

**ARBITRATION LAW OF
CZECH REPUBLIC:
PRACTICE AND PROCEDURE**

Alexander J. Bělohlávek

JURIS

Questions About This Publication

For assistance with shipments, billing or other customer service matters, please call our Customer Services Department at:

1-631-350-2100

To obtain a copy of this book, call our Sales Department:

1-631-351-5430

Fax: 1-631-351-5712

Toll Free Order Line:

1-800-887-4064 (United States & Canada)

See our webpage about this book:
www.arbitrationlaw.com

COPYRIGHT 2013
by JurisNet, LLC

All rights reserved. No part of this publication may be reproduced in any form or by any electronic or mechanical means including information storage and retrieval systems without permission in writing from the publisher.

Printed in the United States of America
ISBN 978-1-937518-18-9

JurisNet, LLC
71 New Street
Huntington, New York 11743
USA
www.arbitrationlaw.com

TABLE OF CONTENTS

About the Author	xliii
Acknowledgments	xliv
List of Abbreviations	xlvii
Text and Comparison of the Act	lix
Introduction	cxxvii

PART ONE: GENERAL PROVISIONS

Chapter 1, Scope of the Act; Independence and Impartiality—	
Section 1	3
1.I. Arbitration and <i>lex arbitri</i>	4
1.II. Arbitration and the right to legal and judicial protection (European Convention on Human Rights—ECHR)	8
1.III. Purpose of arbitration: The nature of arbitration according to the doctrines applied by certain selected countries	10
1.IV. Right to legal protection versus right to judicial protection and the importance of autonomy	13
1.V. Scope of the right to a fair trial and arbitration	18
1.VI. Nature of arbitration from the perspective of Czech law	23
1.VI.1. Contractual theory	23
1.VI.2. Jurisdictional theory	28
1.VI.3. Mixed (hybrid) theory	37
1.VI.4. Autonomous theory	39
1.VII. Development and basis of the opinions on the nature of arbitration	39
1.VIII. Concept of arbitration in the doctrine adjudicated by the Constitutional Court of the Czech Republic	49
1.VIII.1. Development of the constitutional opinion on arbitration until 2011	49
1.VIII.2. Important decisions of the ConCourt from 2002 to 2011	52
1.VIII.2.1. Resolution of the ConCourt, Case No. IV. ÚS 174/02 of 15 July 2002 ...	52

ARBITRATION LAW OF CZECH REPUBLIC

1.VIII.2.2.	Judgment of the ConCourt, Case No. IV. ÚS 2157/08 of 24 September 2008: Interpretation of an arbitration agreement; right to a lawful judge; free will; alternative arbitration clause— clause of choice.....	56
1.VIII.2.3.	Resolution of the ConCourt, Case No. II. ÚS 3059/08 of 15 January 2009	57
1.VIII.2.4.	Resolution of the ConCourt, Case No. I. ÚS 339/02 of 26 January 2004..	58
1.VIII.2.5.	Resolution of the ConCourt, Case No. IV. ÚS 511/03 of 4 December 2003	59
1.VIII.2.6.	Resolution of the ConCourt, Case No. III. ÚS 166/05 of 29 April 2005..	59
1.VIII.2.7.	Resolution of the ConCourt, Case No. III. ÚS 145/03 of 12 September 2003	60
1.VIII.2.8.	Resolution of the ConCourt, Case No. II. ÚS 2169/07 of 3 September 2007	62
1.VIII.3.	Importance of the Judgment of the ConCourt, Case No. I. ÚS 3227/07 of 8 March 2011	62
1.IX.	Arbitrability (basic concept and connection to Section 2 and sources of international origin)	64
1.IX.1.	Objective versus subjective arbitrability and importance of arbitrability	64
1.IX.2.	Public non-profit health care facilities and capacity of public entities to enter into arbitration agreements	65
1.IX.2.1.	Arbitrability of disputes involving public non-profit health care facilities (ex Section 2(1) of the ArbAct)	65
1.IX.2.2.	Arbitrability of disputes involving public entities	65
1.IX.3.	Conflict with proceedings before the financial arbiter	66
1.X.	Case law	72
1.XI.	Case law of the ECtHR (including the Commission's decisions)	109
1.XII.	From arbitration practice.....	115

TABLE OF CONTENTS

1.XIII.	Comparison with the law of the Slovak Republic (SlovArbAct).....	120
1.XIV.	Bibliography.....	121
CHAPTER 2, Arbitrability; Arbitration Agreement—Section 2.....		135
Article II paragraph 2 of the Amendment to the ArbAct (Act No. 19/2012 Coll.) [Transitional provisions]		136
2.I.	Arbitrability and the legal basis for the assessment of arbitrability.....	137
2.I.1.	Arbitrability and the scope of arbitrability.....	137
2.I.2.	Legal basis for the assessment of arbitrability: Importance of the place of arbitration (connection to Section 17 of the ArbAct and Section 36(1) of the ArbAct)	138
2.II.	Section 2(1) of the ArbAct.....	141
2.II.1.	Dispute: Adversary and non-adversary proceedings.....	141
2.II.1.1.	Factual dispute and dispute within the meaning of procedural law.....	141
2.II.1.2.	Adversary and non-adversary proceedings.....	141
2.II.1.3.	Adversary proceedings.....	143
2.II.1.4.	Non-adversary proceedings	144
2.II.1.5.	The importance of distinguishing adversary proceedings from non-adversary proceedings for objective arbitrability (connection between Section 1 and Section 2(1) of the ArbAct and Section 2(2) of the ArbAct)	147
2.II.2.	Nature of dispute as a property dispute.....	148
2.III.	Section 2(2) of the ArbAct.....	155
2.III.1.	General jurisdiction of courts.....	155
2.III.2.	The powers of special public authorities influencing arbitrability.....	155
2.III.2.1.	Arbitrability of disputes in the energy industry	155
2.III.2.2.	Arbitrability of disputes in telecommunications (electronic communications).....	158
2.III.3.	Settlement and permissibility of settlement regarding the subject matter of the dispute	162

ARBITRATION LAW OF CZECH REPUBLIC

	2.III.3.1.	Definition of “settlement”: Difference between the subject matter of the dispute and the contents of obligations.....	162
	2.III.3.2.	Possibility to settle	167
	2.III.4.	Disputes relating to real property.....	169
	2.III.5.	Arbitrability of individual employment disputes ..	171
	2.III.6.	Arbitrability of disputes concerning bills of exchange / promissory notes	172
	2.III.7.	Disputes over rights to investments in corporations and disputes over the invalidity of resolutions adopted by general meetings.....	173
	2.III.8.	Capacity to enter into an arbitration agreement	175
2.IV.		Section 2(3) of the ArbAct.....	175
	2.IV.1.	Arbitration agreement: Connection to subject matter regulated under Section 3 of the ArbAct.....	175
	2.IV.2.	The importance of time in connection with an arbitration agreement	178
	2.IV.2.1.	Temporal limitation of the right to enter into an arbitration agreement	178
	2.IV.2.2.	Arbitration agreement for a definite period of time and other temporal limitations to the duration of an arbitration agreement	182
	2.IV.3.	Alternative agreement on jurisdiction— jurisdiction of choice.....	182
2.V.		Section 2(4) of the ArbAct: Validity and subject matter of an arbitration agreement and independence of the main contract ..	183
2.VI.		Section 2(5) of the ArbAct: Arbitration agreement as an agreement binding on legal successors	187
	2.VI.1.	Assignment (universal and singular succession) ..	187
	2.VI.2.	Assumption of obligations	195
	2.VI.3.	Selected examples of other situations where a non-party to the arbitration agreement is bound by the agreed jurisdiction of the arbitrators	196
	2.VI.3.1.	The group (holding) theory (groups of entrepreneurs bound by one and the same arbitration agreement).....	197
	2.VI.3.2.	The theory of extensive and parallel effects of an arbitration agreement...	199
	2.VI.4.	Guarantee obligations	199
2.VII.		Case law	202

