ARBITRATION IN THE CZECH REPUBLIC

Historical background

Commercial arbitration in the Czech Republic has undergone a renaissance since 1995. The pre communist Czechoslovak legal roots were strongly influenced by the Austro-Hungarian legal system and prior to 1939 commercial arbitration was well established. After the communist reformation of the Czechoslovak legal system, only foreign trade disputes between state trading organisations of the member states of the Council for Mutual Economic Assistance ("COMECON") could be referred to arbitration before the Permanent Court of Arbitration attached to the Czechoslovak Chamber of Commerce. Such arbitrations were governed by the relevant provisions in the 1972 Moscow Convention, the 1963 Arbitration Act, and the 1963 Civil Procedure Code.1 Since the division of Czechoslovakia and the creation of the Czech Republic in 1993, the Permanent Court of Arbitration now operates under the name of the Arbitration Court Attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic ("the Arbitration Court"). Following the velvet revolution of 1989, as part of an extensive programme of legal reform, a legislative commission was formed with the task of producing a new arbitration law. It was hoped that modernisation of the law of arbitration would help to secure inward foreign investment by providing an internationally acceptable and politically neutral system of commercial dispute resolution. There was also a concern that, in the post-communist era, an increasing number of foreign investment contracts were providing for arbitration abroad (e.g., in Vienna or London) rather than in the Czech Republic. As a result, the new Czech Arbitration Act 1994 (Act No 216/1994 Coll. on Arbitral Proceedings and Enforcement of Arbitral Awards "the Arbitration Act" or "the Act") was adopted. The Arbitration Act is based on the old 1963 legislation and, in contrast with the new arbitration laws in many jurisdictions elsewhere in Central and Eastern Europe, it is not based on the UNCITRAL Model Law although many of the underlying concepts and procedural provisions are similar. The Arbitration Act brought about wide-ranging changes to the Czech arbitration regime. A key change effected by the Arbitration Act was to enable domestic as well as international disputes to be referred to arbitration. It also widened the range of disputes which are capable of being arbitrated. These are significant changes from the old law which, as explained above, restricted the use of arbitration to disputes arising from international trade agreements between state trading organisations. The Arbitration Court remains the premier permanent arbitration institution in the Czech Republic for the resolution of both domestic and international disputes. It adopted two new sets of Rules in 1996: one concerning international arbitration ("the Rules"), and the other concerning internal arbitration. The rules contain differences on various issues including the fees charged and the language and place in which proceedings are heard. Both rules provide a comprehensive framework for commercial arbitrations in the Czech Republic. Since 1994, the Arbitration Court no longer has a monopoly in relation to institutional arbitration and arbitrations under the rules of other international arbitral institutions, such as the London Court of International Arbitration (LCIA) or the International Chamber of Commerce (ICC) are now also permitted in the Czech Republic, as are ad hoc arbitrations, including arbitrations under the UNCITRAL Arbitration Rules.2 This overview will focus on the statutory provisions which apply under the Arbitration Act to the extent that the parties have not (validly) agreed the application of institutional arbitration rules or otherwise determined the applicable procedural rules governing the arbitration proceedings. However, the Rules of the Arbitration Court will also be mentioned where they contain provisions of particular interest.

Scope of application and general provisions of the Arbitration Act

Scope of application

Pursuant to the transitional provisions in section 48 of the Arbitration Act, the Act governs all arbitral proceedings taking place under arbitration agreements made after 1st January 1995. Arbitrations arising from agreements made before 1st January 1995 will continue to be governed by the 1963 legislation, regardless of when proceedings are started. The 1963 legislation will therefore continue to be in use for some years to come. The 1963 Civil Procedure Code, as amended by the Arbitration Act, also continues to apply to arbitral proceedings, subject to any expressly incorporated institutional rules, such as those of the Arbitration Court or of the ICC. Where the arbitration involves foreign parties or elements, the 1963 Private International Law and Law of International Procedure Act, which deals with conflicts of law issues also applies.

General principles

The general principles of Czech Arbitration law include: Section 18 of the Arbitration Act provides that the parties shall have equal standing in the arbitral proceedings and shall be given full opportunity of presenting their respective cases. Section 19 of the Arbitration Act provides that the parties shall be free to agree on the procedural rules to be followed in the arbitration proceedings. In international arbitrations, the parties are also free to determine the law applicable to the substance of their dispute. In addition to the general principle as expressed in Section 1 of the Arbitration Act, a number of further provisions of the Arbitration Act are designed to ensure the independence and impartiality of arbitrators. Section 19(3) of the Arbitration Act provides that the arbitration hearings are not public and arbitrators have a statutory duty of confidentiality (section 6 of the Arbitration Act).

