GETTING THE DEAL THROUGH

Dispute Resolution

in 45 jurisdictions worldwide

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Litigation

1 Court system

What is the structure of the civil court system?

Serbia is a civil law country, and its entire court network includes 129 courts. Courts in Serbia are first divided by jurisdiction, and there are courts of general and special jurisdiction. Within this classification, jurisdiction is further determined by the type of dispute, parties, value of the dispute, penalty in criminal proceedings, etc.

Courts of general jurisdiction are:

- basic courts (34 courts) – court of first instance for criminal offences where the penalty is a fine and imprisonment of up to 10 years, civil law matters, labour disputes, enforcement and certain non-contentious proceedings, international legal assistance, etc;
- higher courts (26 courts) – act both as appellate courts for decisions of basic courts in certain matters, and as a first-instance courts for criminal offences where the penalty is imprisonment of more than 10 years, proceedings against juveniles, copyright, labour disputes in respect of strikes, collective bargaining agreements, civil law matters if the value of the dispute allows for revision of the claim, which is at least €100,000, etc;
- appellate courts (four courts) – appellate court for decisions of basic courts (when jurisdiction of higher court is not established) and higher courts; and
- the Supreme Court of Cassation – has trial jurisdiction (deciding on extraordinary remedies, conflict of jurisdictions of lower courts, etc), and out-of-trial jurisdiction (issuing legal opinions to unify court practice, reviewing the implementation of laws and regulations and work of the courts, etc).

Courts of special jurisdiction are:

- commercial courts (16 courts) – first-instance courts in all matters in respect of business activities, including commercial, corporate matters, insolvency, enforcement, and also copyright, recognition and enforcement of foreign court and arbitral awards;
- Commercial Appellate Court (one court) – appellate court for commercial courts;
- magistrates courts (45 courts) – first-instance courts deciding on misdemeanours if an administrative body does not have jurisdiction, as well as deciding on appeals on decisions of administrative bodies in misdemeanour procedure;
- High Magistrates Court (one court) – appellate court for magistrates courts; and
- Administrative Court (one court) – deciding on administrative disputes.

2 Judges and juries

What is the role of the judge and the jury in civil proceedings?

In Serbia, judges and lay judges participate in civil proceedings, and there is no jury. First-instance civil proceedings are conducted by a sole judge, unless the law specifically requires that the court sits in panel. In that case, the panel will consist of one judge and two lay-judges. In second-instance proceedings the court always sits in panel.

A judge's position is permanent, except for persons appointed to the position for the first time. In that case, the judge is appointed for a period of three years by the national assembly at the proposal of the High Judicial Council. Appointments of judges on a permanent basis and appointments of lay judges are made by the High Judicial Council.

On the one hand, the role of the judge in a civil proceeding can be regarded as passive, since the court can decide only within the limits of claims filed by the parties. A judge can only review evidence and determine those facts and circumstances presented by the parties. On the other hand, a judge is the one in charge of the process and in this respect has an inquisitorial role. A judge sets the timetable, and can subpoena witnesses to appear in court or order the parties to furnish certain documents. A judge can also sometimes appoint an expert even in the absence of a proposal from the parties. A judge is entitled to determine if parties are filing claims which they are not entitled to, if this transpires from the outcome of discussions and evidentiary proceedings. Parties may not file claims that are contrary to mandatory rules, public policy, morality and good custom. A judge is also required to inform the parties about the possibility of judicial settlement.

3 Limitation issues

What are the time limits for bringing civil claims?

The time limits for bringing civil claims will depend on the nature of a dispute, and these are statutory limits which generally cannot be altered by agreement. Filing of the claim or acknowledgment of debt interrupts the statute of limitation. As a general rule claims become time-barred after a period of 10 years. However, for example, claims for damages become time-barred after a period of three years from the time a party learned of the damage and the person who caused it, and in any event after a period of five years from the time the damage was caused. Mutual contractual claims of legal entities under sale of goods and supply of services contracts expire after three years. This period runs separately for each supply of goods or services provided. Claims from labour disputes become unenforceable after three years. Once a claim becomes time-barred it cannot be enforced before the courts. However, this is something the courts do not observe ex officio but only when an objection is raised by a party.

