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IBA ARBITRATION COMMITTEE

Arbitration Guide

ESTONIA

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

The use of arbitration is getting more and more popular in Estonia, especially with respect to larger transactions. However, since the court proceedings have been relatively efficient and considerably cheaper than arbitration, the majority of disputes are clearly resolved in courts, especially when it comes to domestic disputes or disputes involving state-controlled entities (public procurement cases). Considering that courts have considerably slowed down over the last one to two years, the efficiency of arbitration may become more appealing. The principal advantages of arbitration are confidentiality (if agreed upon) and the option to choose competent arbitrators for a particular case.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most arbitrations involving Estonian parties are institutional arbitrations. The most popular institution is the Arbitration Court of the Estonian Chamber of Commerce and Industry ('ECCI'), however, for international transactions more often the SCC Arbitration Institute ('SCC'), Finland Arbitration Institute ('FAI') or the International Court of Arbitration of the International Chamber of Commerce ('ICC') are used. At ECCI, depending on the year, about half the cases might be international and half domestic. In 2024, all new cases were international.

(iii) What types of disputes are typically arbitrated?

There is no clear pattern as to which disputes are being arbitrated and which are not. However, arbitration is often used in bigger transactions (often M&A, shareholder agreements and sometimes construction matters).

(iv) How long do arbitral proceedings usually last in your country?

The ECCI Rules provide for the award to be issued within six months from transferring the case file to the arbitrators. In most cases the award is rendered within the time frame. Some years ago, there have been delays from the period from filing to transferring the file to arbitrators but there is a clear trend towards efficiency at this stage.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

No, there are no such restrictions.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

In Estonia, arbitration is mainly regulated by §-s 712 to 757 of the Estonian Code of Civil Procedure (CCP), which took effect on 1 January 2006. Certain provisions apply even if the seat of arbitration is a foreign country or if the seat has not yet been determined. The chapter on arbitration of the CCP replaced the Act of the Republic of Estonia on the Court

of Arbitration of the Estonian Chamber of Commerce and Industry. The CCP applies to both domestic and international arbitrations.

The arbitration chapter of the CCP is based on the 1985 UNCITRAL Model Law on International Commercial Arbitration (MAL). However, there are also certain differences (by and large, nearly identical to the differences made by Germany).

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

No, by law, there is no distinction between domestic and international arbitration (except for the provisions on recognition and enforcement of arbitral awards).

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Since 1993, Estonia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC). Estonia has not opted to any reservations.

Estonia is not a party to any regional conventions or treaties on recognition and/or enforcement of arbitral awards.

Estonia is also a party to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID, 1965). In 1998 Estonia joined the Energy Charter Treaty.

Estonia has also signed more than 20 bilateral investment treaties (BITs).

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

By law, in resolving the dispute, the arbitral tribunal applies legislation whose application was agreed upon by the parties. Where reference is made to the law of a state, it is presumed that the agreement does not extend to the state's rules on the conflict of laws unless the parties have expressly agreed otherwise. The arbitral tribunal may resolve the dispute under the principle of equity if the parties have expressly agreed so.

As a distinction from MAL, the CCP sets forth that where the parties have not agreed on the applicable law and such law has not been provided for by law either, the arbitral tribunal applies Estonian law. The practical effect of this clause remains to be seen. There is still no available case-law on the issue (though the same provision has been effective already pre-CCP).

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

As per the CCP, an arbitral agreement is an agreement between the parties to resolve, by way of arbitration, a dispute which has already arisen or may arise between them over a defined contractual relationship or a non-contractual relationship. An arbitration agreement may be concluded in the form of a separate agreement or as a separable clause being part of an agreement (in this wording in force as of 1 January 2013). It shall be in the form that can be reproduced in writing, *inter alia* expressed in a confirmation letter. If a consumer is a party to an arbitral agreement, such agreement must be set out in a document bearing the hand-written or digital signature of the consumer (as of 1 April 2019, there are also additional requirements in effect for arbitration agreements with consumers). The general requirements for

agreements as set forth in the General Part of the Civil Code Act (GPCCA) and the Law of Obligations Act (LOA) shall be kept in mind, especially the regulation of standard terms.