Domestic and international arbitrations

The Arbitration Act contains in Part 5 (sections 36 to 40), under the heading "Relations to Foreign Countries", additional specific provisions which apply to international arbitrations. They address such matters as the validity of the arbitration agreement, choice of law, and the recognition and enforcement of foreign arbitral awards; these subjects will be addressed further below in the relevant context.

The arbitration agreement

Formal requirements

Section 3 of the Arbitration Act requires arbitration agreements to be made in writing. An arbitration agreement made by telegram, telex, or other electronic means, enabling the contents of the agreement to be ascertained, and the parties to the agreement to be determined, is deemed to have been made in writing. If the arbitration agreement is contained in general terms and conditions governing the main contract to which the arbitration agreement applies, then the arbitration agreement is validly concluded if the offer of the main contract is accepted by the other party and there is no doubt that this acceptance extends to the arbitration agreement. Section 2(5) of the Arbitration Act clarifies that the arbitration agreement also binds the legal successors of the parties thereto, unless expressly otherwise agreed. In international arbitrations, the arbitrability of disputes to be resolved in the Czech Republic is determined according to Czech law pursuant to section 36(1) of the Act. However, according to section 36(2), the

arbitration agreement will be valid if its form complies either with Czech law or the law of the place where the arbitration agreement was made.

Arbitrability

Pursuant to section 2(3) of the Arbitration Act, an arbitration agreement may be entered into either in relation to a specific already existing dispute, or in relation to future disputes arising out of a given legal relationship. Unless expressly excluded by the arbitration agreement, the arbitration agreement is binding on the legal successors of the parties to the original agreement.
Section 1(1) of the Arbitration Act further provides that most disputes relating to "property" are arbitrable. The precise ambit of this term is unclear, but it is generally accepted to include most claims of a financial or monetary nature. Generally, an arbitration agreement may be validly entered into if the parties are free at law (in particular pursuant to section 99 of the 1963 Civil Procedure Code) to conclude a settlement in respect of the subject matter of the dispute referred to arbitration. Accordingly, only disputes regarding to personal status (such as divorce, annulment of marriage, paternity, etc), cases where court proceedings can be initiated in the absence of a motion (i.e., cases involving care of minors, legal capacity, guardianship, inheritance, etc), or cases in which the substantive law does not permit an agreement between the parties which is contrary to mandatory statutory requirements, are not arbitrable. This also covers disputes relating to the enforcement of decisions, or disputes arising as a result of bankruptcy proceedings or receivership.

Composition of the arbitral tribunal

Pursuant to section 4 of the Arbitration Act, both Czech and foreign citizens may act as arbitrators, provided they are of full age and enjoy capacity to act under the law of their country, or under the law of the Czech Republic. The appointment of arbitrators is dealt with in section 7 of the Arbitration Act. The parties are free to determine the number of arbitrators in the arbitration agreement. The arbitration agreement should also set out the identity of the arbitrators, or otherwise how the number of arbitrators shall be determined, and the arbitrator shall be appointed. The final number of arbitrators must always be uneven. If the parties have not made any provision in relation to the number and appointment of arbitrators in the arbitration agreement, each party shall be entitled to appoint one arbitrator. The party appointed arbitrators shall then select the presiding arbitrator to act as president of the tribunal. Section 8 of the Arbitration Act requires a proposed arbitrator to disclose to the parties or to the court forthwith all circumstances which are likely to give rise to serious doubts as to his impartiality and which would disqualify him from acting as arbitrator. Section 9 of the Arbitration Act sets out the procedure to be followed in the event that a party who has to appoint an arbitrator fails to do so within 30 days of receipt of an invitation by the other party to make the appointment, or if the party appointed arbitrators are unable to agree on the person of the president of the arbitral tribunal. Unless otherwise agreed by the parties in their arbitration agreement, the court shall in such circumstances appoint the arbitrator or president of the arbitral tribunal, as the case may be. The application to the court for such nomination may be made by any party to the proceedings or any of the arbitrators already appointed. The Rules provide in section 3(2) for arbitral tribunals to consist of three arbitrators (or a sole arbitrator, if so agreed by both parties to the proceedings,) and set out in section 21 the appointment procedures to be followed, including a provision in relation to multi-party disputes. Generally, if the parties or the party appointed arbitrators fail to make an appointment, the appointment will be made by the president of the Arbitration Court.

