Serbia


Slaven Moravčević


Ivana Panić

Moravčević Vojnović i Partneri
in cooperation with Schoenherr

1 Making Construction Projects

1.1 What are the standard types of construction contract in your jurisdiction? Do you have contracts which place both design and construction obligations upon contractors? If so, please describe the types of contract. Please also describe any forms of design-only contract common in your jurisdiction. Do you have any arrangement known as management contracting, with one main managing contractor and with the construction work done by a series of package contractors? (*NB* For ease of reference throughout the chapter, we refer to "construction contracts" as an abbreviation for construction and engineering contracts.)

Serbian law is not familiar with specific types of construction contracts (model construction contracts) that may be found in some German-speaking countries, however high-level construction laws are being developed in Serbia, as well as in the surrounding region. General contractual terms and conditions of construction are regulated under the Serbian Contracts and Torts Act; however most of these terms are of dispositive and not imperative nature. Key mandatory rights and obligations pertaining to the general contractor and the employer are set forth under the Planning and Construction Act ("**PCA**").

Additionally, these relationships are regulated by the Specific Customs on Construction [*Posebne uznase o gradjenju*]; the application of the Specific Customs on Construction is not mandatory, but can be agreed between the parties.

Given the extensive foreign investments and financing from banks/financial institutions of many of the projects, one of the model agreements most commonly used is the FIDIC (International Federation of Consulting Engineers) Conditions of Contract.

Design-only contracts are usually based on the FIDIC White Book or other tailor-made design contracts for the elaboration of the design for issuance of the construction permit (previously known as concept design) and/or design for construction (previously known as main design).

Management construction contracts are typically used under the name "general construction contracts". However, such contracts differ from standard management contracts due to the greater role of the main/management contactor.

1.2 Are there either any legally essential qualities needed either to create a legally binding contract (e.g. in common law jurisdictions, offer, acceptance, consideration and intention to create legal relations), or any specific requirements which need to be included in a construction contract (e.g. provision for adjudication or any need for the contract to be evidenced in writing)?

Construction contracts are not subject to any specific execution/notarisation requirements except the fact that they must be in written form.

A construction contract is deemed concluded once the offer of one party (the contractor) is accepted by the other party (the investor). Also, a construction contract must contain essential elements enabling the execution of the works (prices/terms).

1.3 In your jurisdiction please identify whether there is a concept of what is known as a "letter of intent", in which an employer can give either a legally binding or non-legally binding indication of willingness either to enter into a contract later or to commit itself to meet certain costs to be incurred by the contractor whether or not a full contract is ever concluded.

Serbian laws are not familiar with the concept of a letter of intent, or a letter of acceptance, as known under the FIDIC Conditions of Contract.

However, in Serbian and regional construction practice a letter of intent is used as a (most often inappropriate) legal ground for the execution of works while the main agreement is being negotiated and implemented.

Under applicable Serbian laws, issuing an application for a letter of intent may be interpreted as an agreement (i.e. acceptance of the party's offer constitutes an agreement).

Often the main ambiguity arising from a letter of acceptance is its legal aim, i.e. whether:

(a) the letter of acceptance serves as an investor's acceptance of the offer provided by the contractor, where the investor will separately, upon such letter of acceptance being executed, negotiate and enter into an agreement on the execution of the works (in other words, the letter would allow negotiations on the agreement, based on the offer by the contractor);

(b) the tender documentation (accompanying the letter of acceptance) already contains a form of the agreement (which would presumably be the FIDIC Green Book), thus, by executing the letter of acceptance, the agreement on the execution of the works would be "deemed executed" as well; or

(c) the agreement on the execution of the works would be executed independently from, but simultaneously with, the letter of acceptance, so all such documents will form an agreement (this option is similar to point (b) above).

In light of the above, it is advisable to prescribe the manner and timeline in which the letter of intent (agreement) will be replaced with the main agreement. Also, the main agreement should contain details on the works executed up to that moment (on the basis of the letter of acceptance (agreement))/remaining scope, and the price paid for such works.

One alternative is a preliminary agreement on the execution of the main agreement (containing the obligations of the parties to enter into the main agreement within a certain period of time).