The law does not set forth any recommended terms for the arbitration agreement but in practice it is advisable and customary to use the model clauses of institutions.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

Estonian courts have confirmed the effect of an arbitration agreement in preventing the courts from hearing a claim subject to an arbitration agreement. However, it has also been concluded that a party waives its right to rely on the arbitration agreement if it fails to timely rely on it.

The Estonian Supreme Court has repeatedly ruled that an agreement on giving the dispute to be resolved in arbitration shall be clear because by this, a party denies itself the possibility to turn to court. The courts have also confirmed that an agreement does not have to be printed out and signed, the agreement by way of sending letters and faxes is valid. It has also been confirmed by an appellate court that the Estonian courts can, upon assessing the validity of the arbitration agreement, take the practice of other states into consideration.

(iii) Are multi-tier clauses (eg, arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Most dispute resolution clauses include the principle that if amicable negotiations fail, a party can turn to arbitration. Even though technically multi-tier, in practice, it is usually concluded that if a party has turned to arbitration, the negotiations have failed, so usually parties are not forced to reconduct the negotiations. There are some med-arb clauses as well but mediation is rather uncommon still and thus not often included in contracts. Nor is there clear practice on how to interpret such clauses. The general view seems to be that even if there are pre-steps agreed, then if they are not or do not seem to have been efficient to dispute resolution, a party shall nevertheless have access to arbitration if arbitration has been agreed upon as a dispute resolution mechanism.

(iv) What are the requirements for a valid multi-party arbitration agreement?

The law is silent on multi-party agreements. Multi-party arbitration has been introduced in the new ECCI Rules in effect as of 1 January 2024.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

There is no regulation or practice to confirm the opposite. However, depending on the particular case, such agreement might be considered void based on general contract regulation.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

In general, only signatories are deemed bound. The CCP does not regulate the extension of arbitration agreements on third parties. The court practice is also scarce on the subject. It is largely accepted that the arbitration agreement is deemed transferred upon the transfer of the contract. The Supreme Court has also (years ago) in one case concluded that an arbitration agreement in a loan contract could also be binding on the person having given a surety (it was further specified that on interpreting the suretyship agreements, the behaviour of the parties is also relevant).

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The law does not regulate this. In general, the law of the seat is applied (even though the questions have not been addressed often enough to make clear conclusions).

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Yes, the venue for hearings/meetings might be different from the seat, which has legal consequences *(inter alia* applicable procedural law, jurisdiction for challenging the award).

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

There is no known practice to make any valid conclusions.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

In principle, probably yes, but there is no known practice to make any valid conclusions.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

Estonian law does not define the term arbitrability. However, pursuant to the CCP, the object of an arbitration agreement may be a proprietary claim. An arbitration agreement over a non-proprietary claim is valid only if it is capable of settlement. Further, an arbitration agreement is void if its object is a dispute over (a) the validity and/or termination of a residential lease agreement or moving out from a dwelling or (b) the termination of an employment contract or (c) a contract from consumer credit agreement. A proprietary claim of a public nature is arbitrable only if an administrative contract can be concluded with respect to the disputed matter. The law further provides that certain other types of disputes may not be submitted to arbitration, or such right may be restricted if so provided by law. However, the law does not list any such disputes. Court practice on arbitrability is rather scarce.