TABLE OF CONTENTS

2.VIII.	Case Law of the ECtHR (including the Commission’s Decisions).....	249
2.IX.	From arbitration practice.....	250
2.X.	Comparison with the law of the Slovak Republic (SlovArbAct)	271
2.XI.	Bibliography.....	273
Chapter 3, Form, Terms, and Conclusion of an Arbitration Agreement—Section 3		
293		
Article II paragraph 2 of the Amendment to the ArbAct (Act No. 19/2012 Coll.) [Transitional provisions]		
294		
3.I.	Essence of the arbitration agreement and laws applicable to the arbitration agreement	295
3.I.1.	The importance of determining the nature of the arbitration agreement and procedural contracts	295
3.I.2.	Arbitration agreement as a procedural contract in the broader sense.....	298
3.I.2.1.	The concept and effects of a procedural contract in the broader sense.....	298
3.I.2.2.	Capacity to enter into a procedural contract and representation in concluding an arbitration agreement.....	299
3.I.2.3.	Arbitration agreement as a condition for the main contract and the contingent contract.....	301
3.I.3.	Procedural contract in the narrower sense	302
3.I.4.	Law applicable to the procedural contract: Substantive law versus procedural law	308
3.II.	General rules applicable to arbitration agreements in all legal relationships (Section 3(1) and (2) of the ArbAct).....	315
3.II.1.	Sources of international origin and the concept of domestic <i>lex arbitri</i>	315
3.II.2.	Section 3(1) of the ArbAct.....	316
3.II.2.1.	Specific expression of will and identification	316
3.II.2.2.	Requirement of written form and means of electronic communication.....	316
3.II.2.3.	Requirement of written form under the new Civil Code (NCC).....	324
3.II.3.	Section 3(2) of the ArbAct.....	326

ARBITRATION LAW OF CZECH REPUBLIC

3.II.4.	The importance of the arbitration agreement being independent of the main contract	330
3.II.5.	Related rules of international origin.....	330
3.II.5.1.	The New York Convention [NYConv] and the European Convention [EConv].....	330
3.II.5.2.	Trends in the application of the New York Convention regarding the form of arbitration agreement	332
3.III.	Special rules for consumer disputes (Section 3(3) through (6) of the ArbAct)	336
3.III.1.	Concept of special consumer protection with respect to the conclusion and terms of an arbitration agreement	336
3.III.2.	Section 3(3) of the ArbAct.....	338
3.III.3.	Section 3(4) of the ArbAct.....	339
3.III.4.	Section 3(5) of the ArbAct.....	345
3.III.5.	Section 3(6) of the ArbAct.....	347
3.IV.	Case law	347
3.V.	Case law of Slovak courts	379
3.VI.	Case law of the ECtHR (including the Commission’s decisions)	380
3.VII.	Case law of the ECJ (CJEU)	381
3.VIII.	From arbitration practice.....	382
3.IX.	Comparison with the law of the Slovak Republic (SlovArbAct).....	397
3.X.	Bibliography.....	397

PART TWO: ARBITRATORS

Chapter 4, Eligibility to Act as an Arbitrator—Section 4	415
Section 118 of the PIL [Capacity of a foreigner to act as an arbitrator] (effective from 1 January 2014)	416
4.I. Scope and review of the eligibility of arbitrator.....	417
4.I.1. Temporal scope of the eligibility of an arbitrator ..	417
4.I.2. Territorial Scope of the Eligibility of an Arbitrator pursuant to Section 4 of the ArbAct.....	417
4.I.3. Proving the eligibility of an arbitrator.....	418
4.I.4. Arbitral award rendered by an ineligible arbitrator.....	419
4.I.5. Nature of the duties performed by an arbitrator....	419

TABLE OF CONTENTS

4.II.	Section 4(1) of the ArbAct: General eligibility criteria for the office of arbitrator	421
4.II.1.	General eligibility criteria for the office of arbitrator: Majority and legal capacity	421
4.II.2.	Registration in the list of arbitrators.....	422
4.II.3.	Incompatibility with other offices.....	423
4.II.4.	Qualification criteria	426
4.II.5.	Special requirements for experts stipulated by an arbitration agreement.....	427
4.III.	Section 4(2) of the ArbAct: Eligibility of foreigners to act as arbitrators.....	428
4.III.1.	Personal law of a foreigner applicable to the determination of the eligibility to act as an arbitrator.....	428
4.III.2.	New rules regulating the eligibility of a foreigner to act as an arbitrator effective from 1 January 2014 (PIL).....	430
4.IV.	Section 3(3) of the ArbAct: Clean criminal record	433
4.V.	Section 4(4) of the ArbAct: Eligibility of an arbitrator to hear and resolve consumer disputes.....	436
4.VI.	Case law	438
4.VII.	From arbitration practice.....	444
4.VIII.	Comparison with the law of the Slovak Republic (SlovArbAct).....	444
4.IX.	Bibliography.....	445
Chapter 5, Acceptance of Appointment; Resignation—Section 5.....		449
5.I.	Section 5(1) and (2) of the ArbAct	450
5.II.	Section 5(3) of the ArbAct.....	451
5.III.	Case law	462
5.IV.	From arbitration practice.....	464
5.V.	Comparison with the law of the Slovak Republic (SlovArbAct).....	465
5.VI.	Bibliography.....	465
Chapter 6, Obligation of Confidentiality—Section 6		469
6.I.	Section 6(1) of the ArbAct.....	470
6.II.	Section 6(2) of the ArbAct.....	472
6.II.1.	Release from confidentiality	472
6.II.2.	Power to release from confidentiality as a right <i>sui generis</i> outside the exercise of judicial power	473

ARBITRATION LAW OF CZECH REPUBLIC

6.II.3.	Reasons for a release from confidentiality	476
6.II.4.	Parties authorized to request a release from confidentiality	477
6.III.	Confidentiality of arbitrators and Act No. 186/2011 Coll.....	479
6.III.1.	Premises and purpose of Act No. 186/2011 Coll. .	479
6.III.2.	Discrepancy between the premises of Act No. 186/2011 Coll. and the case law of the ECtHR regarding arbitration.....	481
6.III.3.	Absence of any harmonized rules at the international level. Ministries acting <i>ultra vires</i> ?.....	485
6.III.4.	Nature of assistance under Section 3 of Act No. 186/2011 Coll.....	486
6.III.4.1.	Request to provide assistance	486
6.III.4.2.	The obligation of confidentiality and obligation to provide information under the Act.....	490
6.III.5.	Persons making binding decisions on the rights and obligations of others as a category of obligors under Act No. 186/2011 Coll. (arbitrators, the financial arbiter, etc.)	494
6.III.5.1.	Specification of persons making decisions on rights and obligations ..	494
6.III.5.2.	Special regime for releasing the arbitrator from confidentiality from the perspective of Act No. 186/2011 Coll.	495
6.III.5.3.	Financial arbiter (excursus).....	496
6.III.6.	Vagueness and constitutional nonconformity of Section 3(2) of Act No. 186/2011 Coll.	497
6.IV.	From arbitration practice.....	500
6.V.	Comparison with the law of the Slovak Republic (SlovArbAct).....	500
6.VI.	Bibliography.....	501
Chapter 7, Selection of Arbitrators—Section 7		503
7.I.	Section 7(1) of the ArbAct	504
7.I.1.	Selection of individual arbitrators.....	504
7.I.2.	General and special requirements for eligibility to act as an arbitrator	507
7.I.3.	Real and effective possibility to appoint arbitrators (influence the choice of (an) individual arbitrator(s)); equality of the parties	509

TABLE OF CONTENTS

	7.I.4. Selection of arbitrators by a third party (<i>appointing authority</i>) and equality of the parties	510
	7.I.5. Selection of arbitrators by reference to rules on arbitration	514
	7.I.6. Number of arbitrators.....	517
7.II.	Section 7(2) of the ArbAct.....	520
	7.II.1. Substitute rule in the absence of any agreement 521between the parties.....	520
	7.II.2. Arbitration with more than two parties	521
7.III.	Case law	523
7.IV.	From arbitration practice.....	533
7.V.	Comparison with the law of the Slovak Republic (SlovArbAct).....	540
7.VI.	Bibliography.....	540
Chapter 8, Lack of Bias—Section 8		545
8.I.	Section 8(1) of the ArbAct.....	546
	8.I.1. Basic substantive rules for the assessment of lack of bias on the part of the arbitrator and correlation with the mechanisms of protection of the parties under the ArbAct.....	546
	8.I.2. Objective nature of the grounds for bias and challenge to arbitrator	547
	8.I.3. Correlation between impartiality (objective and subjective impartiality) and bias	556
	8.I.4. Acting as arbitrator and mediator in the same case.....	559
8.II.	Section 8(2) of the ArbAct.....	560
8.III.	Section 8(3) of the ArbAct.....	565
8.IV.	Case law	569
8.V.	From arbitration practice.....	572
8.VI.	Comparison with the law of the Slovak Republic (SlovArbAct).....	573
8.VII.	Bibliography.....	574
Chapter 9, Appointment of Arbitrator by the Court—Section		577
9.I.	Section 9(1) of the ArbAct.....	577
	9.I.1. Selection of arbitrator by the court in the discharge of the court’s supporting function vis-à-vis arbitration.....	577

