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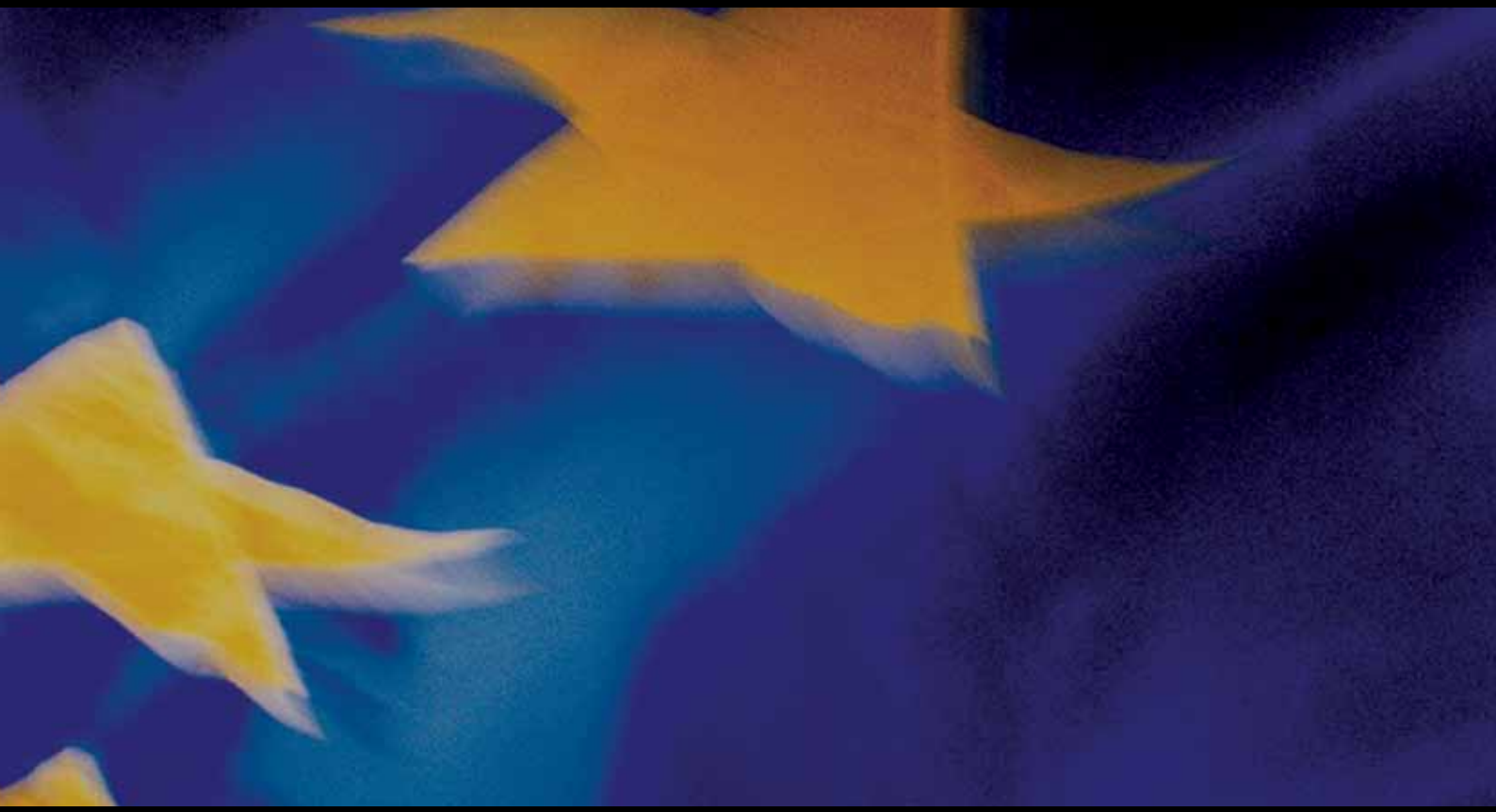

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Latvia

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Latvia is very pro-arbitration country with 213 registered permanent arbitral institutions.[1] According to law, 'a permanent arbitration institution can be established by one or more legal entities', so there are no restrictions as to the founding of arbitral institutions and, as such, the number keeps growing each month. One of the troubling aspects of this high number of permanent arbitration institutions in Latvia is their often similar and therefore confusing names.[2] This facilitates forum-shopping and raises jurisdictional uncertainty as parties often manage to submit the same dispute to two different arbitration institutions that have similar names.