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

Serbia's legal system does not provide for discovery, and in that respect there are no obligatory steps before filing a claim. The

situation is somewhat different if one intends to file a claim against the Republic of Serbia. In that case, a party is obliged to contact the Public Attorney's Office with a proposal for amicable dispute resolution. The party can initiate proceedings, only if the public attorney rejects the proposal or fails to respond within 60 days.

Regarding pretrial considerations in general, a party will be required to present all arguments, facts and evidence at the preparatory hearing (or at the first main hearing, if a preparatory hearing is not held). The introduction of new evidence is allowed at a later stage only if the party can demonstrate the likelihood that it was not able to present such evidence through no fault of its own. Therefore, it is advisable to evaluate the facts of a case and available evidence and discuss it thoroughly with a lawyer prior to filing a claim.

5 Starting proceedings

How are civil proceedings commenced?

A civil proceeding is commenced by filing a claim. The claim must fulfil certain formal requirements: clear indication of the court, the parties and their addresses, the relief sought, the facts on which the claim is based and evidence for these facts, if necessary. A claim can be filed and other actions in the proceeding can be taken by a party in person or through its representative which must be an attorney. The only exception is that legal entities can also be represented by in-house counsel who must be employed in the legal entity and have passed the bar exam.

6 Timetable

What is the typical procedure and timetable for a civil claim?

The court first carries out a preliminary examination of the claim. This includes checking whether the claim fulfils all formal requirements, if it is complete and understandable, whether the court has jurisdiction, etc. If all requirements are met, and within 15 days of receipt of the claim, the court will serve the claim to the defendant together with a request to submit a statement of defence within 30 days. In urgent cases, or when it is necessary to decide on interim measures, the court may simultaneously serve the claim and schedule a hearing. The court must schedule and hold a preparatory hearing within 30 days of the day of delivery of statement of defence to the plaintiff.

In a preparatory hearing (or at the first main hearing, if a preparatory hearing is not held), the parties have to propose a procedural timeframe. Based on the parties' proposal and volume of evidence which needs to be presented, the judge adopts the timetable for that case. This decision should set number of hearings, dates (exact or approximate), procedural schedule, court deadlines and length of the entire procedure. If it is necessary to postpone hearings, the judge must issue a new timetable which cannot be longer than one-third of the initially determined timetable. Parties are required to file submissions no later than 15 days prior to the scheduled hearings. The judge rules immediately upon finalisation of the evidentiary process and conclusion of the main hearing, while in more complex cases a ruling can be rendered within eight days.

7 Case management

Can the parties control the procedure and the timetable?

The proceeding is controlled by the judge. Prior to adoption of the new Civil Procedure Act in February 2012, parties had a wide range of possibilities to engage in dilatory tactics and abuse the proceedings, such as postponing the hearings, filing lengthy submissions minutes before the hearing and avoidance of service. This is due to change under the new act. Now parties can influence the procedure by proposing the timetable, but it is the judge who finally decides and adopts it and who is obliged to ensure compliance with it (failure to comply is grounds for the initiation of disciplinary measures against the judge). The new law is still tested in practice.

8 Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

No. But, if there is a risk that certain evidence cannot be presented in future, or that the presentation of such will be significantly more difficult at a later stage, parties can motion the court asking for evidence to be presented even before a hearing has commenced.

If one party, in supporting its claim, refers to a document stating that the document is held by the other party, the court will call on that party to provide this document. A party cannot refuse to furnish the document if this is a document that the party itself invokes, or if it is a document which a party, ex lege, must provide or show, if a document which by its contents is of a mutual nature for the parties. For other documents that a party can refuse to provide, see question 9. The onus is on the court and it is at its discretion to evaluate the importance of the fact that a party refused to furnish a certain document.

9 Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

A party and witness can refuse to provide information it obtained in confidence:

- as a representative of a party;
- as a religious confession; and
- as a lawyer, doctor or other professional if there is a duty of keeping professional secrets.

A party may refuse to provide information if this would result in severe shame, significant monetary damage or criminal prosecution (of itself or certain circle of immediate relatives or spouse).

10 Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

No.

11 Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

The courts make decisions on the basis of oral, direct and public discussion. The court decides which evidence shall be presented in hearing. Parties will typically prove facts by submitting documents, calling witnesses and requesting expert opinions and investigations.

