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IBA ARBITRATION COMMITTEE

Arbitration Guide

GEORGIA

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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?

In recent years, Georgia has witnessed a significant transformation in the realm of Alternative Dispute Resolution (ADR) through the promotion and consolidation of arbitration as a pivotal tool. This evolution spans both the domestic and international spheres. While the integration of arbitration into Georgia's dispute resolution framework can be traced back to 1997, it has undergone substantial development in the past two decades. The dividing line moment occurred in 2009 when Georgia adopted a new Arbitration Law (the "Law"), which is based on the UNCITRAL Model Law of 2006 (with some notable exceptions).

Arbitration has emerged as the preferred method for resolving disputes in various sectors, including commercial and corporate contracts, construction industry, banking sector, and international trade agreements. Arbitration stands as the predominant mechanism in international trade, primarily due to the confidentiality of the proceedings, the conclusiveness of arbitral awards and the efficiency of their recognition and enforcement under the New York Convention.

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

Most arbitral proceedings in Georgia are conducted through institutional channels. Prior to 2015, the Georgian Law on Arbitration did not provide for the possibility of conducting ad hoc arbitration. However, since 2015, the Georgian Law on Arbitration has been revised to remove any restrictions on parties opting for ad hoc arbitration.

In Georgia, there are more than 35 recognized institutions that facilitate arbitration, but two institutions stand out as principals: the Georgian International Arbitration Centre (GIAC) and the Dispute Resolution Center (DRC). Both institutions enjoy high levels of trust and handle a substantial portion of both domestic and international arbitration disputes.

In addition to domestic institutions, parties involved in arbitration proceedings in Georgia often turn to well-established foreign arbitral institutions such as the ICC, LCIA and SCC, which are known for their comprehensive arbitration rules and expertise in handling international disputes.

(iii) What types of disputes are typically arbitrated?

Arbitration is commonly used for a variety of disputes, including commercial, construction, international trade, employment, intellectual property and consumer disputes. According to reports from arbitral institutions, the bulk of cases involve disputes related to consumer loans, leasing and service agreements and issues stemming from construction and corporate affairs.

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

Depending on the case's complexity and the parties' agreement, arbitral proceedings can typically last from three to ten months from the start of the process. Nonetheless, many arbitral institutions also offer expedited arbitration procedures, significantly shortening the duration of the proceedings.

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

The Georgian Law on Arbitration does not restrict foreign nationals to act either as counsel in arbitral proceedings or as arbitrators.

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?

The Georgian Law on Arbitration regulates all arbitral proceedings within Georgia, irrespective of whether they are domestic or international in nature. This law has been crafted in alignment with the UNCITRAL Model Law, moreover, some articles are verbatim adoption of Model Law articles.

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

The Law treats domestic and international arbitration equally, except in the specific instance of recognizing and enforcing foreign arbitral awards. In such cases, the Supreme Court of Georgia holds the authority, whereas domestic awards are recognized and enforced by the Courts of Appeal.

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

Georgia has been a party to the New York Convention since 1994 and has also adopted the Washington Convention.

(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?

The Georgian Law on Arbitration provides that a tribunal shall decide a dispute in accordance with the rules of law that are chosen by the parties and are applicable to the substance of the dispute. In the absence of such agreement, the arbitral tribunal will determine the rules of law that shall be used during the arbitration proceedings. Therefore, the tribunal has a general discretion to make a determination. However, the Law provides, upon rendering an arbitral award, the tribunal shall take into account the terms of the contract and such practices and traditions of the trade that are applicable to this type of contracts.

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?

In accordance with the Georgian Law on Arbitration, an arbitration agreement is an agreement through which the parties commit to resolving either all or specific disputes that have arisen or may arise between them based on various contractual or legal relationships. This legal framework establishes two crucial elements for such an agreement: 1) the clear intention of the parties to submit disputes to arbitration must be evident, and 2) the agreement must explicitly outline the types of disputes which are subject to arbitration.

