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LATVIA

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I. INTRODUCTION: ARBITRATION IN LATVIA — HISTORY AND INFRASTRUCTURE

A. History and Current Legislation on Arbitration

1. Historical evolution of law relating to arbitration

Latvia *de facto* declared itself an independent state on 18 November 1918 and was recognized *de jure* by the international community in 1921. In 1940, Latvia was incorporated into the Soviet Union, only to regain its independence in 1991. In 2004 Latvia joined NATO and the European Union.

Until 1940, the Russian Civil Procedure Law of 1864 as amended and modified during 1920 – 1940 governed domestic arbitrations in Latvia. During those years, two permanent arbitration institutes were established—one at the Latvian Chamber of Commerce and Industry, and another at the Latvian Craftsmen Chamber. There is no data on whether any international arbitration cases were heard during this time.

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During the Soviet period, all commercial disputes were settled by the State Arbitration Court or by the courts of general jurisdiction. Indeed, there were no permanent arbitration institutions in Latvia where domestic and international commercial disputes could be settled.

In 1991, Latvia's independence was restored, which triggered a number of changes in the field of arbitration. Firstly, in 1992 Latvia signed and ratified the New York Convention.[1] Secondly, in the same year the first permanent arbitration institution was established for the settlement of both domestic and international disputes when the Latvian Chamber of Commerce and Industry approved the Statute of the Arbitration Court. Despite the availability of an arbitral institution, for a while the courts of general jurisdiction were the only available forum for resolving commercial disputes. However, the courts turned out to be quite inefficient in dealing with the ever-growing number of commercial disputes. Their caseload increased dramatically due to a burgeoning number of cases and the lengthy amount of time the courts took to issue rulings on the merits. The momentum for an alternative procedure of commercial dispute settlement was evident.

Notwithstanding the obvious need for arbitration and legal regulation thereof in Latvia, it was only in 1997 that work on drafting the national law on arbitration took off. The Latvian Civil Procedure Law ("CPL"), adopted on 14 October 1998 and in force since 1 March 1999, contained a special Chapter D devoted exclusively to the regulation of arbitration proceedings. Before its approval, the draft regulation was subject to critical review by a number of foreign experts.[2] The final text of the Law, as adopted by the Parliament, suffered from several important drawbacks and deviated considerably from the provisions of the UNCITRAL Model Law on Commercial Arbitration.[3] For example, the Model Law provisions on the court's role with respect to the constitution of the arbitral tribunal, the powers of the arbitral tribunal to order interim measures (introduced to the Model Law in 2006) and the setting aside procedure were not incorporated into the CPL.

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[1] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 330 UNTS 38; 21 UST 2517; 7 ILM 1046 (1968).

[2] Hascher D., Reymond C., Veeder V.V., *Comments on the Draft Law on Arbitration of the Republic of Latvia*, Strasburg, 10 July, 1997, unpublished.

[3] U.N. Doc. A/40/17, Annex I, adopted by the United Nations Commission on International Trade law on 21 June 1985, and http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf (last visited on 15 June 2016).

In 2005, the Constitutional Court of Latvia rendered a judgment[4] on the conformity of the CPL provisions on arbitration with the Constitution. The Court analysed at length the role of arbitration. The Court specifically emphasized the importance of the protection of human rights in the arbitration process. The decision suggested some necessary improvements to the development of arbitration law in Latvia (see II.H.1.).

Despite a pressing need for reform, the new regulation – the Arbitration Act ("AA") – saw the light of day only in 2014. One of the Act's main objectives is to bolster the low level of trust in arbitration. Unfortunately, as explained below, similarly to the old regulation, the new Act suffers from numerous drawbacks.

2. Current law

a) Domestic arbitration law

The Arbitration Act was adopted on 11 September 2014 and entered into force on 1 January 2015.[5] Like its predecessor, Chapter D of the CPL, the Act is not based on the UNCITRAL Model Law. Notably, as with the CPL, the Arbitration Act does not follow the Model Law approach as far as the provisions on the domestic courts' role in constitution of the arbitral tribunal, the powers of the arbitral tribunal to issue interim measures and the setting aside procedure are concerned. Accordingly, Latvia cannot be considered a Model Law country.

Nevertheless, Latvia has taken a number of steps to ensure that its statutory regulation of arbitration is consistent with existing international standards. Notably, Latvia signed and ratified the New York Convention[6] and signed the European Convention on International Commercial Arbitration.[7]

[4] Constitutional Court of Latvia case No. 2004-10-01 "On the Compliance of Section 132 (Item 3 of the First Part) and Section 223 (Item 6) of the Civil Procedure Law with Article 92 of the Republic of Latvia Satversme (Constitution)." Available also in English on www.satv.tiesa.gov.

[5] The Arbitration Act, published in *Latvijas Vēstnesis* No. 194 on 01.10.2014, available in Latvian at http://likumi.lv/doc.php?id=269189.

[6] The Decision on the Accession to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted on 11 March 1992, in force since 13 July 1992.

[7] The Law on the Accession to the European Convention on International Commercial Arbitration, adopted on 23 January 2003, published in *Latvijas Vēstnesis* No. 23 on 12.02.2003, in force since 12 February 2003.

b) International arbitration law

The Arbitration Act does not distinguish between domestic and international arbitration where the seat of arbitration is in Latvia. The only exception to this is the separate section, "Recognition and Enforcement of Foreign Arbitral Awards" in the CPL (Section 78, Chapter F). Proposals voiced during the drafting process of the International Private Law Act for special regulation for international arbitration were left unaddressed.

3. Law reform projects

The late 2014 judgment of the Constitutional Court declared certain provisions of the CPL, then still in force, unconstitutional, as well as the corresponding provisions of the forthcoming Arbitration Act (see II.C.3.). It was understood at the time that the relevant amendments will be introduced into the law. The current position of the Ministry of Justice, however, is that there is no need for legislative changes, as the judgment of the Constitutional Court has the force of law for all legal subjects - state and municipal authorities, courts, legal entities and individuals.[8]

4. Confidentiality and publication of awards

a) Privacy of proceedings

Arbitration proceedings are confidential and no information regarding the proceedings is provided to third parties or published unless the parties have agreed otherwise (Article 23(1) and (2) AA). The new Act contains a novel provision empowering persons "entrusted by law" to receive information about the arbitration proceedings (Article 23(3) AA). As in other jurisdictions, the facts of the case become public where the parties submit requests with the state courts for the compulsory enforcement of the awards.

b) Publication of awards

No arbitration awards are published by any of the domestic arbitration institutions.

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[8] See Article 32 (2) of the Constitutional Court Law, adopted on 5 June 1996, published in *Latvijas Vēstnesis* No.103 on 14.06.1996, in force since 28 June 1996.

In 2008, the Supreme Court published an overview of the *Court Practice in the Cases of Issuance of the Writs of Execution for the Enforcement of the Arbitral Awards*.[9]

B. *Arbitration Infrastructure and Practice in Latvia*

1. Major arbitration institutions

The most particular feature of the Latvian arbitration is the high number of permanent, registered arbitration institutions. As we have reported in the 2015 edition of this WAR publication, according to the information on the web site of the Latvian Register of Enterprises,[10] as of December 2013 there were 214 arbitration institutions. Upon the promulgation of the new Arbitration Act, permanent arbitration courts had to be re-registered. Unlike the previous regulation, which merely provided that "a permanent arbitration institution can be established by one or more legal entities" (ex. Article 486(3) CPL), the new Act grants this right only to associations registered with the Register of Enterprises, the bylaws of which list the provision of arbitration services as one of their objectives (Article 2(2) AA).[11]

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[9] Supreme Court of Latvia (further: Supreme Court). *Court Practice in the Cases of Issuance of the Writs of Execution for the Enforcement of the Arbitral Awards*, Riga, 2008, http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/civiltiesibas/, in Latvian (last visited on 15 June 2016).

[10] Latvian Register of Enterprises, http://www.ur.gov.lv/skirejtiesas.html (last visited on 15 June 2016). Every arbitration institution has to register with the Latvian Register of Enterprises before it can provide its services. The Register administers the registration process as of 1 April 2005 (see Amendments to the law "*On Register of Enterprises of the Republic of Latvia*," *Latvijas Vēstnesis* No.40, 09.03.2005; Regulations of the Cabinet of Ministers No.204, "*Regulations on the Register of Arbitration Institutions*," *Latvijas Vēstnesis* No.52, 01.04.2005, and Regulations of the Cabinet of Ministers No.205 "*On state fees for records in the Register of Arbitration Institutions*", *Latvijas Vēstnesis* No.52, 01.04.2005).

[11] The draft Arbitration Act provided that permanent arbitral institutions could be established only by associations consisting of at least 10 members (legal persons), the total net turnover of the members of which constituted EUR 72 million (as a minimum), and which were registered at least three years prior to filing an application to register the arbitral institution (Article 2). This rule was not included in the Arbitration Act as adopted by the Parliament.

The Act sets forth certain requirements for permanent arbitration courts: such court should have its own premises, the necessary staff and a website (Article 4(1) AA). The website should provide the following information about the court: its title and address, opening hours and location, information about the costs of arbitration and the account number to which costs should be paid, rules, list of arbitrators, contact information (address, phone number, e-mail) and "other relevant information" (Article 4(2) AA).

As a result of some light reforms, the number of permanent arbitration courts has decreased in the last years by two-thirds, totaling 83 in June 2016.[12] Most of the founders of these institutions are business entities; only a few are non-governmental organizations or professional associations. The prevailing view is that great majority of these "pocket courts," as they have become known, are serving individual interests.

Indeed, only a handful of the 83 permanent arbitration institutions can be considered independent. The three largest arbitration institutions are: (1) The Court of Arbitration of the Latvian Chamber of Commerce and Industry; (2) The Baltic International Arbitration Court; and (3) The Riga International Arbitration Court (see IV Appendix B).

The Court of Arbitration of the Latvian Chamber of Commerce and Industry (*LCCI Court of Arbitration*) is the oldest and the most reputable among Latvian arbitral institutions. Established in 1934, the Chamber and the Court of Arbitration were liquidated after the occupation of Latvia in 1940. They were re-established after the proclamation of Latvia's independence in 1991. At that time, the LCCI Court of Arbitration was the first and only arbitral institution.