1.4 Are there any statutory or standard types of insurance which it would be commonplace or compulsory to have in place when carrying out construction work? For example, is there employer's liability insurance for contractors in respect of death and personal injury, or is there a requirement for the contractor to have contractors all risk insurance?

Most commonly, works are insured under CAR (Contractors All Risk Insurance); design liability is insured under professional liability insurance.

Death and personal injury insurance is regulated by the Serbian Law on Health and Safety at Work. An employer is liable for employees' injuries at work, occupational diseases and work-related diseases, so should have insurance. The financial means for insurance shall be borne by the employer, and shall be determined subject to the level of risk from injury, professional disease or work-related disease with regard to the workplace and working environment.

1.5 Are there any statutory requirements in relation to construction contracts in terms of: (a) general requirements; (b) labour (i.e. the legal status of those working on site as employees or as self-employed sub-contractors); (c) tax (payment of income tax of employees); or (d) health and safety?

Serbian laws, in principle, do not prescribe specific constraints regarding the construction of buildings, beside statutory requirements for obtaining relevant permits and licences for the execution of construction works. However, besides general legal requirements, projects of specific state interest and/or importance, such as, for example, energy projects, may be subject to specific (additional) legal requirements.

In light of the above, for the purposes of the execution of the works, two types of permits/licences will be necessary: (i) permits that relate to the works directly, i.e. permits required for the execution of construction works under applicable laws; and (ii) licences that relate to the contractor itself, i.e. licences required for a foreign entity in the capacity of contractor to execute construction works.

Firstly, pursuant to the PCA, construction works cannot commence before a construction permit for the works has been obtained. Following completion of the works, the employer must obtain an occupancy permit, which is issued for a facility or part of a facility whose construction phases have been determined in the construction permit.

Beside the above mentioned, some additional legal requirements relating to the works/labour force must be met as well during the entire project implementation (e.g. work permits for foreign workers, occupational health and safety permits, etc.). Namely, construction workers in Serbia are mainly engaged on the basis of (i) definite or indefinite employment agreements, or (ii) service agreements entered into for the purpose of provision of specific material or intellectual works only. Although the term is the main element that differentiates definite and indefinite employment agreements, generally the same rights, obligations and liabilities are guaranteed under both types of agreement. Even the termination conditions that apply to both types of agreements are generally the same (the only difference being that definite time agreements may not be terminated on the grounds of redundancy).

1.6 Is the employer legally permitted to retain part of the purchase price for the works as a retention to be released either in whole or in part when: (a) the works are substantially complete; and/or (b) any agreed defects liability is complete?

Yes. Most commonly, retention is partially released once construction works are taken over by the investor (one half) and upon expiration of the defect liability period.

1.7 Is it permissible/common for there to be performance bonds (provided by banks and others) to guarantee performance, and/or company guarantees provided to guarantee the performance of subsidiary companies? Are there any restrictions on the nature of such bonds and guarantees?

Frequently the performance of works, as well as the liability for removal of defects during the defect liability period, is secured by guarantees/bonds issued by the bank as unconditional, payable at first demand and irrevocable.

In certain cases parties provide a corporate guarantee instead of a performance bond, however, given that enforceability of such securities when compared to bonds is less efficient, issuance thereof is not common.

1.8 Is it possible and/or usual for contractors to have retention of title rights in relation to goods and supplies used in the works? Is it permissible for contractors to claim that until they have been paid they retain title and the right to remove goods and materials supplied from the site?

Right of retention is prescribed under the Serbian Contracts and Torts Act, which allows a creditor to establish the right to retain [*retencija*] the goods of a debtor if they are in the possession of the debtor.

However, given the nature of the works, this right cannot be qualified as a statutory lien over the works.

2 Supervising Construction Contracts

2.1 Is it common for construction contracts to be suspended on behalf of the employer by a third party? Does any such third party (e.g. an engineer or architect) have a duty to act impartially between contractor and employer? Is that duty absolute or is it only one which exists in certain situations? If so, please identify when the architect/engineer must act impartially.

Construction contracts may be suspended on behalf of the employer/investor and the third party (i.e. statutory supervision or the engineer/architect).

In accordance with the PCA, during the execution of works, the investor must ensure statutory supervision of the works. Statutory

supervision covers the obligation to review technical documentation, to control and assess the compliance of the works with the technical documentation, to review regulations, standards and quality, and to take appropriate measures with respect to the contractor. Accordingly statutory supervision may also mean undertaking measures of suspension.