ARBITRATION LAW OF CZECH REPUBLIC

9.I.2.	Power to submit a motion for the appointment of an arbitrator by the court.....	578
9.I.3.	Time limits.....	579
9.I.3.1.	Time limit for the selection of an arbitrator by the parties.....	579
9.I.3.2.	Time limit for the court's decision under Section 9(1) of the ArbAct.....	579
9.I.4.	Jurisdiction of the court.....	580
9.II.	Section 9(2) of the ArbAct.....	581
9.III.	Procedure under international treaties.....	581
9.IV.	Case Law.....	582
9.V.	Comparison with the law of the Slovak Republic (SlovArbAct).....	583
9.VI.	Bibliography.....	584
Chapter 10, Requirements for the Appointment of Arbitrator by the Court—Section 10.....		
10.I.	Section 10(1) of the ArbAct.....	585
10.II.	Section 10(2) of the ArbAct.....	587
10.III.	Comparison with the law of the Slovak Republic (SlovArbAct).....	587
10.IV.	Bibliography.....	588
Chapter 11, Challenge to Arbitrator—Section 11.....		
11.I.	Commentary on Section 11 of the ArbAct.....	589
11.II.	From arbitration practice.....	595
11.III.	Comparison with the law of the Slovak Republic (SlovArbAct).....	595
11.IV.	Bibliography.....	596
Chapter 12, Additional Circumstances, Challenge Procedure—Section 12.....		
12.I.	Section 12(1) of the ArbAct.....	598
12.I.1.	Effects of the resignation of an arbitrator.....	598
12.I.2.	Challenging an arbitrator after the first procedural act on the merits.....	598
12.I.3.	Extinguishment of the party's right to challenge an arbitrator: Importance of the moment when the arbitral award is made.....	600
12.II.	Section 12(2) of the ArbAct.....	602

TABLE OF CONTENTS

12.II.1.	Requirements for a motion to challenge an arbitrator.....	602
12.II.2.	Nature of court proceedings under Section 12(2) of the ArbAct	603
12.II.3.	Autonomy of the parties with respect to decisions on the challenge	603
12.III.	Case law	604
12.IV.	Case law of the ECtHR (including the Commission’s decisions)	606
12.V.	From arbitration practice.....	608
12.VI.	Comparison with the law of the Slovak Republic (SlovArbAct).....	608
12.VII.	Bibliography.....	610
Chapter 13, Permanent Arbitral Institutions—Section 13		613
13.I.	Section 13(1) of the ArbAct.....	615
13.I.1.	Legal basis for the establishment of a permanent arbitral institution.....	615
13.I.2.	Permanent arbitral institutions in the Czech Republic	617
13.I.2.1.	Arbitration Court at the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic	617
13.I.2.2.	Exchange Court of Arbitration at the Prague Stock Exchange [Burza cenných papírů Praha a.s.]	619
13.I.2.3.	Arbitration Court of the Czech Moravian Commodity Exchange Kladno.....	620
13.I.3.	Advantages of proceedings before a permanent arbitral institution (specifics)	620
13.II.	Section 13(2) of the ArbAct.....	621
13.III.	Section 13(3) of the ArbAct.....	622
13.IV.	Section 13(4) of the ArbAct.....	624
13.IV.1.	The so-called “arbitral centers” as entities providing organizational services	624
13.IV.2.	Rules of procedure versus arbitration agreement: Permanent arbitral proceedings versus <i>ad hoc</i> arbitration.....	626

ARBITRATION LAW OF CZECH REPUBLIC

13.IV.3.	Commencing proceedings in a permanent arbitral institution and in <i>ad hoc</i> arbitration (connection to Section 14(1) of the ArbAct)	627
13.IV.4.	Seat of arbitration before a permanent arbitral institution and in <i>ad hoc</i> arbitration (connection to Section 17 of the ArbAct, etc.)	629
13.IV.5.	Appointment of arbitrators in proceedings in a permanent arbitral institution and in <i>ad hoc</i> arbitration (connection to Sections 7, 8, 11, and 12 of the ArbAct)	631
13.IV.6.	Exclusion of the possibility to confuse a permanent arbitral institution with another entity providing services for arbitrators (with respect to arbitration).....	637
13.V.	Case law	639
13.VI.	From arbitration practice.....	661
13.VII.	Comparison with the law of the Slovak Republic (SlovArbAct).....	665
13VIII.	Bibliography.....	667

PART THREE: ARBITRAL PROCEEDINGS

CHAPTER 14, Commencement of the Proceedings—Section 14677

14.I.	Motion to commence proceedings (request for arbitration/statement of claim)	679
14.I.1.	Contents of the request for arbitration (statement of claim)	679
14.I.2.	Language of the request for arbitration (statement of claim).....	683
14.I.3.	Form of the request for arbitration (statement of claim)	685
14.I.4.	Stamping the request for arbitration (statement of claim) with the date of service and evidence of commencing the proceedings.....	686
14.I.5.	Service of the request for arbitration (statement of claim)	688
14.I.5.1.	Submitting the request for arbitration (statement of claim) with an incorrect arbitrator.....	688
14.I.5.2.	Request for arbitration (statement of claim) submitted to a foreign arbitrator.....	689

TABLE OF CONTENTS

	14.I.5.3. Service of documents to a place different from the arbitrator’s residence	690
	14.I.6. Service of the request for arbitration (statement of claim) on the opponent	691
	14.I.7. Signing the request for arbitration (statement of claim)	693
14.II.	Consequences of commencing the arbitral proceedings under substantive law	695
	14.II.1. Application of the substantive standards and special provisions of the ArbAct.....	695
	14.II.2. Limitation of actions with respect to civil law liabilities submitted to arbitration (CC/NCC and ArbAct)	696
	14.II.2.1. Connection to Section 110 of the CC	696
	14.II.2.2. Connection to Section 112 of the CC.....	698
	14.II.2.3. Connection to the New Civil Code (NCC).....	700
	14.II.3. Limitation of actions with respect to commercial law liabilities submitted to arbitration (CC/NCC and ArbAct)	702
	14.II.3.1. Exercise of right and determination of the period of limitation	702
	14.II.3.2. Counterclaim.....	705
	14.II.3.3. Period of limitation depending on the progress and termination of the proceedings	707
	(a) Absence of a decision on the merits.....	708
	(b) Making a decision on the merits	709
14.III.	Case law	712
14.IV.	From arbitration practice.....	717
14.V.	Comparison with the law of the Slovak Republic (SlovArbAct).....	729
14.VI.	Bibliography.....	732
Chapter 15, Decisions on Jurisdiction, Plea of Lack of Jurisdiction—Section 15		737
Section 106 of the CCP		738
15.I.	Section 15(1) of the ArbAct.....	739
15.II.	Section 15(2) of the ArbAct.....	747

ARBITRATION LAW OF CZECH REPUBLIC

15.III.	Assessment of jurisdiction in consumer disputes.....	754
15.III.1.	Obligation to assess jurisdiction.....	754
15.III.2.	Evaluation criteria.....	755
15.III.3.	Obligation to provide instructions.....	757
15.IV.	Section 106 of the CCP.....	759
15.V.	Case law (with respect to Section 15 of the ArbAct and Section 106 of the CCP).....	761
15.VI.	Case law of the ECJ (CJEU).....	774
15.VII.	From arbitration practice.....	776
15.VIII.	Comparison with the law of the Slovak Republic (SlovArbAct).....	815
15.IX.	Bibliography.....	816
Chapter 16, Effects of a Request for Arbitration (Statement of Claim) in Case of a Lack of Jurisdiction—Section 16.....		823
16.I.	Section 16 of the ArbAct.....	823
16.II.	Bibliography.....	825
Chapter 17, Seat of Arbitration—Section 17.....		827
17.I.	Definition of the “seat of arbitration”.....	827
17.II.	Meaning of the seat of arbitration.....	829
17.II.1.	Importance of the seat of arbitration.....	829
17.II.2.	Localization theory (the seat theory).....	832
17.II.3.	Delocalization theory.....	834
17.III.	Seat of arbitration; place of hearings, place where the arbitral award is made and signed; classification of an arbitral award.....	836
17.III.1.	Distinguishing the seat of arbitration from the place of hearings under the ArbAct.....	836
17.III.2.	Place where the arbitral award is made.....	837
17.III.3.	Place where the arbitral award is signed.....	838
17.IV.	Determination (choice) of the seat of arbitration in international arbitration.....	839
17.IV.1.	Autonomy of the parties in determining the seat of arbitration.....	839
17.IV.2.	Determination of the seat of arbitration under the regime regulated by Section 17 of the ArbAct....	843
17.IV.2.1.	Choice of the seat of arbitration and arbitrability of the dispute.....	844
17.IV.2.2.	Legitimate interest of the parties in determining the seat of arbitration ...	846