One of the troubling aspects of the high number of permanent arbitration institutions in Latvia is their often similar and therefore confusing names. Among these, one can mention arbitration institutions such as the "Hanzas Court of Arbitration" and "Hanzas International Court of Arbitration;" "Riga International Court of Arbitration," "Riga Court of Arbitration" and "Riga Regional Court of Arbitration;" "Latvian Permanent Court of Arbitration" and "Latvian Court of Arbitration." There are entities, registered as permanent arbitration institutions, named "Arbitration", "The Arbitration Court", "The Main Arbitration Court" and "The Independent

[12] Latvian Register of Enterprises, http://www.ur.gov.lv/skirejtiesas.html (last visited on 15 June 2016).

Arbitration Court". As one can imagine, all these names create a fertile ground for legal battles and problems, particularly in instances where the parties, for one reason or another, have initiated parallel arbitration proceedings in different arbitration institutions. Thus, it is not uncommon that arbitral tribunals established under the auspices of different institutions affirm their jurisdiction to hear the same dispute and, subsequently, arrive at conflicting conclusions on the merits.[13]

The Arbitration Act purported to solve this issue by introducing rules governing the choice and spelling of the names of permanent arbitration courts. The Act in particular provides that (Article 7 AA):

(1) the name of the permanent arbitration court should be different from the name of another arbitration court or firm/company registered with the Registry of Enterprises or the application for the registration of which is already pending before the Enterprises Registry. Such name should not contain misleading information about the permanent arbitration court's aims, legal status or whether it is permanent or *ad hoc* court;

(2) the name of the permanent arbitration court is subject to other rules which limit the choice of the companies' names and which set forth divergence criteria;

(3) the name of the permanent arbitration institution should not be contrary to good faith; and

(4) only Latvian and Latin alphabet letters can be used in the spelling of the permanent arbitration courts' names. Given Latvia's geographical location, this rule in essence precludes the use of Cyrillic letters in the denomination of the arbitration centers.

2. Number of cases and other statistics

There is no official data on the number of arbitrations, as only a handful of the arbitration institutions publish statistical data. A useful insight can be gleaned from the data assembled by the Court Information System, according to which 1,496 requests for a writ of execution of an arbitral award were filed with the courts in 2013, out

[13] See Udris Z., Kacevska I., Observations on the Judgment by the Riga Regional Court rendered on 19 August 2004 in case CA-4208/20, 2004. (Forscan Timber Export AB v. Interwood). *Stockholm International Arbitration Review*, 2006:2, p. 193.

of which 1,355 were satisfied.[14] In 2014, 1,075 such requests were submitted, whereas 992 of them were satisfied. Only 978 requests were filed in 2015, of which 906 were satisfied. These numbers dramatically decreased compared to 2006, when altogether 7,648 requests for the compulsory execution of the arbitral awards were submitted to the courts. Such a decrease is explained by the fact that major restrictions were imposed for arbitrating consumer disputes (see II.D.3.a.).

3. Development of arbitration compared with litigation

See above.

II. CURRENT LAW AND PRACTICE

A. Arbitration Agreement

1. Types and validity of agreement

a) Clauses and submission agreements

Section III of the Arbitration Act regulates arbitration agreements. Article 10 AA defines an arbitration agreement as an "agreement entered into by the parties in accordance with the procedures provided for by this Act regarding the referring of a civil dispute for resolution to an arbitration court." This agreement can cover disputes that have already arisen or those that may arise in the future.

Article 13 AA regulates the validity of the arbitration agreement and provides for the binding force thereof. In cases where the main contract terminates or is declared void, the arbitration agreement stays in force. Compared to the old regulation, the Arbitration Act adds a new provision according to which, upon the claim cessation, the assignee acquires the right to a claim without being bound by the arbitration agreement (Article 13(4) AA).

Initially, the Latvian courts took a relatively narrow view on the binding force of the arbitration agreement. Thus, the Supreme Court

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[14] The Court Information System statistics is available in Latvian at https://tis.ta.gov.lv/tisreal?Form=TIS_STAT_0&SessionId=A316042F50FED7774F6684959197CCB0 (last visited on 15 June 2016).

has ruled that the arbitration agreement is terminated in a situation where one of the parties unilaterally avoided performance of the main contract.[15] In the same vein, the court of the first instance accepted to hear a claim regarding breach of contract despite the fact that there was an arbitration agreement between the parties.

That said, however, the later case law points to a different trend. In 2009, the Supreme Court held that a party's unilateral avoidance of the contract does not release the defaulting party from performance of the contract, nor does it discontinue the parties' agreement to arbitrate their disputes.[16]

The Arbitration Act repealed a norm in the old regulation (ex. Article 493(4) CPL), according to which a party could unilaterally withdraw from the arbitration agreement if: (i) no arbitral tribunal has been established or no procedural activities have taken place in the initiated proceedings for more than four months; or (ii) the final award on the merits of the dispute is not rendered within one year from the initiation of the arbitral proceedings.

b) Minimum essential content

The Arbitration Act does not prescribe any mandatory content for the arbitration agreement. Yet, the main practical advice would be to specify the chosen arbitration institution as precisely as possible.[17] Article 1543 of the Civil Law stipulates that a contract which asks for the impossible is "not in effect." This requirement took on great significance given the large number of arbitration institutions in Latvia with often-confusing names (see I.B.1.).[18]

The Arbitration Act stipulates that the arbitration agreement may include references to a permanent arbitration court or *ad hoc* proceedings; the place and language of arbitration; number of arbitrators; the way in which the costs of the arbitration will be

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[15] Supreme Court case No. SPC-4/2008, unpublished.

[16] Decision of the General Meeting of Supreme Court's Justices on Validity of the Arbitration Agreement When a Creditor Unilaterally Avoids the Performance of the Agreement Incorporating the Arbitration Clause, 2 July 2009, in Latvian, http://at.gov.lv/files/uploads/files/dokumenti/cld+ctp-02.07.09.doc (last visited on 15 June 2016).

[17] Torgans K. (ed.), Commentary on Civil Procedure Law (TNA, Riga, 1999), p. 362.

[18] Riga Regional Court case CA-2653-08/7, 10 September 2008, unpublished.

borne by the parties; and any other elements deemed important by the parties (Article 12 AA).

The consent to arbitrate is a pre-requisite for submission of the dispute to arbitration. Thus far, the Latvian courts have adopted a restrictive interpretation of the parties' consent, employing the grammatical method of interpretation.

The practice of the Latvian courts is to declare the arbitration agreement void when it provides for the choice of the arbitration institution by only one of the parties (such as buyer[19] or creditor[20]), on the grounds that such a clause violates the principle of party equality.

Yet the approach is different in international cases in which the parties come from states party to the European Convention on International Commercial Arbitration. Namely, by virtue of Article IV of said Convention, the President of the Latvian Chamber of Commerce can determine the arbitration institution in cases where the parties failed to agree thereon. The President has availed himself of such rights in few instances: when the arbitration clauses provided for referral of "disputes to the arbitration in Latvian Court", or for their settlement "in the Economic Court of Riga". However, the President rejected a party's request to determine the relevant arbitration institution when the clause provided for dispute resolution in "the Court of Arbitration of Latvia". The reason for such a decision was that there are multiple registered permanent arbitration institutions containing the words "Latvian arbitration" and "Latvian court of arbitration" in their names, which prevented the President from determining the parties' will.

In one case the Supreme Court decided that the parties had waived the arbitration agreement by submitting the claim and the counterclaim to the state court in accordance with the Article 6, Part 1 of the European Convention on International Commercial Arbitration.[21]

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[19] Riga Regional Court case CA-4360/10, 30 November 2009, unpublished.
[20] Riga Regional Court case CA-364/07, 30 November 2007, unpublished.
[21] Supreme Court case No. SKC-579/2012, 17 October 2012, in Latvian, available at http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-civillietu-departaments/hronologiska-seciba_1/2012-hronologiska-seciba (last visited on 15 June 2016).

c) *Form requirements*

The Arbitration Act requires that the arbitration agreement be in written form and incorporated into a main contract or established as a separate arbitration clause (Article 12(1) AA). The agreement is considered as having been concluded in writing when the exchange took place by mail, including by electronic mail. In this latter case it is important to ensure the safety of the electronic signature (Article 12(2) AA).

In the past, the Latvian courts ruled that an "agreement in writing" requirement is satisfied only when it is a "signed" agreement,[22] as required by Article 1493 of the Civil Law. Thus, the Supreme Court decided that there was no "agreement in writing" in a situation where the arbitration clause was located to the side of the main contract and not signed by one of the parties.[23] The Court came to a different conclusion, though, in a case in which the promissory note containing the arbitration agreement was signed only by the debtors. In the Court's opinion, the creditor had consented to the terms of the agreement by its actions.[24] From the above examples one may conclude that the courts have become less stringent in applying the "written form" requirement and now pay increasing attention to the parties' will.

In case the parties wish to amend or rescind their arbitration agreement, such an amendment is valid only if it is done in writing. No waivers to this rule are possible.

d) *Incorporation by reference*

There are no specific rules in the Arbitration Act about the incorporation of an arbitration clause contained in general terms and conditions. Compared to the previous regulation, the Arbitration Act provides that an arbitration agreement "may be incorporated as a separate provision into any contract, which sets forth an obligation which gave rise or may give raise to a civil dispute" (Article 12(1) AA). As a matter of law, a reference to standard forms and general terms and conditions would be sufficient to conclude that there is a valid arbitration agreement.

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22 Supreme Court case No. SPC-6/2004, unpublished.
23 See footnote 9, p. 11.
24 Supreme Court case No. SPC-6/2009, unpublished.

However, case law suggests a different approach. Thus, in one case, the Supreme Court found that the arbitration agreement contained in the bill of lading incorporated into the contract by reference did not bind the parties to arbitrate.[25] We are not aware of any recent case law on the basis of the Arbitration Act.

e) Interpretation

Arbitration agreements are interpreted pursuant to the general principles of contract interpretation, even though these do not always fit the specific characteristics of the agreement. For example, Article 1504 of the Civil Law reads that the contracts are interpreted in accordance with the grammatical method of interpretation. Such a method consists of giving consideration to the "meaning of the words used in the transaction, and if they are not ambiguous, then they shall be strictly observed, as long as there is no proof that they do not concur with the intent of the participants." However, pursuant to Article 1505 of the Civil Law, "[i]f doubt arises regarding the meaning of words, their sense shall be observed, and the clearly expressed or otherwise demonstrated intention of the participants to the transaction," i.e., the historical method of interpretation. The systemic and teleological methods of interpretation can be used as well. Finally, Article 1 of the Civil Law provides that all rights shall be exercised and duties performed in good faith.