The challenge of arbitrators

Section 11 of the Arbitration Act provides that an arbitrator who has been named in the arbitration agreement or appointed by the parties shall be disqualified from hearing the dispute if circumstances giving rise to serious doubts as to his impartiality are disclosed at a later date. Section 12(1) of the Arbitration Act requires the arbitrator to resign from his office in the event that such circumstances are disclosed. If he fails to do so, the parties have the right pursuant to section 12(2) to agree on the further steps to be taken in respect of the arbitrator's disqualification. In addition, either party has the right to apply to the court for a disqualification order. The detailed challenge procedures in section 22 of the Rules give each party the right to challenge any of the arbitrators, experts or interpreters employed in the proceedings, on the grounds that, in its opinion, they are biased, or if it may be presumed that they are directly or indirectly interested in the outcome of the proceedings.

The appointment of substitute arbitrators

In the event that an arbitrator already appointed by the parties resigns from his office, or is otherwise no longer in a position to exercise his function, section 9(2) of the Arbitration Act states that the court shall appoint a new arbitrator upon application of any party, or of another arbitrator, unless otherwise agreed by the parties. When making the substitute appointment, the court is required by section 10 of the Arbitration Act to take into consideration circumstances guaranteeing the arbitrator's independent and impartial decision making.

Arbitrators' fees, expenses and immunity

The Arbitration Act does not contain express provisions regarding the fees and expenses of the arbitrators or their liability for breach of duty. In ad hoc arbitrations, the arbitrators' fees and expenses (including a payment schedule) will be determined by agreement between the parties and the arbitrator. In institutional arbitration proceedings, the arbitrators' fees and expenses will generally be determined by the rules and fee schedules applied by the relevant institution. In relation to proceedings before the Arbitration Court, the relevant provisions on payment of arbitration fees, costs, etc, are set out in the Annex to the Rules. The arbitration fees are calculated by reference to the value of the claim although other factors, such as the number of parties and arbitrators, are also taken into account. The arbitration fee is payable upon filing of the statement of claim or counterclaim as the case may be. A lump sum payment on account of administrative costs will also be requested from the claimant.

Jurisdiction of the arbitral tribunal

Competence to rule on its own jurisdiction The scope of the tribunal's jurisdiction is determined in the first instance by the terms of the arbitration agreement between the parties. Section 15(1) of the Arbitration Act provides that the arbitrators have the power to rule on their own jurisdiction. If the arbitrators come to the conclusion that they lack the necessary jurisdiction, they shall make a decree of discontinuance. Pursuant to section 15(2) of the Arbitration Act, an objection by a party to the jurisdiction of the tribunal on the grounds of the non-existence, invalidity, or termination of the arbitration agreement must be raised no later than when taking the first step in the proceedings relating to the merits of the case, unless the objection is based on the allegation that the subject matter of the dispute is not arbitral. In that event, the objection can be raised at any stage of the arbitral process. The right to object to the award may otherwise be lost pursuant to section 33 of the Act. In institutional arbitration

proceedings, jurisdictional challenges are decided according to section 23 of the Rules by the Court of Arbitration pursuant to a reference from the arbitral tribunal.

Power to order interim measures

The Arbitration Act does not give the arbitrators power to order preliminary measures such as injunctions. However, see below as to the court's jurisdiction to grant such matters in support of the arbitral process.

Conduct of the arbitral proceedings

Commencement of arbitration

Pursuant of section 14(1) of the Arbitration Act, arbitral proceedings shall be commenced by lodging a statement of claim. The day on which the statement of claim is lodged shall be the day of commencement of the arbitral proceedings. Lodging a statement of claim with an arbitral tribunal has the same legal consequences (e.g., with regard to limitation of claims) as if the same were lodged with a court. The statement of claim must be lodged in the case of institutional arbitration with the permanent arbitration 10 CMS Guide to Arbitration in Europe court or, in ad hoc proceedings, with the president of the arbitral tribunal, provided he has already been determined or appointed. If the president of the arbitral tribunal has not yet been determined or appointed, then the statement of claim shall be lodged with any arbitrator already determined or appointed (section 14(2) of the Arbitration Act). Section 16 of the Rules contains parallel provisions for the commencement of institutional arbitration proceedings but requires the claimant to pre-pay the arbitration fees and a lump sum to cover the administrative costs of the Arbitration Court upon filing the statement of claim.