TABLE OF CONTENTS

17.IV.2.3.	Seat of arbitration in a case where jurisdiction is vested in a permanent arbitral institution.....	847
17.IV.2.4.	Online proceedings; Administrative Site	847
17.IV.3.	Changing the seat of arbitration	848
17.IV.3.1.	Changing the seat of arbitration under the ArbAct.....	848
17.IV.3.2.	Changing the seat of arbitration in international practice.....	848
17.V.	Seat of arbitration and annulment of arbitral award by the court	849
17.V.1.	Fundamental rule – jurisdiction of the courts in the seat of arbitration.....	849
17.V.2.	Exception – jurisdiction of the courts of the state under the law of which the arbitral award was made.....	850
17.V.3.	Approach under the ArbAct (connection to Sections 5, 31, 38, and 43 of the ArbAct).....	852
17.VI.	Seat of arbitration and intervention of the state (court) in arbitration under Czech law	855
17.VI.1.	Territorial jurisdiction of the courts for exercising supporting and supervisory functions	855
17.VI.2.	Territorial jurisdiction of the court for depositing the arbitral award (Section 29(2) of the ArbAct)	857
17.VI.3.	Seat of arbitration and the law applicable to the arbitration agreement under the ArbAct; law applicable to the subject matter of the dispute	858
17.VII.	Subjective internationalization of a domestic dispute under Czech law and in comparison with international practice.....	859
17.VII.1.	Permissibility of internationalization of a dispute by the parties’ choice.....	859
17.VII.2.	The seat of arbitration is abroad versus the place where the arbitral award is made is situated in the Czech Republic	861
17.VII.3.	The seat of arbitration and the place where the arbitral award is made are both situated abroad....	862
17.VII.4.	Internationalization of a domestic dispute and enforcement of an arbitral award	864
17.VIII.	Case law	866
17.IX.	Case law of the ECJ (CJEU): Consumer disputes.....	867

ARBITRATION LAW OF CZECH REPUBLIC

17.X.	From arbitration practice.....	868
17.XI.	Comparison with the law of the Slovak Republic (SlovArbAct).....	872
17.XII.	Bibliography.....	873
Chapter 18, Equality of the Parties—Section 18		879
18.I.	Section 18 of the ArbAct.....	879
18.II.	Case law	883
18.III.	From arbitration practice.....	895
18.IV.	Comparison with the law of the Slovak Republic (SlovArbAct).....	902
18.V.	Bibliography.....	902
Chapter 19, Procedure—Section 19		905
19.I.	Autonomy in the determination of procedural rules	906
19.II.	Section 19(1) of the ArbAct.....	908
19.III.	Section 19(2) of the ArbAct.....	911
19.III.1.	Time limits	911
19.III.2.	Service of documents	914
19.III.2.1.	Service of documents during the course of the arbitral proceedings	914
19.III.2.2.	Service of documents in <i>ad hoc</i> proceedings at the international level (especially in “ <i>ad hoc</i> ” proceedings under the UNCITRAL Rules).....	922
(a)	Legal sources.....	922
(b)	Principal priority of the autonomy of the parties – importance of the parties’ agreement on service.....	923
(c)	Constructive service under the UNCITRAL Rules	926
(d)	Last known residence.....	928
(e)	Hierarchy of the rules applicable to the proceedings in terms of the service of documents	929
(f)	Service of documents in the context of European civil procedure and in connection with the arbitral proceedings.....	931
(g)	Service of documents and so-called denationalized arbitration.....	932

TABLE OF CONTENTS

	(h) Procedural service with an international dimension within the background of substantive law	934
19.III.2.3.	Service of decisions under Section 23 of the ArbAct as a process integrated in the proceedings after the Amendment to the ArbAct.....	934
19.III.2.4.	Service of documents to arbitrators ..	935
19.III.2.5.	Service of documents by e-mail.....	935
19.III.2.6.	Guardian.....	936
	(a) Guardian for receiving correspondence ...	936
	(b) Procedural guardian	937
19.III.3.	Reservation of arbitrator with respect to procedure.....	937
19.III.4.	Application of the rules adopted by permanent arbitral institutions based on an agreement of the parties in <i>ad hoc</i> proceedings.....	938
19.III.5.	Form of procedural decisions.....	939
19.III.6.	Severance of various parts of the request for arbitration (statement of claim) to be heard and resolved in separate proceedings and consolidation of separate claims	939
	19.III.6.1. Exclusion for a separate hearing (severance of actions)	939
	19.III.6.2. Consolidation of actions for a joint hearing	940
19.III.7.	Procedure regarding the taking of evidence.....	940
19.III.8.	Hearing.....	941
19.III.9.	Language of the proceedings and language of evidence	942
19.III.10.	Exclusion of analogy with proceedings terminated by a confessed or default judgment.....	945
19.IV.	Section 19(3) of the ArbAct.....	948
	19.IV.1. Oral hearing	948
	19.IV.2. Exclusion of the public and confidentiality of the arbitral proceedings.....	949
	19.IV.2.1 Exclusion of the public versus confidentiality of the arbitral proceedings	949

ARBITRATION LAW OF CZECH REPUBLIC

19.IV.2.2.	Absence of universal confidentiality as an obligation of the parties to refrain from disclosing information about the hearing	952
(a)	Diversity of approach to the confidentiality of the arbitral proceedings and the global practice of excluding the public from the hearing.....	952
(b)	Confidentiality, public access to information (definition of the “public”) and permission granted to specific (third) parties to attend the hearing of the dispute	956
19.IV.2.3.	Exclusion of the public from the arbitral proceedings and the possibility to allow other “specific parties” to attend the hearing of the dispute.....	958
19.IV.2.4.	Exclusion of the public from the proceedings and intervenors	960
19.V.	Section 19(4) of the ArbAct.....	961
19.VI.	Choice of procedural law in international arbitration	966
19.VII.	Consequences of insolvency proceedings for pending arbitration.....	967
19.VII.1.	Effects of insolvency and insolvency proceedings on arbitration.....	967
19.VII.2.	Effects of insolvency proceedings on arbitration in domestic disputes	968
19.VII.2.1.	Effects of a declaration of bankruptcy	968
(a)	Declaration of bankruptcy in the course of the arbitral proceedings.....	968
(b)	Declaration of bankruptcy after the arbitral proceedings are terminated	969
(c)	Declaration of bankruptcy after the arbitral award is made or becomes final and conclusive.....	970
19.VII.2.2.	Procedure adopted by the arbitrators	970
19.VII.2.3.	Arbitration agreement binding upon the insolvency trustee.....	973
19.VII.3.	Effects of insolvency proceedings on arbitration in international disputes	974

TABLE OF CONTENTS

19.VII.4.	EU law: Applicability and scope of application of Regulation 1346/2000 to arbitration	977
19.VII.4.1.	Scope of the issue of applicability of Regulation 1346/2000 to arbitration.....	977
19.VII.4.2.	Application of insolvency law in arbitration.....	980
(a)	Application of insolvency law	980
(b)	Suspension of arbitral proceedings	982
(c)	Application of Regulation 1346/2000	985
(d)	Applicable provisions of Regulation 1346/2000	987
19.VII.4.3.	Risk of different approaches adopted by certain EU Member States	989
19.VII.5.	Priority of collective (insolvency) proceedings over individual (arbitral) proceedings as a component of public policy.....	991
19.VIII.	Case law	992
19.IX.	Case law of the ECtHR (including the Commission's decisions)	1017
19.X.	From arbitration practice.....	1020
19.XI.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1049
19.XII.	Bibliography.....	1052
Chapter 20, Taking of Evidence; Procedural Acts—Section 20.....		1063
20.I.	Section 20(1) of the ArbAct.....	1063
20.II.	Section 20(2) of the ArbAct.....	1070
20.II.1.	Support for arbitration in the Czech Republic ..	1070
20.II.2.	Legal assistance with respect to foreign countries, or assistance to proceedings conducted abroad	1075
20.III.	Section 20(3) of the ArbAct.....	1078
20.IV.	Case law	1079
20.V.	Case law of the ECJ/CJEU.....	1082
20.VI.	From arbitration practice.....	1083
20.VII.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1095
20.VIII.	Bibliography.....	1097