Witnesses must appear in person before the court and give testimony at the oral hearing. New law provides that the court can decide to accept affidavit evidence from a witness, or that a witness be examined by conference call or by audio-visual means. However, a judge can still at any time decide to subpoena the witness to confirm its statement in person. Expert witnesses prepare written opinions which are delivered to parties for comment, and if necessary they are later called to discuss their findings.

12 Interim remedies

What interim remedies are available?

Courts can order interim remedies before, during and after the court or administrative proceeding. There are two types of interim

remedies: preliminary injunctions for securing monetary claims and preliminary injunctions for securing non-monetary claims.

Preliminary injunctions for securing monetary claims can be ordered if a plaintiff made probable its claim and there is a danger the respondent could sell, conceal or otherwise dispose of its assets, thus making collection of the claim impossible or significantly hindering it. Such measures include freezing orders on bank accounts or prohibition of disposal of the defendant's assets, including real estate, etc.

Preliminary injunctions for securing non-monetary claims can be ordered if a plaintiff demonstrated the likelihood of its claim and the danger that fulfilment of the claim will be impossible or significantly hindered. A preliminary injunction may also be ordered if a plaintiff demonstrates the likelihood that such measure could prevent significant damage or the use of force. Such measures include prohibition of disposal or encumbrance of the defendant's assets, including real estate, an order to the defendant to desist from actions that could cause damage to the plaintiff, etc.

13 Remedies

What substantive remedies are available?

A party can request performance (such as delivery of goods or payment of damages), or declaratory judgment which determines the existence or non-existence of certain right, legal relationship, violation of personal rights, or truthfulness of a certain document or constitutive judgment which creates, amends or terminates a legal relationship. A debtor that is late in performing a monetary obligation owes statutory interest in addition to the principal amount. Punitive damages are not available.

14 Enforcement

What means of enforcement are available?

A party can seek compulsory enforcement in court on the basis of enforceable or authentic documents. Enforcement of monetary claims may include the sale of moveable and immoveable property, freezing of the defendant's bank accounts, sale of shares in legal entities and assignment of monetary claims. Enforcement of non-monetary claims may include the handing over of moveables and immoveable property, specific performance, enforcing decisions from family relationships, returning an employee to work, registering creditors' rights in public registers, etc.

In addition to judicial enforcement, the new Enforcement and Security Act of 2011 provides for enforcing claims through licensed private enforcers. This new system is still being tested in practice.

15 Public access

Are court hearings held in public? Are court documents available to the public?

Court hearings are public. A court can exclude the public for the entire or part of a court hearing on national security grounds, public order and morality, in order to protect the interests of juveniles or privacy of participants in the procedure. The court can also exclude the public if it is not possible to ensure order or avoid disturbances. A review of case files (including submissions, witness statements, orders, etc) will be allowed by the judge only to a party who submits a written request and who has justified legal interest in the proceeding.

16 Costs

Does the court have power to order costs?

Court judgments regularly include decisions on litigation costs. Litigation costs include court fees (which are determined by court tariffs), legal fees (courts recognise only legal fees as determined in attorneys' tariffs, though these costs would in practice often be higher), witness travel costs and salary lost by witnesses and experts, and costs for expert opinions, and other expenses incurred during or in relation to the proceedings. However, the court will take into consideration only costs that were necessary for conducting the process.

Each party temporarily bears its own costs and costs caused by its action. The losing party must reimburse the other party for its costs. If a party partially succeeds in the process, the court can order that each party bear its own costs or that costs be divided on a pro rata basis.

17 Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Generally, any sale of a disputed right is allowed. However, any agreement pursuant to which a lawyer would buy a disputed right the realisation of which he or she was entrusted with, or arranged for himself or herself to participate in the division of the amount awarded to the client within the proceeding, is null and void.

Under the applicable tariffs, lawyers can agree on a success fee (as a fixed amount or percentage; in any event not to exceed 30 per cent of the value), if that is not contrary to the rule in the previous paragraph regarding the sale of disputed rights, does not affect his or her independence and is appropriate based on the nature of the dispute. Generally, pure contingency and conditional fees are considered incompatible with the applicable tariff.

18 Insurance

Is insurance available to cover all or part of a party's legal costs?