Regarding the form of the agreement, the Law stipulates that it must be in writing. Nevertheless, the Law also outlines cases where the written form requirement can be met, including:

- when an agreement is reached through electronic communication;

- when an agreement to arbitrate is reached through the exchange of a statement of claim and a statement of defence, with one party asserting the existence of an arbitration agreement and the other party not disputing it; or
- when a contract references any document containing an arbitration clause, making that clause an integral part of the contract.

However, if one of the parties involved in an arbitration agreement is a natural person or an administrative body, the arbitration agreement must be in writing in the form of a signed document. In such cases, the written form requirement is narrowly interpreted, and the aforementioned exceptions do not apply.

(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?

As a general rule, courts in Georgia uphold arbitration agreements, provided that these agreements comply with the requirements outlined in the Georgian Law on Arbitration, both in terms of their content and their form. Notably, a 2018 ruling by the Supreme Court of Georgia established that a provision stating that parties 'may' opt for arbitration becomes binding once one of the parties exercises this option. This decision highlights the court's commitment to interpreting arbitration clauses in a pro-enforcement manner, particularly when the parties' intent to resolve their disputes through arbitration is evident.

However, when it comes to consumer arbitration or arbitration involving a natural person, courts tend to apply stricter standards, both in terms of the agreement's content (demanding clear and unambiguous consent) and its form. For example, in one case, the Court of Appeals invalidated an arbitration clause entered into online by a natural person. This decision was based on the Georgian Law on Arbitration's requirement that, when a natural person is a party to the agreement, the natural person must physically sign the document, and the electronic execution of an arbitration clause is not permitted in such instances.

(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?

Multi-tier clauses, which necessitate negotiations before commencing arbitration proceedings, are quite prevalent in Georgia. Nevertheless, their status as a prerequisite to arbitration and their mandatory nature may not be established in the absence of specific regulation governing the negotiation procedure, depending on the circumstances.

Regarding Med-Arb clauses, their infrequent use in Georgia can be attributed primarily to the adoption of the Georgian Law on Mediation in 2019, which came into effect on 1 January 2020. Namely, before the adoption of the above law, the Georgian legislation did not enforce the private mediation agreements. Hence, Med-arb clauses were not used. However, the said law now enables the enforcement of private mediation agreements and allows for the initiation of mediation before arbitration, effectively implementing Med-Arb clauses.

Furthermore, it is worth noting that the Georgian Law on Mediation provides the flexibility to impose time limits on mediation proceedings or associate their conclusion with specific events. In such instances, the court or tribunal is precluded from reviewing the dispute until the conditions stipulated in the mediation agreement are met, unless the claimant can demonstrate that irreparable harm will result from not initiating court or arbitration proceedings.

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

The Law treats multi-party arbitration clauses and their general characteristics without differentiation, making them subject to the same general requirements outlined for arbitration agreements.

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

The Law does not impose restrictions on the formation of such agreements. Nevertheless, it's important to highlight that there is no definitive legal precedent established in this context. Notably, when it comes to consumer arbitration and when a natural person is a party to the arbitration agreement, courts tend to apply more stringent criteria when assessing the validity of the arbitration agreement.

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

To date, Georgian courts have not established a clear legal precedent demonstrating that individuals or entities who did not sign the arbitration agreement can be held to its terms. Given the general stipulation that natural persons and administrative bodies must explicitly sign an arbitration agreement, it is improbable that non-signatory administrative bodies or individuals will be legally bound by arbitration agreements that lack their signatures.

However, in situations involving legal succession or assignment, the individuals or entities receiving rights or obligations through such processes are indeed bound by the arbitration agreement, thereby becoming parties to it.

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

When determining the law governing the arbitration agreement, courts rely upon the party agreement. Provided that parties have explicitly agreed on such governing law, the court will apply it, unless both parties deviate from it either explicitly or in course of proceedings (for instance, if both of them base their reasoning on a different law rather than already agreed).