The CCP clearly provides for the principles of separability and competence-competence; an arbitral tribunal has the right to determine its competence and, in connection therewith, also resolve the matter of existence of an arbitral agreement and of the validity of such agreement. In doing so, the arbitral tribunal shall view the arbitral agreement as an independent agreement not connected to the terms and conditions of any contract. However, in the end it would be the relevant courts that would decide on the validity of the arbitration agreement. Further, a controversial article of CCP regulating competence-competence sets forth that the principle does not apply if the court has accepted an action for establishment of the validity of an arbitral agreement or the right of an arbitral tribunal to conduct proceedings in a matter (though the provision further specifies that the court shall not accept such action if an arbitral tribunal has already been formed in the matter and the tribunal has not yet declared itself to be incompetent in the matter). There have been some lower courts disputes on the interpretation of this clause but there is still no clear practice on it.

There is no legal literature or court practice on the issue whether lack of arbitrability is a question of jurisdiction or admissibility. Rather it could be concluded that it is a question of jurisdiction as the courts lack jurisdiction only if there is a valid arbitration agreement on the matter. If a dispute is non-arbitrable, then there is no valid arbitration agreement.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do

parties waive their right to arbitrate by participating in court proceedings?

The rules of procedure for general court proceedings set forth that a party shall respond to a claim within the time limit set forth by the court (usually 14 days, in cases of a foreign party, often 28 days). The law also sets forth that all objections to the legality of filing of an action or appeal shall be submitted to the court together in the response to the action or appeal or, if a response is not given, in the first court session or upon the filing of the first petition on the merits of the matter.

The Supreme Court has confirmed that a party waives its right to rely on the arbitration agreement if it fails to timely rely on it. In the particular case, the Supreme Court concluded that neither the claimant nor the respondent relied on the arbitration agreement in their first submissions, thus they indicated by their behaviour that they wish to terminate the arbitration agreement and resolve the dispute in regular court.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

Please see the response to question in section IV(i) above.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Pursuant to the CCP, the parties may agree on the number of arbitrators and the procedure for appointing arbitrators. However, if the arbitration agreement gives one party an economic or other benefit that significantly harms the other party regarding composition of the tribunal, the other party may submit to the court a petition to determine the arbitrator/tribunal by following other rules. Such petition to court shall be filed within 15 days as of the time when the party found out about the formation of the tribunal. The CCP provides that the tribunal may (but does not have to) suspend arbitral proceedings in such a case.

If the parties have not agreed on the number of arbitrators, the dispute shall be resolved by three arbitrators. If the parties have not agreed on the appointment procedure, either party shall appoint an arbitrator who shall jointly appoint the chairman. If a party has not appointed an arbitrator within 30 days from receiving the other party's respective request, or if the appointed arbitrators are unable to appoint the chairman within 30 days from their appointment, the arbitrator shall be appointed by court upon a party's request.

If the parties have agreed on appointing one arbitrator but they are unable to agree on the appointment procedure, the arbitrator shall be appointed by the court upon a party's request. If the parties have agreed on the appointment procedure and one party breaches it, or if the parties or both arbitrators are unable to reach agreement, or if a third person does not fulfil appointing tasks, either party may request appointment by court, except if the appointment procedure provides otherwise.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

By law, an arbitrator candidate must immediately disclose any circumstances which may create a doubt in his or her impartiality or independence, or which may constitute the basis for his or her removal due to another reason. Unless an arbitrator has disclosed such circumstances to the parties earlier, he or she has the obligation to immediately inform the parties of such circumstances during the period between his or her appointment and the end of the arbitration proceeding.

An arbitrator may be removed if circumstances exist which create a reasonable doubt in his or her impartiality, independence or competence, or if the conditions agreed upon by the parties are not fulfilled with respect to the

arbitrator. A party may request the removal of the arbitrator appointed thereby if the grounds for removal of the arbitrator became known to the party only after the appointment of the arbitrator.

