements*

Last but not least, the draft provides the termination (by virtue of the entry into force of the amendments) of the existing arbitration agreements for *ad hoc* arbitration, unless such agreement concerns international arbitration.

Thus, those parties to the agreements concerned wishing to refer their disputes to arbitration should sign new arbitration agreements in accordance with the new legal framework.

* * *

This article was prepared by Plamen Peev, Partner and Director of PETERKA & PARTNERS for Bulgaria.

No information contained in this article should be considered or interpreted in any manner as legal advice and/or the provision of legal services. This article has been prepared for the purposes of general information only. PETERKA & PARTNERS does not accept any responsibility for any omission and/or action undertaken by you and/or by any third party on the basis of the information contained herein.

For further information on the new draft, please contact us at peev@peterkapartners.bg.