In absence of any explicit agreement, Georgian courts may consider various factors, such as the governing law of the main contract, seat of arbitration, and any applicable international conventions or treaties to identify the implied agreement of the parties. In absence of any such agreement, the courts will apply the law of the seat of arbitration.

However, in practice, courts may also consider the Georgian legislation while determining whether the dispute falls under the scope of the arbitration clause, as in one case, while deciding whether the dispute fell under the scope of the arbitration agreement, the Supreme court invoked legal principles established under the Georgian legislation and established that as under Georgian law, a claim for damages is a secondary recourse (can be claimed in absence or after termination of the agreement), and as the agreement provided that the claims arising out of the agreement where subject to arbitration, the dispute concerning the claim of damages after termination of the agreement did not fall under the scope of the arbitration agreement in accordance with the Georgian law.

Therefore, it is advisable for parties to clearly specify the governing law of the arbitration agreement in their contracts to avoid any ambiguity or potential disputes in this regard.

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

In Georgia, under the legislation and court practice, there is a clear distinction between the seat of arbitration and the venue for meetings/hearings, with the seat having legal significance, while the venue is a logistical choice.

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

Georgia lacks specific laws or regulations that directly address disputes related to blockchain and NFTs and their suitability for arbitration. Generally, under Georgian law, an arbitral tribunal is entitled to resolve a dispute arising from private property that is based on the equality of the parties, and that can be resolved by the parties between themselves. Therefore, the arbitrability of above disputes will depend on the nature of the dispute and the claim.

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

Courts in Georgia have found arbitration agreements to be inoperable when the identity of the arbitration institution chosen by the parties to administer the dispute could not be identified and/or it was not clear which institution was chosen by the parties under the arbitration agreement.

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?

Although the Georgian Law on Arbitration does not explicitly categorize arbitrable disputes, it defines the types of disputes that can be subject to arbitration. Specifically, the law states that property disputes of a private nature, characterized by party equality and resolvability through mutual agreement, can be arbitrated. Furthermore, in accordance with specialized laws, employment disputes and disputes related to Public Private Partnership (PPP) agreements are also eligible for arbitration. It is generally understood that disputes involving non-pecuniary claims, such as child custody, divorce, administrative matters, tax issues and criminal cases, are not suitable for arbitration.

The Georgian Law on Arbitration follows the competence-competence principle, which grants arbitrators the authority to determine their own competence. Issues related to arbitrability are typically considered within the scope of jurisdiction.

(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?

Courts in Georgia do not have the authority to terminate proceedings on their own initiative. If a party commences court proceedings despite having signed an arbitration agreement, the opposing party must raise a jurisdiction objection within the time period set by the judge. This time frame is typically the same as the period allocated for the respondent to submit a statement of defence, which is commonly around ten days in practice.

If parties raise a jurisdictional objection within the stipulated time, their participation in the proceedings for the purpose of pursuing such objections is not considered a waiver of their right to arbitration. However, if a party fails to raise a jurisdictional objection within the specified time limit, it may be interpreted as a waiver of their right to arbitrate the dispute.

(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?

In Georgia, the competence-competence principle, as outlined in Article 16 of the Model Law, is followed. However, when a party initiates a lawsuit in court and the opposing party objects to the court's jurisdiction, as mentioned in section IV (ii) above, the court will assess whether the arbitration agreement is null and void, inoperative, or incapable of being executed. In certain situations, especially in consumer disputes, courts may conduct a de novo review of the agreement.

If an arbitral tribunal issues a preliminary ruling affirming its jurisdiction, and this ruling is contested in court, the court will proceed with a comprehensive examination of the jurisdictional objections.

V. Selection of Arbitrators

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

Arbitrators are selected in accordance with the parties' agreement. In case the procedure selected by the parties cannot succeed, an arbitrator is not selected, or various circumstances prevent the appointment, parties are authorized to apply to the courts with a request for appointment of the arbitrator. In such cases, parties are usually expected to present the candidates and their consents to the court for the review and approval of the court.