However, the great number of permanent arbitration institutions means that they also hear a great number of cases. For example, the courts received 1627 applications for the compulsory execution of arbitral awards in 2012.[3] The number of applications was highest in 2006, when 8,380 such applications were reviewed by the court.

Latvia does not follow the UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL Model Law), so it has a very special arbitration environment. For example, there is almost no court assistance during arbitration proceedings and there is no setting-aside procedure in Latvia. This article will give a brief overview on the main specifics and essentials of arbitration in Latvia.

Legal framework

The main rules on arbitration are laid down in the Latvian Civil Procedure Law, chapter D, which came into force on 1 March 1999. The Civil Procedure Law does not distinguish between domestic and international arbitration. The only exception to this is the section entitled 'Recognition and Enforcement of a Foreign Arbitral Awards' (section 78, chapter F). In addition, Latvia signed and ratified the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards and the European Convention on International Commercial Arbitration with reservation to article 2, part 2 of the Convention, providing that the legal persons of public law have no right to conclude arbitration agreements.

Arbitrability

The matters concerning legal facts, employment contracts, guardianship and eviction of a person from a property are not arbitrable in Latvia. Also, arbitration courts do not have jurisdiction in cases where at least one of the parties is a state or local government, or a person involved in the insolvency proceedings. Moreover, the Civil Procedure Law clearly stipulates that 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. Thus, for example, the Supreme Court has ruled that disputes concerning pledged real property cannot be settled by arbitration since, in such cases, third parties' rights (eg, bank's) can be infringed.[4]

The Civil Procedure Law explicitly does not restrict parties to arbitrate consumer disputes; however, according to Latvian courts'[5] and the European Court of Justice's practice, a clause in the consumer agreement that provides for dispute settlement exclusively by means of arbitration is considered unfair. However, if the natural person acts as guarantor in the private agreement, he or she will not be considered a consumer.

Arbitration agreement

Article 492 of the Civil Procedure Law requires that the arbitration agreement be in written form and incorporated into a main contract, or established as a separate arbitration clause. This requirement corresponds to article 7.2 of the UNCITRAL Model Law, except that Latvian law does not allow the arbitration agreement to be made by an 'exchange of statements of claim and not denied by another'. There are no specific rules in the Civil Procedure Law about the incorporation of an arbitration clause contained in the general terms and conditions. However, the Supreme Court acknowledged that the arbitration clause included in a unilaterally signed promissory note is valid since in this case the parties' intent to conclude the arbitration agreement can be established. Moreover, according to the law, the arbitration clause should not necessarily include both parties' signatures.[6]

According to article 493(4) of the Civil Procedure Law, a party may unilaterally withdraw from the arbitration agreement, upon notification to the other party, provided that:

- once the arbitral proceeding has started, no arbitral tribunal has been established or no procedural activities have taken place in at minimum four months; or
- the final award on the merits of the dispute has not been rendered within one year from the initiation of the arbitral proceedings.

This last provision has fallen especially prey to criticism, as arbitral proceedings are necessarily lengthier nowadays and the parties become increasingly astute in employing various delaying tactics.

It is suggested in the case law that an arbitration agreement cannot be transferred via cessation (assignment agreement), as only claims, and not contractual obligations, are transferred at the moment of cession, so an arbitration agreement will not survive.

The Latvian courts have adopted a rather restrictive interpretation of the parties' consent. For example, the court declared the arbitration agreement unenforceable when, in their agreement, the parties agreed to settle the disputes in an arbitration institution chosen by the claimant.[7] The court suggested that the parties name a particular arbitration institution in their agreement in order for the arbitration agreement can be considered valid.