Pursuant to the Insurance Act, parties can insure the cost of legal expenses, including court fees, legal fees and other litigation costs. However, this type of insurance is not commonly used in Serbia.

19 Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Class actions in the common law sense are not allowed. A kind of remotely similar concept is provided in the Civil Procedure Act, a procedure for protection of collective rights and interests of citizens. Associations, unions and other organisations may institute proceedings for protection of collective rights and interests of citizens if such protection is foreseen by their registered activity. It can be expected that consumer protection associations will utilise this possibility the most, since it is particularly provided that this procedure is applicable for disputes initiated by consumers owing to unfair contractual terms and business practices.

20 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

A first-instance court decision can be appealed within 15 days from the day of receipt of the decision on the following grounds:

- severe violation of rules of civil procedure (eg, a party was not given an opportunity to present its case before the court, the court did not have jurisdiction, the party was denied the right to use its own language, etc);
- erroneous or incomplete determination of facts of the case; and
- erroneous application of law (the court failed to the apply necessary legal provisions or it applied the wrong provisions).

Extraordinary legal remedies that can be filed against final and binding court decisions are:

- revision (within 30 days of receipt of the judgment if value of the dispute exceeds €100,000, in commercial matters €300,000),
- request for review of final judgment (available only to Republic Public Prosecutor); and
- request for retrial (eg, a party was not given an opportunity to present its case before the court, the decision is based on the false testimony of a witness or expert or counterfeit document, a party learned of new facts or was able to use evidence that was not available earlier, etc).

21 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

A foreign judgment must be recognised by Serbian courts before it can be enforced. A foreign judgment must be final and binding and enforceable pursuant to the laws of the country of origin. Reciprocity is a requirement for recognition and the presumption is that reciprocity exists.

In the recognition procedure a court will not re-examine the merits of the case. Courts will refuse to recognise a foreign court judgment:

- if it is contrary to the public order of Serbia;
- if there is exclusive jurisdiction of domestic courts;
- if the other party was not granted the right of defence (ie, the party proves that owing to procedural irregularities it was not able to defend itself or there was lack of proper service of process); and
- if there is already a final and binding decision in the same matter between the same parties (rendered by the domestic courts or another foreign court).

The court will stay the recognition procedure if there is a procedure pending regarding the same legal matter before domestic courts.

22 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Courts are obliged to provide each other legal assistance in litigation proceedings. Domestic courts will provide international legal assistance where provided by law, international agreements, generally accepted rules of international law and if there is reciprocity in provision of legal assistance. If there is a doubt regarding reciprocity, the court will seek an opinion from the Ministry of Justice. A request for legal assistance must be sent through diplomatic channels in Serbian or accompanied by a certified translation. Domestic courts provide legal assistance in accordance with the rules of Serbian civil procedure. At the request of a foreign court, a Serbian court can collect evidence under rules of a different procedure, if such procedure is not contrary to public policy.

Arbitration

23 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Yes. Arbitration in Serbia was for the first time regulated in a single law in 2006 by the Arbitration Act. This act is based on the UNCITRAL Model Law, but differs from it in that the Arbitration Act clarifies that the number of arbitrators must be odd, specifies the deadline for parties to appoint arbitrators and gives parties the option of using the language of the main agreement, language of arbitration agreement or language of the seat of arbitration, until the moment the arbitral tribunal chooses the language. The Arbitration Act also provides an additional reason for setting aside an arbitral award, namely, if at a later stage it is determined that the decision was based on a criminal offence – false testimony of a witness or expert, counterfeit document or criminal act by arbitrators or parties to the arbitration. The criminal act must be proven by a final and binding court decision.

24 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be in writing. This requirement shall be deemed fulfilled if:

- it is contained in a document signed by the parties;
- parties exchanged messages through a means of communication which provides written proof of the agreement, regardless of whether the messages are signed or not;
- the parties to a written agreement made reference to another document that contains an arbitration agreement (such as the general terms and conditions or another agreement) if the purpose of this reference was to make the arbitration agreement an integral part of the contract; and
- one party initiates arbitration in writing and the other side expressly accepts arbitration, in writing or on record from the hearing, as well as if the party participates in the arbitration proceeding and does not object to the existence of the arbitration agreement or the competence of the tribunal.