(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?

Arbitrators in Georgia are under a general obligation to disclose any circumstances that could reasonably raise doubts about their impartiality or independence. In line with the UNCITRAL Model Law, if a challenge to an arbitrator is unsuccessful, parties have the right to apply to the courts within a specified time frame to challenge the arbitrator. According to the law, the court must issue a judgment within 14 days after receiving the challenge. This judgment is considered final and cannot be appealed.

(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?

Under the Georgian Law on Arbitration, individuals may generally not be denied appointment as an arbitrator, except when they:

a) are a person with limited legal capacity or a beneficiary of support, unless otherwise determined by a court judgment;
b) hold a position as a state employee, state political official, political official, or public servant;
c) have a prior conviction for a crime that has not been vacated or expunged; or
d) previously acted as a mediator in the same case or another case substantially related to the one at hand.

In terms of ethical standards, there are no statutory provisions in this regard. However, a non-statutory organization, the Georgian Association of Arbitrators (the "Association" or "GAA"), has established a Code of Ethics that has been adopted by various arbitral institutions. Arbitrators who operate in accordance with the arbitration rules of such institutions are bound by this Code of Ethics, which serves as a guideline for their conduct during arbitration proceedings.

(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?

There are no specific statutory provisions governing conflicts of interest among arbitrators. The applicability of such rules is contingent on the parties' agreement. In some cases, the parties may choose to rely on the IBA Guidelines, which are occasionally adopted by the parties and, consequently, serve as a reference for arbitrators. For further details, also refer to section V (iii).

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?

With the consent of the parties and upon their request to the tribunal, provisional measures can be invoked before or at any stage of arbitration proceedings in Georgia. The arbitral tribunal, in written decisions, is authorized to order a party to:

a) preserve or restore the status quo before the final award is rendered;
b) take actions to prevent harm to the other party or to the arbitration process;
c) establish a means for safeguarding assets from which a future award may be satisfied;
d) protect and maintain evidence that is relevant to the dispute and its resolution.

An interim measure issued by an arbitral tribunal is binding and must be enforced by submitting an application to a court, irrespective of the country where the arbitration award on interim measures was issued. The court has the authority to reformulate interim measures, without altering their essence, as needed for enforcement in accordance with applicable statutory rules.

(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?

In Georgia, unless otherwise stipulated in the arbitration agreement, any party can request the arbitral tribunal to grant interim measures before the commencement of arbitration proceedings or at any point during the proceedings, but prior to the issuance of the arbitral award. Additionally, the Georgian legislation permits parties to apply directly to the relevant Appellate Court (instead of applying to the tribunal) and request the use of provisional measures even after the compositional of the tribunal.

Furthermore, in line with existing practice and the Civil Procedural Code of Georgia, a party may seek security measures even before filing an arbitration claim. However, if a court grants these security measures, and the claimant does not demonstrate that the arbitration claim has been submitted within ten days of the security measures being granted, the court will revoke the security measures.

(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?

According to the Georgian Law on Arbitration, at any point during the arbitration proceedings, the arbitral tribunal or a party, with the consent of the arbitral tribunal, has the authority to seek assistance from a court in obtaining evidence. This evidence can be presented to the party or parties involved or to the arbitral tribunal at any stage of the arbitration proceedings. The arbitral tribunal also has the power to request the court to compel the attendance of witnesses when necessary for the proceedings.

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

Certain arbitration institutes in Georgia (such as DRC and GIAC) have adopted provisions regarding the emergency arbitrator in their arbitration rules. However, Georgia neither has any specific provisions in its law addressing the enforceability of decisions by emergency arbitrators nor has any such decision been rendered that would address the enforceability of such relief in Georgia.