As mentioned above, the often similar names of arbitration institutions can raise jurisdictional uncertainties. In the most reported case, the parties agreed to settle their disputes in the 'Commercial Arbitration Court in Riga, Latvia'; however, one party submitted the claim to the 'Commercial Arbitration Court' in Riga, and the other to 'Riga Commercial Arbitration Court'.[8] The race was on as both arbitration courts not only accepted the jurisdiction but also reviewed the cases. Despite the fact that the first award was rendered by the Commercial Arbitration Court

with power of res judicata, the claimant to the procedure at Riga Commercial Arbitration Court proceeded with the compulsory execution of the award in the state court. Although the court did not issue the writ of execution, the case perfectly demonstrated the deficiencies of Latvian arbitration law.

Procedure

There are some procedural particularities in Latvian arbitration law. For example, it is a mandatory provision that the arbitral tribunal shall inform the parties of the hearing in writing no less than 15 days before the hearing (article 518 of the Civil Procedure Law). In addition, the Civil Procedure Law provides a mandatory time limit of 15 days for the submission of an answer and counterclaims. However, such a strict and short time limit is particularly problematic in international cases given that it starts to run from the moment the document is dispatched, rather than the moment it is received by the respondent.

The law states that, in an arbitration procedure, the evidences considered include explanations by the parties, written evidences and expert opinions (article 521 of the Civil Procedure Law). Thus witnesses cannot be summoned before arbitral tribunal. The provision to allow witnesses into arbitral proceedings was not included in the law as only a judge can warn witnesses regarding their liability for refusing to testify or for knowingly providing false testimony – arbitrators do not have such power. In practice, the parties submit the witnesses' written explanations once approved by the notary public and it is considered as written evidence in the arbitral procedure; or parties authorise the necessary person to be the representative so that the witness can give his or her oral explanations in the hearing. However, such approach is seriously criticised by the legal community.

The Civil Procedure Law contains provisions stating that if parties have not agreed on the language of the proceedings, then Latvian shall be the language of the proceedings (article 509). Therefore, if two foreign parties are willing to settle their dispute by arbitration in Latvia and there is no clear indication of the language of the proceedings in their arbitration agreement, then arbitrators shall proceed with arbitration in Latvian according to lex citus arbitri.

The Civil Procedure Law does not provide for specific rules pertaining to multiparty arbitration or the joinder of a third party, and there is no practice regarding multiparty arbitration. However, as stated above, the arbitration agreement must be concluded in writing and signed by all parties in order for it to be valid and enforceable.

Special consideration is given to the independence and impartiality of arbitrators, as this is one of the biggest concerns in an environment with so many arbitral institutions. For example, in one arbitration case, the claimant was represented by the lawyer who was also the founder of the arbitral institution; the arbitral institution and lawyer's law office were located at the same address.[9] The Constitutional Court stressed that the structure of the arbitration court, previous relations of the arbitrators with the parties and other factors may serve as cause for doubt over the independence and impartiality or the arbitrator,[10] and that in such case, the enforcement of the arbitral award shall not be given by the court. Due to ongoing concerns regarding the independence, impartiality and professionalism of arbitrators on January 2013, the legislator has accepted amendments to article 497 of the Civil Procedure Law. This article provides, inter alia, that an arbitrator shall have a good reputation, a law degree, at least three years practical legal experience and no criminal record. If the appointed arbitrator does not meet these requirements, the court shall not execute the national arbitral award. The legal community raised objections to such amendments in parliament; however, they were accepted without constructive discussions.

Interaction of national courts and tribunals

As Latvia is not a UNCITRAL Model Law country, the Civil Procedure Law does not provide for court assistance during the arbitration, with regards to taking evidence or appointing arbitrators. The exception is article 138 of the Civil Procedure Law, which grants courts the authority to adopt interim measures for the security of a claim. However, the courts can grant interim measures only prior to the initiation of arbitration proceedings. Neither the court during the arbitral proceedings, nor the arbitral tribunal itself at any stage of the proceedings can secure the claim.

The award can not be set aside in Latvia. Even though the Constitutional Court of Latvia admitted that:

> *Taking into consideration the frequently expressed criticism on 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 court judgment in Latvia, would be of especially great importance.*

However, in Latvia:

> *From the viewpoint of the protection of fundamental rights, the most essential stage of the arbitration court procedure is the issuance of a writ of execution.*[11]

There have been attempts to introduce the set-aside procedure into Latvian arbitration law; nevertheless, there is much resistance from the judiciary as the challenging of awards can increase the caseload in the courts.

