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2010

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Lithuania

Ramūnas Audzevičius, Tomas Samulevičius and Mantas Juozaitis

Motieka & Audzevičius

Laws and institutions

1 Multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Lithuania is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which entered into force in Lithuania on 12 June 1995. Lithuania has made a declaration on the basis of article 1 of the Convention that with regard to awards made in the territory of non-contracting states Lithuania will apply the Convention only to the extent to which those states grant reciprocal treatment. Lithuania is also a party to the Washington Convention of 18 March 1965, on the settlement of investment disputes between states and nationals of other states, which came into force in Lithuania on 5 August 1992.

2 Bilateral treaties

Do bilateral treaties relating to arbitration exist with other countries?

There are many bilateral treaties between the Republic of Lithuania and other countries on the promotion and protection of investments that provide for ICSID arbitration: Germany (28 February 1992), Denmark (30 March 1992), Finland (12 June 1992), Norway (16 June 1992), Poland (28 September 1992), Switzerland (23 December 1992), France (18 March 1993), the UK (17 May 1993), Korea (24 September 1993), China (8 November 1993), the Netherlands (26 January 1994), Ukraine (8 February 1994), Romania (8 March 1994), Spain (6 July 1994), Turkey (11 July 1994), Kazakhstan (15 September 1994), Israel (2 October 1994), the Czech Republic (27 October 1994), Italy (1 December 1994), Venezuela (24 May 1995), Estonia (7 September 1995), Vietnam (27 September 1995), Latvia (7 February 1996), Argentina (14 March 1996), Austria (28 June 1996), Greece (19 July 1996), Belgium and Luxembourg (15 October 1997), the US (14 January 1998), Portugal (27 May 1998), Slovenia (13 October 1998), Australia (24 November 1998), Belarus (5 March 1999), Hungary (25 May 1999), Russia (29 June 1999), Moldova (20 September 1999), Kuwait (5 June 2001) and Uzbekistan (18 February 2002).

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary domestic sources of law are the Code of Civil Procedure (the CCP), which came into force on 1 January 2003, and the Law on Arbitration (the Arbitration Law), which came into force on 2

May 1996. The CCP deals with the recognition and enforcement of arbitral awards. Both of these sources apply to domestic as well as foreign arbitration proceedings if carried out in Lithuania.

The Arbitration Law mirrors article 1(3) of the 1985 UNCITRAL Model Law (the Model Law) in defining foreign arbitration. An additional criterion (article 4, part 1(6) of the Arbitration Law) is that an arbitration is considered foreign when both parties are Lithuanian entities in which foreign capital has been invested.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The Arbitration Law is based on the Model Law. Major differences include:

- differences in the scope and description of foreign arbitration, (see question 3);
- the number of arbitrators in all cases shall be odd (article 13(3) of the Arbitration Law);
- under the Arbitration Law certain final decisions are made by the head of the permanent arbitral institution, including challenging the arbitrators, failure to appoint arbitrators, determining the termination of an arbitrator's mandate and challenging the arbitral tribunal's jurisdiction. In such cases the tribunal may continue the proceedings but an award can only be made when the head of the permanent arbitral institution issues a decision;
- the Arbitration Law advises appointing an arbitrator of a different nationality to the parties to the dispute in cases of appointing a sole or third arbitrator; and
- the arbitral tribunal has limited powers to grant interim measures itself.

Other differences are discussed below.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The general rule is that parties are free to agree on the form of the arbitration procedure. Mandatory provisions usually mirror relevant provisions of the Model Law with some minor differences.

The following provisions on procedure are considered mandatory:

- article 21 (equality of the parties);
- article 26 (requirements for submission of statements of claim and defence);
- article 27 (basic requirements for the hearings and written procedure); and
- article 34 (content of the award).

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The parties are free to choose the applicable law. The Arbitration Law (article 31) provides that in the absence of the agreement of the parties on the applicable law, the tribunal shall determine the law applicable in accordance with the conflict of law rules. In national commercial arbitration and in the absence of a choice on the applicable law, Lithuanian law will apply. In all cases the tribunal shall be bound by trade usages between the parties and the provisions of the contract.

7 Arbitral institutions

What are the most prominent arbitral institutions in your country?

The most prominent arbitral institution in Lithuania is the Vilnius Court of Commercial Arbitration (VCCA).