However, most commonly the right of suspension is retained under the authority of the employer.

2.2 Are employers entitled to provide in the contract that they will pay the contractor when they, the employer, have themselves been paid; i.e. can the employer include in the contract what is known as a "pay when paid" clause?

Yes, these types of back-to-back clauses, as well as back-to-back agreements, are allowed and not uncommon in practice in Serbia.

Under Serbian law there is no concrete/mandatory rule or regulation under which the court would request the employer to pay the contractor amounts due regardless of the "if and when" clause.

Namely, if carefully drafted (clearly indicating both "if and when paid" aspects), the validity and enforceability of said clause could be claimed under one of the main principles prescribed by the Serbian Contracts and Torts Act; specifically the "autonomy of the parties' will", with respect to contractual relations. This would apply especially in the case where parties were free to negotiate the contract. Conversely, non-negotiable agreements (called "*ugovori po pristupu*") are interpreted in favour of the person adhering to such an agreement. It is predominately known here as "*in dubio contra stipulatorem*".

However, when a party to a bilateral agreement fails to fulfil its obligations, the other party may, unless provided otherwise, request fulfilment of these obligations, and is entitled to compensation of damages in any event.

In addition to the above and the general principles of the Obligations Act (e.g. the good faith argument), a contractor could claim payments on account of works that were duly executed and taken over by the contractor on the basis of the claim for unjustified enrichment. Pursuant to the Obligations Act, after a part of a person's property is transferred in any way to another, and such transfer has no legal ground, the person acquiring the property in such a way is bound to restitute it, and where impossible, to compensate the value of the benefits gained.

Legal doctrine has also confirmed that a contractor is entitled to recompense where work is carried out at the request (express or implied) of the principal and, for any reason, there is no right to payment under the contract. The contractor would receive the benefit of such work, and it would be unjust if the employer were to retain the benefit without paying the contractor for the work. The same approach has been admitted in certain cases in which it was held by the court/tribunal that unjustified enrichment may be available to the contractor in the case no remedy is available under the contract.

2.3 Are the parties permitted to agree in advance a fixed sum (known as liquidated damages) which will be paid by the contractor to the employer in the event of particular breaches, e.g. liquidated damages for late completion? If such arrangements are permitted, are there any restrictions on what can be agreed? E.g. does the sum to be paid have to be a genuine pre-estimate of loss, or can the contractor be bound to pay a sum which is wholly unrelated to the amount of financial loss suffered?

Yes. Under Serbian law, "liquidated damages" are known as contractual penalties for delay and may be agreed as a penalty for late completion for the total works and/or milestones in execution of the works. Also, parties commonly stipulate a cap/maximum amount of contractual penalties for delay payable by the contractor to the employer.

The Serbian Contracts and Torts Act, however, prescribes certain limitation concerning caps/limitations on liability of contractual penalties/damages.

Initially, the agreement stipulating the maximum amount of compensation shall be valid, provided that the agreed amount is not in blatant disproportion to the damage and unless otherwise provided by law for the case at hand.

Also, in the case the damage suffered by the creditor is more extensive than the amount of agreed contractual penalty, the creditor is entitled to request the difference up to the total amount of damages. This standpoint was confirmed by the High Commercial Court of the Republic of Serbia in its decision Pž. 3970/08, dated 11 November 2008.

However, the parties are not entitled to exclude or limit in advance liability in the case of fraud, deliberate default or reckless misconduct by the defaulting party. Moreover, the competent court, at the request of an interested party, may annul a contractual provision even for simple negligence if such limitation of liability is a result of a dominant position of the debtor or, otherwise, of unequal mutual positions of the contracting parties.

A contractual cap on liability is also valid unless the set amount is in obvious disproportion to the damages sustained. Also, where a maximum amount of damages has been agreed, the creditor shall be entitled to seek full compensation should the inability to fulfil an obligation be caused by the debtor's wilful misconduct or gross negligence.

In addition to the foregoing specific rules, limitation of liability clauses, as well as any other contractual provisions, could be challenged based on certain general principles set forth in the Serbian Contract and Tort Act (e.g. principle of fairness, equal considerations, etc.).