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

In Georgia, there are no specific regulation addressing anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings. However, arbitrators are generally empowered to rule on their own jurisdiction and may issue interim measures or injunctions to prevent parties from commencing or continuing litigation proceedings in contravention of an arbitration agreement. The enforceability of such injunctions may depend on the willingness of local courts to uphold the principle of competence-competence and the specific circumstances of the case. As of today, there is no court practice regarding this matter.

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

Georgian courts may aid foreign-seated arbitrations, including through the disclosure of documents. The extent and nature of such assistance depends on the request of the parties, arbitrators, and international treaties and conventions to which Georgia is a party, as well as the specific provisions of Georgian law.

VII. Disclosure/Discovery

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

The type and the nature of allowed disclosure is generally dependent on the party agreement and the applicable arbitration rules and soft law. Under the Georgian Law on Arbitration, unless otherwise provided by the party agreement, the arbitral tribunal is inherently entitled to request from a party to provide the other party with any document or evidence related to the dispute. Despite of the above, in practice, arbitral tribunals are reluctant to request submission of all or wide range of documents, but rather they carefully review requests for document production, and only grant such requests if the requesting party evidences, among others, the relevance of the requested evidence to the dispute.

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

There is no explicit restriction in this regard. However, in practice, arbitral tribunals grant requests for document production or submission of evidence if the requesting party proves, among others, the relevance of requested evidence to the dispute and restrictions provided under applicable regulations (such as, among others confidentiality or privilege) do not restrict submission of such evidence.

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

While there are no specific regulations related to arbitration in Georgia, the country has adopted the Georgian Law on Electronic Documents and Electronic Trusted Services, which may have relevance to the field of arbitration. This law addresses various aspects of electronic documents, including e-signatures, and establishes their legal validity and applicability in administrative and legal proceedings.

Furthermore, it's worth noting that in response to the declaration of the Covid-19 pandemic, leading arbitral institutions in Georgia, such as the GIAC, have implemented protocols for conducting remote arbitration hearings. This adaptation to remote proceedings is a notable development that reflects the changing landscape of arbitration practices in the country.

VIII. Confidentiality

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

Under the Georgian Law on Arbitration, unless there are specific provisions in the law or the parties' agreement to the contrary, all arbitration proceedings are required to be confidential. This means that no documents, evidence, written or oral statements from the proceedings can be published or transferred for use in any other judicial or administrative proceedings. This duty of confidentiality applies to both arbitrators and any individuals involved in the arbitration process.

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

There is no specific regulation in this regard. *See* section VII (i).

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

The Georgian Law on Arbitration does not contain specific regulations on confidentiality, but it's possible that various special laws or regulations apply in specific circumstances, such as for attorneys who are members of the bar. These specialized laws or regulations could provide guidance or specific provisions regarding confidentiality in the context of arbitration, depending on the roles and responsibilities of the individuals involved.

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?

Parties rarely agree on application of the IBA Rules on the Taking of Evidence in International Arbitration. Accordingly, arbitral tribunals exercise discretion and have the powers provided under the party agreement and the arbitration rules (in case of an institutional arbitration), or the general discretion provided under the Georgian Law on Arbitration (in case of ad hoc arbitration).

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

There are no specific limitations under the Georgian Law on Arbitration. Nonetheless, Article 3 of the Law provides that parties shall have equal rights and each of them shall be given a full opportunity to present their case (a right to fair hearing). The principle is enshrined in various provisions of the Law, ensuring the right of fair hearing, inter alia, giving parties the right to be informed about the hearing within a reasonable time prior etc.

(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?

The Law does not explicitly regulate the above. The procedure for the presentation of witness statements, as well as related procedures, can be agreed by the parties, either directly in the arbitration agreement or by reference to the applicable arbitration rules. Use of direct or cross-examinations and whether the process is more inquisitorial than adversarial, depends on the parties' agreement and applicable arbitration rules. Generally, under the Georgian Law on

Arbitration, arbitrators have the power to summon and, if necessary, require the examination of the witness of any party, or use the testimony in the arbitration proceedings, unless otherwise regulated by the party's agreement.