Vilnius Court of Commercial Arbitration

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www.arbitrazas.lt

The Rules of the VCCA are available in English online at www.arbitrazas.lt/index.php?handler=en.ar.regulation.

The basic registration fee is 1,210 litas. In property claims, the administration fee depends on the value of the dispute. If three arbitrators are appointed, the administration fee is increased by 70 per cent. In non-property claims, the administration fee is 2,000 litas plus VAT and arbitrators' fees (approximately 50 to 200 litas plus VAT per hour). The arbitrators' fees for non-property claims shall be set by the chairman of the VCCA.

If parties do not appoint arbitrators, the chairman of the VCCA makes the appointment from the list of arbitrators.

Arbitration agreement**8 Arbitrability**

Are there any types of disputes that are not arbitrable?

Article 11 of the Arbitration Law provides a list of non-arbitrable disputes, namely, disputes arising from constitutional, employment, family or administrative legal relations, and disputes related to competition law, IP (patents, trademarks), bankruptcy and arising from consumer relations.

Disputes arising out of securities transactions and intra-company disputes are arbitrable if they do not fall within the above-mentioned fields.

There are also limitations to the arbitrability of disputes where one of the parties is a state or municipal company (except the Bank of Lithuania). The prior consent of the state or the body that established such party is required.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

Article 9 of the Arbitration Law provides that the arbitration agreement shall be considered concluded if:

- an agreement to arbitrate is executed as a joint document signed by the parties;

- it is concluded by an exchange of letters, telegrams, telefaxes or other documents that confirm the record of such agreement;
- it is concluded by an exchange of a claim and response to the claim, in which one of the parties claims the existence of such agreement and the other party does not disagree; or
- there are other written evidence confirming the conclusion of such agreement.

Arbitration agreements can be stipulated in the general terms and conditions (the principle of *in favorem contractus*). For peculiarities with regard to municipal and state companies, see question 8.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Invalidity of the underlying contract is not in itself sufficient for invalidity of the arbitration agreement (article 19 of the Arbitration Law). However, the arbitration agreement is not enforceable if it is not in writing, the dispute is not arbitrable, the arbitration agreement itself is null and void, inoperative or is incapable of being performed, or the parties agree (explicitly or implicitly) to terminate or waive the agreement. In the event of insolvency all pecuniary claims are forwarded to the domestic court. In the event of death, the arbitration agreement is enforceable against successors unless it is proved that the arbitration agreement was inseparable from the personality of the individual who died. In the event of legal incapacity, the arbitration agreement is enforceable upon the custodian of the person who has become legally incapable.

11 Third parties

In which instances can third parties or non-signatories be bound by an arbitration agreement?

An arbitration agreement shall be mandatory for:

- a party that has entered into a legal relationship to which the arbitration agreement is applicable by virtue of assignment of claim or transfer of debt;
- the principal in the case of an arbitration agreement concluded by the principal's agent; and
- for legal successors to a company reorganised by a merger or acquisition.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration such as joinder or third-party notice?

The Arbitration Law does not make any provisions with respect to third-party participation in arbitration such as joinder or third-party notice. However, VCCA rules (part 3 of article 14) contain a provision that in the event of there being several claimants or respondents, such group of claimants or respondents shall agree on the appointment of one arbitrator for that group, who will then decide on the appointment of the third arbitrator. This provision makes the participation of several claimants and respondents in the arbitration possible. However, if a manufacturer is not brought into an arbitration by the end-user (the claimant), the manufacturer should only be brought into arbitration with its consent, having regard to the contractual spirit of the arbitration agreement.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

There is no reported case law on the 'group of companies' doctrine in Lithuania.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The Arbitration Law does not provide for such possibility. However, a multiparty arbitration agreement should nevertheless be possible if it meets general requirements for arbitration agreements (ie, it is in writing; the dispute is arbitrable; the agreement meets to the requirements of validity and performance; and all parties are identified).

Constitution of arbitral tribunal**15 Appointment of arbitrators – restrictions**

Are there any restrictions as to who may act as an arbitrator?

There are only restrictions on acting as an arbitrator and being paid for such work for persons who are prohibited by Lithuanian law from performing any paid work except their current occupation (usually judges, members of Parliament, etc) (article 14 of the Arbitration Law). That rule is not applicable to attorneys and their assistants.