The parties may agree on the procedure for removal of arbitrators. If the parties have not agreed on a procedure for removal, a party may submit a petition for removal to the arbitral tribunal within 15 days after the date of formation of the arbitral tribunal or the date of becoming aware of the respective circumstance. If an arbitrator refuses to resign or if the other party does not agree to the removal, the arbitral tribunal shall decide on the removal without the participation of the arbitrator to be removed. If the issue of removal cannot be decided pursuant to above-described procedure, a party may submit a petition for removal to the court within 30 days after the date on which the party became aware of the dismissal of the petition for removal. The arbitral tribunal may suspend its proceedings until the time the court adjudicates the petition for removal.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

By law, arbitrators shall have active legal capacity. The parties may agree on qualification requirements, but the law (nor ECCI Rules) does not prescribe any other prerequisites. However, in accordance with the Courts Act, judges are not allowed to act as arbitrators elected by parties. In practice, they are often acting as chairmen (especially in the ECCI Arbitration Court proceedings, though the practice is slightly decreasing). The Bar Association Act stipulates that acting as arbitrator is within the competence of attorneys-at-law only, which may be interpreted in a way that more beginner attorneys may not sit as arbitrators.

There is no document setting forth ethical duties of arbitrators as such. However, the ethics rules of the bar association apply to attorneys and the same regarding judges sitting as arbitrators.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

Other than those set forth by law (see above), no. If a party relies on the IBA Guidelines, they are often followed as guidance. Yet the knowledge of their existence is not too widely spread.

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

The CCP stipulates that, unless otherwise agreed and upon a party's application, the arbitral tribunal may apply interim measures that do not restrict personal freedom. Until the formation of the arbitral tribunal to resolve the dispute, the institution may transmit a party's application for interim relief to the court (often used in ECCI arbitration).

Upon ordering interim measures, the tribunal may demand from both parties the provision of reasonable security for applying an interim measure. The extent of such security is not regulated but it is likely that the tribunal might use the regulation for regular courts by analogy. If the interim measure turns out to be unjustified, the party that requested it shall compensate the damages to the other party.

The law is not clear whether the interim order decision by the tribunal is an order or an award (the law uses the word decision which is used in both contexts). There is no clear relevant analysis or practice to rely on, however, it could be argued that it is rather intended to be in the form of an order (rather than award).

The decision of the tribunal on interim relief is enforced on the basis of a court order. The court makes the order on the petition of the party and allows the decision to be enforced only if the relevant measure of interim relief has not already been sought from the court. The court may rephrase the interim relief order if this is needed for applying the relief. In

relation to the petition filed with the court, a security must be provided analogously with interim relief in relation to a court claim. The court may, on petition, revoke or vary interim relief on the same grounds and following the same rules that apply when granting interim relief in relation to a court claim dealt with in judicial proceedings.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

Pursuant to CCP (general civil court procedure regulation), a party may also request the application of interim measures prior to submitting the claim to the arbitration institute. In that case, the claim itself shall be submitted within the time period ordered by the court, but maximum within one month.

The CCP states that the fact that the parties have concluded an arbitration agreement does not preclude a party from applying for, nor the court from granting – on an application of the party and before or after the beginning of arbitration proceedings – interim relief in the case. However, opinions vary as to whether a party can also request interim measures directly from the court after the claim has been submitted to institutional arbitration (eg, ECCI). Recent practice rather confirms that such possibility exists but it is too early to confirm this with certainty.

The court-ordered provisional measures do remain in force after the constitution of the arbitral tribunal.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

If the arbitrators lack jurisdiction to take evidence or carry out other court procedures, the tribunal, or based on the tribunal's consent, a party may request court assistance. The court shall take evidence following its regular procedural rules. Pursuant to the CCP, the arbitrator may participate in the respective court proceedings for taking evidence and also ask questions. The court shall take minutes of the proceeding and send the minutes to the tribunal and the parties without delay. The tribunal may suspend arbitral proceedings until the respective court procedures have been conducted.

(iv) Are decisions by emergency arbitrators enforceable in your country?