Parties can agree to defer to arbitration all future disputes or disputes from a particular legal transaction. Furthermore, parties can agree to resort to arbitration even after the dispute has arisen. In addition, the agreement must refer to disputes that are 'arbitrable' and must be concluded between parties that have all necessary capacity and qualification for its conclusion. Furthermore, the agreement must not be concluded under the influence of coercion, threat or fraud.

25 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Parties are free to choose the number of arbitrators. If they fail to do so, the number of arbitrators shall be determined by the person or institution agreed to by the parties – the 'appointing authority'. If a permanent arbitral institution administers the proceedings, the appointment of arbitrators shall be made pursuant to its rules. If there is no appointing authority, or if it fails to make the appointment, the number of arbitrators shall be determined by the competent court. In any event the number of arbitrators must be odd.

Parties can challenge the appointment of an arbitrator solely if there are circumstances which reasonably raise doubts as to their independence or impartiality, or if he or she does not fulfil the requirements agreed to by the parties, if any. Parties can also agree on the procedure for challenging the appointment of arbitrators. Parties can challenge the appointment only for reasons that arose or of which the party learned after the arbitrator has already been appointed. If the parties have not agreed otherwise or if they have not chosen a permanent arbitral institution, the challenge can be made within 15 days of the day when the party learned of the appointment or of the reasons for the challenge and it will be decided by the competent court. Even though the procedure for challenging the arbitrator is in progress the arbitral tribunal can continue the arbitral proceedings and render its decision.

26 Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The Arbitration Act applies only to arbitral proceedings with their seat in Serbia. Parties must agree on the procedure; if they fail to do so, the arbitral tribunal can conduct the procedure in the manner it deems expedient. However, mandatory provisions cannot be excluded. This includes a main principle that parties to the arbitration are equal. The arbitral tribunal is obliged to allow a party to present its arguments and evidence as well as to comment on the actions of the other side. Furthermore, parties must receive timely notice of every oral hearing and every meeting of the arbitral tribunal that is held in order to review goods or documents. Each party must receive each and every submission of the other side, and expert options or other documents which represent evidence. Witnesses are not required to take an oath and the tribunal is not allowed to impose procedural measures or fines. However, this should not represent an obstacle to the arbitral tribunal in conducting the procedure since it is entitled to request the court's assistance when presenting evidence.

27 Court intervention

On what grounds can the court intervene during an arbitration?

The court can intervene in an arbitral proceeding only in situations provided for in the Arbitration Act:

- to issue interim measures – both in domestic and international arbitrations;
- to appoint arbitrators, if the parties or appointment authority have not done so;
- to rule on the challenge of the arbitrators, if the parties have not chosen a different procedure or if they have not chosen permanent arbitral institution, typically in ad hoc arbitrations;
- to issue a final judgment on an interlocutory question at the request of one of the parties, if the arbitral tribunal is deciding on its jurisdiction as an interlocutory question
- to assist with collecting evidence, at the request of the arbitral tribunal;
- to deposit the decision of the arbitral tribunal, at the request of a party;
- to decide on the request for annulment of a domestic arbitral award; and
- to recognise and enforce a foreign award.

28 Interim relief

Do arbitrators have powers to grant interim relief?

Yes, if the parties have not agreed otherwise. At the request of a party, an arbitral tribunal can grant any interim relief that it deems necessary based on the subject matter of the dispute. At the same time it can order the other party to provide appropriate security.

29 Award

When and in what form must the award be delivered?

The Arbitration Act does not specify the time period in which the arbitration award should be delivered. The award must be in writing and signed by the arbitrators. Unless the parties agreed otherwise, the award should be adopted by majority of votes, following deliberation by all the arbitrators. A decision will be valid even if it is signed by the majority of arbitrators, but it should have a note that the rest of the arbitrators refused to sign. A dissenting opinion by an arbitrator, if any, shall be delivered together with the award, if so requested by the dissenting arbitrator.

Necessary elements of an award are: introduction, disposition, decision on costs, reasoning, place and date of the award. Parties can agree to exclude the reasoning part of an award. This part is not mandatory in an award on settlement reached in the proceeding.

The tribunal can issue interim and partial awards. The award can be delivered ex aequo et bono only if expressly agreed to by the parties.

30 Appeal

On what grounds can an award be appealed to the court?