ARBITRATION LAW OF CZECH REPUBLIC

Chapter 21, Additional ACTS of the Parties—Section 21	1107
21.I. Section 21 of the ArbAct.....	1107
21.II. From arbitration practice.....	1113
21.III. Comparison with the law of the Slovak Republic (SlovArbAct).....	1114
21.IV. Bibliography.....	1114
Chapter 22, Interim Measures—Section 22	1117
22.I. Section 22 of the ArbAct.....	1117
22.II. Case law	1123
22.III. Comparison with the law of the Slovak Republic (SlovArbAct).....	1132
22.IV. Bibliography.....	1132
Chapter 23, Termination of the Proceedings, Arbitral Award, Resolution—Section 23	1137
Article II of the Amendment to the ArbAct (Act No 19/2012 Coll.) [Transitional provisions].....	1137
23.I. Conditions for terminating the proceedings	1138
23.I.1. Rendering an arbitral award.....	1138
23.I.2. Rendering a resolution terminating the proceedings	1139
23.II. Determination of the rights and obligations of the parties in an arbitral award.....	1140
23.III. Interim and partial arbitral awards	1141
23.IV. Completeness of an arbitral award and a supplemental arbitral award	1142
23.V. Closing the hearing of the case	1143
23.VI. Decision making <i>ex officio</i>	1144
23.VII. Time limit for performance under an award	1145
23.VIII. Form of the decision terminating the proceedings	1146
23.IX. The moment of terminating the arbitral proceedings and a conceptual change under the Amendment to the ArbAct.....	1147
23.X. Accelerated proceedings	1149
23.XI. Costs of proceedings	1150
23.XI.1. Obligation to reimburse the costs.....	1150
23.XI.2. Legal fees	1152
23.XI.3. Fees and costs of the arbitrators	1155
23.XII. Case law	1167
23.XIII. From arbitration practice.....	1187

TABLE OF CONTENTS

23.XIV. Comparison with the law of the Slovak Republic (SlovArbAct).....	1223
23.XV. Bibliography.....	1225
Chapter 24, Settlement of the Dispute—Section 24.....	1235
24.I. Section 24(1) of the ArbAct.....	1235
24.II. Section 24(2) of the ArbAct.....	1238
24.III. From arbitration practice.....	1245
24.IV. Comparison with the law of the Slovak Republic (SlovArbAct).....	1249
24.V. Bibliography.....	1249
Chapter 25, Making the Arbitral Award and Reasons—Section 25....	1259
25.I. Section 25(1) of the ArbAct: Making the arbitral award and a written execution thereof.....	1260
25.II. Section 25(2) of the ArbAct: Reasons for the arbitral award and instructions in consumer disputes.....	1269
25.III. Section 25(3) of the ArbAct: Legal basis for a decision and decision making following the principles of equity	1274
25.III.1. Decision making according to valid law	1274
25.III.2. Decision making following the principles of equity	1275
25.III.2.1. Exception to the application of substantive rules in arbitration	1275
25.III.2.2. Distinguishing decision making following the principles of equity from the amiable compositeur procedure	1276
25.III.2.3. Difference between decision making following the principles of equity (<i>ex aequo et bono</i>) and the <i>amiable compositeur</i> procedure.....	1279
25.III.2.4. Decision making as <i>amiable compositeur</i>	1281
25.III.2.5. Permissibility of <i>dépeçage</i> (splitting) in consequence of a partial authorization to decide following the <i>principles of equity</i> or as <i>amiable compositeur</i>	1284
25.III.2.6. Power of the arbitrator to modify the agreement of the parties	1286

ARBITRATION LAW OF CZECH REPUBLIC

25.III.2.7.	Decision making following the principles of equity (<i>ex aequo et bono</i>) and connection with valid law	1287
25.III.2.8.	Unambiguity of the authorization granted to the arbitrators to make decisions following the principles of equity	1288
25.III.2.9	Decision making outside the law versus decision making within a particular legal system.....	1291
25.III.2.10.	Contents of decision making following the principles of equity depending on the scope and manner of exercising the authorization	1293
25.III.2.11.	Prohibition of arbitrary conduct.....	1294
25.III.2.12.	Principles of decision making following the principles of equity ..	1295
25.III.2.13.	Predictability of decisions.....	1295
25.III.2.14.	Public policy as a factor limiting decision making following the principles of equity	1297
25.III.2.15.	Relationship between decision making following the principles of equity and “ <i>lex mercatoria</i> ”	1297
25.III.2.16.	Decision making following the principles of equity and the procedure pursuant to Section 136 of the CCP	1298
25.III.3.	Mandatory consideration of consumer protection laws	1299
25.III.4.	Predictability of decisions and connection to Section 13 of the NCC	1300
25.IV.	Case law	1302
25.V.	From arbitration practice.....	1307
25.VI.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1329
25.VII.	Bibliography.....	1331
Chapter 26, Correction of Errors in an Arbitral Award—		
Section 26.....		
26.I.	Manifest errors and mistakes	1339
26.II.	Continuing obligation of the arbitrators	1340

TABLE OF CONTENTS

26.III.	Method of making, form and essentials of a decision to correct	1341
26.IV.	The difference compared to an additional (supplemental) arbitral award and interpretation of an arbitral award	1343
26.IV.1.	Additional (supplemental) arbitral award	1343
26.IV.2.	Interpretation of an arbitral award according to different legal systems	1343
26.V.	Depositing the correction of an arbitral award (connection to Section 29 of the ArbAct)	1344
26.VI.	Consequences for running of the time limits for submitting a motion to annul an arbitral award (connection to Section 32(1) of the ArbAct).....	1344
26.VII.	From arbitration practice.....	1345
26.VIII.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1346
26.IX.	Bibliography.....	1346
 Chapter 27, Review of an Arbitral Award—Section 27		 1349
27.I.	Exclusion of appeal as a principle of arbitration.....	1349
27.II.	Scope and purpose of review (arbitral award / resolution on terminating the proceedings).....	1352
27.III.	Number of tribunals exercising the review	1356
27.IV.	Commencement of the review and appointment of arbitrators for the review	1357
27.V.	Time limit for submitting a motion to review / scope of the parties' autonomy.....	1359
27.VI.	Case law	1359
27.VII.	From arbitration practice.....	1361
27.VIII.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1363
27.IX.	Bibliography.....	1363
 Chapter 28, Legal Force and Effect, Enforceability—Section 28		 1365
28.I.	Section 28(1) of the ArbAct.....	1365
28.I.1.	Reasonable application of the CCP and change in the concept of terminating the arbitral proceedings resulting from the amendment to Section 23 of the ArbAct (Amendment to the ArbAct)	1365
28.I.2.	Addressee (recipient) of an arbitral award	1367
28.I.3.	Online arbitration and an electronic arbitral award.....	1368

ARBITRATION LAW OF CZECH REPUBLIC

28.I.4.	Confirmation of legal force and effect	1369
28.II.	Section 28(2) of the ArbAct	1372
28.II.1.	Legal force and effect of an arbitral award and effects of a final and conclusive arbitral award	1372
28.II.2.	Enforceability of an arbitral award	1374
28.II.2.1.	Enforceability as a consequence of legal force and effect / enforceable decision under the CCP and under the ExecProcC	1374
28.II.2.2.	Absence of the confirmation of enforceability in arbitration (with respect to arbitral awards)	1374
28.II.2.3.	The moment enforceability takes effect	1375
28.II.3.	Confirmation of service of the arbitral award on the parties for the purpose of using it abroad	1376
28.II.4.	Legal force and effect, enforceability, and motion to annul an arbitral award	1376
28.III.	Connection between Section 28(1) of the ArbAct and Section 28(2) of the ArbAct	1378
28.IV.	Case law	1379
28.V.	From arbitration practice	1405
28.VI.	Comparison with the law of the Slovak Republic (SlovArbAct)	1414
28.VII.	Bibliography	1415