The Estonian law, or any effective rules, do not currently set forth emergency arbitration and there is no established practice as to whether such decisions are enforceable. It would be argued that general rules apply; as long as such decisions would be deemed as awards, they would be enforceable. If they could be interpreted as interim relief orders, then possibly also so.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

There is no relevant practice to make any conclusions from. In general, the concept is foreign to the Estonian legal system.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

Estonian courts can provide assistance in aid of foreign-seated arbitrations. This applies to interim measures, as well as regarding evidentiary matters. The courts shall follow the general civil court procedure rules. The arbitrators may participate and ask questions (just like in case of Estonia-seated arbitrations).

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

There are no specific rules on disclosure or discovery. The usual practice is that both parties submit evidence they are relying on, or request the tribunal to order the other party to submit certain evidence or overturn the burden of proof standard. The tribunals address these requests depending on the facts of the case. Unless agreed by the parties (hardly ever), there is no common-law type of discovery.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

Please see the answer to the previous question.

(iii) Are there special rules for handling electronically stored information?

There are no special rules. However, it is common practice to transmit all submissions and correspondence electronically.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

The CCP stipulates that, unless the parties have agreed otherwise, the arbitrator is required to keep as confidential any information that became known to them in the course of performing their duties and that the parties have a legitimate interest to keep confidential. The ECCI Rules foresee broader confidentiality.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

The arbitration law does not regulate the protection of trade secrets or confidential information (other than described above).

(iii) Are there any provisions in your arbitration law as to rules of privilege?

The arbitration law does not address privilege but the relevant rules from other laws might apply upon the request of a party.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

It is not common to adopt the IBA Rules but quite often guidance is sought from a more general level.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

There are no specific limits other than principles of due process and right to be heard.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

There is increasing tendency towards providing written witness statements with the possibility for the opposing party to request cross-examination. Overall practice varies and more often than not witnesses are being heard (especially if no written testimonies are presented).

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

The arbitration law is silent on who can or cannot be a witness, nor are there any rules on oath (not taken) or affirmation.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?

The law does not set forth any such differences. It is up to the arbitrators to assess the credibility of a witness statement.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

There are no formal requirements. Usually, a written statement is submitted.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

It is not common for tribunals to appoint experts, unless so requested by a party. The law sets forth that, unless the parties have agreed otherwise, the arbitral tribunal may appoint one or several experts to provide an expert opinion on issues formulated by the tribunal. The tribunal may require a party to provide the expert with relevant information and with the items of property or documents needed for the expert's assessment. Unless the parties have agreed otherwise,

the expert who has provided the expert opinion must – on a party's motion or where this is required by the arbitral tribunal – participate in the hearing. At the hearing, a party has a right to put questions to the expert and to allow the party's own expert to offer an opinion on the disputed issue. The expert appointed by the arbitral tribunal may be challenged and the corresponding petition may be filed with the court following the rules that apply to challenging the arbitrator. There are no mandatory expert lists to be used in arbitration but the relevant lists exist and it is rather common to choose an expert form the list, if possible.

There are no rules for assessing the expert opinion so the tribunal would assess the expert opinion depending on the particular circumstances.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

There is no clear established practice. It can be used, but in most cases it is not.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

There is no clear established practice. There are no regulations on the usage of secretaries. Quite often, a co-worker from the law office of one of the arbitrators would participate in a hearing to prepare minutes. However, the secretary would usually not be fixed as tribunal secretary.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

There are no ethical codes specifically to arbitration but the ethics rules of the bar associations apply to attorneys and other alike rules might be applicable.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

No.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

The arbitration law does not regulate remote hearings. In practice remote hearings are generally accepted upon party agreement or if reasonable for some other reason. Most hearings are in person, though (witnesses might be heard remotely).

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

By law, the award shall be in writing and signed by arbitrator(s). The signatures of the majority suffice, if the reason for omitted signature is stated. The dissenting opinion signed by the dissenting arbitrator, if any, is presented after the signatures. The award shall state its date and the place of arbitration. Awards shall be reasoned, except if the parties have

agreed otherwise or if the award is based on a settlement. In most cases, awards are signed digitally, unless otherwise requested by the parties (all submissions are also signed digitally).