These principles, however, do not always find their practical application. Thus, in 2007, the regional court, seized with the request to issue a writ of execution, ruled that the arbitration agreement between the parties shall be interpreted against the creditor.[26] The court relied on Article 1509 of the Civil Law, which reads that, in case of doubt regarding the interpretation of the contract, the interpretation that is less favourable to the creditor will be employed. As the creditor was in a stronger position in the contract, he ought to have expressed his intention to arbitrate with more clarity.

Unlike the previous regulation, the Arbitration Act does not set forth the rules for the determination of the law applicable to the arbitration agreement (on the old regulation, see the 2015 edition of this publication, Section II.A.1.e)). According to the Annotation note to the draft Arbitration Act, the old norm led to confusion in application.

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[25] Supreme Court case No. SPC-6/2004, unpublished.
[26] Kurzeme Regional Court case No. CA-00129-07/2007, unpublished.

2. Enforcing arbitration agreements

a) Declaratory actions in court

The authority to rule on jurisdiction, including in situations where one of the parties disputes the validity of the arbitration agreement, rests with the arbitral tribunal (Article 24(1) AA). The Arbitration Act does not provide for court assistance in the enforcement of arbitration agreements. However, the case law dating from prior to the 2014 reform suggests that, if the court declared the arbitration agreement invalid, the arbitration proceedings should terminate.

See also II.C.3.

b) Applications to compel or stay arbitration

The Arbitration Act mandates that permanent arbitration institutions include provisions on the stay, deferral and suspension of the proceedings in their rules (see Articles 8(4) and 52 AA).

c) Anti-suit and other injunctions

Latvian law does not provide for anti-suit or other injunctions.

3. Effects on third parties

a) Extension of the agreement over third parties

The arbitral tribunal has no jurisdiction where its award may infringe on the rights or interests of persons that are not party to the arbitration agreement (Article 5(1) AA; there are no changes compared to the old regulation, ex. Article 487.1.1 CPL). A good portion of the challenges to the enforcement of an arbitral award are based on this norm.

For example, in one case the court refused the enforcement of an arbitral award that found joint liability of the mother company and its branch. The court reasoned that there was no proof that the arbitration agreement concluded by the branch was also binding on the mother company.[27] In another case the Supreme Court ruled that disputes concerning pledged real property cannot be settled by arbitration, since in such cases third parties' rights (e.g., banks) can be infringed.

[27] Riga Regional Court case No. 3-11/668/2009, unpublished.

As stated earlier (see II.A.1.a.), the Arbitration Act includes a new provision according to which, upon the claim cessation, the assignee acquires the right to a claim without being bound by the arbitration agreement (Article 13(4) AA). This rule is built upon the case law.[28]

4. Termination and breach

See II.A.1.a.

The arbitration agreement can be terminated or modified by the written agreement of the parties (Article 12(1) AA).

B. Doctrine of Separability

1. Statutory provisions

Article 13(3) AA endorses the doctrine of separability of the arbitration agreement and the main contract.

2. Practice and case law

See II.A.1.a.

C. Jurisdiction

1. Which forum decides jurisdiction

The authority to rule on jurisdiction, including situations when one of the parties disputes the validity of the arbitration agreement, rests with the arbitral tribunal (Article 24 AA CPL). The courts are under a duty to terminate the proceedings if the parties agreed to settlement of their disputes by arbitration (Article 223(6) CPL).

See II.C.1.

2. *Prima facie* determination

See II.C.4.

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[28] Senate of the Supreme Court case No. SPC-11/2005, unpublished; Award in the Arbitration Court of the Latvian Chamber of Commerce and Industry case No. 2008/44 and the ensuing Riga City Vidzemes region court case No. 3-12/305/9, 3 March 2009.

3. Competence-competence

The arbitral tribunal may rule on its jurisdiction at any stage of the proceedings, including in situations where one of the parties challenges the existence or validity of the arbitration agreement (Article 24 AA).

In 2014, the Constitutional Court of Latvia ruled[29] that the *compétence-compétence* provision of the CPL then in force (ex. Article 495(1), and which was taken over, with the underlying premise, in Article 24(1) of the 2014 Arbitration Act) was unconstitutional insofar it precluded judicial review of the arbitral tribunal's jurisdiction, and, as a corollary to this, precluded the parties from applying to state courts for a declaration that there was no valid or existing arbitration agreement. The contested provision was held to violate the constitutional right to a fair trial (Constitution, Article 92, first sentence).

The starting point for the Court's analysis was the constitutional right to a fair trial (Constitution, Article 92, first sentence) in light of Article 6 "Right to a fair trial" of the European Convention on Human Rights (ECHR).[30] According to the Court, it is a State's duty to establish an effective legal framework, which ensures a mechanism for correcting significant procedural breaches which might have taken place during the arbitral proceedings, as well as a duty not to recognize the outcome of wrongful arbitral proceedings (para. 14.1. of the Decision). Next, the Court considered the international instruments. It noted that the European Convention on International Commercial Arbitration and the New York Convention (to both of which Latvia is a signatory), as well as the UNCITRAL Model Law,

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[29] Decision of the Constitutional Court of Latvia (Satversmes tiesa) of 28 November 2014 in case No. 2014-09-01, available at http://www.satv.tiesa.gov.lv/upload/spriedums-2014_09_01.pdf (in Latvian) and at http://www.satv.tiesa.gov.lv/upload/spriedums_2014_09_01_ENG.pdf (in English). See also Decision of the Constitutional Court of Latvia (Satversmes tiesa) of 6 February 2015 in case No. 2014-32-01, available at http://www.satv.tiesa.gov.lv/upload/spriedums-2014-32-01.pdf (in Latvian).

[30] G. Zukova, "Lettonie: Le principe compétence-compétence n'exclut pas le recours aux tribunaux étatiques pour statuer sur la validité de la clause compromissoire" (case-law review of the Decision of the Constitutional Court of Latvia (Satversmes tiesa) of 28 November 2014 in case No. 2014-09-01), *Les Cahiers de l'Arbitrage/The Paris Journal of International Arbitration*, 2015(3), pp. 496-498.

provide for the court to determine the validity and existence of the arbitration agreement. It further noted that the practice in other countries, albeit not binding, serves as a good guideline and may suggest a possible solution. The Court confirmed that the *compétence-compétence* principle does not preclude an assessment of arbitral jurisdiction by a state court (para. 15.5. of the Decision).

The Court then looked at Latvian domestic case law, including that of the Supreme Court. The conclusion drawn from this review was that the state courts' approach is to interpret the contested norm as not conferring an individual right of a party to apply to the court with a challenge to the arbitration agreement (para. 16 of the Decision). The question before the Supreme Court was, thus, whether by precluding court challenges to the arbitration agreement, the constitutional right to a fair court was impaired. The applicable test is to verify whether the restriction is justified, namely, whether: (i) it is established by law; (ii) it has a legitimate purpose; and (iii) it is proportional (para. 17 of the Decision).

On the first two points the Court answered in the affirmative. As to the last, third, point, the Court found the restriction to be disproportionate. First, the considerations of the possible increase in the courts' workload did not stand as a valid excuse to restrict the right to apply to the state courts. Second, as the law stands and is applied, the courts are precluded from examining the validity and existence of the arbitration agreement upon receipt of the request for a writ of execution of an award. Nor does the law vest the judge with the necessary tools (for example, time, oral depositions, designation of expert or summoning of witnesses) to carry out such a review. Lastly, the Court noted the often criticized shortcoming of the national regulation whereby, in the absence of a setting-aside mechanism, it is not possible to challenge declaratory awards which, as a consequence, always remain in force.

As the Constitutional Court's judgments and interpretations are binding, the legislature decided not to introduce changes into the Arbitration Act.

See also I.A.3., II.A.2.a. and II.C.1.

4. Interaction of national courts and tribunals

When a court is seized in a matter arising out of a contract which stipulates for the settlement of disputes in arbitration, the court has to refer the parties to arbitration on its own motion, unless it finds that the arbitration agreement is null and void (Articles 132(1) and

(3) and 223(6) CPL). Generally speaking, the Latvian courts conduct only a *prima facie* review of the arbitration agreements. Only in cases where a party directly challenges the validity of the arbitration agreement, will the court conduct a more detailed review.

Requests for a declaration that an arbitration agreement is valid and binding should be filed with the courts of general jurisdiction.

D. Arbitrability

1. Notion and functions of arbitrability

Pursuant to Article 5 AA, no matter is arbitrable:

1) which may infringe the rights of a person that is not a party to the arbitration agreement;
2) in which even one of the parties is a State or local government institution or where the arbitral award may affect the rights of the State or local government institutions;
3) which relates to amendments of the Civil Records Registry;
4) which relates to the rights and duties of persons under guardianship or trusteeship, or their interests protected by law;
5) regarding establishment, alteration or termination of property rights with respect to immovable property, if one of the parties to the dispute is a person whose rights to acquire immovable property in ownership, possession or use are restricted by law;
6) regarding the eviction of a person from his living quarters;
7) between employees and employers if the disputes have arisen when entering into, amending, terminating or implementing an employment contract, as well as in applying or interpreting provisions of regulatory enactments, collective labour contract or working procedures (individual labour rights dispute); and
8) regarding the rights and duties of persons with respect to which the insolvency proceedings have been initiated.

As mentioned before (see II.A.3.a.), the allegation that the arbitration proceedings infringe upon the rights and interests of

third parties is the most frequent ground for challenging the jurisdiction of the arbitral tribunal and the enforceability of the award. Typical examples to this end are cases concerning pledged real property or commercial pledges in which banks may have interest as third persons. In 2012, the court found that the arbitral tribunal lacked jurisdiction to consider the matter as the disputed equipment, for which the respondent failed to pay, was installed in premises belonging to a third party, the State Revenue Office. The court ruled that the matter touched upon the rights and interests of the state entity and, hence, the disputed equipment became the property of the said institution.[31]

2. Applicable law

There are no provisions in the Arbitration Act regarding the law applicable to the question of arbitrability.

3. Subjective arbitrability

According to Article 11 AA, an arbitration agreement may be entered into by: (i) a natural person who has the capacity to act; (ii) a private legal entity; or (iii) a public entity, when acting in the area of private law.

In cases where the arbitration agreement is signed by a party's representative, it is important to ensure that the representation rights are duly registered. In 2004, in a case where a consignment note containing the arbitration agreement was signed by a party's representative whose representation rights were not registered with the Enterprise Register, the Supreme Court decided that there was no valid arbitration agreement.[32] The Court based its decision on Article 1410 of the Civil Law, which provides that an agreement must be signed by the legal representative whose power emanates from the bylaws of the legal entity.