Chapter 29, Deposition of the Award and Other Documents—

Section 29	1421	
29.I.	Section 29(1) of the ArbAct	1421
29.II.	Section 29(2) of the ArbAct	1422
29.III.	Section 29(3) of the ArbAct	1423
29.IV.	Obligation to archive documents after the proceedings are terminated by a resolution pursuant to Section 23(b) of the ArbAct	1424
29.V.	Partial and interim arbitral awards	1424
29.VI.	Case law	1426

Chapter 30, Application of the Code of Civil Procedure—

Section 30	1427	
30.I.	The concept of Section 30 of the ArbAct	1427

TABLE OF CONTENTS

30.II.	Procedural rules applicable in arbitration and differences between domestic and international disputes	1434
30.III.	Case law	1439
30.IV.	From arbitration practice.....	1446
30.V.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1448
30.VI.	Bibliography.....	1448

PART FOUR: ANNULMENT OF ARBITRAL AWARD BY COURT AND TERMINATION OF PENDING ENFORCEMENT PROCEEDINGS

CHAPTER 31, Annulment of Arbitral Award by the Court—

Section 31	1457
Article II of the Amendment to the ArbAct (Act No. 19/2012 Coll.) [Transitional provisions], point 2.	1458
31.I. Annulment of an arbitral award and proceedings based on a motion to annul (nature, parties, motion, conditions, and effects).....	1459
31.I.1. Purpose of and conditions for the application of annulment of an arbitral award	1459
31.I.2. Scope of annulment of an arbitral award: Exclusion of the possibility to annul a foreign arbitral award.....	1464
31.I.3. Obligation to supply the relevant statements of fact and burden of proof.....	1464
31.I.4. Consumer disputes and examination of selected reasons for annulment <i>ex officio</i>	1465
31.I.5. Parties authorized to make a motion to annul an arbitral award, parties to annulment proceedings	1466
31.I.5.1. Parties authorized to make a motion to annul	1466
31.I.5.2. Arbitrators and permanent arbitral institutions in proceedings for annulment of an arbitral award (witness, intervenor)	1469
31.I.6. Binding nature of Section 31 et seq. of the ArbAct	1474

ARBITRATION LAW OF CZECH REPUBLIC

31.I.7.	Review proceedings (Section 27 of the ArbAct) and annulment proceedings (Section 31 of the ArbAct)	1475
31.I.8.	Final, interim, and partial arbitral awards	1476
31.I.9.	Contents and effects of the motion to annul an arbitral award	1477
31.I.10.	Absence of any extritorial effects of the annulment of an arbitral award / connection between court jurisdiction and the place where the arbitral award is made (seat of arbitration)	1479
31.I.11.	Special arbitration (the state as a party to arbitration).....	1480
31.I.12.	Fee for a motion to annul an arbitral award	1481
31.I.13.	International standards regarding the annulment of an arbitral award: NYConv, UNCITRAL Model Law (UML), and international practice	1481
31.II.	Section 31(a) of the ArbAct	1490
31.II.1.	Objective arbitrability	1490
31.II.2.	Changes in the conditions of arbitrability after the conclusion of an arbitration agreement – relaxing the conditions of arbitrability	1490
31.II.3.	Changes in the conditions of arbitrability after the conclusion of an arbitration agreement – tightening the conditions of arbitrability	1493
31.III.	Section 31(b) of the ArbAct	1495
31.III.1.	Validity and scope of an arbitration agreement	1495
31.III.2.	Nullity of an arbitration agreement	1496
31.III.3.	Importance of the classification of an arbitration agreement as a type of contract	1497
31.III.4.	<i>Res judicata</i> and grounds for annulment of an arbitral award	1498
31.III.5.	<i>Lis pendens</i> and grounds for annulment of an arbitral award	1499
31.IV.	Section 31(c) of the ArbAct	1502
31.V.	Section 31(d) of the ArbAct	1504
31.VI.	Section 31(e) of the ArbAct	1504
31.VII.	Section 31(f) of the ArbAct.....	1512
31.VIII.	Special grounds for annulment of an arbitral award in relations between consumer and professional (B2C relations).....	1515

TABLE OF CONTENTS

31.VIII.1. Generally regarding special grounds for annulment of an arbitral award in consumer disputes	1515
31.VIII.2. Section 31(g) of the ArbAct.....	1516
31.VIII.3. Section 31(h) of the ArbAct.....	1519
31.IX. Subsection (i) of the ArbAct	1521
31.X. Case law	1524
31.XI. Case law of the ECtHR (including the Commission’s decisions)	1574
31.XII. Case law of the ECJ (CJEU)	1577
31.XIII. From arbitration practice.....	1579
31.XIV. Comparison with the law of the Slovak Republic (SlovArbAct).....	1584
31.XV. Bibliography.....	1585

Chapter 32, Time Limit for Submitting a Motion to Annul an Arbitral Award—Section 32	1595
32.I. Section 32(1) of the ArbAct.....	1596
32.I.1. Objective time limit for submitting a motion to annul an arbitral award.....	1596
32.I.2. Statutory time limit – exclusion of the possibility to pardon or postpone the time limit	1597
32.I.3. Commencement of the time limit – connection to service of the award, not the legal force and effect of the arbitral award	1598
32.I.4. Consumer disputes	1598
32.I.5. Correction of manifest errors in the arbitral award: Interim, partial, and supplemental (additional) arbitral awards.....	1600
32.I.5.1. Time limit for submitting a motion to annul in case of a correction of manifest errors in the AA (Section 26 of the ArbAct)	1600
32.I.5.2. Interim and partial arbitral awards ..	1601
32.I.5.3. Time limit for submitting a motion to annul in case of a supplemental (additional) arbitral award.....	1604
32.II. Section 32(2) of the ArbAct.....	1604
32.II.1. Suspension of enforceability as an institution exclusively regulated under the ArbAct.....	1604
32.II.2. Threat of serious harm	1605
32.II.3. Grounds justifying a motion to annul.....	1606

ARBITRATION LAW OF CZECH REPUBLIC

32.III.	Section 32(3) of the ArbAct.....	1607	
32.IV.	Case law	1607	
32.V.	Case law of the ECJ (CJEU)	1610	
32.VI.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1612	
32.VII.	Bibliography.....	1612	
Chapter 33, Dismissal of a Motion to Annul an Arbitral Award—			
Section 33			1613
33.I.	Concept and constitutional compliance of Section 33 of the ArbAct.....	1614	
33.II.	Extinguishment of the grounds for annulment of an arbitral award as a result of the arbitration agreement being non- existent or invalid.....	1615	
33.III.	Extinguishment of the grounds for annulment of an arbitral award as a result of an arbitrator challenge.....	1619	
33.IV.	Special consumer protection	1622	
33.V.	Case law	1622	
33.VI.	Case law of the ECJ (CJEU)	1625	
33.VII.	From arbitration practice.....	1627	
33.VIII.	Bibliography.....	1628	
Chapter 34, Consequences of Annulment of an Arbitral Award—			
Section 34			1629
34.I.	Purpose of Section 34(1) compared to Section 34(2) and a new hearing on the merits	1630	
34.II.	Section 34(1) of the ArbAct.....	1633	
34.III.	Section 34(2) of the ArbAct.....	1637	
34.IV.	Section 34(3) of the ArbAct.....	1648	
34.V.	Case law	1648	
34.VI.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1650	
34.VII.	Bibliography.....	1651	
Chapter 35, Termination of the Enforcement Proceedings—			
Section 35			1653
35.I.	Section 35(1) of the ArbAct.....	1654	
35.I.1.	General and special grounds	1654	
35.I.2.	Section 35(1)(a) of the ArbAct	1658	
35.I.3.	Section 35(1)(b) of the ArbAct	1659	
35.I.4.	Subsection (1)(c) and (d) of the ArbAct	1660	

TABLE OF CONTENTS

35.II. Section 35(2) of the ArbAct.....	1660
35.III. Section 35(3) of the ArbAct.....	1661
35.IV. Case law	1662
35.V. Case law of Slovak courts [SVK]	1672
35.VI. Case law of the ECJ (CJEU)	1672
35.VII. Comparison with the law of the Slovak Republic (SlovArbAct).....	1673
35.VIII. Bibliography.....	1674

