

# Bulgaria



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## I. LITIGATION

### 1 Preliminaries

#### 1.1 What type of legal system has Bulgaria got? Are there any rules that govern civil procedure in Bulgaria?

Bulgaria has a continental law system. In adjudication of disputes the Bulgarian courts apply written law. Judicial precedents are not recognised as a source of law.

Civil procedure in Bulgaria is governed by the Civil Procedure Code (CPC), the Judiciary Act and some substantive laws (e.g. Anti-Discrimination Act, Consumer Protection Act, State Liability Act, etc.).

Apart from the general civil procedure the CPC provides for special procedural rules in commercial disputes. (According to Article 365 of the CPC commercial disputes within the meaning of the Code shall be disputes for a right or a legal relation arising from or pertaining to: a commercial transaction, including the conclusion, interpretation, validity, performance, non-performance or termination of any such transaction; the consequences of the termination thereof; as well as for filling gaps in a commercial transaction or adjustment of any such transaction to intervening circumstances.)

#### 1.2 How is the civil court system in Bulgaria structured? What are the various levels of appeal and are there any specialist courts?

Civil and commercial matters are examined by the civil and commercial departments of regional and district courts, courts of appeal and the Supreme Court of Cassation (SCC). No specialised courts exist in Bulgaria.

Regional courts act as first instance in all cases save for cases which, according to the express provision of the law, are under the jurisdiction of district courts as first instance (e.g. ownership and other rights *in-rem* claims exceeding BGN 50,000 (approximately EUR 25,000); and civil and commercial claims exceeding BGN 25,000 (approximately EUR 12,500) etc.).

Appeals against judgments of regional courts shall be lodged with the respective district courts, whereas first-instance judgments of district courts can be challenged before courts of appeal.

The SCC carries out reviews on points of law (cassation) over second instance decisions provided that admissibility requirements for cassation are met (see question 9.4 below).

#### 1.3 What are the main stages in civil proceedings in Bulgaria? What is their underlying timeframe?

The main stages in civil proceedings before the Bulgarian first-instance courts are:

- submission of a statement of claim;
- service of the statement of claim to the defendant;
- submission of a response to Statement of claim;
- service of the response to the statement of claim to the claimant;
- submission of an additional statement of claim (only in commercial disputes);
- service of the additional statement of claim to the defendant (only in commercial disputes);
- submission of a response to the additional statement of claim (only in commercial disputes)
- examination by the court of the statement of claim concerning its conformity with formal requirement of the CPC, the admissibility of the actions brought, as well as of the other requests and oppositions of the parties, at the end of which the court shall render a ruling on all preliminary issues and on admission of the evidence;
- listing the case for trial;
- trial (it could be one court hearing but it could be more depending on the objections raised and evidence to be gathered); and
- rendering the judgment and estimation of the costs.

The main stages at second instance are:

- submission of an appeal to the first-instance judgment;
- service of the appeal to the other party;
- submission of a response to the appeal and a cross-appeal;
- examination by the court of the appeal and the cross-appeal concerning its conformity with formal requirement of CPC;
- listing the case for trial;
- trial; and
- rendering the judgment and estimation of the costs.

Generally, time limits in civil proceedings are determined either by the CPC or by courts in the cases where no strict deadlines are set forth by the CPC. With respect to some of the main stages of the proceedings, the CPC provides strict time limits, which preclude procedural rights and legal opportunities for defence, such as the submission of an answer to the statement of claim, lodging of an appeal and answer to the appeal, etc. We discuss these time limits in the respective parts of this report.

#### 1.4 What is Bulgaria's local judiciary's approach to exclusive jurisdiction clauses?

An exclusive jurisdiction clause in favour of foreign courts will be respected by the Bulgarian courts provided that the case is not covered by their exclusive jurisdiction. The law defines circumstances in which Bulgarian courts have exclusive jurisdiction and, at present, these include, *inter alia*, disputes over rights *in-rem* for real property on the territory of the country, disputes on corporate issues of Bulgarian legal entities, etc. In case of an exclusive jurisdiction clause the respective Bulgarian court will relinquish jurisdiction in favour of the foreign court upon objection raised by the defendant within the time limit for submission of the response to statement of claim.