Pursuant to Article 221 of the Commercial Law, the Board of Directors is the executive body of a company that it manages and represents. Provided that the company's bylaws empower them to do so, Board members can enter into arbitration agreements on the company's behalf.

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[31] Supreme Court case No. SPC-32/2012, unpublished; reported on http://www.adrklubs.lv/?p=365.

[32] Supreme Court case No. SPC-6/2004, unpublished.

In 2006, the Supreme Court ruled that arbitration agreements signed by a legal counsel on the basis of a power of attorney are valid only if the power of attorney expressly empowers the counsel to bind the party it represents to an arbitration agreement.[33] Failure to include this specific empowerment results in a declaration of invalidity of the arbitration agreement. Yet, in 2012, the Supreme Court ruled that a principal is bound by the contract—including the arbitration agreement included therein—concluded by a proxy on the principal's behalf. Any disputes regarding the scope of the power of attorney are subject the state courts' jurisdiction.[34]

a) Natural persons

The most controversial aspect of arbitration involving natural persons is consumer disputes. According to Article 6 of the Law on Consumer Rights Protection, a clause in a consumer agreement which provides for dispute settlement exclusively by means of arbitration is unfair. In addition, pursuant to the case law of the European Court of Justice, a non-negotiated agreement to arbitrate is invalid.[35]

As a result, the courts normally deny requests to issue a writ of execution where the respondent is a private consumer.[36] In this respect, the courts treat equally individually-negotiated contracts, standard contracts[37] and agreements providing for the possibility of dispute settlement either by arbitration or litigation. However, where a consumer has explicitly accepted or drafted the proposed arbitration clause, the arbitration agreement will survive and be declared valid. Still, the burden of proof rests with the service provider.[38]

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[33] Supreme Court case No. SPC-0036/2006, unpublished.

[34] Supreme Court case No. SPC-38/2012, in Latvian, http://www.at.gov.lv/files/uploads/files/archive/department1/2012/38-spc-2012.doc (last visited on 15 June 2016).

[35] ECJ Judgment of 26.10.2006 in case C-168/05, *Elisa María Mostaza Claro v. Centro Móvil Milenium SL*, 2006 I-10421; ECJ Judgment of 6.10.2009 in case C-40/08, *Asturcom Telecomunicaciones SL v. Cristina Rodríguez Nogueira*, 2009 I-09579.

[36] Supreme Court cases Nos. SPC-20/2006 and SPC-35/2006, SPC-46/2006, unpublished. On the discussion of whether a guarantor can be treated as a consumer, see Supreme Court case No. SPC-22/2012, unpublished.

[37] Supreme Court case No. SPC-13/2007, unpublished.

[38] See footnote 9, p. 24.

In general, therefore, the state courts will most often enjoy exclusive jurisdiction in disputes where one party is a consumer.

b) Legal persons

See Introduction to II.D.3.

c) States and state entities

According to Article 5 AA (cited earlier, see II.D.1.), the arbitral tribunal does not enjoy jurisdiction in matters in which at least one of the parties is a State or local government institution, or where the award may affect these institutions' rights and interests. In addition, the Law on Local Governments explicitly provides that monetary disputes between State entities and local governments, on the one side, and legal or natural persons, on the other side, shall be decided in courts of general jurisdiction.[39]

Upon the signature and ratification of the European Convention on International Commercial Arbitration, Latvia availed itself of the possibility to not apply Article II(1) of the Convention to the "legal persons considered by the law which is applicable to them as 'legal persons of public law'." The Law on Accession to the Convention stated that the term "legal persons of public law" was understood to mean state and municipal institutions.[40] The amendments to this law, adopted in 2013, revoked the said reservation.[41] The annotation to the Law explains that, as the Law stood, it did not correspond to modern principles of international trade and international arbitration and that the state should avail itself of the possibility to settle its disputes with investors in a neutral forum.

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[39] Law on Local Governments, Article 77, adopted on 19 May 1994, published in *Latvijas Vēstnesis* No.61 on 24 May 1994, in force since 9 June 1994.

[40] See footnote 7, Article 2.

[41] Amendments to the Law "On Convention on International Commercial Arbitration", adopted on 31 October 2013, published in *Latvijas Vēstnesis* No.222 on 13 November 2013, in force since 27 November 2013.

4. Objective arbitrability

a) Examples of restrictions to objective arbitrability at law

See II.D.1.

Pursuant to the Arbitration Act, a dispute is not arbitrable if it concerns the rights and obligations of insolvent persons/entities (Article 5(1)(8) AA). In accordance with Article 363 CPL, insolvency is effective as of the date of filing the insolvency application with the court. Should an application be filed during the arbitration proceedings, this will effectively terminate the proceedings. The matter ought to then be referred to the court.[42]

The Law on Patents provides that claims regarding patents and trademarks are to be resolved only by the state courts.

Finally, according to the Competition Law, competition disputes are to be either resolved by the Competition Council or by the state courts.

E. Arbitral Tribunal

1. Status and qualifications of arbitrators

a) Number of arbitrators

Article 29 of the Arbitration Act provides that the number of arbitrators must be an odd number. Where the parties have not agreed on the number of arbitrators, and unless the institutional rules of arbitration provide otherwise, the arbitral tribunal should consist of three arbitrators.

The earlier regulation did not grant the arbitration institutions with discretion to appoint a Sole Arbitrator as a fallback mechanism. As a result, in a case decided in 2007, the court refused to issue a writ of execution because the matter was decided by a Sole Arbitrator, and not by a three-member arbitral tribunal, as stipulated by law. This was despite the fact that the arbitration rules of the relevant institution provided for an arbitral tribunal consisting of one arbitrator only.[43] It is understood that this case law no longer stands after the 2014 reform.

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[42] Senate of the Supreme Court case No. SPC-38/2003, unpublished.

[43] Riga Regional Court decision No. CA-3642/07/2007, unpublished.

b) Legal status

In Latvia, any person possessing the (legal) capacity to act and who has reached a legal age may be appointed as an arbitrator, irrespective of his/her nationality and place of residence.

The Law on Prevention of Conflicts of Interest in Activities of Public Officials stipulates that judges, notaries, prosecutors and civil servants cannot combine their appointment with other mandates (Article 7). Accordingly, persons exercising these professions cannot serve as arbitrators.

c) Qualifications and accreditation requirements

Until 2013, ex. Article 497(3) CPL merely stipulated that arbitrators must be independent and impartial and perform their duties in good faith. Given the regular complaints about the insufficient qualifications of the persons exercising arbitrator's functions, the 2012 amendments to this Article (ex. Article 497(2)) amended its scope in the following manner: an arbitrator must possess a law degree, not have a criminal record, have at least three years of practical experience and enjoy "undoubtful" reputation. The arbitration institutions with closed lists of arbitrators were to provide the Enterprise Register the relevant proofs that their arbitrators met the new requirements; and the courts would refuse to issue a writ of execution if the arbitrators did not possess the qualification provided by the CPL.

The new Arbitration Act introduced a few important amendments. First of all, that all permanent arbitration institutions should establish a list of arbitrators containing at least 10 names. The Act specifies that both first and last names of the arbitrators should be indicated (Articles 4(2)(5) and 8(2) AA). The arbitrator should also be of legal age; not under guardianship; have a "flawless reputation"; have completed higher professional or academic education and qualified as a lawyer; and have at least three years of experience in the legal field, including in academia (Article 14 AA). Persons with criminal records or who have declared bankruptcy in the past five years cannot serve as arbitrators (Article 15 AA). Furthermore, an individual cannot be included in the lists of arbitrators of more than three permanent arbitration courts

As a result of the reform, all arbitration institutions in Latvia have a closed list of arbitrators. Upon registration of a permanent arbitration institution with the Register of Enterprises, the establishing entity submits the institution's rules of arbitration and its list of arbitrators, together with all the documents proving the arbitrators' qualifications. In practice, it is nearly impossible to nominate a person outside of the respective lists of arbitrators. It may also be difficult to find information on the listed candidates. It is a regular paradigm in Latvia that arbitrators lack independence and impartiality. Thus, in one case the founders and the owners of an arbitration institution were also the lawyers of the Respondent's instructed law firm, and the law firm and the arbitration institution were both registered at the same address. The Claimant challenged the arbitration agreement between the parties before the court. Whereas the courts of the first two instances upheld the Claimant's claim and found the arbitration agreement void *ab initio,* the Supreme Court ruled that the matter had to be resolved by the arbitral tribunal and not by the courts of general jurisdiction.[44]

Finally, the draft Arbitration Act suggested that arbitrators would have to go through specific training courses and certification. This requirement was not included in the finalized version of the Act as adopted by the Parliament.

d) *Arbitrators' rights and duties*

The Arbitration Act requires arbitrators to be independent, impartial ("objective") and fair; s/he should carry out his/ her duties free of any external influence (Articles 14(5) and 22 AA). The prospective arbitrator must disclose any facts which could raise justifiable doubts as to his/her impartiality and independence, both prior to accepting the nomination and in the course of the proceedings, once s/he became aware of such facts.

e) *Relevant codes of ethics*

The IBA Guidelines on Conflicts of Interest in International Arbitration remain unfamiliar and rarely invoked in Latvia.

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[44] Supreme Court case No. SKC-179/2008, unpublished.

2. Appointment of arbitrators

a) Methods of appointment

The parties are free to agree on the procedure for the establishment of the arbitral tribunal (Article 30 AA). They may entrust the constitution of the arbitral tribunal to any natural or legal person with the capacity to act.

If the parties have agreed on institutional arbitration, the arbitrators shall be appointed in accordance with the rules of arbitration of the respective institution. If the dispute is resolved in *ad hoc* arbitration and the parties have made no agreement on the procedure regarding the constitution of the arbitral tribunal, each party shall appoint one arbitrator and the co-arbitrators shall jointly appoint the Chairman (Article 30 AA). In cases of domestic *ad hoc* arbitration, the failure of a party to appoint an arbitrator will prevent the establishment of the arbitral tribunal, since state courts are not empowered to act as appointing authorities.

b) Appointing authorities

See II.E.2.a.

c) Payment agreements

As a matter of practice, no separate payment arrangements can take place between the parties and the arbitrators, with the logical exception of *ad hoc* arbitrations.

d) Resignation and its consequences

Article 18 of the Arbitration Act provides that the mandate of the arbitrator terminates *inter alia* upon his/her resignation. The parties are free to agree on the resignation procedure but if there is no such agreement, the rules of the permanent arbitration institution shall apply (Article 16(3) AA).