3 Common Issues on Construction Contracts

3.1 Is the employer entitled to vary the works to be done under the contract? Is there any limit on that right?

The employer is entitled to vary the works to be done by the contractor in quantity and/or quality and/or type. The applicable laws do not prescribe a limit on variation procedures, however in the case such a variation would have an impact on the time for completion and/or price of the works, such change should be approved by the contractor.

In practice, most often in Serbia variations are ordered by the employer as instructions without proper elaboration of the impact on price and time for the execution of the works.

3.2 Can work be omitted from the contract? If it is omitted, can the employer do it himself or get a third party to do it?

The works can be omitted from the contract by the employer or the third party administrating the contract (e.g. the engineer). The manner and conditions for omission are determined on a contractual basis and most often done in the form of variations.

In addition, the omission can done in the form of an annex to the contract (requiring signature of both parties) or partial termination.

3.3 Are there terms which will/can be implied into a construction contract?

Construction contracts must contain key/essential elements (among other definitions of the works, prices and terms) to be deemed applicable. All other terms must be agreed on contractual basis or prescribed under mandatory provisions of Serbian law, being the law of the country where the works are executed.

3.4 If the contractor is delayed by two events, one the fault of the contractor and one the fault or risk of his employer, is the contractor entitled to: (a) an extension of time; or (b) the costs occasioned by that concurrent delay?

Serbian laws and regulations do not prescribe a mechanism for calculating penalties in the case of concurrent delays.

In practice, however, the contractor is commonly granted with an extension of time and/or the costs occasioned by the concurrent delay in the case the delay of the employer was such to directly cause the delay of the contractor. In other words, in cases when the contactor, due to acts and/or omissions of the employer, was directly prevented to timely execute works.

3.5 If the contractor has allowed in his programme a period of time (known as the float) to allow for his own delays but the employer uses up that period by, for example, a variation, is the contractor subsequently entitled to an extension of time if he is then delayed after this float is used up?

The concept of variations during the float is not established in regional construction practice, thus must be observed on case-by-case basis, taking into consideration specific circumstances.

3.6 Is there a limit in time beyond which the parties to a construction contract may no longer bring claims against each other? How long is that period and from what date does time start to run?

Such limits arise out of the Serbian Contracts and Torts Act and are applied to construction contracts.

Claims shall become unenforceable after a 10-year period (the general limitation period is one in which all the rights expire and that applies, unless a right is not anticipated in another period of limitation) and a three-year period (special limitation periods are set for individual subjective rights which are shorter than the general limitation period) for mutual contractual claims in the sphere of the sale of goods and services, known as commercial contracts. Unenforceability due to the statute of limitations shall begin to run on the first day following the day the creditor was entitled to request fulfilment of the obligation. A debtor shall not renounce unenforceability prior to the expiration of time set forth for such unenforceability.

3.7 Who normally bears the risk of unforeseen ground conditions?

The risk of unforeseen ground conditions is most commonly regulated contractually.

In a standard construction contract and design and build contracts, the risk of unforeseen ground conditions is borne by the employer. On the other hand, in turnkey projects such risk is shifted to the contractor.

However, based on applicable laws the unforeseen ground conditions may also qualify as changed circumstances under Serbian law, which would allow termination of the contract.

3.8 Who usually bears the risk of a change in law affecting the completion of the works?

Usually each party bears the risk of a change in law affecting their scope of obligations under the contract.

However, in case a change in the law affects the permissibility of execution of the works, such risk would most likely lie with the employer.

It is also worth mentioning that changes in the law may also be qualified.

3.9 Who usually owns the intellectual property in relation to the design and operation of the property?

Pursuant to the Law on Intellectual Property, the intellectual property (IP) rights are defined as both material and moral rights (personal rights of the author).

The moral segment of intellectual property rights is not transferable and thus is retained by the author. Therefore, it may be deemed that IP rights over the design and the works pertain to the architect. Consequently, pursuant to the law, such fact triggers the obligation of the employer to, in the case it wishes to change the main design/construction, address the same architect to undertake respective changes.

However, the material segment of intellectual property rights is transferable, and conditions of such a transfer/assignment should be addressed in the contract with the employer.