#### 1.5 What are the costs of civil court proceedings in Bulgaria? Who bears these costs?

Costs in civil proceedings in Bulgaria may include court fees, expenses for expert opinions and witness testimony, as well as lawyer fees. They may vary considerably depending on the interest at stake (the value of the claim or of the appeal), on the complexity of the case, as well as on the rates of the lawyer fees.

The general rule is that the losing party has to cover the costs paid by the successful party ("costs follow the event" principle). However, the CPC puts a threshold on lawyer's fees which can be recovered. Firstly, the winning party is entitled to the reimbursement of the fees of a single lawyer (regardless how many lawyers have actually worked on the case). Secondly, the fees agreed and paid by the party to the lawyer can be reimbursed in a diminished amount in case the court finds that the fees actually paid by the party are excessive. The defendant is entitled to require the plaintiff to recover the costs of the proceedings paid by him in the proportion of the rejected part of the claim. The defendant has the same right in case of termination of the proceedings. The recoverable amount of the costs and the party to bear them are assessed by the court in its judgment, respectively in its ruling on termination.

#### 1.6 Are there any particular rules about funding litigation in Bulgaria? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

The Bulgarian legal system allows conditional fee arrangements between a lawyer and a client, except for cases involving non-material interest. However, according to the established case-law of the Bulgarian courts, conditional fees are not recoverable as they depend on the outcome of the case and, hence, have not been paid up by the end of the trial, e.g. by the end of the final court hearing before the issuance of the court decision.

No special rules on security for costs exist in Bulgaria. However it is possible to require the court to order security measures (by imposing an injunction against the defendant) in order to secure the enforcement of the future decision, including the costs - i.e. at least those already paid by the claimant at the time the request for security has been filed).

## 2 Before Commencing Proceedings

#### 2.1 Is there any particular formality with which you must comply before you initiate proceedings?

There are no such formalities in Bulgaria.

#### 2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Limitation periods under Bulgarian law are divided into prescription periods which are considered to be a substantive law issue and preclusion periods which are a procedural law issue.

The general prescription period for all claims is 5 years, except if it is otherwise provided by law. Tort claims and claims for rescission of contracts are subject to a 5-year prescription period. The prescription period is 3 years for claims for damages and liquidated damages from non-performed contracts and for claims for rent, interest and other periodic payments. Prescription periods start to run from the date on which the obligation became executable, that is to say from the date on which the cause of action occurred. These terms are applied by the court only upon objection raised by the defendant. If certain events (expressly and exhaustively listed in the law) occur, such terms can stop running and, after the cause no longer exists, continue to run; such terms can be interrupted and a new limitation period shall start to run from the moment of interruption.

There are preclusion periods for the lodging of certain claims (only in cases expressly provided by the law). Such terms are applied by the court *ex officio* and if a claim is filed after the expiration of the term it is considered inadmissible, and the case is terminated without being heard on the merits.

## 3 Commencing Proceedings

#### 3.1 How are civil proceedings commenced (issued and served) in Bulgaria? What various means of service are there? What is the deemed date of service? How is service effected outside Bulgaria? Is there a preferred method of service of foreign proceedings in Bulgaria?

Civil proceedings in Bulgaria are commenced by the lodging of the statement of claim with the court. The statement of claim has to be served to the defendant but no specific time limit for the service is set forth.

Permissible means of service include:

- service in person;
- by post or courier with a registered mail with a receipt of delivery; or
- by means of telephone, telex, telefax or by telegram or via e-mail.