3. Challenge and removal

a) Grounds for challenge

The new Arbitration Act lists certain situations of conflict (using IBA Guidelines' terminology – a "non-waivable list"), which preclude

a candidate from serving as an arbitrator (Article 16 AA). This is so where an arbitrator:

1) has been a party representative, expert or witness for the parties in the dispute;

2) is relative, up to the third degree of affinity, or brother/sister-in-law, up to the second degree, with parties to the dispute or their representatives;

3) is relative, up to the third degree of affinity, or brother/sister-in-law, up to the second degree, with a member of the same arbitral tribunal;

4) is employed with any party to the dispute or its representatives, or if the arbitrator currently advises one of the parties; or

5) his or her spouse, or relative to the third degree, or business partner, or an entity which is a party to the dispute and of which the arbitrator or his relatives to the third degree is the shareholder, member, management, control or executive body, is financially interested in the outcome of the dispute.

A party may file a challenge against an arbitrator where the above conditions are satisfied, as well as when an arbitrator does not meet the criteria set by the law (see II.E.1.c.) or agreed by the parties. The necessary ground for challenging an arbitrator is well-founded doubts as to his/her impartiality and independence. A party may challenge an arbitrator whom it has appointed, or in whose appointment it has participated, only where the grounds for challenge have become known to that party after the appointment of the arbitrator (Article 17 AA).

b) Procedure for challenge

The parties are free to agree on the challenge procedure. The Arbitration Act is somewhat unclear in that it provides that, if the dispute is submitted to a permanent arbitration institution "and the parties have not agreed on the challenge procedure, this procedure is set by law" (Article 17(4) AA). Thus, on its literal reading, the procedure set by law should always prevail over the procedure established by an institution's rules of arbitration.

The deadline for submitting a challenge is five days from the notification of the arbitrator's appointment or after the party becomes aware of the facts and circumstances giving rise to a challenge. The decision on the challenge is taken by the arbitral

tribunal, or, in case the dispute is submitted to a sole arbitrator, by the sole arbitrator him/herself. The decision on the challenge should also be taken within five days of receipt thereof (Article 17(5) and (6) AA).

While Latvian courts cannot be seized in matters relating to the challenge of an arbitrator, the courts may consider the matter when asked to issue a writ of execution.

c) Removal procedure

The parties can agree on an arbitrator's removal. In cases where the dispute is submitted to a permanent arbitration institution and the parties have not agreed on a different procedure, the rules of arbitration of the institution apply (Article 18 AA).

d) Replacement of arbitrators

Article 18(3) AA reads that, "if the authority of the arbitrator ended, the new arbitrator shall be appointed in accordance with the procedures prescribed in Article 30" (see also II.E.2.a.).

4. Arbitrator liability and immunity

Latvian law does not provide for any regulation of the liability of arbitrators. The general rules of liability apply.

F. Conducting the Arbitration

1. Law governing procedure

a) Determination of law and rules governing procedure

Arbitration proceedings taking place in Latvia are governed by the Arbitration Act. Articles 19 and 20 thereof require the arbitral tribunal to pay due regard to principles of party equality and adversarial procedure.

Article 21 AA stipulates that parties are free to determine the arbitration procedure. The arbitral tribunal renders procedural decisions after prior consultation with the parties. The arbitral tribunal may not overrule any agreement of the parties, unless there exists an agreement to the opposite. Failure to conduct the

arbitration proceedings in accordance with the requirements set out in the arbitration agreement and those supplemented by the Arbitration Act may lead to the non-enforceability of the arbitral award.

b) Notion and role of seat of arbitration

The provisions of the Arbitration Act govern proceedings with the place of arbitration in Latvia (Article 1 AA).

c) Methods for selection of seat absent of party choice

Should the parties fail to agree on the place of arbitration, it shall be fixed by the arbitral tribunal, taking into account efficiency considerations (Article 25 AA). The Rules of Arbitration of the LCCI Court of Arbitration, for example, provide that the place of arbitration shall be the seat of the LCCI, unless otherwise agreed by the parties (Article VII). The Rules of Arbitration of the Riga International Court of Arbitration read that the arbitral tribunal may determine the seat of the said Court as the place of arbitration or set any other seat which it considers appropriate in the relevant circumstances (Article 15).

d) Mandatory rules of procedure

The best insight into practice can be found in the document prepared in 2008 by the Supreme Court of Latvia entitled “Court Practice in the Cases of Issuance of the Writs of Execution for the Enforcement of the Arbitral Awards”.[45] This document, *inter alia*, summarizes the most common violations of the CPL (which was in force until 1 January 2015, when the Arbitration Act came into force) as far as arbitration proceedings are concerned.

Thus, the arbitration institution and the arbitral tribunal must observe at all times the limits mandated by law. For example, notice of the hearing must be sent to the parties no later than 15 days before the hearing (Article 31(4) AA). The Supreme Court has ruled that the arbitral tribunal’s notice of hearing should provide information about the time and place of the hearing; otherwise, the award shall not be enforced.[46]

[45] See footnote 9, p. 26.
[46] See footnote 9, p. 27.

The notifications are sent by registered mail or by email, if the parties have so agreed. As a matter of practice, the file of the case should contain proofs (i.e., postal receipts) attesting that all correspondence relating to the proceedings was delivered to all concerned.[47]

2. Conduct of arbitration

a) Basic procedural principles

See II.F.1.a. and d.

b) Party autonomy and arbitrators' power to determine procedure

See II.F.1.a. and d.

c) Style and characteristics of the oral hearing

Within the limits set by the arbitration agreement, the arbitral tribunal has the discretion to decide whether to hold hearings or proceed on the basis of the written evidence and submitted materials only (Article 40 AA).

d) Documents only arbitrations

See II.F.2.c.

e) Submissions and notifications

Articles 35 and 37 of the Arbitration Act detail a list of documents which must be included in the Request for Arbitration and Answer. For example, the Request must include information about the parties; the subject-matter of the dispute; the relief sought; the calculations of the amounts claimed; and the necessary evidence. In addition, the Request must include the arbitration agreement, the main contract, any documents supporting the claim and proof that the Request has been sent to the respondent. The respondent's

[47] Supreme Court case No. SPC- 41/2006.

Answer must indicate whether the respondent recognizes the claim, and state its objections, if any, supported by evidence.

The parties are free to file counterclaims. If the parties have not agreed otherwise, a party can amend or add a claim at any time before review of the merits of the dispute begins (Articles 38 and 39 AA).

Pursuant to Article 40(5) AA, the arbitral tribunal must inform the parties of any "submissions, documents and other information, which it has obtained, as well as expert opinions and other evidence." Failure to observe this rule may lead to non-enforceability of an award.[48]

f) Deadlines, and methods for their extension

While the arbitration institution may set the procedural deadlines for the arbitral proceedings, parties may not derogate from the imperative deadlines provided by law. Until the arbitral tribunal is constituted, all procedural deadlines are set pursuant to the rules of arbitration of the relevant institution (Article 28 AA).

The Arbitration Act provides a mandatory minimum time-limit of 15 days for the submission of an Answer (Article 37). Such a strict time-limit is particularly problematic in international cases, given that the time-limit starts to run from the moment of dispatch of the document, rather than its receipt by respondent. However, in such a case the foreign party may ask the arbitration institution/the arbitral tribunal to extend the time-limit.

In 2008, the Supreme Court decided that the failure to indicate in the arbitral award whether the mandatory time-limits – in particular the 15-day deadline for the respondent's Answer – were observed, may lead to the denial of the request to issue a writ of execution.[49]

See also II.G.2.c.

g) Legal representation

Legal representation is not mandatory (Article 32 AA). Individuals may participate in arbitration proceedings as themselves or through their authorized representatives, including attorneys. In the latter case the power of attorney must be certified by the notary. Legal persons may participate through their officials, who act

48 Supreme Court case No. SPC-12/2011.
49 Supreme Court case No. SPC-43/2008.

pursuant to and within the scope of the authorization conferred by law, articles of association or bylaws, or through external counsel/attorneys who act on the basis of a power of attorney.

The new Arbitration Act lists no less than six requirements for parties' representatives: (i) a representative should be of legal age; (ii) he or she should not be under guardianship; (iii) there should be no court decision precluding it/him/her from representing third parties; (iv) s/he should not be a relative, up to the third degree of affinity, or brother/sister-in law, up to the second degree, of an arbitrator; (v) s/he should not have provided legal advice to the opposing party in this or related dispute; and (vi) s/he should not have participated in the mediation of this or a related dispute. Should a person have been on a permanent arbitration institution's list of arbitrators for the last five years, s/he cannot serve as party representative in a dispute brought to that institution. In case the arbitral tribunal determines that one of the above criteria is not met, it should proscribe said representation.

h) Default proceedings

The proceedings will take place even if a party fails to attend the hearing and provides no reasons for its failure, or if it does not submit written evidence (Article 46 AA). See also II.D.1. and 4.

3. Taking of evidence

a) Admissibility

Pursuant to Article 41(5) of the Arbitration Act, the arbitral tribunal shall determine the relevance and admissibility of evidence.

b) Burden of proof

The Arbitration Act explicitly provides that parties must submit evidence to support their claims and objections. Evidence may be submitted in the form of parties' explanations, written evidence, material evidence and experts' opinions. An arbitral tribunal may require the parties to submit supplementary documents or any other evidence it deems necessary (Article 41 AA).

c) Standards of proof

The Arbitration Act defines evidence as "information, on which basis the arbitral tribunal determines the existence (or absence) of such facts, which are relevant for the dispute resolution." The arbitral tribunal determines the relevance of the submitted evidence (Article 41(5) AA).

d) Documentary evidence and privilege

Documentary evidence shall be submitted as an original or as a certified copy (Article 41(4) AA). If a party submits a certified copy of the document, the arbitral tribunal may, on its own motion or pursuant to the application of the other party, request that the original document be presented to it. If so, the arbitral tribunal shall return an original document, but will leave a certified copy in the file.

There are no special rules for the confidentiality of documents. However, the general standards of confidentiality apply.