Execution of arbitral awards

The awards and decisions are final and binding on parties and take effect immediately. They cannot be appealed or challenged. Where the arbitration is conducted on the basis of written proceedings, the award must be sent to the parties within three days (article 530 of the Civil Procedure Law).

If the award is not voluntarily complied with, the interested party can submit applications for the compulsory execution of the arbitral award and issuance of the writ to the state court. The application shall be submitted to the city court at the debtors domicile or legal address with the request to issue a writ of execution; however, the law does not provide for the possibility to seize the court at the location of the debtor's property, which is heavily criticised by the legal community.

Unfortunately, according to the Law, domestic ad hoc arbitral awards cannot be enforced through the courts.

Article 536 of the Civil Procedure Law provides the grounds for when a request to issue a writ of execution can be denied; for example, in cases where the particular dispute may only be resolved by a court, or the arbitration agreement was declared null and void, or due process was not foreseen in the proceedings. The most common ground for the denial of the request to issue the writ of execution is that the arbitration proceedings did not take place in accordance with the Civil Procedure Law. For instance, the Supreme Court decided that there is lack of motivation in the arbitral award as the arbitrators have not explained how the contractual penalty is calculated in their award.[12] In fact, the contractual penalty is a contemporary question in the process of compulsory execution of the arbitral awards. In one case, the court found that the arbitral award was not made in good faith as the contractual penalty exceeded the main debt six times.[13] However,

in another case, the Supreme Court stated that 'the state is not responsible for the violations in the arbitral process and has not undertaken to eliminate every mistake made by the parties' chosen arbitration institution.'[14] Namely, at this stage of proceedings, the court is not authorised to evaluate the proportionality of the main debt and contractual penalty awarded by the arbitral tribunal.

Recognition and enforcement of foreign arbitral awards

Part 78 of the Civil Procedure Law sets the national procedural rules for the recognition and enforcement of foreign arbitral awards and consists of seven articles only. In practice, it serves as a supplementary instrument for New York Convention, mainly providing national rules on how to submit the application for recognition and enforcement. For example, article 646 of the Civil Procedure Law provides that the foreign arbitral award is recognised in accordance with international treaties binding to Latvia, but the next article states that the interested party shall submit the application for recognition and enforcement accompanied by the original award and arbitration agreement, or certified copies and their translation in Latvian. In reviewing the application for the recognition and enforcement of the foreign arbitral award, the court holds the hearing with the participation of the parties.

There is no extensive court practice in applying New York Convention, therefore those few cases at hand are inconsistent. In one particular case, the court refused to recognise and enforce the foreign arbitral award based on article IV and V part 1(a) of the New York Convention as the claimant could not prove the existence and validity of the arbitration agreement. The arbitration agreement was concluded through a broker who issued the notary approved text evidencing that parties agreed upon arbitration clause.[15]

In another case, the court decided that the denial of the arbitral tribunal to site visit as requested by one party during the arbitration is a fundamental violation of article V part 1(b) of the New York Convention, thus the award was not recognised in Latvia.[16] Moreover, the court stated that there is no evidence in the case materials that the parties had agreed to apply IBA Rules on the Taking of Evidence in International Commercial Arbitration, but the arbitral tribunal made the reference to those rules in the procedural order and so this was also considered a procedural violation.

In another case, the respondent claimed that the award was made against another legal person, not the respondent.[17] Namely, the respondent argued that it had never signed a contract with an arbitration clause, the name of the company slightly differed in the contract and the award, it never held such bank account, and the legal address indicated in the contract was wrong. In deciding whether to recognise this foreign arbitral award or not, the Supreme Court stated that, in evaluating whether the respondent is party to the arbitration agreement, article 5, part 1 of the European Convention on International Commercial Arbitration would be taken into account providing that the party that 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 not later than the delivery of its defence relating to the substance of the dispute. The respondent received the notice of arbitration and other documents regarding the arbitration process, but did not participate in the arbitration and did not object during the process. Thus the question as to whether the respondent was party to the arbitration agreement is the evaluation of the merits of the arbitration case. Accordingly, the Supreme Court recognised and enforced this arbitral award.