The deemed date of service is:

1. the date of handing the communication over to the party or to its representative, or to another person on the same address who has given his/her consent to accept the communication;
2. the date on which the party appears to receive the communication in person from the court or the municipality or a private enforcement agent, as the case may be, after a note has been left in/on his/her mail box or on the front door notifying that a term of 2 weeks is given for the communication to be received;
3. in case the party does not appear as in p.2, the court shall require a certificate for the current and the permanent address of the person, and in case it is different from the one identified in the court file, a new process of notification will start as in p.2, which will end up either by the date when the party will appear or by the date of expiration of the term of 2 weeks;

4. if it is proved that the respondent does not have a registered permanent or current address in the country, and if it is confirmed by a declaration that the plaintiff is not aware of the address of the respondent abroad, service shall be effected through publication in the Unofficial Section of the State Gazette, performed at least 1 month before the hearing; and/or
5. the date on which the delivery is attested: by the addressee in the receipt for delivery by post; by the server in writing if service is by telephone; or by telefax, respectively if it is service by telegram - by an advice of delivery of the said telegram, and, where service has been effected by means of telex, the date of the written confirmation of delivery of the message and service at an electronic address shall be attested by a copy of the electronic record of the service.

If there are any non-conformities upon the service, the said service shall be presumed effected at the time at which the communication actually reached the addressee.

Service abroad is effected pursuant to the legislation of the state where service is sought. Applicable rules are also included in the 1965 Hague Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil and Commercial Matters (the Hague Convention) and the EU Service Regulation (Council regulation (EC) No 1348/2000). The state bodies in charge for the service under these acts are, respectively, the Ministry of Justice and the court before which the proceedings are pending.

As far as we know the preferred method of service of foreign proceedings in Bulgaria is service in person.

### 3.2 Are any pre-action interim remedies available in Bulgaria? How do you apply for them? What are the main criteria for obtaining these?

The Bulgarian courts are empowered to impose various pre-action interim measures, including orders for freezing movable or immovable assets or bank account of the defendant, as well as any other appropriate measures as requested by the plaintiff. The proceedings start by an application by the claimant. The court will order the pre-action interim measures provided that the following conditions are fulfilled:

- the action is supported by convincing written evidence; and/or
- the claimant has furnished the court with a guarantee in an amount determined by the court.

When the request for pre-action interim measures is granted, the plaintiff is given a term no longer than a month to lodge the claim.

The interim measures are applied without notice to the other party.

Interim remedies are also available in relation to proceedings which are already pending, or will take place outside the jurisdiction.

### 3.3 What are the main elements of the claimant's pleadings?

Claimant's pleadings (a statement of claim) must be written in Bulgarian and signed by the plaintiff. The statement of claim should clearly set out:

- the names and addresses of the parties;
- the value of the claim;
- the facts giving rise to the dispute; and
- the relief sought.

In commercial disputes the additional statement of claim may clarify and supplement the initial statement of claim.

### 3.4 Can the pleadings be amended? If so, are there any restrictions?

At any time before the statement of claim is served to the other party, the plaintiff may amend either the cause of action (the facts which ground the claim) or the relief sought. He/she could do this during the first trial hearing, as well, but amendment of the cause of action has to be permitted by the court if it does not hamper the defence to the action. Also, prior to the end of the trial the plaintiff may change the amount of the relief and pass from a declaratory action to an action for a judgment for performance.

In commercial disputes the statement of claim may be amended within the time limit for submission of the additional statement claim.

## 4 Defending a Claim

### 4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

Statement of defence (response to the statement of claim) must state:

- a defendant's stand on both the admissibility and the merits of the claim;
- a statement about the facts upon which the action is founded; and
- the objections to the claim and the circumstances upon which the said objections are founded.

Within the deadline for the statement of defence, the defendant can bring a counterclaim if it is covered by the subject-matter jurisdiction of the same court and is connected with the initial claim or can be set-off against it. In addition, a defence of set-off is available to the defendant during the trial.

Each of the parties - the plaintiff (not later than at the first court hearing) and the defendant (with the response to the statement of claim at the latest) may bring an additional action to establish the existence of a disputable relationship that is decisive for the proper solution of the case at hand - the so-called incidental declaratory action (*incidenten ustanovitelen isk*).