The IBA Rules on Taking of Evidence in International Commercial Arbitration remain unfamiliar and rarely invoked in Latvia.

e) Production of documents

Upon the motivated request of one party, the arbitral tribunal may order the other party to submit the written evidences that are in possession thereof. The requesting party shall describe the requested document and explain why it believes that the evidence is in possession of the other party. If the other party declines to produce the evidence within the deadline set forth by the arbitral tribunal without denying the fact that the document is in its possession, the arbitral tribunal can consider the relevant facts as proven (Article 43 AA).

f) Witnesses

The Arbitration Act is mute regarding the summoning of witnesses before the arbitral tribunal. Latvian courts do not have the authority to compel a witness who is unwilling to appear before the arbitrators. The absence of regulation regarding witnesses has been criticized by the legal community. The legislature, in response, pointed to the Latvian legal tradition in which the adjudicator must warn the witnesses of their legal responsibility, and indicated that

arbitrators are not empowered to do so. The current practice accommodates the aforementioned legal requirement by preparing the witness testimony as a written document and having it approved by a public notary.

g) Tribunal-appointed experts

Upon the request of a party, the arbitral tribunal may designate one or several experts (Article 44 AA). As a rule, a party that requests the appointment of an expert must provide the arbitral tribunal with the questions to be asked to the expert. Parties must also submit necessary information, documents, items, and/or other articles to the expert.

There are no special rules in the Arbitration Act regarding the independence and impartiality of the expert and the parties' right to reject him/her. However, the arbitral tribunal can seize the court and proceed, by analogy, to establish the witness' testimony in court. Article 121 CPL provides that the expert shall provide his/her objective opinion and that he/she is personally responsible for it.

There are no special methods for the examination of experts. However, as previously mentioned, the arbitral tribunal applies the procedures commonly used by courts. As a rule, the claimant's experts are examined first, followed by a hearing of the respondent's experts. Upon leave of the arbitral tribunal, the parties may address questions to the experts. There is no provision in the CPL or elsewhere that provides for the cross-examination of witnesses or experts.

Costs of the expert's services are to be borne by the party that requested the expertise. If such request came from both parties, the costs are borne by both of them (Article 45(3) AA).

h) Party-appointed experts

See II.F.3.g.

4. Interim measures of protection

a) Jurisdiction for granting interim measures

The arbitral tribunal has no power to order interim measures. Article 138 CPL grants the courts the authority to order interim

measures for the security of a claim. However, this authority can be exercised only prior to the initiation of the arbitration proceedings.

b) Types of measures

A party has the right to request the following interim measures of protection from the courts (Article 138 CPL) (this part of the CPL was not affected by the 2014 Arbitration reform):

- attachment of movable property and monetary funds of the respondent;
- entering of a prohibitory endorsement in the register of the respective movable property or any other public register;
- entering of an endorsement regarding the securing of a claim in the Land Register or Ship Register;
- arrest of a ship;
- enjoining the respondent from performing certain actions;
- attachment of payments (also deposits in credit institutions), which are due from third persons; and
- postponement of execution activities (also enjoining bailiffs from transferring money or property to a judgment creditor or debtor, or suspending of sale of property).

c) Enforcement mechanisms

As stated above, interim measures of protection may be ordered by the state court, but only prior to the initiation of the arbitration proceedings (Article 138 CPL). The judge sets the time period for the claimant to submit the Request for Arbitration to the arbitration institution. The request for interim measures of protection is granted only in cases where the claimant proves that the respondent avoided the fulfilment of its obligations under the contract (Article 139 CPL). The judge takes a decision on the application within one day (Article 140 CPL).

An application should be filed with the court at the place where the debtor is incorporated or where its property is located. Pursuant to the case law, monetary funds do not fall with the definition of "property", which makes it impossible to attach funds in a bank

account.[50] Thus, in a London-seated arbitration involving two non-residents in Latvia, the court refused to attach the defaulting party's funds held in a bank account in Latvia as, firstly, the monies held on a bank account were not considered as "property" within the meaning of the Civil Procedure Law, and, secondly, because the interested party did not submit evidence proving that there were indeed funds on the defaulting party's Latvian bank account.[51] This approach of the Latvian courts is subject to major criticism as, according to the 2015 statistics, 53.4% of deposits in Latvian banks belong to non-residents.[52] Yet, it is nearly impossible to attach funds located with Latvian banks by non-residents. In addition, if the application for a grant of interim measures is denied by the court, the state fee – 0.5% of the claimed amount - is not reimbursed.

5. Interaction between national courts and arbitration tribunals

a) Court assistance before the arbitration begins

See II.F.4.c.

b) Court assistance during the arbitration

Neither the Arbitration Act nor the CPL provide for any court assistance during the arbitration.

c) Court assistance after the arbitration

Upon a party's request, the court shall issue the writ of execution for the arbitral award.

6. Multiparty, multi-action and multi-contract arbitration

The Arbitration Act does not provide specific rules for multi-party or multi-contract arbitrations. For the arbitration agreement

[50] The Court Practice on Interim Measures of Protection, 2015, p. 18. Available in Latvian at http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/civiltiesibas/.
[51] 17 June 2010 Riga regional Court case No. CA-3378-10/22, unpublished; see also the 24 September 2014 judgment of the Riga City Ziemeļu Region Court case No. 3-10/0067-14/11, unpublished.
[52] Financial and Capital market Commission's Information available at www.fktk.lv.

to be valid and enforceable, however, it must be concluded in writing and signed by all the parties.

a) Parallel and concurrent proceedings

In practice, parallel and concurrent proceedings in distinct arbitration institutions are possible due to the similar names of multiple arbitration institutions (see I.B.1. above).

Thus, in one case the parties concluded an arbitration agreement providing for the settlement of disputes by "*the Commercial Arbitration Court in Riga, Latvia*". When a dispute arose, the Latvian company submitted the Request for Arbitration to the "Commercial Arbitration Court" (*Komerciālā šķīrējtiesa*) with its registered address in Riga, Latvia. However, the Swedish company submitted its Request for Arbitration to the "Riga Commercial Arbitration Court" (*Rīgas Komerciālā šķīrējtiesa*). Ironically, both arbitration institutions found themselves competent to hear the case. The Commercial Arbitration Court was the first one to render an arbitral award. In spite of the *res judicata* effect of that award, the Riga Commercial Arbitration Court continued with the consideration of the case.

On appeal, the second instance court, the Riga Regional court, confirmed the decision of the lower court not to issue a writ of execution for the award rendered under the auspices of the Riga Commercial Arbitration Court.[53]

7. Law and rules of law applicable to the merits

a) Determining the applicable law and rules

The new Arbitration Act is silent on the rules for the determination of the law governing the substance of the dispute (unlike the old CPL, see the 2015 edition of this WAR publication). Yet, for example, Article 19 of the Civil Law provides that contracts to which one of the parties is a Latvian state entity or a local government are governed by Latvian law unless the contract provides otherwise.

[53] Swedish company "Forscan Timber Export" AB v. Latvian company "interwood" judgment by the Riga Regional Court, Civil Case Board Rendered on 19 August 2004 in International Arbitration Court Decisions (Ed. Jarvin S., Magnusson A.), JurisNet, 2008, p. 637.

b) Party autonomy

See II.F.7.a.

c) Determination by arbitrators

As a rule, arbitrators should respect the parties' agreement or, should there be no such agreement, determine the applicable law.

d) Non-national substantive rules, general principles of law and transnational rules

There is no legal tradition in Latvia to apply *lex mercatoria* or general principles of law. That said, the Constitutional Court has emphasized that one of the advantages of the arbitration process is the possibility of reaching a settlement by arbitrators on the basis of the traditions of international commerce.[54] Thus, arbitrators are not precluded from applying *lex mercatoria* or general principles of law.

The arbitral tribunal may decide the dispute as *amiable compositeur* or *ex aequo et bono* only where it is explicitly empowered to do so by the parties.

e) Mandatory rules

See II.F.7.a.

8. Costs

a) Arbitration costs

Article 45 of the Arbitration Act divides the costs of arbitration into two groups: the costs related to the provision of the dispute resolution services (e.g., administrative expenses) and arbitrators' fees. In case of institutional arbitration, the determination of the administrative costs rests with an arbitral institution, which takes into account the complexity of the case and the amount in dispute. Several institutions fix different costs of arbitration for oral and written proceedings (the former being more expensive). In one case,

[54] See footnote 4, para. 8.2.

the respondent failed to pay its share of the costs fixed for the oral procedure, which it requested. As a result, the dispute was considered on the basis of written submissions only. At the enforcement stage, the court refused to issue a writ of execution, underlining that it is a party's right to request an oral hearing.[55]

Costs related to secretarial assistance and the services of a translator/interpreter and an expert, are borne by the party who requested the said services. If such request came from both parties, the costs are borne by both of them (Article 45(3) AA).

Articles 54(4)(11) and (12) of the Arbitration Act state that the award shall fix the costs of arbitration and decide on allocation thereof between the parties. The arbitral tribunal can allocate the costs based on the "costs follow the event" principle (Article 41 CPL). As a rule, the amount of the arbitrators' fees is not subject to judicial review.

b) Legal costs

The winning party may claim reimbursement of its legal costs as damages. A practice has developed in which the legal costs are reimbursed only up to 5% of the awarded amount in dispute. This practice is derived by analogy from court proceedings (Article 44 CPL).

In 2008, the arbitral tribunal considered it reasonable to order the losing party to reimburse the claimant all of its legal costs, given that the claim was satisfied in full. The Supreme Court found that arbitral tribunal misapplied the law, as it arrived at its decision without proof of the actual payment of legal costs and associated expenses.[56]

c) Security for costs

As stated above (see II.F.4.a.), the arbitral tribunal does not have power to order interim measures of protection.

[55] Supreme Court case No. SPC-38/2012.
[56] Supreme Court case No. SPC-1/2008.

G. Arbitration Award

1. Types of awards

The Arbitration Act distinguishes between decisions which do not rule on the merits of the matter and those that do – accordingly, procedural decisions and awards (Articles 51-54 AA). It does not distinguish among interim, partial or final awards. The awards and decisions are final and binding on parties, and take effect immediately. They cannot be appealed or challenged.

2. Form requirements

a) Essential content

According to Article 54(2) AA, the award shall be in writing and should contain *inter alia* the names of arbitrators, place of arbitration and date of the award; information concerning the parties; the subject-matter of the dispute; the reasons upon which the award is based, unless otherwise agreed by the parties; the dispositive section with the arbitral tribunal's decisions; the awarded amount; the details for specific performance, where appropriate (by whom, by which deadline); and the costs of arbitration, legal costs and the allocation thereof between the parties. In cases where these requirements are not met, the court may refuse to issue a writ of execution and declare that the proceedings/award do not comply with the requirements set by law (Article 54(4) AA).