3.10 Is the contractor ever entitled to suspend works?

The general right of the contractor to suspend works is not regulated under Serbian law, however it may be subsumed under one of the basic principles of the Serbian Contracts and Torts Act.

Namely, pursuant to said law, in bilateral agreements neither party is obliged to fulfil its obligation if the other party fails to fulfil or is not ready to simultaneously fulfil its obligation, unless otherwise agreed or legally defined.

In light of the applicable law, it may be argued that the contractor is entitled to suspend works due to non-payment by the employer.

3.11 On what grounds can a contract be terminated? Are there any grounds which automatically/or usually entitle the innocent party to terminate the contract? Do those termination rights need to be set out expressly?

The grounds and procedure for termination are most commonly agreed between the respective particles and regulated under the construction contract.

Based on Serbian law, a contract (including a construction contract) may be terminated due to non-fulfilment of the parties' obligations. Depending on whether the term for fulfilment of the parties' obligations is an essential element of the contract or not, the party terminating the contract may be required to leave an additional term for fulfilment of obligation of the breaching party.

3.12 Is the concept of *force majeure* or frustration known in your jurisdiction? What remedy does this give the injured party? Is it usual/possible to argue successfully that a contract which has become uneconomic is grounds for a claim for *force majeure*?

Serbian law does not know the concept of *force majeure* as such, but instead applies it through specific legal concepts such as "inability to perform" or "change in circumstances", which are regulated by the Serbian Contracts and Torts Act and mainly constitute grounds for termination of, or amendments to, an agreement.

Specifically, as a general rule, where the fulfilment of obligations by one of the parties to a bilateral agreement has become impossible due to events not attributable to either of the parties, the counterparty's obligations are then also cancelled out; if such a counterparty has fulfilled a part of its obligations until that time, it may claim reimbursement according to the rules governing the reimbursement of benefits acquired groundlessly. Accordingly, in the case of partial inability to perform due to events not attributable to either of the parties, the counterparty may terminate the agreement if the partial performance does not correspond to its needs; otherwise the agreement remains in force and the counterparty may request a *pro rata* reduction of its obligations.

As a rule, in the case referred to above, the agreement is terminated out of court.

Force majeure itself is in theory usually defined as an outside interference whose effect could not have been foreseen, avoided or eliminated.

3.13 Are parties which are not parties to the contract entitled to claim the benefit of any contract right which is made for their benefit? E.g. is the second or subsequent owner of a building able to claim against the original contracts in relation to defects in the building?

According to case law, the contractor and the employer are deemed jointly and severally liable towards the buyer for damage caused in relation to the construction. In accordance with the PCA, the employer, the contractor and the designer are all liable towards the buyer.

Furthermore, pursuant to the Serbian Contracts and Torts Act, the seller (the employer) is liable for the following material defects of a building at the moment risk passes to the buyer: (i) absence of characteristics required for its normal use; (ii) absence of characteristics required for its particular uses; (iii) absence of characteristics that were agreed upon; and (iv) non-conformity with the model or sample. However, this liability can be excluded or limited in the contract.

3.14 Can one party (P1) to a construction contract which owes money to the other (P2) set off against the sums due to P2 the sums P2 owes to P1? Are there any limits on the rights of set-off?

Set-off of claims is generally permissible under Serbian law.

According to the Serbian Contracts and Torts Act, a debtor may set-off the claim by a creditor against him with his claim against the creditor. In order to do so, the Obligations Act provides conditions that need to be fulfilled:

(i) both claims have to be of a monetary nature, or other replaceable goods of the same nature and kind;

(ii) both claims have to be due; and

(iii) one party must declare to the other its intention for set-off (i.e. to send a written notice on set-off).

Upon the notice set-off being dispatched, the settlement will be considered effectuated upon fulfilment of the conditions set forth under points (i) and (ii) above.

Upon the set-off, the contractor/employer may initiate the proceedings against the party that preformed set-off, claiming that the claim and/or value thereof was unjustified.

In order to support its claims, the claimant shall have the burden of proving the facts relied on, i.e. the insubstantiality of the set-off of claims with regard to the contract. On the other hand, the compensatory objection stands for the respondent in the proceedings.

3.15 Do parties to construction contracts owe a duty of care to each other either in contract or under any other legal doctrine?