### 4.2 What is the time-limit within which the statement of defence has to be served?

After the statement of claim is served to the defendant, the latter shall be given a term - one month (in general civil proceedings) and two weeks (in commercial disputes) - to prepare and submit to the court the statement of defence.

In general civil proceedings, no specific time limit is provided for the service of the response to the statement of claim to the plaintiff. As a general rule, the statement of defence is served to the plaintiff together with the summons for the first hearing at least one week before the scheduled date of the hearing.

In commercial disputes, the defendant's response to the statement of claim is served to the plaintiff and the latter is given two weeks as from the service to submit an additional statement of claim. The additional statement of claim is also served to the defendant and the defendant should prepare and submit a response to the additional statement of claim within two weeks as from the service.

#### 4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

The defendant can pass on liability to a third party by bringing the so-called “reverse action” against this person. No later than the final date for submission of the response to the statement of claim the defendant can request the inclusion of the third party to the proceedings, if the latter has an interest in the final dismissal of the principle claim and, simultaneously with the request for inclusion, the defendant can bring the reverse claim against the third party for jointed examination with the principle claim. If the court refuses to allow the joinder of the claims, the reverse claim will be reviewed in separate proceedings in which the reasoning of the court in its judgment on the principle claim will be binding on the defendant and the third person who has been included as a third party.

The defendant may bring a separate reverse action after the end of the trial, if he/she has not requested the inclusion in the trial of the third party. However, in this case, the latter could avoid liability through the defence of negligent conduct of the previous trial.

#### 4.4 What happens if the defendant does not defend the claim?

If the defendant fails to submit the response to the statement of claim, thus failing to give a written answer, to take a stand, to lodge oppositions, to contest the truthfulness of a document presented, to cite evidence, to present written evidence or to file a counterclaim, or to file an incidental declaratory action or to require the inclusion of a third party and to file a reverse claim, that defendant shall forfeit the possibility to do so later, unless the omission is due to special unforeseen circumstances.

If the defendant has not presented a statement of defence and has not appeared at the first hearing, the court may, at the plaintiff’s request, deliver a default judgment which is final and binding upon the parties.

There are specific remedies against a default judgment: within a month from the service of the judgment the defendant may request the court to set it aside, if the defendant was unable to participate in the trial because of undue service or reasons which are out of his/her control; the defendant may claim or challenge the right resolved by the default judgment in case of new or newly discovered circumstances or new evidence.

If the defendant expressly admits the claim, the court may upon request of the plaintiff hold a judgment based on the admission of the claim.

#### 4.5 Can the defendant dispute the court’s jurisdiction?

The court’s subjective jurisdiction can be challenged at any time during the proceeding before first and second instance courts. The territorial jurisdiction may be disputed by the defendant before the first instance court within the time limit for submission of the statement of defence, except for the territorial jurisdiction related to the location of the real estate under dispute, which may be contested up until the end of the trial.

## 5 Joinder & Consolidation

#### 5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

At any time during the first instance a third party may at its own

request join an ongoing civil proceeding to support any of the parties if the third party is interested in the court rendering a judgment in favour of the supported party.

As mentioned above, any of the parties to the proceedings may request the inclusion of a third party who has the right to join the proceeding according to the preceding sentence. The request of the claimant has to be filed during the first court hearing at the first instance at the latest; and the request of the defendant within the term for submission of the response to the statement of claim.

#### 5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

It is possible to consolidate closely connected claims between the same parties or between the plaintiff/defendant and a third party (objective consolidation). Consolidation is possible where the claims accommodate under the jurisdiction of the same court and must be examined under the same procedure.

It is also possible to consolidate claims brought by several plaintiffs and/or against several defendants (subjective consolidation) provided that the subject matter of the dispute includes:

- their common rights and obligations; or
- rights and obligations resting on one and the same grounds.