PART FIVE: LIST OF ARBITRATORS ADMINISTERED BY THE MINISTRY

Chapter 35A, List of Arbitrators—Section 35A	1679
35A.I. Limitation of the scope of the rules regulating the list of arbitrators exclusively to consumer disputes	1679
35A.II. Nature of arbitration and status of arbitrator in consumer disputes in consequence of stronger public supervision	1680
35A.III. Prospects of the institution of the list of arbitrators in consumer disputes in connection with the Private International Law Act (PIL) after 1 January 2014	1684
35A.IV. Bibliography.....	1687
Chapter 35B, Registration in the List of Arbitrators— Section 35B	1689
Article II paragraphs 4 and 5 of the Amendment to the ArbAct (Act No. 19/2012 Coll.) [Transitional provisions]	1690
35B.I. Section 35b(1) of the ArbAct.....	1691
35B.II. Section 35b(2) of the ArbAct.....	1693
35B.III. Section 35b(3) and (4) of the ArbAct.....	1693
35B.IV. Section 35b(5) of the ArbAct.....	1695
Chapter 35C, Striking off the List of Arbitrators—Section 35C	1697
35C.I. Striking off the list as an administrative decision	1698
35C.II. Section 35c(1) of the ArbAct: Obligation of the Ministry to strike the arbitrator off the list.....	1699
35C.III. Section 35c(2): Possibility to strike off the list	1701
35C.III.1. Interpretation of the terms “serious” or “repeated” breach of duties	1701
35C.III.2. Connection between the criteria for annulment of an arbitral award and the interpretation adopted by the Ministry	1702

ARBITRATION LAW OF CZECH REPUBLIC

35C.III.3.	Service of the counterparts of the decision on annulment of an arbitral award (Section 34(3) of the ArbAct) and connection to striking the arbitrator off the list (Section 35c(2))	1703
35C.III.4.	Duties relating to consumer rules.....	1706
35C.III.5.	Administrative discretion of the Ministry in choosing the legal consequences of breaching the duties of arbitrator	1708
35C.IV.	Section 35c(3) of the ArbAct: Possibility of a temporary striking off the list	1711
35C.V.	Procedural aspects of the proceedings on striking the arbitrator off the list	1711
35C.V.1.	Applicable laws.....	1711
35C.V.2.	Administrative proceedings at the Ministry of Justice of the Czech Republic	1713
35C.V.3.	Review of the Ministry's decision – appeal	1718
35C.V.4.	Proceedings in court – lawsuit in administrative court proceedings	1719
35C.VI.	Section 35c(4) of the ArbAct	1721
Chapter 35D, Obligations to Provide Information—Section 35D		1723
Chapter 36, Law Applicable to the Arbitration Agreement—		
Section 36.....		1725
Section 117 of the PIL [Arbitration agreement]		1725
Section 123 of the PIL[Transitional provisions].....		1726
36.I.	International dimension in an arbitration agreement and differentiation of applicable laws in arbitration	1726
36.I.1.	Manifestations of the international dimension in arbitration.....	1726
36.I.2.	The law applicable to the arbitration agreement as an autonomous category between lex arbitri and lex causae	1731
36.II.	Correlation between the law applicable to the proceedings and the law applicable to the arbitration agreement.....	1732
36.II.1.	Difference between applicable procedural law and the law applicable to the arbitration agreement	1732
36.II.2.	Interrelation between applicable procedural law and the law applicable to the arbitration agreement.....	1733

TABLE OF CONTENTS

36.III.	Arbitrability and form of arbitration agreement under Czech law	1734
36.IV.	Arbitrability from the conflict-of-laws perspective.....	1739
36.IV.1.	Approaches to the interpretation of arbitrability in arbitration agreements with an international dimension	1739
36.IV.2.	Approaches to the assessment of arbitrability in international arbitration.....	1746
36.IV.2.1.	The conflict-of-laws method(s).....	1746
36.IV.2.2.	Procedural approach.....	1748
36.IV.2.3.	Internationally mandatory approach.....	1749
36.IV.3.	Law applicable to arbitrability under international treaties.....	1752
36.IV.3.1.	Concept of international treaties and approach to the interpretation thereof (NYConv and EConv)	1752
36.IV.3.2.	Absence of arbitrability under Article V(2)(a) of the NYConv	1755
36.V.	Exclusion of the law applicable to an arbitration agreement from the scope of the Rome I Regulation and the Rome Convention	1764
36.VI.	Consumer protection in connection with the law applicable to an arbitration agreement.....	1765
36.VII.	Changes in connection with the new Private International Law Act.....	1766
36.VIII.	From arbitration practice.....	1766
36.IX.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1768
36.X.	Bibliography.....	1769
Chapter 37, Applicable Substantive Law—Section 37		1781
37.I.	Law applicable to the subject matter of the dispute and approaches to the determination of the conflict-of-laws status of the lex causae in arbitration	1783
37.I.1.	International dimension in arbitration and its influence on the substantive law applicable to the merits of the dispute	1783
37.I.2.	Choice of law and attempts at transnationalization of the law applicable to the subject matter of the dispute	1785

ARBITRATION LAW OF CZECH REPUBLIC

37.I.3.	Application of the conflict-of-laws rules and the conflict-of-laws method by arbitral tribunals	1787
37.I.4.	Connecting factors used by arbitrators in international practice.....	1789
37.I.5.	Subjective evaluation factors for the determination of applicable substantive law	1792
37.I.6.	Consideration and application of non-state standards in arbitration.....	1794
37.II.	Section 37(1) of the ArbAct.....	1795
37.II.1.	Choice of law in arbitration pursuant to Section 37 of the ArbAct (first sentence of Section 37(1) of the ArbAct).....	1795
37.II.2.	Consumer protection (second sentence of Section 37(1) of the ArbAct)	1799
37.III.	Section 37(2) of the ArbAct.....	1802
37.IV.	Application of EU law in arbitration.....	1804
37.IV.1.	Connection between EU law and arbitration.....	1804
37.IV.2.	Arbitration and the Rome I Regulation from the perspective of Community law	1810
37.V.	Changes in connection with the new Private International Law Act.....	1813
37.VI.	Case law	1814
37.VII.	From arbitration practice.....	1816
37.VIII.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1823
37.IX.	Bibliography.....	1824

Chapter 38, Recognition and Enforcement of Foreign Arbitral Awards—Section 38..... 1851

Section 120 of the PIL.....	1851	
Section 121 of the PIL.....	1851	
Section 122 of the PIL.....	1852	
Section 123 of the PIL [Transitional provisions].....	1852	
38.I.	The term “foreign arbitral award” under the law of national origin (ArbAct) and under the New York Convention (NYConv)	1853
38.I.1.	Importance of the NYConv (NYConv) and the concept of arbitration / arbitral award in the state of recognition/enforcement.....	1853
38.I.1.1.	Importance of the NYConv (NYConv)	1854

TABLE OF CONTENTS

	38.I.1.2. Contractual concept of the arbitral award.....	1854
	38.I.1.3. Jurisdictional concept of the arbitral award (arbitral award as a judgment).....	1855
	38.I.1.4. International treaties.....	1856
	38.I.1.5. Connection between the NYConv and other international treaties and national rules.....	1857
38.I.2.	Scope of the New York Convention in connection with Sections 38 and 39 of the ArbAct.....	1858
	38.I.2.1. Scope of the New York Convention (NYConv).....	1858
	38.I.2.2. Concept of “arbitral award” under the New York Convention.....	1860
	38.I.2.3. Foreign arbitral award.....	1867
	(a) Territorial criterion.....	1867
	(b) Functional criterion.....	1870
	38.I.2.4. Foreign arbitral award within the meaning of Sections 38 and 39 of the ArbAct.....	1874
38.II.	Recognition and enforcement.....	1875
38.III.	Correlation between recognition and enforcement of foreign arbitral awards and standards applicable to the proceedings... ..	1879
38.IV.	Case law.....	1881
38.V.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1888
38.VI.	Bibliography.....	1891
 Chapter 39, Refusal to Enforce a Foreign Award—Section 39		 1901
Section 121 of the PIL [Recognition and enforcement of foreign arbitral awards].....		1901
	39.I. Priority application of the rules of international origin.....	1902
	39.II. Rules of national origin applicable where rules of international origin cannot be applied (Section 39 of the ArbAct / 121 of the PIL).....	1904
	39.III. Section 39(a) of the ArbAct / Section 121(a) and (b) of the PIL.....	1905
	39.IV. Section 39(b) of the ArbAct / Section 121(c) of the PIL.....	1907
	39.V. Section 39(c) of the ArbAct / Section 121(d) of the PIL.....	1909
	39.VI. Enforcement of foreign arbitral awards rendered in consumer disputes.....	1910