Duty of care may be subsumed under the basic principle of the Serbian Contracts and Torts Act, and thus applied. However, the extent of this principle differs from its common law concept.

3.16 Where the terms of a construction contract are ambiguous are there rules which will settle how that ambiguity is interpreted?

The basic principle of interpretation that shall be applied in accordance with Serbian law is the original intent of both parties.

However, in the region it is mainly recognised for types of non-negotiable agreements (called "*ugovori po pristupu*") – that are interpreted in favour of the person accessing to such agreement; in principle, known as "*in dubio contra stipulatorem*".

3.17 Are there any terms in a construction contract which are unenforceable?

The FIDIC Conditions of Contract contain certain provisions that may be challenged from the aspect of local law in the proceeding (e.g. limitation of liability), however risk is low.

3.18 Where the construction contract involves an element of design and/or the contract is one for design only, are the designer's obligations absolute or are there limits on the extent of his liability? In particular, does the designer have to give an absolute guarantee in respect of his work?

If not agreed otherwise, it is an employer's obligation to provide construction plans/designs and a contractor's obligation to carry out works according to the plans/designs. Therefore, an error in the design is an employer's liability. If the employer trusted the preparation of designs to a third person (a designer/architect), then the designer/architect shall be individually and fully liable towards the employer for damage that occurred due to errors in the design (the error of the design has to be notified to the employer). If the error in design results in a defect of the building that affects its solidity, the designer shall be liable for any defect that shows within ten (10) years.

In the case both the contractor and the designer are liable, their liability will be measured proportionally to their respective faults.

The parties to a contract cannot exclude or limit decennial liability.

In light of the above, the decennial liability shall be applied to the architect and/or engineering consultant in respect of its design (design

error), notwithstanding that the works are executed by a different person, and not on a design and built basis. Also, and on the same principles, the contractor is held liable for the structural defects of construction works, even if such defects were a result of a design error.

However, contractually, on a case-by-case basis, mutual liabilities and indemnifications in relations between contractors/employers/designers may be tailor-made and adjusted to specific circumstances of the case, especially in view of the person liable to cover the correction of design errors and/or the rectification of defects in works that resulted due to such errors.

The contractor can, however, be liable for design errors if he noticed an error in design and failed to notify the employer (omission of notification duty). A contractor is obliged to review the design with due diligence.

4 Dispute Resolution

4.1 How are disputes generally resolved?

In Serbia, disputes are generally resolved by the courts. In recent years, however, other dispute resolution mechanisms have become increasingly popular. One such method, arbitration, finds general applicability in commercial disputes. On the other hand, there is also an intention to resolve disputes through the involvement of a third neutral person acting as a mediator.

4.2 Do you have adjudication processes in your jurisdiction? If so, please describe the general procedures.

Litigation still has primacy when considering all the types of disputes. Litigation is governed by the Serbian Litigation Act and can be led by a single judge or a chamber (depending on the type of dispute and its value).

As one of the most common adjudication processes, arbitration is the most important alternative to litigation as a state adjudication. The dispute is resolved in Serbia by a sole arbitrator or by an arbitration tribunal. The decisions rendered in the arbitration are binding.

Arbitration can be conducted as *ad hoc* or institutional. The Foreign Trade Court of Arbitration is located in Belgrade and has administrated thousands of cases so far.

Beside those, in Serbia mediation is another alternative dispute mechanisms. A mediator is a neutral person who helps the parties to come to an agreement in relation to the dispute at hand. A mediator's position can be formal or informal and he/she does not render a decision that is binding; rather he/she helps the parties to find the solution by themselves.

4.3 Do your construction contracts commonly have arbitration clauses? If so, please explain how arbitration works in your jurisdiction.

Yes, given that court practice in the area of construction law is not developed in Serbia, most construction contracts contain an arbitration clause and thus disputes are referred to arbitration.

As stated above, arbitration is conducted as *ad hoc* or institutional, depending on the dispute's value and parties' agreement. Commercial entities in Serbia will likely agree on some of the very common arbitration rules, such as UNCITRAL, ICC and LCIA.

4.4 Where the contract provides for international arbitration do your jurisdiction's courts recognise and enforce international arbitration awards? Please advise of any obstacles to enforcement.