#### 5.3 Do you have split trials/bifurcation of proceedings?

The Bulgarian courts have discretion to order split trials, meaning reviewing objectively or subjectively consolidated claims in a separate proceeding, if joint examination of the claims would impede examination of the case. The courts may order the split trials either on their own motion or upon application by any of the parties.

## 6 Duties & Powers of the Courts

#### 6.1 Is there any particular case allocation system before the civil courts in Bulgaria? How are cases allocated?

Generally, allocation of cases before the different court levels and the courts of one and the same level are governed by the rules of subjective and territorial jurisdiction. Apart from this, there is no particular system for allocation of cases before civil courts in Bulgaria. In practice, cases are accommodated to either a civil or a commercial department of the competent court and then allocated to a particular panel of the respective department through electronic assignment on the basis of the random selection principle.

#### 6.2 Do the courts in Bulgaria have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The Bulgarian courts have broad management powers which include performance *ex officio* of all necessary procedural steps and scrutinising the due performance of the necessary procedural steps of the parties. Courts, *inter alia*, are authorised to:

- summon parties and other participants and serve communications and documents;
- administer and control the progress of the case by setting procedural time limits and giving other appropriate directions;
- prepare a report on the case to identify the issues which require full investigation and the issues which do not;

- facilitate the parties to make use of mediation or other dispute resolution procedures or to reach an out-of-court agreement; and
- appoint expert witnesses and prepare records of court hearings.

A broad variety of interim applications are available to the parties, including application for:

- interim injunctions (see question 3.2 above);
- orders for appointment of an expert witness; and
- orders for disclosure of a document (see question 7.1 below).

Normally, the courts determine the related costs, if any, together with ordering the respective action.

### 6.3 What sanctions are the courts in Bulgaria empowered to impose on a party that disobeys the court's orders or directions?

The court can impose fines upon recalcitrant party. The courts are also allowed to draw adverse inference from party's failure to take a certain action or even to terminate the proceeding in appropriate circumstances (see questions 6.4 to 6.6 below).

### 6.4 Do the courts in Bulgaria have the power to strike out part of a statement of case? If so, in what circumstances?

A civil case can be terminated in whole or in part:

- on admissibility grounds (lack of legal capacity; lack of legal standing; lack of procedural right to bring a claim);
- where the claimant failed to fulfil the court instructions to correct the deficiencies of the statement of claim (fully or partially); and/or
- upon waiver or withdrawal of the claim by the plaintiff.

### 6.5 Can the civil courts in Bulgaria enter summary judgment?

The Bulgarian law does not regulate issuance of a summary judgment within the meaning of common law.

However, it provides for a summary procedure to be applicable in commercial disputes. Courts may examine commercial cases on the basis of the papers presented by the parties either where it was so requested by the parties or where all evidence has been presented by the exchange of papers and should the court hold that hearing of the parties in person is not necessary.

### 6.6 Do the courts in Bulgaria have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The courts can discontinue proceedings only in cases expressly listed in the law:

1. In case of stay of proceedings based on mutual consent of the parties and if within a term of 6 months none of the parties move for the resumption of the proceedings.
2. On request of the plaintiff who waives his/her claim. After the termination the plaintiff shall no longer be entitled to bring the same action again.
3. On request of the plaintiff who withdraws the claim, in which case the plaintiff's right to sue the defendant in a new proceedings in the future is preserved, and because of that in such case the termination of the case depends on whether the defendant gives consent for the termination of case.
4. In case a settlement of the dispute is reached by the parties and the court approves of the settlement, the case is

terminated in whole or in the part which has been settled.

The courts can stay proceedings, *inter alia*:

- by mutual consent of the parties;
- in the event of death of any of the parties;
- where it is necessary to institute tutorship or curatorship for any of the parties;
- where a case is examined in the same or in another court and the judgment in the said case will be relevant to the proper determination of the dispute - until that case is finally resolved;
- where criminal circumstances are discovered and the outcome of the civil dispute depends on the establishment of the said circumstances;
- where the Constitutional Court has admitted to examination on the merits a motion whereby the constitutionality of a law applicable to the case is contested; and
- in the cases expressly provided for in a law.