The award should be signed by all members of the arbitral tribunal. In case any of them refuses to do so, the award should state the reasons therefor (Article 54(3) AA).

The Arbitration Act provides for special rules regarding the certification of the signatures on the award. In a permanent arbitration institution, the procedure regarding the certification of arbitrators' signatures is determined by the rules of arbitration of that institution. By contrast, in *ad hoc* arbitration the signatures of the arbitrators must be certified by a public notary prior to the issuance of the award (Article 56 AA).

b) *Reasons*

The Award should provide the reasons on which it is based, unless otherwise agreed by the parties (Article 54(4)(5) AA). The same has been confirmed by the Supreme Court, which added that the award must include a decision on whether the claim is fully or partially satisfied or rejected. Otherwise, the request to issue a writ of execution may be denied.[57] For example, the Supreme Court denied a request for a writ of execution in a case in which the award failed to include information about when and in what amount the debtor had made a partial payment of its debt, and provided no explanation as to how the arbitral tribunal calculated the penalty and the amounts still due by the debtor.[58] Similarly, a request to issue a writ of execution was denied when the award did not include information about the date of commencement of the arbitral proceedings and the exact time period for which the penalty was awarded.[59]

c) *Time limits for making an award*

Ex. Article 493 CPL stated that either party could unilaterally withdraw from the arbitration agreement if the arbitral tribunal has not delivered an award within one year after the commencement of the arbitration proceedings. Accordingly, this rule suggested that the award must be rendered within one year.

The rule was heavily criticized. The 2014 reform brought amendments in this regard. Article 54(1) of the Arbitration Act states that the arbitral tribunal “shall render an award within 14 days after it had considered the matter on the merits.”

The rules of various arbitration institutions set different deadlines with regard to the rendering of the Final Award. For example, the Rules of the LCCI Court of Arbitration provide that the award must be rendered within three months from the date when the file has been transmitted to the arbitral tribunal (Article 68). However, the arbitral tribunal may submit a request in writing to the Council of the LCCI Court of Arbitration to extend this deadline.

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[57] See footnote 9, p. 11.
[58] Supreme Court case No. SPC-10/2008.
[59] Supreme Court case No. SPC-43/2008.

d) Notification to parties and registration

An arbitral award must be sent to the parties within three days after the award is rendered (Article 54(5) AA). The Arbitration Act does not require that the award be registered.

3. Remedies

a) Damages

The arbitral tribunal can order damages. Pursuant to Article 1775 of the Civil Law, a party shall prove the unlawful action and fault of the other party, the existence and the amount of the damages as well as the causal link between unlawful actions and damages.

b) Specific performance

The arbitral tribunal can order specific performance, indicating which party shall perform, what kind of performance and within what time period (Article 54(4)(9) AA).

c) Other typical remedies

Although until recently the Civil Law did not limit the amount of contractual penalties, the Supreme Court dismissed a request to issue a writ of execution for an arbitral award that awarded the a penalty amount seven times as high as the initial debt.[60] The Supreme Court found, on the basis of Article 1 (good faith) and Article 1592 of the Civil Law (no contract which encourages anything immoral or dishonest shall be binding), that the claimed and granted penalty was not proportional to the initial debt. Interestingly, in a case decided one year later, the Supreme Court did not follow the parties argument and that, by granting a penalty greater than the amount of the main debt, the tribunal violated human rights. The Court granted the writ since the respondent failed to specify which rights, exactly, were allegedly violated.[61] Such "revisions" by the courts of dispositive sections of awards raise the delicate and

[60] Supreme Court case No. SPC-43/2007, unpublished.
[61] Supreme Court case No. SPC-43/2008, unpublished.

broader issue of whether courts venture too far in undertaking material review of awards.

In summer 2013, the legislature passed amendments to the Civil Law. As a result thereof, Article 1716 now reads that the contractual penalty cannot exceed 10% of the main debt or contractual price.[62]

d) Interest

Unless the parties agreed on the interest rate in their contract, the legal rate applies (Articles 1756 and 1757 of the Civil Law). The legal rate for the use of capital is 6% per year for commercial contracts, whereas the legal rate for delay payments is 8% above the ECB base rate. The interest may not exceed the amount of the main debt and can be claimed until the full execution of the award.

According to Article 195 CPL, the dispositive portion of court judgments should *inter alia* indicate the type of claim and the awarded amount (the principal amount and interest, separately), the time period for which interest was adjudged and the claimant's rights to interest until the execution of the judgment and its rate. This norm is applied by arbitrators by analogy. Yet, in a recent case the Supreme Court ruled that the legislature did not vest arbitrators with the power to award post-award interest and thus, by doing so, the arbitral tribunal had exceeded the authority given to it by law.[63]

4. Decision making

a) Deliberations

For arbitral tribunals consisting of three or more arbitrators, decisions are taken by majority (Article 51(1) AA). In cases where the arbitral award is not signed by all arbitrators, it should state why an arbitrator's signature is missing (Article 54(3) AA).

b) Majority or Consensus?

See II.G.4.a.

[62] Amendments adopted on 20 June 2013, in force since 1 January 2014.
[63] Supreme Court case No. SPC-42/2012, in Latvian, available at http://www.chamber.lv/uploads/filedir/Code%20of% 20Ethics_EN.doc (last visited on 15 June 2016).

c) Dissenting and concurring opinions

The Arbitration Act is mute on the issue of dissenting opinions. This implies that arbitrators are not prevented from issuing a dissenting opinion. In practice, awards do sometimes contain dissenting opinions. It is debatable whether dissenting opinions are considered as part of the award.

d) Signature

The award shall be made in writing and signed by the arbitrators (Article 54 AA). See also II.G.2.a.

5. Settlement

A settlement agreement shall not affect a third persons' rights and interests protected by law. Upon the parties' agreement, and provided that the arbitral tribunal agrees, the arbitral tribunal may issue an award by consent. Such an award has the same legal force as an award on the merits (Article 53 AA). The arbitral proceedings are declared terminated once the parties have agreed on the settlement of their dispute (Article 57(1)(2) AA).

a) Settlement recorded in an award

See II.G.5.

b) Settlement without an award

The law does not provide for special rules regarding private settlements. In practice, private settlements do not enjoy the same legal force as settlement agreements confirmed by the arbitral tribunal.

c) Use of settlement techniques by arbitrators

Similar to a judge, arbitrators should encourage parties to settle their dispute.

6. Effects of award

a) Effects between parties

All awards and decisions of the arbitral tribunal have binding force, they may not be appealed. The award enters into force on the day it is rendered (Article 51 AA). The minimal deadline for the voluntary compliance with the award should be 10 days (Article 58(1) AA).

b) Effects against third parties

The award cannot affect rights of third parties. Disputes involving a third party's interests are not arbitrable (see II.A.3.), and requests for the issuance of a writ of execution of such awards shall be denied.

c) Res judicata

The award becomes *res judicata* after it is rendered.

As the CPL did not provide for a setting aside procedure, accordingly, even if the court denied a request to issue a writ of execution, the award would still be deemed to have *res judicata* effect. This was seen as one of the main faults and was among the most criticized elements of the Latvian arbitration regulation. To great regret, the new Arbitration Act did not bring any changes in this regard.

7. Correction, supplementation and amendment

a) Correcting the award

The arbitral tribunal can correct any computational, grammatical and typographical omissions on its own motion. Such omissions can be corrected without conveying the parties. Omitting to state the place of arbitration and date of the award do not qualify as computational, grammatical or typographical errors.

As to the parties, any party may request, within 30 days of the notification of the award, the correction of any computational, grammatical and typographical errors therein, interpretation thereof, or a supplementary award if any of the claims submitted to

arbitration have not been adjudicated. If so, within 15 days after the receipt of such request, the arbitral tribunal must schedule a hearing.

Similar to awards, a decision on the request should be issued within 14 days after it is considered on the merits (Article 55 AA); be made in writing; and signed by all members of the arbitral tribunal in order to be enforceable.

b) Additional award

See II.G.7.a.

c) Interpretation of award

See II.G.7.a.

H. Challenge and Other Actions Against the Award

1. Setting aside

The arbitral award is final; it may not be subject to appeal (Article 51 AA). See also II.G.6.c.

This also means that in Latvia the award can *not* be set aside by the state court. This regulation was subject to major criticism and discussion by lawyers, legislators and judges alike. One of the principal arguments against modifying this provision was (and, seemingly, remains) that the courts are already overloaded and will not be in a position to hear a significant number of applications for the setting aside of arbitral awards in a timely manner.

Yet, a party may resist the enforcement of the arbitral award by objecting to the issuance of a writ of execution by the state court.

The fundamental decision regarding this aspect of arbitration was rendered by the Constitutional Court in 2004. The Court stated that judicial control over arbitration is concentrated at the stage of the issuance of a writ of execution though "one may doubt whether such a solution is optimal, as well as whether it is necessary to resign from the well-known and universally accepted model of control of arbitration; however, the state has extensive freedom of action in determining the regulation on the arbitration court procedure."[64] The Court continued as follows:

[64] See footnote 4, para. 89.1.

> At the moment, in the Civil Procedure Law and the draft of the amendments to it there are no norms, which determine the procedure for setting aside the arbitration award, even if the issuance of a writ of execution is not requested. Taking into consideration the frequently expressed criticism about the performance of the arbitration courts and *prima facie* noticeable faults in the regulation of the issuance of a writ of execution, the accepted in the world institute for contesting the arbitration awards in Latvia, would be of especially great importance.[65]

The suggestions of the Constitutional Court remained unaddressed, even in the new 2014 Arbitration Act. See also the relevant discussion in II.C.3.

III. RECOGNITION AND ENFORCEMENT OF AWARDS

A. Domestic Awards

1. Statutory or other regime

a) Distinction between recognition and enforcement

As for domestic awards, the CPL and the Arbitration Act provide only the procedure for the enforcement (execution) of the awards.

b) Grounds for refusing recognition and enforcement

A request to issue a writ of execution can be denied, if (Article 536 CPL):

1) the particular dispute may be resolved only by a court;
2) the arbitration agreement has been entered into by a person who lacked capacity to act or was under age;
3) the arbitration agreement, pursuant to the law applying thereto, was declared null and void;
4) the party was not notified of the arbitration proceedings in the appropriate manner or, due to other reasons, was unable

[65] *Ibid.*, para. 10.

to make his/her submissions, and this significantly affected or could have affected the arbitration proceedings;

5) the party was not notified of the appointment of arbitrators in the appropriate manner, and this significantly affected or could have affected the arbitration proceedings;

6) an arbitrator fails to meet the requirements set forth by the Arbitration Act (see II.E.1.c.), the arbitral tribunal was not established or the arbitration proceedings did not take place in accordance with the provisions of the arbitration agreement or the relevant provisions of the Arbitration Act; or

7) the award decides on issues falling outside the scope of the arbitration agreement or does not comply with the requirements set by the arbitration agreement. In such a case, a writ of execution may be issued for that part of the award, which complies with the requirements set forth by the arbitration agreement, provided that it can be separated from the issues, which are not within the scope of the arbitration agreement.