The law does not directly set forth any limitations on the types of relief. Indirectly, the grounds for challenging an award may be considered as limits.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

The arbitration law does not regulate this question and it depends on the applicable material law.

(iii) Are interim or partial awards enforceable?

In principle, yes, but there is no clear practice to draw wider conclusions. With respect to interim awards the question of finality is likely to arise.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Please see answer to question in section X(i) above.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

The parties may request that their settlement of the dispute be recorded in the form of an arbitral award on agreed terms. In such a case, the tribunal shall formulate the settlement in the agreed wording as an award, provided that the content of the settlement is not in violation of *ordre public* or good morals. However, unlike the Model Law, the CCP stipulates that such award shall also be signed by the parties. It shall have the same legal effect as a regular arbitral award. Further, if an expression of will of a party is valid only in a notarised form, then the notarisation is deemed to have been replaced by the award using the agreed wording, provided that the award is made by an arbitral institution permanently acting in Estonia.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

On the motion of a party, the arbitral tribunal may:

- rectify any calculation and typing errors and other such mistakes in its decision;
- clarify the decision to the extent requested;
- make a supplementary decision concerning an item of relief that was notified in the course of arbitration proceedings but was not disposed of by the decision.

The relevant motion may be filed within 30 days following service of the decision, unless the parties have agreed on a different time limit. The arbitral tribunal sends the motion to supplement or clarify its decision to the other party for information. The arbitral tribunal makes a provisional decision concerning the rectification or clarification within 30 days and, concerning supplementation, within 60 days following receipt of the motion. The tribunal may also rectify its decision without a corresponding motion by a party. The rectification, supplementation and clarification of the arbitral tribunal's decision is subject to the provisions concerning the form of and particulars in such decisions.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Unlike MAL, the CCP provides that unless otherwise agreed by the parties, the tribunal shall decide the division of costs between the parties in the award (both the costs of the arbitral proceedings and necessary costs in connection with participating in the proceedings). If the division of costs has not been determined in the award, or if it cannot be ascertained until after the termination of the proceedings, it shall be decided in a separate award. There is no rule in the law but the general principle is that the unsuccessful party bears the costs. However, the tribunal might assess the necessity and extent of the costs requested.

(ii) What are the elements of costs that are typically awarded?

All direct costs (including expert costs, arbitration fees, etc) and lawyer fees are usually rewarded.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

Please see answer to question in sections XI(i) and XI(ii) above.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

Please see answer to question in section XI(i) above. The apportion usually depends on the outcome of the case and the behaviour of parties during proceedings.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

There is no clear regulation but it could be argued that the costs allocation is part of the award and thus can be challenged on general grounds.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

The grounds for setting aside an arbitral award are essentially the same as the grounds contained in MAL, with two differences. Firstly, under MAL, an arbitral award may be set aside if the composition of the arbitral tribunal or the arbitral proceedings were not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the MAL from which the parties cannot derogate, or, failing such agreement, was not in accordance with the MAL. Under the CCP, however, such circumstance is a ground for annulment only if it could be presumed that it has materially affected the arbitral award. Secondly, in addition to public policy as a ground for which a court may set aside the award (also on its own initiative), the CCP also provides for setting aside based on a violation of good morals (although it is difficult if not impossible to distinguish between the two concepts).

Further, unlike MAL, which sets forth that an arbitral award *may be set aside* by the court, the CCP stipulates that, if a ground for annulment exists, a court *sets aside* the arbitral award issued in Estonia.

The application for setting an award aside may be submitted to the court within 30 days as of receiving the arbitral award. An application for setting an award aside cannot be submitted after the court has recognised the award or declared it enforceable.