## 7 Disclosure

### 7.1 What are the basic rules of disclosure in civil proceedings in Bulgaria? Are there any classes of documents that do not require disclosure?

The Bulgarian procedural law does not recognise a general right to disclosure. The parties are not obliged to exchange a list of relevant documentation in their control. Neither are they obliged to reveal or present all relevant documents to the opposing party.

According to the CPC, either of the parties is entitled to request the court to order the other party to present a specific document which is in the latter's possession having explained the relevance of the document to the dispute. The court is empowered to draw adverse inference from the party's failure to present the document and may assume in the latter's detriment that the respective fact has been proved. On request of any of the parties, the court can order a third party to present a document which the court considers to be of relevance to the dispute.

### 7.2 What are the rules on privilege in civil proceedings in Bulgaria?

Under the Bar Act, attorney-at-law papers, files, electronic documents, computer equipment and other carriers of information shall be privileged and confidential. Correspondence between an attorney-at-law and his or her client, irrespective of the manner it is maintained, including electronically, shall also be privileged and confidential. Conferences between an attorney-at-law and his or her client shall not be intercepted and recorded. Any recordings, where available, shall not be used as means of evidence and shall be subject to immediate destruction.

Attorneys-at-law shall not be interrogated in their procedural capacity with regard to: their conferences and correspondence with clients; their conferences and correspondence with another attorney-at-law; the affairs of clients; or facts and circumstances, of which they have become aware in relation to the provision of protection and assistance.

The CPC stipulates that any of the parties may refuse to present a document if its contents concerns his/her private or family life or the presentation would lead to defamation or self-incrimination of the party or his/her relatives.

Disclosure of documents is also subject to the rules on protection of classified information.

### 7.3 What are the rules in Bulgaria with respect to disclosure by third parties?

Each party may ask the court to oblige a third person to present a specific document which is in his/her possession. Failing to do so, the third person will face the risk of being fined by the court. He/she will also be liable for damages *vis-a-vis* the party requesting the presentation of the document.

### 7.4 What is the court's role in disclosure in civil proceedings in Bulgaria?

The court plays a decisive role in disclosure of documents in the context of civil proceedings in Bulgaria. They are authorised to order the disclosure of certain documents of relevance to the case. Furthermore, they may draw adverse inference from a party's failure to comply with their orders. The procedure explained in question 7.1 above is the only legal remedy available to a party to obtain a document which is in the opposing party's possession.

### 7.5 Are there any restrictions on the use of documents obtained by disclosure in Bulgaria?

As a matter of principle, any document obtained in the context of civil proceedings may not be used for any other purposes. The CPC does not contain any specific provisions in this regard. The use of information and/or documents is governed by general rules of information and personal data laws.

## 8 Evidence

### 8.1 What are the basic rules of evidence in Bulgaria?

The general rule of evidence in Bulgaria is that each party should prove his/her allegation. Both the plaintiff and the defendant should adduce their evidence and the facts they seek to prove and present all written evidence together with, respectively, the statement of claim or statement of defence.

Facts in respect of which a presumption established by law exists need not be proved. Refutation of such presumptions shall be granted in all cases except where a law prohibits this.

Any facts of common knowledge and any facts known to the court *ex officio*, of which the court shall be obligated to inform the parties, shall not have to be proved.

### 8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The admissible types of evidence are:

- witnesses of fact;
- acknowledgments of facts by the parties;
- explanations by the parties which evidence facts that are unfavourable to the party who provides them;
- written evidence;
- expert witnesses; and
- inspection and certification.

Expert witnesses are admissible where a certain matter, which is relevant to the dispute, requires a special expertise. Experts are appointed by the court of its own motion or by request of the parties and must be independent. The Bulgarian law does not consider expert opinions gathered out-of-court and presented by the parties as expert evidence but rather as the party's explanations.