Otherwise, any neutral and competent person can act as an arbitrator. With regard to the selection of the arbitrator from a list, there is no such requirement in the Arbitration Law; however, see question 7.

16 Appointment of arbitrators – default mechanism

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

If there is no prior agreement and if the arbitration consists of three arbitrators, each party selects one arbitrator, and the two of them appoint the third one (article 14 of the Arbitration Law). If the arbitration has a sole arbitrator, and if the parties cannot agree on the appointment, an arbitrator is appointed by the head of the permanent arbitral institution upon the request of the parties; this also applies if one party does not appoint an arbitrator (or two arbitrators do not appoint the third one) within 30 days from the receipt of the respective notice.

VCCA rules mirror the provisions above (with minor differences). Courts are never involved in the appointment of arbitrators.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced?

Grounds for challenge (article 15 of the Arbitration Law) are that

- the arbitrator does not have necessary qualifications agreed upon by the parties;
- reasonable concern about the bias of the arbitrator;
- the arbitrator is a relative of a party;
- the arbitrator depends on one of the parties due to his or her official position or otherwise;
- the arbitrator is directly or indirectly interested in the result of the case in favour of one of the parties; or
- the arbitrator has participated in the pre-arbitration mediation procedure.

An arbitrator may be replaced when the arbitrator cannot de jure and de facto perform his or her duties as an arbitrator (article 17 of the Arbitration Law). This includes death and illness. Parties can agree on the arbitrator's resignation or the arbitrator can resign sua sponte.

Procedure for challenge or replacement – if parties fail to agree otherwise, a party must apply to the tribunal within 15 days of learning about the grounds for the challenge. If the arbitrator does not resign and the other party objects to the challenge, the tribunal, including the challenged arbitrator, decides on the issue. Such decision can be appealed within 30 days to the head of the permanent arbitral institution, whose decision is final.

The improper appointment of arbitrators can be a ground for challenging the arbitration award, but the appointment cannot be challenged in court per se.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators?

All arbitrators, including those appointed by the parties, must be neutral and independent throughout the proceedings. There is no case law regarding the nature of the relationship between the arbitrator and the party that appointed him or her, or case law regarding the liability of such arbitrator. However, the contractual nature of the arbitration itself leads to a conclusion that the relationship between the arbitrator and the party that appointed him or her should be viewed as contractual, keeping in mind the requirements for neutrality and independence. An arbitrator is not exempt from liability due to gross-negligence or deliberate actions (article 6.252 of the Civil Code of the Republic of Lithuania).

The arbitration fees are divided by the arbitration award (article 34 of the Arbitration Law). Article 7 of the VCCA rules provides the same, upon the condition that parties did not agree otherwise.

Jurisdiction**19 Court proceedings contrary to arbitration agreements**

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Article 10 of the Arbitration Law provides that if the court receives a claim a the party regarding an issue that is covered by an arbitration agreement, it will refuse to accept the claim if at least one of the parties to the arbitration agreement demands so. Time limits for such jurisdictional claims are set out in article 142 of the CCP, and range from 14 to 30 days from the receipt of the claim by the party.

20 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

Article 6 of the Arbitration Law provides that if a party is aware that any provision of the law from which the party may derogate or any provision of the arbitration agreement is not followed properly and still participates in the proceedings without objecting immediately, without any justifiable excuse, it is considered that the party has waived the right to make such objection.

An objection to the jurisdiction of the tribunal must be raised no later than the statement of defence (article 19 of the Arbitration Law). The participation of the party in the appointment procedure for arbitrators does not rule out the possibility of challenging the jurisdiction of the tribunal. The tribunal then decides on its jurisdiction in one of the two ways – it either decides on it in the award, or it decides on it in an interim award. In the latter case the parties may bring further objections with regard to jurisdiction to the head of the permanent

arbitral institution within 30 days from the receipt of the tribunal's resolution. Such decision is final.

If the tribunal exceeds its competence in the arbitration proceedings, the respective objection shall be brought by the parties immediately when the issue falling outside the tribunal's competence is raised. If such objection is presented later, the tribunal has discretion to allow it if the reasons for such delay are reasonable (article 19 of the Arbitration Law).

All the above provisions are mirrored by the VCCA rules, article 24.