Procedural powers of the tribunal

Section 19 of the Arbitration Act expressly provides the parties with freedom to agree on the procedural rules to be followed in the arbitration. Such agreement by the parties is binding on the arbitrators. To the extent that the parties have not made provision for procedural issues in their arbitration agreement, the Arbitration Act provides in section 19(1) that procedural issues may be decided by the president of the arbitral tribunal, provided that the parties or all arbitrators authorise him to do so. If no such agreement has been made, the arbitrators shall be free to conduct the proceedings in the manner they deem fit. Section 19(2) of the Arbitration Act expressly provides that, when doing so, the arbitrators shall avoid all superfluous formalities but shall give full opportunities to the parties to present their respective cases and shall make findings of fact on which the decision is to be based. Pursuant to section 30 of the Arbitration Act, the arbitrators shall apply the provisions of the 1963 Civil Procedure Code to proceedings pending before them in a reasonable manner unless otherwise provided by the Arbitration Act. The 1963 Civil Procedure Code therefore serves to provide a fall-back position in the event that the Arbitration Act or the arbitration agreement between the parties does not contain any provision in relation to any given procedural issue arising in the proceedings. Place and language of arbitration Section 17 of the Arbitration Act provides that the arbitration proceedings shall be conducted at the place agreed upon by the parties. If no such place has been agreed, then the proceedings shall be conducted at the place determined by the arbitrators. When determining the place of arbitration, the arbitrators shall take the legitimate interests of the parties into due consideration. In institutional arbitration under the Rules, section 5 of the Rules provides hearings are generally held at the seat of the Arbitration Court in Prague, but on the initiative of the arbitral tribunal or by agreement of the parties, hearings may also be held elsewhere in the Czech

Republic or abroad. The Arbitration Act does not contain an express provision in relation to the language of the arbitral proceedings. Generally, all hearings will be held and decisions be made in the Czech (or Slovak) language. However, in international arbitration proceedings, the proceedings may be held and decisions made in a language agreed upon by the parties or determined by institutional arbitration rules or the language of the contract from which the dispute arose. Pursuant to sections 6 and 7 of the Rules, similar provisions apply to arbitrations beforethe Arbitration Court.

Submissions

The Act does not contain express provisions in relation to the format, content or timetable of the parties' submissions to the arbitral tribunal. However, according to the abovementioned section 30 of the Act, in circumstances where the Act does not make such express provision, sections 42 and 79 of the Civil Procedure Code will apply, if deemed reasonable to do so, and govern the content of any correspondence, (for instance, statements of claim). To the extent that the arbitration agreement between the parties does not set out the procedure to be followed, this will be determined by the arbitral tribunal or the president of the tribunal. By contrast, sections 17 and 18 of the Rules sets out the mandatory minimum and recommended additional content of the statement of claim in proceedings before the Arbitration Court. Upon filing, the statement of claim will be reviewed by the secretary of the Arbitration Court and, if necessary, the claimant will be invited to remedy any defects pursuant to section 19 of the Rules. The statement of defence is dealt with in section 20 of the Rules. The statement of claim will generally have to be answered by the defendant within 30 days of service. Section 28 entitles the defendant to bring a counter-claim. Detailed provisions on the service of documents are set out in section 9 of the Rules. Oral hearing and written proceedings, default by the parties Section 19(3) of the Arbitration Act requires the proceedings to be oral, unless otherwise agreed by the parties. The parties are therefore free to agree that all or part of the arbitration proceedings shall be conducted in writing. Section 26 of the Rules makes detailed provision for the conduct of hearings in proceedings before the Arbitration Court and section 27 of the Rules sets out simplified procedures for document only arbitrations, or those proceedings which end in the issuing of an award without the giving of any grounds (these types of proceedings are 20%-30% cheaper than standard arbitration).In section 21, the Arbitration Act contains an express provision that if a party is unable to participate in the proceedings, either wholly or in part, without such same circumstances, a party fails to take a step in the proceedings necessary to defend its rights, then, upon application by that party, the arbitrators shall take reasonable measures allowing the party in default to take such steps. However, if a party's default is not sufficiently excused, the tribunal may exclude the relevant submissions by the defaulting party. The Rules contain a similar provision in section 11.

Evidence

The arbitrators have power pursuant to section 20 of the Arbitration Act to hear witnesses, experts and the parties, provided they appear voluntarily and do not refuse to give evidence. The tribunal may also take other evidence if it is given voluntarily. However, the arbitral tribunal does not have a power under the Act to compel witnesses, experts or the parties to appear or to give evidence before the tribunal. If necessary, the arbitrators can apply for the court to take any steps in the proceedings which the arbitrators themselves are unable to take (see further below on the courts' powers in such circumstances). The rules of evidence applicable in arbitration proceedings in the Arbitration Court are set out in sections 31 and 32 of the Rules, pursuant to

which the arbitral tribunal takes evidence, assesses it freely at its discretion and may request the parties to produce supplementary evidence.