See III.A.1.d.

c) Formal requirement for enforcement of awards

See III.A.1.d.

d) Enforcement procedure

The presumption is that the parties will voluntarily comply with the award. Should this not be so, and provided that the award is rendered under the auspices of an arbitration institution, the interested party is entitled to seize the district (city) court (Article 58 AA) at the place of the debtor's domicile, legal address or the place of the enforcement of the award, with a request to issue a writ of execution (Article 534 CPL). Unlike the pre-2014 reform regulation, the application may be also made "at the place of the enforcement of the award", hence, arguably, with the court at the location of the debtor's property.

Only awards rendered under the auspices of permanent arbitration institutions are enforceable in Latvia. Domestic *ad hoc* arbitral awards cannot be enforced through the courts.

Requests to issue a writ of execution should be filed with the first instance court. Pursuant to the case law of the Supreme Court, failure to do so will result in denial of the request. Together with the request, the party should submit the original or notarised copies of the award and the arbitration agreement, and pay a state fee (Article 534 CPL). All documents should be submitted in Latvian.

The court transmits the request to the other party and sets the deadline of 20 days for submission of comments. In its comments, the party is invited to indicate whether it acknowledges the request, state its objections, if any, as well as provide any relevant evidence (Article 534[1] CPL).

The judge adjudicates the matter based on the documents before him/her within 20 days from the date of the parties' last submission to the court. The court decision comes into force immediately.

See also II.H.1and II.G.3.

e) Execution

The decision granting a request to issue a writ of execution is final and cannot be subject to appeal.

In contrast, decisions denying a request to issue a writ of execution can be appealed within 10 days of the receipt of the decision (Article 535 CPL). Upon appeal, the court can either to leave the decision unchanged and dismiss the appeal, or annul the decision in full or in part, and refer the case back to the arbitral tribunal. Such a decision of the second instance court is final and takes immediate effect.

Depending on the reasons for the refusal to issue a writ of execution, the matter may be referred either back to arbitration or to the courts of general jurisdiction. Thus, in cases of breaches Nos. 1, 2, 3 and 7 of Article 536 CPL (see III.A.1.b.), the matter shall be referred to the courts of general jurisdiction. In cases of breaches Nos. 4, 5 and 6 of the same Article (see III.A.1.b.), the matter may be referred back to arbitration. The law is quiet on the question what happens to the initial award in such circumstances – i.e., whether it stands in law or not.

Upon receipt of the court's decision, a party shall submit a writ of execution to the court bailiff. Compulsory execution by the court bailiff may be requested within 10 years from the date of the court decision (Article 546 CPL).

B. Foreign Awards

1. Various regulatory regimes

a) Domestic rules

The 2014 reform did not bring any substantive changes to the old regulation.

The CPL has a separate chapter dealing with the recognition and enforcement of foreign arbitral awards (Section 78 CPL). Procedural orders issued by the foreign arbitral tribunals, such as, for example, on interim measures, are not enforceable under the CPL. The arbitral award is qualified as "foreign" if it is rendered by a foreign arbitral tribunal (permanent or *ad hoc*, Article 645 CPL). The recognition is carried out in accordance with the CPL and international treaties to which Latvia is a party (Article 646 CPL). An application for the enforcement and recognition of foreign awards can be dismissed by the state court only in the cases provided for by international treaties binding upon Latvia (Article 649 CPL), i.e., the 1958 New York Convention.

The court cannot review a foreign award on the merits.

b) New York Convention

Latvia is a party to the New York Convention as of 1992.

c) Other international conventions

As of 1997, Latvia is a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.

In 2003, Latvia signed the 1961 European Convention on International Commercial Arbitration. See also I.A.2.a.

2. Application of New York Convention by local courts

a) Enforcement procedure

An application for the recognition and enforcement of a foreign arbitral award shall be submitted to a district (city) court at the place where the enforcement of the award will be sought or at the place of residence/incorporation of the party against whom the enforcement will be sought. Article 647 CPL states that an original

or true copy of the award and the arbitration agreement (including a translation into Latvian approved by a notary, where necessary) must be attached to the application. Upon examination of the application, the court may request explanations from the parties or additional information from the foreign arbitration institution under the auspices of which the award was rendered.

The applicant may request the court to secure the enforcement of the award (Article 650 CPL), for example, by providing the court with the information about the movable and immovable property of the respondent.

Court decisions regarding the enforcement of foreign awards are subject to special appeal (Article 649 CPL). Initially, it was not clear whether only the first instance court's decisions could be appealed or the later decisions, too. Thus, on at least one occasion the application for the recognition and enforcement was heard in the first, the second and the third (the Supreme Court) instances.[66] Yet, in 2012 the Supreme Court ruled that, unlike applications for the recognition of the foreign court's judgments, which can be heard in three court instances, applications for the recognition and enforcement of foreign arbitral awards can be heard in two instances only.[67] The present Article 642 should be interpreted across these lines.

b) *Examples from practice*

There is no exact data on how many foreign arbitral awards have been enforced following Latvia's accession to the New York Convention in 1992—neither the Ministry of Justice nor the courts of general jurisdiction keep such statistics.[68] Yet, the practice is subject to heavy criticism.

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[66] Supreme Court case No. SKC-395/2010, in Latvian, available at http://www.at.gov.lv/files/uploads/files/archive/department1/2010/395-la.doc (last visited on 15 June 2016).

[67] Supreme Court case No. SKC-953/2012, in Latvian, available at http://www.at.gov.lv/files/uploads/files/archive/department1/2012/953-skc-2012.doc (last visited on 15 June 2016).

[68] See Kačevska I. "Recognition and Enforcement of Foreign Arbitral Awards" in Commentaries on the Civil Procedure Law. Part III (Chapters 61-86) [ed. Torgāns K.] *Tiesu Nama Aģentūra*, Riga (in Latvian), 2014, Chapter 78.

In one case, the court refused to recognise the foreign arbitral award, as the arbitral tribunal: (i) did not meet one party's request to conduct on-site visit; and (ii) referred in its procedural order to the IBA Rules on Taking of Evidence in International Commercial Arbitration, whereas there was no proof on the file that the parties had agreed to apply those rules.[69]

The Supreme Court upheld the decision of the first instance court in recognising the foreign arbitral award despite the respondent's contention that it was not a proper party to the arbitration agreement and, hence, the dispute. More particularly, the respondent argued that its name, legal address and bank account were different from those indicated in the contract. The Supreme Court relied upon Article 5(1) of the European Convention on International Commercial Arbitration, according to which the party which intends to raise a plea as to the arbitrator's jurisdiction based on the fact that the arbitration agreement was either non-existent or null and void or had lapsed, shall do so during the arbitration proceedings and no later than the delivery of its defence relating to the substance of the dispute. The respondent did not raise this defence before the arbitral tribunal and, hence, had waived its right in this regard.[70]

IV. APPENDICES AND RELEVANT INSTRUMENTS

A. National Legislation (See CD-ROM)

N/A. The 2014 Arbitration Act is not translated into English.

B. Major Arbitration Institutions

Court of Arbitration of the Latvian Chamber of Commerce and Industry
Kr. Valdemara Street 35,
Riga, LV-1010, Latvia
Telephone: +371 67830815, +371 67225595
Fax: +371 67820092
E-mail: arbitr@chamber.lv
Website: http://www.chamber.lv

[69] Riga Regional Court case No. CA – 4668-11/5-09/15, 2011, unpublished.
[70] See footnote 63.

Baltic International Arbitration Court
Gertrudes Street 7
Riga, LV-1010, Latvia
Telephone: +371 67240347
Fax: +371 67292607
E-mail: mail@arbitration.lv
Website: http://www.arbitration.lv

Riga International Arbitration Court
Palasta Street 10
Riga, LV-1050
Latvia
Telephone: +371 67222822; +371 67223124
Fax.: +371 67224447
E-mail: info@rsst.lv
Website: http://www.rsst.lv

C. Cases

D. Bibliography

a) Books on arbitration

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b) Articles

G. Zukova, "Lettonie: Le principe compétence-compétence n'exclut pas le recours aux tribunaux étatiques pour statuer sur la validité de la clause compromissoire" (case-law review of the Decision of the Constitutional Court of Latvia (Satversmes tiesa) of 28 November 2014 in case No. 2014-09-01), *Les Cahiers de l'Arbitrage/The Paris Journal of International Arbitration*, 2015(3), pp. 493-503

I. Kacevska, The Quality of Part 78 of the Latvian Civil Procedure Law and its Importance in Recognizing and Enforcing the Foreign Arbitral Awards. International Scientific Conference "The Quality of Legal Acts and its Importance in Contemporary Legal Space". *University of Latvia Press*, 2012, pp. 489-496.

I. Kacevska, Applicable Legal Norms in International Arbitration Procedure, in Harmonization of the Laws in the Baltic Sea Region After EU Expansion. Compendium of Articles for International Scientific Conference. *University of Latvia*, 2012, pp. 110- 127.

8 *Baltic Yearbook of International Law* (2008), Special Issue "Arbitration in the Baltics: Contemporary Issues"

U. Ziedonis, I. Kacevska, "Arbitration in Latvia: Urgent Need for Statutory Reform," 21(2) *Journal of International Arbitration* (2004), pp. 211-220 (in English)

G. Zukova, "Comments on the Latvian Draft Law on Arbitration," *Jurista Vards*, 18 December 2007, No. 51/52, (504) (in Latvian)

G. Zukova, "Problems in the Latvian Arbitration Regulation," Topical Issues of Civil Procedure, Materials of Scientific Conference of 2007, *Tiesu Nama Aǵentūra*, Riga, 2008, pp. 157-184 (in Latvian).

c) Periodicals dealing with arbitration

The official state newspaper "Latvijas Vestnesis" has a weekly addendum "Jurista Vards" ("Lawyer's Word") that occasionally publishes articles on arbitration.

d) The periodical where published awards can be found.
(See also Chapter VI.11 - Publication of the Award)

N/A .