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

There are no specific rules applicable. Parties are free to agree on the procedure.

(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?

There are no specific rules applicable. Arbitrators have general discretion to determine both the relevance and admissibility of such testimonies.

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

The form and the process of presenting expert testimonies depend on the applicable arbitration rules and the party agreement. As for the impartiality and the independence of experts, the law does not specifically regulate the above, but rather applies the same standards that are set for arbitrations. Therefore, parties are entitled to challenging the impartiality or independence of experts, similar to challenging arbitrators.

(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?

In practice, it's not common for arbitrators to unilaterally appoint experts without considering the parties' agreement. However, unless the arbitration agreement specifies otherwise, arbitrators are generally not restricted from appointing experts when it is deemed necessary for the case. The significance and utility of an expert opinion are typically determined by the specific circumstances of the case.

Regarding expert selection, there is no mandatory list of experts that the tribunal is obligated to follow. The choice of experts is generally at the discretion of the arbitrators, subject to any applicable agreement or specific guidelines outlined by the parties.

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

Usually, such conferences are not used in domestic arbitration proceedings. However, the law does not prohibit the tribunal from organizing such conferences. Therefore, whether and in which form such conference will be held depends on the party agreement and applicable arbitration rules.

(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 are no specific rules applicable, nonetheless arbitral secretaries are quite common.

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

In Georgia, non-statutory organizations and arbitral institutions have established their codes of ethics and guidelines that practitioners and arbitrators conducting the arbitration proceedings are expected to adhere to. For instance, the Association, which is a non-statutory, voluntarily created private institution (which does not administer arbitration proceedings), has adopted a Code of Ethics, which is incorporated by various arbitral institutions in the country via bilateral memoranda signed between the Association and the arbitral institution. Therefore, all arbitrators conducting arbitration proceedings which are appointed under the rules of such institutions, by reference shall adhere to the Code of Ethics of the Association and its violation may lead to sanctions or expulsion of arbitrators from the above Association.

Additionally, lawyers in Georgia, which have become members of the Georgian Bar Association are bound by ethical rules and standards established by the Georgian Bar Association. These standards govern the conduct of counsel representing parties in arbitration proceedings as well.

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

There are no specific rules in place in Georgia that empower arbitral tribunals to exclude counsel from proceedings based on conflicts of interest or other reasons. The rules and procedures related to the conduct of counsel in arbitration proceedings were generally determined by the parties' agreement, the applicable arbitration rules, and any relevant ethical guidelines.

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

Georgian Law on Arbitrations lacks any explicit regulation on remote hearing and it merely provides that in absence of parties' agreement, the arbitrator has the discretion in determining the rules and procedure of the arbitration. However, certain arbitral institutions, such as GIAC and DRC, have adopted specialized rules to accommodate remote hearings in the event parties explicitly agree on them.

X. Awards

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

The Law provides that the award must be in writing and signed by the arbitrator(s). It shall provide the identification information of the decision-making arbitrators, the parties, the date, and the place of rendering of the award. The award shall also contain the reasoning, unless otherwise agreed by the parties or it is rendered via settlement. There are no common restrictions with regards to the permissible relief. However, it shall not be contrary to public policy.

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

On several occasions, Appellate Courts have partially enforced arbitral awards that entitled a party to an excessive penalty against a natural person under a loan agreement. Namely, courts have found that in case penalties are excessive, for instance, exceeding around 130 per cent of the principal amount of the loan, it violates Georgian public policy and enforcement will only be granted partially, for a reduced amount. Considering the above, it is highly likely that Georgian courts will not enforce awards granting punitive or exemplary damages. As for the simple interest and compound interest, similar to the above, if a court finds that the principle of proportionality is violated or the enforcement of the award would violate public policy, it may refuse recognition and enforcement.

(iii) Are interim or partial awards enforceable?

Provided that such awards finally resolve the dispute or a matter of the dispute, they are enforceable.

(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?