Arbitral proceedings

21 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

In the absence of prior agreement the place and language of arbitration (except national arbitration) is determined by the arbitration tribunal, which considers the factual circumstances related to the case (eg, where witnesses live, evidence, goods and other relevant objects). In national arbitration the language of arbitration is Lithuanian (articles 23 to 25 of the Arbitration Law).

22 Commencement of arbitration

How are arbitral proceedings initiated?

Unless otherwise agreed by the parties, the arbitration proceedings shall commence on the date on which a request for the dispute to be referred to arbitration is received by the respondent (article 24 of the Arbitration Law). The Arbitration Law does not provide requirements for the notice for arbitration; instead, it provides requirements for the claim. Therefore, the requirements for the claim (article 26 of the Arbitration Law and article 9 of the VCCA rules) apply to arbitration notices.

23 Hearing

Is a hearing required and what rules apply?

Both the Arbitration Law and the VCCA rules provide that the parties are free to agree on how the proceedings will be held and the arbitration tribunal must follow such choice. If no such agreement between the parties exists, hearings shall be held.

24 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Article 29 of the Arbitration Law provides that unless the parties agree otherwise the arbitral tribunal has a right to appoint experts and order the parties to provide the appointed experts with any information related to the dispute. Unless the parties agree otherwise the experts are required to appear in the hearings in person if any of the parties or the tribunal requests it. The parties can also invite their witnesses and experts to testify. The tendency is towards tribunal-appointed experts to ensure the impartiality of the experts. There are no restrictions on party officers and parties testifying.

According to the VCCA rules all issues related to the admissibility and significance of evidence are decided by the tribunal, unless the parties agree otherwise. The tribunal has the right to order the parties to provide evidence to prove certain claims and can ask a domestic court to assist in the gathering of evidence. The parties can invite their experts to be heard with the tribunal's approval. The parties must inform the tribunal 15 days prior to the hearing about witnesses they wish to call. If witnesses are not able to appear in person, written statements are accepted.

The tribunal may seek guidance from the IBA Rules on the Taking of Evidence in International Commercial Arbitration.

25 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

An arbitral tribunal can at any time on its own initiative or at the request of any party ask the domestic court covering the location of the arbitral tribunal for assistance in obtaining evidence. Unless otherwise agreed by the parties the tribunal may address the same court for an order to grant interim measures. Unless the parties agree otherwise, all issues related to the admissibility of evidence are decided by the arbitral tribunal.

26 Confidentiality

Is confidentiality ensured?

The Arbitration Law does not contain any provisions on confidentiality. However, article 6 of the VCCA rules provides that arbitral tribunals must follow the principle of confidentiality in all proceedings. Neither the arbitral tribunal nor a permanent arbitral institution may publish the award without the consent of both parties to the dispute (article 39).

All proceedings in domestic courts are public with certain exceptions, such as professional or commercial secrets, and therefore all information communicated to the domestic courts might be exposed to the public if the assistance of a domestic court is requested (eg, in the recognition, enforcement or challenge of the award).

Interim measures

27 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

A wide range of interim measures is available, including the arrest of property, funds or proprietary rights, orders to refrain from certain actions and designation of a property administrator (article 145 of the CCP).

If arbitration proceedings have not been initiated, a party must apply directly to a domestic court for interim measures. After arbitration proceedings have been initiated the parties may request the arbitral tribunal to apply to the domestic court situated in the same district as the arbitral tribunal for the application of interim measures, unless the parties have agreed otherwise (article 20 of the Arbitration Law).

Under article 26 of the VCCA rules, parties also may apply to the domestic court of any jurisdiction for the application of interim measures. Any such request by a party and any measures taken by the national court must be communicated immediately to the secretariat of the arbitration court.

28 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Unless the parties have agreed otherwise, the arbitral tribunal, upon request of any party, can order another party to pay security for costs, as well as apply for assistance from the domestic courts in enforcing such order. Other interim measures can be obtained through the domestic courts.

Awards
29 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Decisions by the arbitral tribunal are made by a majority of all of its members if three or more arbitrators were appointed and the parties have not agreed otherwise. The award must be signed by the majority of arbitrators. Dissenting opinions must be attached to the award but they have no consequences on the validity of the award, if the above requirements are met (article 34 of the Arbitration Law, article 38 of the VCCA rules).