Serbia signed the New York Convention on the recognition and enforcement of foreign arbitral awards and has accepted its principles and norms. That means that in Serbia all the foreign arbitral awards will have the same treatment, regardless of whether or not it comes from a state that is a New York Convention signatory.

The reasons for refusal of recognition and enforcement of the foreign arbitral award are listed in the Convention and are as follows:

- considered only at the request of the party against whom it is invoked:
  1. the arbitration tribunal did not have the jurisdiction;
  2. the right of defence was not respected;
  3. the arbitrators decided beyond their authorisation,
  4. the arbitral procedure was not in accordance with the parties' agreement; or
  5. the arbitration award is not final.
- considered *ex officio* by the competent court:
  1. the subject matter is not capable of being settled before the arbitration; or
  2. the decision is contrary to public policy.

4.5 Where the contract provides for court proceedings in a foreign country, will the judgment of that foreign court be upheld and enforced in your jurisdiction?

Serbian law dealing with the issue of the enforcement of foreign court awards prescribes several reasons for a refusal of their enforcement; among others, the lack of reciprocity.

4.6 Where a contract provides for court proceedings in your jurisdiction, please outline the process adopted, any rights of appeal and a general assessment of how long proceedings are likely to take to reduce: (a) a decision by the court of first jurisdiction; and (b) a decision by the final court of appeal.

There is no common practice with respect to the duration of a judicial procedure. This depends on the complexity of the dispute at hand and other circumstances that can affect the dynamics of the procedure. However, it is our experience that less complicated disputes are likely to be resolved within one year by the first instance court. As regards the appeal procedure, it is normal for the court to render a decision within six months to one year.

In Serbia, the judge would normally schedule the preliminary hearing, in which all of the evidence that will be presented during the proceeding should be proposed. After all of the evidence is presented in the proceeding, the judge will conclude the main hearing and render a decision on the matter.

The losing party has the right to appeal a decision within 15 days as of the receipt of the decision (i.e. eight days in the case of a dispute with a minor value). In particular cases explicitly stipulated by the law, a party is entitled to submit an extraordinary legal remedy to the second instance decision.

Slaven Moravčević
Moravčević Vojnović i Partneri in cooperation with Schoenherr
Dobračina 15
SRB-11000 Belgrade
Serbia

Tel: +381 11 3202 600
Fax: +381 11 3202 610
Email: s.moravcevic@schoenherr.rs
URL: www.schoenherr.rs

Slaven Moravčević is a partner with Moravčević Vojnović i Partneri in cooperation with Schoenherr specialising in M&A, real estate, telecommunications and energy, and heading the firm's operations in Montenegro. In addition, Slaven is head of Schoenherr's Real Estate practice group. He is active across different sectors and regulated industries, including the energy, financial services, infrastructure, insurance, telecommunications, media and the pharmaceutical industries. Slaven also acts as general counsel to the Government of Montenegro.

Ivana Panić
Moravčević Vojnović i Partneri in cooperation with Schoenherr
Dobračina 15
SRB-11000 Belgrade
Serbia

Tel: +381 11 3202 600
Fax: +381 11 3202 610
Email: i.panic@schoenherr.rs
URL: www.schoenherr.rs

Ivana Panić is a senior attorney at law with Moravčević Vojnović i Partneri in cooperation with Schoenherr. She specialises in construction law (with an emphasis on the FIDIC Conditions of Contract), along with real estate, arbitration and corporate. Given that FIDIC is her main area of expertise, Ivana has been engaged in all of the firm's FIDIC-related projects, advising both investors and contractors.

moravčević vojnović
and partners
in cooperation with schönherr

Moravčević Vojnović i Partneri in cooperation with Schoenherr has been active in the Serbian market since 2002. The firm's practice is client-orientated, with specialised practice groups that provide industry-focused services to meet the demands of a competitive, developing and rapidly changing marketplace. The firm's client list includes leading companies, financial institutions, organisations and governments. The Belgrade office, via its specialised country desks, acts as a hub for Bosnia-Herzegovina, Macedonia, and Montenegro.

Schoenherr is a leading full-service law firm in Central and Eastern Europe. About 300 professionals service national and international clients from our offices in Austria, Belgium/EU, and throughout the entire CEE region. As one of the first international law firms to move into CEE, we have grown to be one of the largest firms in the region.