### 8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

Written witness statements are not admissible in civil proceedings in Bulgaria. Witnesses of facts must appear in front of the court to testify, as well as to be cross-examined, and their statements are put in the judicial records. Only parties can request witnesses of fact to be called by the court. A witness may refuse to testify in special circumstances which are expressly provided for by the CPC.

### 8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Bulgaria?

The Bulgarian courts play a decisive role in the admission of evidence. Firstly, any written evidence should be admitted by the court in order to be considered in the examination of the case. Also, the court *ex officio* can appoint expert witnesses.

## 9 Judgments & Orders

### 9.1 What different types of judgments and orders are the civil courts in Bulgaria empowered to issue and in what circumstances?

Depending on the type of claims, the Bulgarian courts can issue:

1. declarative judgments - establishing the existence or non-existence of a legal relation, a right, a fact or criminal circumstances, truthfulness of a document;
2. judgments for performance - such as performance of a monetary obligation, or fulfilment of another type of contractual or non-contractual obligation; or performance of repetitive obligations, or the transfer of possession etc.; and
3. constitutive judgments - which by entering into force provide the requested by the plaintiff legal change.

Depending on the type of proceedings which they resolve, the courts can issue:

1. judgments on the merits of the case - these could be judgments under the general procedure, judgments upon admission, judgments by default, etc.;
2. rulings - on matters whereby the dispute is not resolved on the merits - these could be rulings on interim measures, rulings on termination of proceedings, rulings on stay of proceedings, etc; and
3. orders - such as injunctive orders enforcing the security measures granted, enforcement orders.

### 9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The Bulgarian courts are empowered to rule on the compensation of any loss suffered (loss and loss of profits), including to award non-pecuniary damages. Damages must compensate the actual loss. Punitive damages are not allowed under Bulgarian law.

Upon request of the parties, courts can award costs of the proceedings according to the "costs follow the event" principle (see question 1.5 above).

The courts have the power to award interest on damages awarded upon application by the interested party. The interest rate awarded by the court can be agreed by the parties but could not exceed the statutory rate of default interest.

### 9.3 How can a domestic/foreign judgment be enforced?

Enforcement of judgments in Bulgaria is carried out by virtue of a writ of execution. Writ of execution is issued only after a judgment has entered into force. However, as appellate judgments for performance also constitute enforcement of title, even they are subject to appeal on points of law before the SCC. The enforcement is carried out by enforcement agents, whereas the CPC sets forth specific rules for enforcement of monetary and different types of non-monetary judgments.

Bulgaria is a party to a number of bilateral agreements in the sphere of civil justice, which include special provision with respect to the enforcement of judgments. It is also bound by the EU Council Regulation 44/2001. Generally, a foreign judgment could be executed in Bulgaria if it is recognised by the Bulgarian courts according to the procedure provided for in the CPC. The recognition is not required if a judgment is given in an EU Member State, as explicitly provided for by the Regulation 44/2001.

### 9.4 What are the rules of appeal against a judgment of a civil court of Bulgaria?

All first instance judgments are subject to appeal (see question 1.2 above). In his/her application to the court the appellant must state the alleged defects of the judgment.

Cassation appeal on points of law is available only where an appellate judgment is (i) null and void, (ii) inadmissible or (iii) erroneous due to a violation of the substantive law, a material breach of the procedural rules or unfounded.

The admissibility requirements for lodging an appeal on points of law are:

- the appellate court has pronounced on a substantive or procedural legal issue in contradiction with the SCC's case-law;
- the issue has been resolved by Bulgarian courts in a conflicting manner; or
- it is relevant to the accurate application of the law, as well as to the progress of law.

No review on point of law is available in cases where amount of the claim is under BGN 10,000 - approximately EUR 500.