Multi-party proceedings

The Rules quite helpfully contain a number of provisions, e.g., the appointment provisions in section 21, or the provisions in relation to the joinder of third parties with a legal interest in the outcome of the proceedings in section 13, expressly addressing multi-party dispute situations which frequently pose procedural difficulties under other arbitration regimes. In multi-party arbitrations it may therefore be advisable for parties to opt for institutional arbitration before the Arbitration Court rather than for ad hoc arbitration.

Confidentiality

Section 19(3) of the Arbitration Act makes clear that arbitration proceedings shall not be public. The confidentiality of arbitration proceedings is further protected by section 6(1) of the Arbitration Act, which imposes on the arbitrators a statutory duty of confidentiality. Pursuant to section 6(2), the arbitrators may be relieved of this duty only by the agreement of the parties or (for serious reasons) by order of the court.

Choice of law

If the arbitral proceedings involve legal relations containing an international element, section 37(1) of the Arbitration Act provides that the arbitrators shall take their decision under the proper law chosen by the parties. If the parties have not determined the applicable law in their contract, section 37(2) of the Arbitration Act provides that the arbitrators shall apply the local conflict of law rules in determining the applicable law. The Arbitration Act clarifies that a choice of law by the parties, or the determination of the applicable law by the arbitral tribunal under the conflict of law rules, shall, unless otherwise agreed by the parties, be taken as a reference to the substantive law of the jurisdiction so chosen or determined under exclusion of its conflict of law rules. In domestic arbitrations, section 25(3) of the Arbitration Act provides that the arbitrators shall base their decision on the material law applicable to the case. The arbitrators may also decide the case ex aequo et bono, provided the parties expressly authorise them to do so. In proceedings before the Arbitration Court, section 8 of the Rules requires the tribunal in addition to have regard to the customs of trade.

Decision making by the tribunal

Section 25(1) of the Arbitration Act provides that an arbitral award shall be adopted by a majority of the arbitrators. The same applies pursuant to section 36(1) of the Rules in proceedings before the Arbitration Court, although section 36(2) of the Rules contains special voting rules in relation to the quantum of monetary awards.

Form, contents and effect of the award

Pursuant to section 25(1) of the Arbitration Act, the arbitration award must be reduced to writing and signed by at least a majority of the arbitrators. The Act expressly requires the operative part of the award not to be ambiguous. Section 25(2) requires that an opinion setting out the tribunal's reasons for the decision and the award shall be attached to the award, unless the parties by agreement dispense with this requirement. This rule also applies to arbitral awards recording a settlement between the parties (section 25(2) in conjunction with section 24(2) of

the Arbitration Act). Section 28(1) of the Arbitration Act requires the written award to be served on the parties. Upon service, a clause of res judicata shall be apposed to the award. Pursuant to section 28(2), an award which is not subject to review by a second tier arbitral tribunal (as to which see further below), or in respect of which the time limit for lodging an application for revision has been expired, acquires the force of res judicata upon service and thus becomes enforceable in the courts. Section 29 makes provision for the award to be deposited with the courts. Section 34 of the Rules clarifies that, in proceedings before the Arbitration Court, the arbitral tribunal may also make partial awards (final awards in relation to certain issues in dispute), interim awards (on liability before deciding on quantum), or awards recording a settlement reached between the parties. Section 35 of the Rules sets out the required contents of the award. In addition to being signed by at least two out of three arbitrators or the sole arbitrator, awards in institutional proceedings are also signed by the president and secretary of the Arbitration Court. Pursuant to section 37 of the Rules, the award is either pronounced to the parties orally or served in writing. An arbitral award made in proceedings before the Arbitration Court is final, binding, and enforceable (section 39 of the Rules).

Settlement

Section 24(1) of the Arbitration Act requires the arbitrators to invite the parties to settle their disputes during the course of the proceedings. If the parties reach a settlement while the arbitration proceedings are pending, the settlement may upon application of the parties be incorporated into an arbitral award (see also section 34(1) of the Rules).

Termination of proceedings

Section 23 of the Arbitration Act provides that proceedings shall be terminated either by an arbitral award, or by a decree of discontinuance in cases where no arbitral award will be issued (e.g., because the arbitral tribunal declines jurisdiction over the dispute submitted to it for decision). As with arbitral awards, the decree of discontinuance must be adopted, signed, provided with an opinion, and served on the parties in the same way as an arbitral award. In section 40, the Rules contain a similar provision for the discontinuance of proceedings without an award if the claimant withdraws the statement of claim, or if the parties conclude a settlement without incorporating the same in an arbitral award, or if the Arbitration Court rules pursuant to section 23 of the Rules that it lacked jurisdiction. The provisions on arbitrate on awards in sections 34 to 38 of the Rules apply also to rulings and orders of discontinuance.