30 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

There are no special provisions in domestic arbitration law about dissenting opinions except those provided above.

31 Form and content requirements

What form and content requirements exist for an award? Does the award have to be rendered within a certain time limit?

The award must contain the grounds of the award, unless the parties have agreed that grounds should not be provided (article 34 of the Arbitration Law). It shall also contain a statement of whether the claim is sustained or rejected, the expenses awarded and their allocation to the parties, the place where it was awarded, the names of the arbitrators, the names of the parties and their addresses, the names of the representatives of the parties, and the grounds and procedure for appealing the award.

According to the VCCA rules the dispute shall be substantially resolved by rendering an award no later than six months after the dispute was forwarded to the arbitral tribunal. The final award shall be made within as short a time as possible after the main hearings are held, but no more than 20 days after the final main hearing, and immediately sent to the secretariat of the court of arbitration. In exceptional cases the chairman of the court of arbitration can extend the term for rendering an award by 20 days.

32 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The arbitral award shall be effective from the moment it is written and signed (article 38 of the Arbitration Law). The date of the award is decisive for the term during which the award can be appealed, the term being three months (article 37 of the Arbitration Law).

The date of the delivery of the award is decisive for requests for correction of the award, or requests for an additional award, which are allowed within 30 days after receipt of the award (article 36 of the Arbitration Law).

33 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

Under the Arbitration Law the arbitral tribunal can make the following awards and orders:

- final awards, deciding on the merits of the dispute, termination of the proceedings or dismissal of the application;
- partial awards on only some of substantive issues of the dispute;
- interim awards on procedural and jurisdiction issues, such as jurisdiction of the arbitral tribunal, or security of costs;

- consent orders, confirming a mutual consent agreement reached by the parties; and
- additional awards (for claims presented in the proceedings but omitted from the award).

34 Termination of proceedings

By what other means than an award can proceedings be terminated?

The proceedings can be terminated on the following grounds:

- if the claimant withdraws his or her claim and if the respondent does not object;
- if parties agree to terminate the proceedings (by a settlement agreement or otherwise);
- if one of the parties dies or ceases to exist and succession of rights is not allowed; or
- if the arbitral tribunal decides that further proceedings are not necessary or not possible due to certain circumstances. When these circumstances cease to exist the party has a right to commence the proceedings again.

The application for arbitration shall be dismissed if both parties have not appeared for the hearings twice and the dispute cannot be resolved on the existing evidence, arbitration fees are not paid by the parties within the agreed period or the commencement of the proceedings is not possible due to the circumstances beyond the control of the arbitration court. If the claim is dismissed the parties are not precluded from filing an application again in the future (article 28 of the Arbitration Law).

35 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

The Arbitration Law does not provide any rules on the allocation of costs. The VCCA rules (article 7) provide for the following costs to be compensated:

- registration fee;
- administration fee (covers the arbitrators' fees, the salaries paid to the staff of the Secretariat of the Court of Arbitration and other expenses generally incurred by the arbitration institutions);
- compensation fee (includes expenses for the services of experts, interpreters or translators and also covers expenses incurred by arbitrators, witnesses, experts, interpreters and translators due to their participation in arbitral proceedings, including travel costs, accommodation and other expenses); and
- the expenses of the proceedings, which include attorneys' fees and in-house fees.

The costs shall be credited to the party that prevails in the arbitral decision at the expense of the party against which the arbitral decision is made, unless otherwise agreed by the parties. Should the claim be partially accepted, the parties shall share the costs in proportion to their accepted and rejected claims. When the dispute is amicably settled parties shall share the costs in accordance with the settlement agreement.

Rules on cost allocation used in domestic court proceedings have influence only over the allocation of the fees engendered by proceedings undertaken in the domestic courts related to the recognition or enforcement of arbitration awards.

36 Interest

May interest be awarded for principal claims and for costs and at what rate?

The Civil Code (article 6.210) provides for a fixed annual interest rate of 5 per cent in disputes where at least one party is not a businessman or private legal person and 6 per cent where both parties are such.

The Law on the Prevention of Late Payment in Commercial Transactions and the Law on the Payments for the Agricultural Production provide an interest rate, adjusted at least annually, which equals the monthly VILIBOR interest rate plus 7 per cent. For payment obligations that arose in the second half of 2009 the rate is 12.7 per cent.