ARBITRATION LAW OF CZECH REPUBLIC

39.VI.1.	Grounds for refusal of recognition and enforcement.....	1910
39.VI.2.	Enforcement of arbitral awards rendered in states with a lower degree of consumer protection	1916
39.VI.3.	Decisions of courts in EU Member States in cases of enforcement of a foreign arbitral award rendered in a consumer dispute.....	1918
39.VI.3.1.	Decision of the Austrian Supreme Court (OGH), Case No. 3 Ob 144/09m of 22 July 2009: Breach of consumer protection laws does not form part of international or EU public policy	1918
39.VI.3.2.	Decision of the Polish Supreme Court, Case No. No IV CSK 200/06 of 22 February 2007.....	1920
39.VII.	Case law	1922
39.VIII.	Comparison with the law of the Slovak Republic (SlovArbAct).....	1926
39IX.	Bibliography.....	1926

Chapter 40, Recognition of a Foreign Arbitral Award—

Section 40	1939
-------------------------	------

Rules effective from 1 January 2014 (PIL) [Recognition and enforcement of foreign arbitral awards]	1939
Section 120 of the PIL	1939
Section 122 of the PIL	1939
Section 123 of the PIL [Transitional provisions].....	1940
40.I. Section 40 of the ArbAct.....	1940
40.II. Section 122 of the PIL	1941
40.III. Comparison with the law of the Slovak Republic (SlovArbAct).....	1941
40.IV. Bibliography.....	1941

TABLE OF CONTENTS

PART SIX: SUBJECT-MATTER AND TERRITORIAL JURISDICTION OF COURTS

Chapter 41, Subject-matter Jurisdiction of a Court—Section 41	1947
41.I. General rules regulating subject-matter jurisdiction for exercising the supporting and supervisory functions of the state	1947
41.II. Proceedings on invalidity of an arbitration agreement	1948
41.III. Exclusion of the application of Section 41 of the ArbAct and the rules regulating court proceedings to the procedure under Section 6(2) of the ArbAct	1950
41.IV. Comparison with the law of the Slovak Republic (SlovArbAct)	1950
41.V. Bibliography	1951
Chapter 42, Jurisdiction of the Courts to Act Instead of Arbitrators, Juge d’Appui—Section 42	1953
42.I. Section 42(1) of the ArbAct	1953
42.II. Section 42(2) of the ArbAct	1954
42.III. Bibliography	1955
Chapter 43, Territorial Jurisdiction of a Court—Section 43	1957
43.I. Section 43 of the ArbAct	1957
43.II. Case law	1958
Chapter 44, Reasonable Application of the CCP—Section 44	1961
44.I. Scope of Section 44 of the ArbAct	1961
44.II. Method of applying the CCP in exercising the supporting and supervisory functions of courts	1961
44.III. Exclusion of the application of the CCP to release the arbitrator from confidentiality under Section 6(2) of the ArbAct	1962
44.IV. Comparison of the scope and purpose of Section 30 of the ArbAct and Section 44 of the ArbAct	1963
44.V. Case law	1963
44.VI. From arbitration practice	1964
44.VII. Comparison with the law of the Slovak Republic (SlovArbAct)	1965
44.VIII. Bibliography	1965

ARBITRATION LAW OF CZECH REPUBLIC

PART SEVEN: AMENDMENT AND SUPPLEMENT TO THE CODE OF CIVIL PROCEDURE

Chapter 45, Amendment of the CCP—Section 45	1969
45.I. Amendments to other laws implemented in the original text of Act No. 216/1994 Coll. of 1 November 1994.....	1969
45.II. Amendments to other laws implemented by Act No. 19/2012 Coll. (Amendment to the ArbAct) of 20 December 2012.....	1969

PART EIGHT: TRANSITIONAL AND FINAL PROVISIONS

Chapter 46, Proceedings Commenced before the Effective Date of the Act—Section 46	1975
46.I. Proceedings on invalidity of arbitration agreements and on annulment of arbitral awards in the transitional regime from the 1963 ArbAct to the ArbAct (Section 46 of the ArbAct).....	1975
46.II. Proceedings on annulment of arbitral awards in the context of the Amendment to the ArbAct.....	1976
46.III. Comparison with the law of the Slovak Republic (SlovArbAct).....	1977
Chapter 47, Priority of International Treaties—Section 47	1979
47.I. Scope of the sources of international origin applicable under Section 47 of the ArbAct.....	1980
47.II. Arbitration / Recognition and Enforcement of Foreign Arbitral Awards Under Bilateral Legal Assistance Treaties.....	1982
47.II.1. Provision of legal assistance other than in the form of the recognition and enforcement of decisions (arbitral awards).....	1982
47.II.2. Recognition and enforcement of arbitral awards.....	1984
47.II.2.1. Scope of legal assistance treaties with respect to arbitration (arbitral awards).....	1984
47.II.2.2. Conditions for recognition and enforcement of arbitral awards.....	1986
47.II.2.3. Connection to domestic arbitration laws.....	1987

TABLE OF CONTENTS

47.III.	Relationship between the regime under the legal assistance treaties and the New York Convention	1988
47.III.1.	Conflict of sources under the New York Convention (NYConv) and the legal assistance treaties	1988
47.III.2.	Conflict of sources under the general rules of international law	1990
47.III.2.1.	The principle of <i>lex posterior derogat legi priori</i>	1990
47.III.2.2.	The principle of <i>lex specialis derogat legi generali</i>	1990
47.III.2.3.	The principle of maximum efficiency	1991
47.IV.	The regime of legal assistance treaties with individual countries	1991
47.IV.1.	Albania	1991
47.IV.2.	Afghanistan	1992
47.IV.3.	Bosnia and Herzegovina	1994
47.IV.4.	Montenegro	1996
47.IV.5.	Croatia	1998
47.IV.6.	Yemen	1999
47.IV.7.	Cyprus	2001
47.IV.8.	Hungary	2003
47.IV.9.	Macedonia (FYROM)	2004
47.IV.10.	Mongolia	2006
47.IV.11.	Portugal	2008
47.IV.12.	Romania	2009
47.IV.13.	Slovakia	2011
47.IV.14.	Slovenia	2012
47.IV.15.	Serbia	2014
47.IV.16.	Syria	2016
47.IV.17.	Spain	2018
47.IV.18.	Switzerland	2021
47.IV.19.	Tunisia	2022
47.IV.20.	Ukraine	2024
47.IV.21.	Uzbekistan	2025
47.IV.22.	Vietnam	2026
47.V.	Case law	2028
47.VI.	From arbitration practice	2032
47.VII.	Comparison with the law of the Slovak Republic (SlovArbAct)	2033
47.VIII.	Bibliography	2033

ARBITRATION LAW OF CZECH REPUBLIC

Chapter 48, Transitional Provisions—Section 48	2037
Article II of the Amendment to the ArbAct (Act No. 19/2012 Coll.) [Transitional provisions].....	2037
48.I. Transition from the provisions of the 1963 ArbAct (the 1963 Act) to the provisions of the ArbAct (the 1994 Act).....	2038
48.II. Intertemporal rules in connection with the Amendment to the ArbAct (the 2011 Act effective from 1 April 2012).....	2039
48.III. Amendment effective from 1 January 2014	2041
48.IV. Case law	2042
48.V. From arbitration practice.....	2043
48.VI. Comparison with the law of the Slovak Republic (SlovArbAct).....	2044
48.VI.1. SlovArbAct	2044
48.VI.2. Act No. 218/1996 Coll.	2044
Chapter 49, Repeals—Section 49	2047
49.I. Commentary on Section 49 of the ArbAct.....	2048
49.II. Comparison with the law of the Slovak Republic (SlovArbAct).....	2049
49.II.1. SlovArbAct	2049
49.II.2. Act No. 218/1996 Coll.	2049
Chapter 50, Effective Date—Section 50	2051
Article IV of the Amendment to the ArbAct (Act No. 19/2012 Coll.) [Effective date]	2051
Section 124 of the PIL [Repeals].....	2051
Section 125 of the PIL	2051
50.I. Commentary on Section 50 of the ArbAct.....	2052
50.II. Case law	2052
50.III. Comparison with the law of the Slovak Republic (SlovArbAct).....	2053
50.III.1. SlovArbAct	2053
50.III.2. Act No. 218/1996 Coll.	2053
50.IV. Bibliography.....	2053

TABLE OF CONTENTS

BIBLIOGRAPHY	2055
I. Monographs issued in the Czech or Slovak Republics	2055
II. Monographs issued outside the Czech or Slovak Republics.....	2065
III. Master's, doctoral, and dissertation theses and other qualification and scientific papers.....	2083
INDEX	2087