The challenge proceedings do not automatically suspend enforcement but in practice the relevant interim measure is often sought from court (especially as ECCI awards are directly enforceable in Estonia). The challenge proceedings have been resolved relatively quickly but there is a clear trend towards longer periods.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

The arbitration law is silent on this. However, it is doubtful if such agreements would be deemed valid by courts (due to breach of access to justice principle set forth by the constitution).

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

No.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

Where this is reasonable, the court may, based on the petition of a party, set aside the arbitral tribunal's decision and send the case back to the tribunal.

(v) Is there a specialist arbitration court in your jurisdiction?

No.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

There is no practice to draw any conclusions. Wrongly applied material law is not a ground for annulment.

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

Estonian arbitration law is silent on arbitrator liability. The same applies to the other participants listed.

(ii) Does this immunity, if any, extend to criminal liability?

Please see above.

XIV. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

The process of recognition of awards differs depending on whether the award is domestic or foreign. The decision of an arbitral tribunal is recognised in Estonia and enforcement proceedings are carried out on its basis strictly when the decision has been recognised and declared enforceable by the court. As a distinction, decisions rendered in proceedings of ECCI and the Court of Arbitration of the Chamber of Notaries are recognised and enforced without them being recognised and declared enforceable by the court.

Foreign arbitral awards are recognised and enforced in Estonia only in accordance with the NYC.

The parties shall file the respective application for recognition and enforcement (together with the award or a certified copy thereof and the arbitration agreement) to the county court specified in the arbitration agreement or, in the absence of it, to the county court of the seat. If the seat is not in Estonia, the application shall be filed to Harju County Court.

The grounds for opposing enforcement are essentially the same as the grounds for challenging the award (MAL and NYC).

In most cases there can be no enforcement until the relevant court procedure for recognition has been passed. In cases of ECCI awards and Court of Arbitration of the Chamber of Notaries, there is no need to turn to court for enforcement and thus the possibly necessary suspension of enforcement is requested as an interim measure in challenge proceedings.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Upon receiving the court order on recognising the award and declaring it enforceable, the creditor would turn to a bailiff for enforcement. In principle, the enforcement proceedings can be challenged in court (formally the process can be initiated) but it would not lead to overturning the award or court order on recognition. The relevant claim might be successful, for example, if the debtor has paid the amounts after the award already.

(iii) Are conservatory measures available pending enforcement of the award?

In principle, yes. The relevant interim measure can be requested from court on the general grounds.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

There is no clear attitude. If there are no grounds for objecting enforcement, the awards would usually be recognised and declared enforceable. It is rather a question of evidence.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

The general expiry period for enforcing the enforceable award (relevant court order) is ten years.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

Estonian law applies the restrictive sovereign immunity principle. The practice of its application is scarce, if any.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

No, please see above.

(iii) Are there any requirements for arbitrations involving sovereign entities?

No, please see above.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Estonia is a party to the ICSID Convention and to the Energy Charter Treaty.

(ii) Has your country entered into bilateral investment treaties with other countries?

Yes.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

No. However, it is likely that the general European trends would be followed.

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

The Estonian Arbitration Law (as part of the CCP) is available in English on the website of the *Riigi Teataja*.

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

Every now and then, seminars/conferences are organised but there is no regularity. The Estonian Bar Association has also conducted seminars on arbitration.

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Yes, probably increasingly so, but not in all cases.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

In theory mediation can be conducted in Estonia and the regulation is in place but in practice commercial disputes are rarely mediated (rather negotiated thoroughly).

(iii) Are there any noteworthy recent developments in arbitration or ADR?

The ECCI has adopted new considerably revised rules as of 1 January 2024. Also, the Estonian Arbitration Association has been recently established and the very first Tallinn Arbitration Day was very successfully held on 3 October 2024.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

No.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

There are no rules on third-party funding nor any clear practice on the matter.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

Yes, Estonia has adopted several sanctions in connection with the war in Ukraine (partly as part of the European Union but also separately). Sanctions are considered as part of public policy. However, the court practice is rather scarce and thus it is not possible to provide an established overview.