The law allows for dissenting opinions and provides that in case an arbitrator refuses to sign an award or has a dissenting opinion, a relevant remark shall be made within the award. Therefore, in practice, if an arbitrator has a dissenting opinion, such opinion is included in the arbitral decision, in written form.

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

Article 38 of the Georgian Law on Arbitration states that arbitral tribunals are obliged to render an award to terminate the arbitration proceedings, within 30 days after the receipt of an application for settlement. In addition to the above, the arbitral proceedings are terminated if:

- the claimant withdraws his/her claim, unless the respondent objects thereto and the arbitral tribunal decides that the respondent has a legitimate interest in obtaining a final settlement of the dispute;
- the parties agree to the termination of the proceedings; or
- the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

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

Under the Georgian Law on Arbitration, the arbitral tribunal is authorized, at its own discretion, within 30 days after the date of rendering the arbitration award, to correct in the award any errors in computation, any clerical or typographical errors or errors of a similar nature. As for the interpretation of the award, arbitrators are authorized, within 30 days from receiving a relevant request from the parties, to interpret the award within 30 days from such application. Both the time set for interpretation and the correction of the award may be extended by an additional 30 days.

XI. Costs

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

The Georgian Law on Arbitration does not contain specific provisions on the allocation of costs. Therefore, it is up to the parties to regulate cost allocation either directly in the agreement or by reference to the applicable arbitration rules.

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

In general, costs that are awarded include administrative fees, fees payable to the members of the tribunal, and related costs.

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

Generally, the arbitral tribunal has jurisdiction to decide on its own costs. However, usually, before constitution of the tribunal, and before payment of advance costs, relevant bodies under the applicable arbitration rules make a decision on such advance costs.

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

Allocation of costs depends on party agreement and the applicable arbitration rules.

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

There is no special procedure set for the review of costs. However, parties can challenge an award and invoke general grounds for its challenge, as discussed in section XII (i).

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 unsuccessful party may challenge an award by applying to the Appellate Courts of Georgia. As for grounds, they are similar to the grounds provided under the UNCITRAL Model Law, namely:

- a party was legally incompetent when it entered into the arbitration agreement, or was supposed to receive support from a legal guardian in relation to the issues in dispute, but the support was not given;
- the arbitration agreement is void according to the law chosen by the parties, and in absence of a choice of law provision, in accordance with the laws of Georgia;
- a party was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or was otherwise unable to present their case or protect their interests;
- the award settles a matter that was not in dispute, or the award contains a decision on matters beyond the scope of the arbitration request. If the ultra vires decision(s) can be separated from the legitimate decision(s), the award will only be partially set aside;
- the constitution of the arbitral tribunal or the arbitral procedure did not comply with the arbitration agreement or the Georgian Law on Arbitration;
- the dispute is non-arbitrable; or
- the award violates Georgian public policy.

The Law requires that such challenge shall be submitted within 90 days after receipt of the arbitral award by the party and the duration of such challenge proceedings shall not exceed 30 days from the admissibility of the relevant motion/challenge. The court is obliged under the Law to render a decision within such 30 days. However, in practice, annulment proceedings usually last up to several months. Challenging an award does not automatically suspend the process of recognition and enforcement and the judge shall make a relevant decision upon request from a party.

(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?

Up until now, Georgian courts have not reviewed a case concerning such waiver. However, various legal scholars argue that the Georgian legislation does not permit such possibility.

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

The Georgian Law on Arbitration does not provide a right to appeal, but contains a right to request annulment of the award in line with the UNCITRAL Model law.

(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?

No.

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

No, there are no specialist arbitration courts in Georgia. However, there are specialized judges who hear arbitration related cases.

(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?