Interest

Arbitral tribunals have the power to award contractual or statutory default interest if claimed by the Plaintiff in his statement of claim. Pursuant to Section 2(4) of the Arbitration Act, the arbitration agreement (unless it states otherwise) shall cover both the contractual rights directly arising from the agreement as well as legal rights connected thereto. This provision is given a wide interpretation by academic writers and arbitral practice in the Czech Republic, and arbitration awards accordingly also deal both with contractual rights and also with related legal rights, including claims for default interest. Default interest may be awarded either on a contractual basis (if expressly agreed in the main contract), or on the statutory basis of section 517(2) of the Czech Civil Code.

Costs

The Arbitration Act does not contain any express provisions in relation to the payment of the costs of the arbitral proceedings or their allocation as between the parties. In ad hoc arbitration proceedings, the arbitral tribunal will upon application by a party make provision in the award for the allocation and payment of the costs of the proceedings as between the parties, including a party's reasonable costs of legal representation, if the arbitration agreement between the parties so provides. Arbitral tribunals often apply Decree No 484/2000 Coll which specifies the amount of costs which may be awarded to winning parties by the court (regardless of the actual amount of the costs). Typically, sums awarded under the Decree are lower than the actual costs incurred. See further below as to the costs incurred in connection with applications by the arbitrators to the court for measures in support of the arbitral process. In institutional arbitration proceedings, the rules of the relevant institution will generally set out detailed cost provisions. Thus, the Annex to the Rules (comprising 15 sections) makes detailed provision on the costs of arbitral proceedings before the Arbitration Court. In principle, the arbitration fees, administrative costs of the proceedings and other specific costs incurred by the Arbitration Court are generally to be borne by the party who loses the case, or split between the parties in proportion to their relative success. In making its cost award, the tribunal may take into account the parties' conduct during the arbitral proceedings. However, each party will generally have to bear its own legal costs, although the tribunal may adjudicate a partial recovery of costs from the other party if good cause is shown for an order in such terms.

Correction and interpretation of the award

Section 26 of the Arbitration Act permits clerical errors, errors of calculation, and other obvious defects of a similar nature in the arbitral award to be corrected by the arbitrators, or by the permanent arbitration court, at any time upon application of a party. Such corrections are made by way of a decree of correction which shall be adopted, signed and served on the parties by the arbitral tribunal in the same way as an arbitral award. In addition to correction of typing, numerical, or other obvious errors in the award, section 38 of the Rules also gives the arbitral tribunal power in institutional proceedings, upon application of a party filed within 30 days of service of the award, to make an amending award if it appears that the original award failed to deal with all the claims put forward by the parties. However, this requires the parties first to be summoned to a further hearing.

Appeals

Pursuant to section 27 of the Arbitration Act, the parties are free to agree in their arbitration agreement that the tribunal's award shall be subject to review by a second tier arbitral tribunal consisting of other arbitrators. However, unless the parties expressly make such an agreement, the tribunal's award will be final and binding, subject only to the limited circumstances in which an award may be set aside by the court (see below). If an appeal procedure has been agreed by the parties, the application for revision has to be served on the other party within 30 days, unless otherwise agreed. The appeal process forms part of the arbitral proceedings and the provisions of the Arbitration Act apply thereto.

The Role of the courts

The jurisdiction of the courts The Arbitration Act (as supplemented by the 1963 Civil Procedure Code) contains express provisions as to the courts powers in relation to arbitration matters. In particular, the courts have jurisdiction to support the arbitral process in certain

circumstances, e.g., by appointing arbitrators, taking evidence, or granting conservatory or other interim measures. The courts also have jurisdiction in relation to the challenge and enforcement of arbitral awards.

Stay of court proceedings

The Czech Republic is a signatory to the 1958 New York Convention and, pursuant to Article II(3) of the Convention, the Czech courts, when seized of an action in a matter in respect of which the parties have made a written arbitration agreement, are at the request of one of the parties obliged to refer the dispute between the parties to arbitration unless it finds that the said agreement is null and void, inoperative or incapable of being performed. The Arbitration Act does not make express provision for the stay of court proceedings commenced by a party in relation to a subject matter covered by a valid and binding arbitration agreement. The stay of court proceedings in such circumstances is dealt with by section 106 of the 1963 Civil Procedure Code (as amended). Section 106(1) provides that, as soon as a court becomes aware through the defendant that a case should properly be dealt with by arbitration, it must stay the proceedings. The defendant must inform the court of this at the earliest opportunity, as soon as the first contact with the court is established. However, if the parties both declare that they do not wish the dispute to be resolved by arbitration, then the court may hear the case.