The Civil Procedure Law clearly does not provide for whether the court's decision to recognise the foreign arbitral award or not can be appealed on procedural bases in one or two instances. Such ambiguity in the law raises the conflicting decisions of the courts. For example, in one case, the parties went through the three-tier appeal system – the application for recognition and enforcement was heard in the first, second and third instance (the Supreme Court).[18] However, in another recent case, the Supreme Court refused to accept the complaint of the second instance's court decision stating that the decision on the recognition and enforcement of foreign arbitral awards can be reviewed in two instances only.[19]

It should be noted that only final arbitral awards can be enforced in Latvia; decisions, for example, on interim measures made by the foreign arbitral tribunal are not enforceable under the Civil Procedure Law.

Further developments

There is an obvious need for change in arbitration regulations in Latvia, and so there have been a few attempts to draft the new law based on UNCITRAL Model law. However, so far this has been unsuccessful. This is largely because the acceptance of the Model Law will not reduce the number of arbitral institutions, which is the main concern in Latvia. Also, there is big resistance from the judiciary as the courts are afraid to be overloaded with cases related to arbitration.

Notes

1 Enterprise of Register Information available in Latvian at www.ur.gov.lv/skirejtiesas.html.
2 For example, Riga Commercial Arbitration, Riga International Arbitration, Commercial Arbitration, Riga Arbitration, etc.
3 Court Information System statistics available in Latvian at https://tis.ta.gov.lv/tisreal?Form=TIS_STAT_O&SessionId=2BB1D71313F07EC9C2CF1201CE668F07.
4 Supreme Court decision in case No. SPC-41/2006, published in *Court Practice in the Cases of Issuance of the Writ of Execution for the Enforcement of the Arbitral Awards*, Riga, 2008, www.at.gov.lv/lv/info/summary/2008/, in Latvian.
5 For example, Supreme Court decision in case No. SPC-21/2007, published in *Court Practice in the Cases of Issuance of the Writ of Execution for the Enforcement of the Arbitral Awards*, Riga, 2008, www.at.gov.lv/lv/info/summary/2008/, in Latvian.
6 Supreme Court Decision in case No. SPC-6/2009, unpublished.
7 Riga Regional Court Decision in case No. CA – 3655/2, 2006, unpublished.
8 See, *Decision and commentary at Stockholm International Arbitration Review 2006:2*, JurisNet, p181-200.
9 Supreme Court Decision in case No. SKC-179/2008, unpublished.
10 Constitutional Court Judgment in case No. 2004-10-01, published at www.satv.tiesa.gov.lv/upload/2004-19-01E.rtf, in Latvian.
11 Constitutional Court Judgment in case No. 2004-10-01, published at www.satv.tiesa.gov.lv/upload/2004-19-01E.rtf, in Latvian.
12 Supreme Court of Republic of Latvia decision in case No. SPC – 10/2008, published in *Court Practice in the Cases of Issuance of the Writ of Execution for the Enforcement of the Arbitral Awards*, Riga, 2008, www.at.gov.lv/lv/info/summary/2008/, in Latvian.
13 Supreme Court of Republic of Latvia decision in case No. SPC-43/2007, published in *Court Practice in the Cases of Issuance of the Writ of Execution for the Enforcement of the Arbitral Awards*, Riga, 2008, www.at.gov.lv/lv/info/summary/2008/, in Latvian.
14 Supreme Court of Republic of Latvia decision in case No. SPC-41/2008, published in *Court Practice in the Cases of Issuance of the Writ of Execution for the Enforcement of the Arbitral Awards*, Riga, 2008, www.at.gov.lv/lv/info/summary/2008/, in Latvian.
15 Riga Regional Court decision No. C-33510411, 2013, unpublished.

16 Riga Regional Court Decision in case No. CA – 4668-11/5-09/15, 2011, unpublished.
17 Supreme Court of Republic of Latvia decision in case No. SKC-395/2010, http://at.gov.lv/files/archive/department1/2010/395-la.doc, in Latvian.
18 Supreme Court of Republic of Latvia decision in case No. SKC-395/2010: http://at.gov.lv/files/archive/department1/2010/395-la.doc, in Latvian.
19 Supreme Court of Republic of Latvia decision in case No. SKC – 953/2012 [2012], http://at.gov.lv/files/archive/department1/2012/953-skc-2012.doc, in Latvian.

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