Arbitral awards are final and binding, and are non-appealable. However, parties are entitled to file a claim for setting aside domestic arbitral awards (an award rendered in arbitration which is seated in Serbia). A foreign arbitral award cannot be set aside by the courts in Serbia, but it goes through the process of recognition and enforcement.

Grounds for setting aside a domestic award are:

- the arbitration agreement is not valid under the law which the parties have chosen or under the laws of Serbia, if the parties have not chosen the law;
- the party against whom the award was rendered was not properly notified of the appointment of an arbitrator or of the arbitration proceeding or was in any other way deprived of the possibility to make statements before the tribunal;
- the award resolved a dispute that was not covered by the arbitration agreement, or the award exceeds the limits determined in the arbitration agreement. If the part that exceeds the agreement can be separated from the rest of the award then only that part of the decision can be annulled;
- the composition of the arbitral tribunal or the arbitral procedure were not in accordance with the arbitration agreement or the rules of a permanent arbitral institution that was entrusted with the organisation of the arbitration, unless such agreement is contrary to the statutory provisions of the Arbitration Act; or if the parties have not reached agreement on the composition of the arbitral tribunal and arbitral procedure and such composition or procedure were not in accordance with the provisions of the Arbitration Act;
- the award is based on the false testimony of a witness or expert or based on counterfeit document or criminal act of an arbitrator or a party, if these circumstances were proven by a final and binding court judgment;
- the dispute is not 'arbitrable'; or
- the effects of the awards are contrary to Serbian public policy.

31 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

A domestic award has the same legal power and effect as a final and binding domestic court judgment and it can be enforced in accordance with the Enforcement and Security Act.

A foreign award goes through the recognition and enforcement process. Recognition of an arbitral award can be the subject of an independent proceeding or it can be decided as an interlocutory question in enforcement proceedings. Grounds for refusal of recognition correspond to those in Article V of the New York Convention. A decision on recognition of an award can be appealed within 30 days.

Serbia is also a party to the European Convention on International Commercial Arbitration of 1961, the Convention on the Settlement of Investment Disputes and a number of bilateral investment treaties.

32 Costs

Can a successful party recover its costs?

A decision on costs is a mandatory part of an arbitral award. When making such a decision, arbitrators should take into consideration all the facts of the case including the outcome. At the request of the tribunal, parties are obliged to make an advance payment on the costs.

Alternative dispute resolution

33 Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

Of the various ADR processes, the most commonly used in Serbia is mediation. However, it has still not developed its full potential and it cannot yet be said that mediation is common in Serbia. The Mediation Act was adopted in 2005 as a basic act regulating the principles and general rules of mediation in disputes regarding property relations between individuals and legal entities: commercial, family, labour and other civil law relations, administrative and criminal procedures, in which the parties act freely, unless the law stipulates exclusive authority of a court or other relevant authority.

The Agency for the Amicable Settlement of Labour Disputes has been particularly active in recent years, rendering final and binding decisions in various individual and collective labour disputes.

34 Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Lack of compulsion is a basic principle for referring to mediation, but in certain specific situations parties could be referred to mediation against their will if the court deems the dispute resolvable by mediation. The court can make this referral after receipt of the response to the claim, or after the preparatory hearing, or at any time later in the proceedings. Mediation can last 30 days and this deadline can be extended by a court or other competent body at the request of a mediator or the parties if there are justifiable reasons. Referral from litigation to mediation is possible also by way of an appeal. However, in this case the consent of the parties is necessary.

Update and trends

There have been significant reforms in Serbia's legal system in the past number of years. Given that Serbia is a candidate for accession to the EU, the latest wave of reforms was guided by the need to harmonise domestic rules with EU law. It started in 2006 with the adoption of a new Constitution, followed by the adoption of numerous laws reorganising the court system from 2008 to 2010, changing the structure of the court network, changing jurisdictions, and reducing and reorganising the workforce. Late 2011 and early 2012 witnessed the introduction of new laws on civil, enforcement and criminal proceedings. Numerous new laws have also been adopted in the areas of corporate law, finance and real estate. However, after just a couple of years of their application, new changes to the existing court network and procedural rules are expected in the course of 2013.

The current reforms of the commercial chambers might affect their status and continuity. This is a development that will be closely monitored over the next two years.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

No.

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