The court shall also hear the case if it establishes that under Czech law the case cannot be dealt with in arbitration proceedings, that there is no valid and binding arbitration agreement, that the claim falls outside the jurisdiction of the arbitrators, or that the relevant arbitration body has refused to deal with the case. Where court proceedings are stayed and arbitration proceedings are commenced within 30 days of service of the order staying the court proceedings, the legal effects of the initial action remain in force, e.g., for the purpose of calculating the applicable limitation periods (section 106(2)). Where court proceedings are commenced after arbitration proceedings have been initiated, the court must suspend such court proceedings if they relate to the existence, validity or termination of the agreement, until the arbitrators have made a decision either as to their competence or on the merits of the case.

Preliminary rulings on jurisdiction

Section 15(1) of the Arbitration Act gives the arbitrators power to decide on their own jurisdiction. The courts therefore do not have jurisdiction to make preliminary rulings on the tribunal's jurisdiction (other than in connection with applications for a stay of court proceedings). However, the parties may challenge the tribunal's assumption of jurisdiction subsequently by application to the courts for the award to be set aside for lack of jurisdiction (see further below).

Interim protective measures

As explained above, the arbitral tribunal does not have power to order interim protective measures, or to grant injunctions in support of the enforcement of arbitral awards. Section 22 of the Arbitration Act therefore provides the courts with jurisdiction upon application of any party to order a preliminary measure or injunction if, pending the proceedings, or before their commencement, circumstances arise which are likely to jeopardise the enforcement or execution of the arbitral award.

Obtaining evidence and other court assistance

Section 20(2) of the Arbitration Act provides that, to the extent that the arbitrators are unable to take steps in the proceedings (due to the limits on their procedural powers), the

competent court has jurisdiction to take such steps upon application by the arbitrators. This relates primarily to the power to compel witnesses, experts and parties to give evidence to the court for use in the arbitration proceedings where such evidence is not voluntarily given to the arbitral tribunal direct. The court will sustain the application by the arbitrators unless the steps applied for are prohibited by law. When taking its decision, the court shall take all measures necessary for the successful implementation of the application. Section 20(3) provides that the costs incurred by the court in the course of taking the steps applied for by the arbitrators in support of the arbitral proceedings shall be covered by the permanent arbitration court or the arbitrators, as the case may be. This provision may at first appear somewhat unusual, but the arbitrators will generally only make such an application if the parties have advanced reasonable funds to the tribunal to cover the costs of the application. Also, any such costs incurred by the arbitral tribunal in making an application to the court will ordinarily be included in the tribunal's award on costs.

Challenging the award before the courts

The circumstances in which an arbitral award may be set aside by the court upon application by a party are set out in section 31 of the Arbitration Act and include: non-arbitrability of the subject matter of the dispute; the arbitration agreement is void for other reasons, or has been terminated, or does not cover the subject matter of the dispute; an arbitrator takes part in the decision who has not been named in the arbitration agreement or otherwise duly appointed to decide the dispute, or who lacks the capacity to be and to act as arbitrator; the arbitral award has not been adopted by a majority of arbitrators; the parties have not been given the opportunity duly to present their case; the award contains an order against the losing party for relief not claimed by the winning party, or the performance of which is impossible or illegal; or the court is satisfied that there are grounds on which it would be possible to apply for a new trial in civil proceedings. Section 32 of the Arbitration Act requires that an application to set aside an arbitral award must be lodged with the court not later than three months following service of the award on the party seeking to set the same aside. The filing of an application to set an award aside does not have the affect of staying the enforceability of the award. However, the court may, upon application of the losing party, stay the enforceability of the award if execution of the award forthwith would inflict a serious loss on the losing party. As pointed out above, the right to object to the award on the basis of the invalidity of the arbitration agreement or the improper appointment of an arbitrator may be lost pursuant to section 33 of the Arbitration Act if the party applying for the award to be set aside on such grounds did not raise an objection to the jurisdiction of the arbitrators no later than when presenting its arguments on the merits of the case. Section 34 of the Arbitration Act provides that, if the court sets aside an award on the grounds that the subject matter of the dispute was not arbitrable, or the arbitration agreement was void for other reasons, or has been terminated, or does not cover the subject matter of the dispute, the court shall, upon application by either party lodged after the judgment on the setting aside of the award acquired the force of res judicata, proceed with hearing the matter anew and deciding the same. Pursuant to section 35 of the Act, a party against whom the court decrees a levy of execution may in certain circumstances apply for a stay of execution, even if it failed to lodge an application with the court for the award to be set aside. In addition to certain grounds set out in the Civil Procedure Code, the application may be based on the following grounds: that the award suffers from the defect that the subject matter of the dispute was not arbitrable, the arbitral award was not adopted by a majority of the arbitrators, or the award contains an order against the losing party for relief not claimed by the winning party, or the performance of which is impossible or