Proceedings subsequent to issuance of award

37 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The arbitration law provides that any party to the proceedings, upon notice to the other party, has a right to request the arbitral tribunal to correct typographical errors, correct mistakes in calculations, or interpret whole or part of the award. The arbitral tribunal also has a right to make the above-mentioned corrections and interpretations on its own. Parties also may ask for an additional award (see question 33).

All the above-mentioned requests of the parties must be submitted to the arbitral tribunal within 30 days after the receipt of the award (article 36 of the Arbitration Law). Correction or interpretation of the award by the arbitral tribunal on its own initiative shall be done within 30 days after the original award was made. All mentioned time limits can be extended by the arbitration tribunal.

38 Challenge of awards

How and on what grounds can awards be challenged and set aside?

Article 37 of the Arbitration Law provides that an award, in whole or in part, can be challenged if any of the following grounds exist:

- a party to the arbitration agreement was under some incapacity or the said agreement is not valid under the applicable laws;
- the party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was unable to present its case for other valid reasons;
- the award deals with the disputes falling outside the arbitration agreement; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the valid agreement between the parties or imperative requirements of arbitration law if no such agreement was concluded.

The arbitration award will be set aside if the subject matter of the dispute could not have been resolved by arbitration or the arbitration award is contrary to public policy.

An application for setting aside the arbitration award must be submitted to the Court of Appeals by a party to the arbitration proceedings within three months after the arbitral award is made.

39 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

The arbitration award can be appealed to the Court of Appeals as stated in question 38. Further appeal is available to the Supreme Court, but is limited to issues on the application of law. Decisions usually take approximately six months at each level. The main costs incurred are costs for appeal and costs for attorneys. The rules on the allocation of costs are similar to the VCCA rules described in question 35.

Update and trends

There is a project to produce a new version of the Arbitration Law underway, which was prepared with regard to the 2006 UNCITRAL Model Law. There is only one published decision in the field of international investment arbitration with regard to Lithuania – see Case No. ARB/05/8 at <http://icsid.worldbank.org>. There might be one more case in the near future against Lithuania by a foreign producer of alcoholic beverages.

40 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

The request for recognition of an arbitration award should be submitted to the Court of Appeals according to rules defined in the CCP.

Arbitration awards delivered in any jurisdiction can be denied recognition in Lithuania on the grounds defined in article V of the New York Convention. Unless those grounds are applicable, Lithuanian courts tend to look favourably upon enforcing arbitration awards.

41 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Article V, part 1(e) of the New York Convention is reiterated in the Arbitration Law. According to the Supreme Court, domestic courts should ensure uniform application of the stated articles. Because there is not enough case law dealing with those provisions, Lithuanian courts must take into consideration the application of the above-mentioned articles in foreign case law. This presupposes that the enforcement of foreign awards set aside by the courts at the place of arbitration should follow general international practice.

42 Cost of enforcement

What costs are incurred in enforcing awards?

The costs related to proceedings to enforce the award comprise legal fees, translation fees (all documents submitted to the domestic courts must be translated into Lithuanian), travel expenses, court bailiff's fees, etc. There are recommended limits to legal fees defined in law, which the Court of Appeals may follow if the requesting party is not able to provide evidence of fees incurred.

Other

43 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

Lithuania has a civil law system. According to the CCP the parties generally gather evidence themselves, but they may request the domestic court to provide assistance for discovery of documents if they cannot do it themselves. There is no tendency towards US-style discovery.

Written witness statements are common practice. Parties are free to choose whom they call to testify. Party officers may testify.

44 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Generally, there is no need for the counsel or the arbitrator to obtain a work permit if they stay in Lithuania no longer than three months in one year. Visas to enter Lithuania are not required for citizens of

65 countries – all EEA and EU member states, the US, Canada, Japan, Australia, Singapore, New Zealand and others (a full list is available at www.migracija.lt).

21 per cent VAT is applied to earnings of domestic arbitrators registered as VAT payers.

Any person can be chosen to represent the parties in the arbitration proceedings and, therefore, no common professional or ethical rules are applicable. However, attorneys-at-law and their assistants representing the parties must be admitted to Lithuanian Bar Association and follow its professional ethics rules.

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