## II. DISPUTE RESOLUTION

### 1 Preliminaries

#### 1.1 What methods of dispute resolution are available and frequently used in Bulgaria? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

The most frequently used method for dispute resolution in Bulgaria is arbitration - either institutional or *ad-hoc*. The Bulgarian courts will relinquish jurisdiction in case of an arbitration clause between the parties. In the context of pending arbitration proceedings the courts could provide assistance in collection of evidence or order interim measures. Bulgarian arbitral awards constitute enforcement titles, and writs of execution can be issued as soon as they enter into force.

Enforcement of Bulgarian arbitral awards under foreign jurisdiction is possible by virtue of 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which Bulgaria is a party.

In case of dispute, the parties may also have recourse to mediation as provided for by the Mediation Act, but this method is still quite underdeveloped in Bulgaria.

No special tribunal exist in Bulgaria and as such are not permitted by the Constitution.

The Ombudsman in Bulgaria (on national level) has been introduced in 2004. The Ombudsman has the power, among other things, to examine complaints for violation of citizens' rights and freedoms by state and municipal authorities. The responsible authority is obliged to inform the Ombudsman about the measures taken to remedy the violation. In some municipalities there are municipal ombudsmen.

### 1.2 What are the laws or rules governing the different methods of dispute resolution?

Arbitration in Bulgaria is governed by the International Commercial Arbitration Act (adopted in 1988 as amended) which applies also to purely domestic disputes as well. In addition, depending on the agreement between the parties, various institutional arbitration rules may apply.

Mediation is governed by the Mediation Act (of 2004 as amended).

The institution of the Ombudsman is governed by the Ombudsman Act (adopted in 2003 as amended).

### 1.3 Are there any areas of law in Bulgaria that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

Arbitration is applicable to all commercial disputes, except for disputes determining rights *in-rem* over immovable properties. Disputes involving criminal, family or labour law matters are considered non-arbitrable.

Similar restrictions apply to mediation.

The Ombudsman may act only in case of violation of citizens' rights by state and municipal authorities.

## 2 Dispute Resolution Institutions

### 2.1 What are the major dispute resolution institutions in Bulgaria?

The two major arbitration institutions in Bulgaria are the Arbitration Court at the Bulgarian Chamber of Commerce and Industry (BCCI) and the Arbitration Court at the Bulgarian Industrial Association (BIA).

The major mediation institutions are the Mediation Centre at the Arbitration Court at the BCCI and the Institute for Dispute Resolution at the National Association of Mediators.

### 2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

Arbitration awards after they enter into force are binding upon the parties and state institutions, including courts, and are enforceable according to the CPC and the New York Convention.

Settlement agreements reached in mediation are binding on the parties and are enforceable according to the general rules of contract law.

### 3 Trends & Developments

#### 3.1 Are there any trends in the use of the different dispute resolution methods?

In recent years there has been certain growth in the use of institutional arbitration as a method for dispute resolution in commercial matters. This is due to the fact that arbitration proceedings are not so expensive, they are faster, give more flexibility as to selection of arbitrators, choice of the applicable rules of procedure and admissibility of evidence, and they secure confidentiality of proceedings.

Mediation has also experienced certain development in that it becomes more popular and mediation centres have been established in the recent years. It is difficult to predict if it will be utilised more often in the future.

#### 3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Bulgaria?

At present, there is an increasing trend in Bulgaria commercial matters to be referred to arbitration. This is a result of a few reasons.

Arbitration (institutional or *ad hoc*) is an appropriate method for dispute resolution in civil and commercial matters - it is speedier than civil proceedings before state courts, it is based on more flexible rules of procedure and parties are free to select the arbitrators who would be sitting in their case.

In addition, the Bulgarian Civil Procedure Code (entered into force in March 2008) is a relatively new piece of legislation and poses a lot of problems in its interpretation and application. The difficulties in the interpretation and application of the Code, together with the many shortcomings in the functioning of the Bulgarian judicial system hamper the public confidence in the effectiveness of state courts. Therefore, although it is too early to assess the effectiveness of the new rules, the advantages of arbitration in commercial matters is obvious and we expect that the abovementioned trend will continue.

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