illegal; that a party, who can act only through a statutory representative, is not represented in proceedings and that its acts and measures have not subsequently been ratified; or that a representative, having taken part in the arbitral proceedings in the name and on behalf of a party, lacks the necessary authority and his steps or measures taken have not subsequently been ratified by that party. Section 35(2) provides that, if an application for a stay of execution under section 35(1) is lodged with the court in charge of the levy of execution, it shall stay the proceedings and decree that the applicant shall within 30 days lodge an application for the award to be set aside. If no such application is lodged, the court in charge of the levy of execution shall proceed in the execution proceedings. If the award is set aside as a result of such application, the parties are free to proceed as provided for by section 34, i.e., to apply for the court to hear the matter anew and to decide the same after the judgment setting aside the award acquired the force of res judicata.

Recognition and enforcement of awards

Domestic awards

An award which is not subject to revision by a second tier arbitral tribunal pursuant to section 27 of the Arbitration Act, or in respect of which the term for lodging an application for revision has lapsed without such application having been lodged, acquires the force of res judicata when served on the parties and is enforceable in the courts in accordance with the provisions of the Civil Procedure Code.

Foreign awards

The enforcement of arbitral awards rendered abroad is dealt with in sections 38 to 40 of the Arbitration Act. Czechoslovakia was one of the first countries to ratify
the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the Czech Republic has become a party to the convention as a legal successor state. Convention awards are therefore enforceable in accordance with the terms of the convention. In relation to non-convention awards, section 38 of the Arbitration Act provides that arbitral awards rendered abroad shall be recognised and executed in the same way as local awards if reciprocity of enforcement is granted by the country from which the arbitral award originates. Section 38 of the Arbitration Act clarifies that such reciprocity shall be deemed granted if the respective foreign country declares, in a general way, that arbitral awards are enforceable subject to reciprocity. The decision by the court decreeing execution of a foreign award always must set out reasons for the decision. Pursuant to Section 39 of the Act, recognition and enforcement of a foreign award may (only) be refused if: the award has not acquired the force of res judicata under the law of the country where it has been made; the award suffers from one of the defects as set out in Section 31 of the Act; or the award is against Czech Republic public policy.

Court proceedings

Part 6 (sections 41 to 44) of the Arbitration Act sets out the applicable rules on jurisdiction and venue of the courts. Pursuant to section 42(1) of the Arbitration Act, jurisdiction and venue of the court to decree steps and measures under section 20(2) in support of the arbitral process shall be vested in the court within the jurisdiction of which the step or measure is to be taken. Section 42(2) adds that, if such a step or measure is to be taken abroad, then the jurisdiction and venue to decree such a step or measure shall be vested in the district court within the jurisdiction of which the arbitration proceedings are taking place. Jurisdiction to hear applications for a declaration that an arbitration agreement is null and void lies with the court which would have, so-called, “functional” jurisdiction under certain provisions of the Civil Procedure Code, or of other enactments, which would apply but for the existence of the

arbitration agreement (section 41 of the Arbitration Act) i.e. the level of court allocated to hear the specific case, depending on a variety of complex factors, including, but not limited to, the subject matter and the claimed amount. If arbitral applications are heard at first instance at a court without the correct level of jurisdiction, the application will be heard and then referred to a court with a higher or lower level of jurisdiction. This process may be lengthy. The venue for arbitration applications under the provisions of the Act is vested pursuant to section 43 of the Arbitration Act in the court within the local jurisdiction of which the arbitral proceedings are taking place, or have taken place, provided such places are in the Czech Republic. Otherwise, the venue shall be vested in the court which would have jurisdiction to hear and to determine the dispute were it not for the arbitration agreement. Section 43 further provides that, in addition to the general rules on venue, the venue for the conduct of proceedings under section 9 (appointment of arbitrator) and section 12(2) (challenge of arbitrator), shall be vested in the court at the seat or residence of the applicant or respondent, as the case may be, if otherwise no venue can be established in the Czech Republic. Pursuant to section 44 of the Arbitration Act, when hearing arbitration applications under the Arbitration Act, the courts shall apply the provisions of the 1963 Civil Procedure Code.

Conclusion

The introduction of the Arbitration Act in 1995 has been instrumental in reviving arbitration as a means of resolving commercial disputes in the Czech Republic and it now enjoys increasing popularity with the business community for resolving both domestic as well as international commercial disputes. This trend has been supported by the wide enforceability of arbitration awards and the fact that the Czech court system and judiciary can at times today still prove ill-equipped to deal with commercial cases speedily and efficiently.