The Georgian law on Arbitration mirrors Article 5 of the UNCITRAL Model law on International Commercial Arbitration and restricts court intervention, unless it is provided under the law. The Georgian law on Arbitration, also mirroring the Article V of the New York Convention, does not provide such ground either for refusing to enforce the arbitration award nor as a ground to annul the award. Based on the above principle, courts have refused party applications to clarify certain provisions of arbitral awards as it would have been regarded as unjustified interference. However, in court practice, based on the *ex officio* review of compliance with the substantive public policy of Georgia, the scope and the degree of intervention of the court is relatively high if either party to the arbitration agreement is a consumer or a natural person.

At the time of writing this report, there is one case being heard at the Supreme Court of Georgia, where a respondent is arguing about the application of the incorrect law in arbitration proceedings as a ground of refusal to enforce and recognize the foreign arbitral award and the Supreme Court of Georgia has yet to rule on the matter

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?

The law does not provide for such explicit immunity of any of the abovementioned positions. However, often, rules of arbitration institutions restrict their liability. Although, under Georgian legislation, the liability may not be restricted if it is found that the damages have been intentionally incurred on the party.

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

No, there is no immunity in this regard.

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 Georgian Law on Arbitration has directly incorporated provisions of the New York Convention. Therefore, a party is required to submit an arbitration agreement and an award pursuant to the Convention. In any case, if an award or an agreement is executed in a foreign language, the court requests relevant translations into Georgian. The Supreme Court is a competent authority for the recognition and enforcement of foreign awards, while domestic awards are recognized and enforced by Appellate Courts.

Challenging the enforcement does not automatically stay the process of enforcement. However, in case a party files an application for an annulment of the award, or requests a stay of enforcement, the court has discretion to stay the process for 30 days.

(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 recognition and enforcement of the arbitral award, together with the court decision, the court issues an enforcement document, ie, writ of enforcement, that can be enforced under the Georgian Law on Enforcement Proceedings via application to the relevant enforcement bodies. Namely, the winning party, after acquiring the decision and the writ of enforcement, may apply to the Enforcement Bureau of Georgia, provide both documents to the Bureau and request the enforcement. Subsequently, usually, the losing party will still be provided with time to voluntarily perform actions provided under the decision. However, in case the opposing party fails to perform voluntarily, the Enforcement Bureau could exercise various enforcement mechanisms towards such party.

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

Yes, such measures are available.

(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?

In recent years, courts have adopted an arbitration-friendly stance in several lines of case law. For instance, the Supreme Court has found that an arbitration agreement, providing that parties 'may' refer a dispute to arbitration, was enforceable. The same court ruled, in a different case, that even unjust enrichment falls within the scope of boilerplate arbitration clauses that encompass 'all disputes that arise out of the agreement'.

According to publicly available statistical data, from 2020 until the time of writing this report, the Supreme Court has heard 47 motions on recognition and enforcement of foreign arbitral awards. Out of them 6 were denied recognition and enforcement and 29 were not admitted for consideration due to procedural shortcomings.

As far as the enforcement of awards that were set aside in their country of origin, courts have not developed a decisive practice in this regard, mainly due to the rarity of such motions.

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

The Georgian Law on Arbitration provides that courts shall render a decision on recognition and enforcement of the arbitral award within 30 days, after the 7-day period, that is set for the opposing party for submission of the challenge, is expired. However, in practice, rendering a decision by the court takes longer. Covid-19 has drastically affected the timeframes set by Georgian common courts. In the usual course of events, enforcement of an award takes between three to six months and in certain occasions, even longer.

There is no specific deadline laid down for seeking the enforcement of arbitral awards, but there is one set for the enforcements of court decisions, which is 10 years. There is a possibility that courts could rely on such provision by analogy.

XV. Sovereign Immunity

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

In general, states are not precluded from concluding arbitration agreements and participating in arbitral proceedings. As for the state immunity in arbitral proceedings, no conclusive practice has been established in this regard.

Although not relating to the state immunity, a recent ruling by the Tbilisi Appellate Court has touched upon the immunity of the Asian Development Bank (ADB) against judicial proceedings; namely the court relied on the ADB Charter, that has been ratified by Georgia and held that ADB has neither waived its immunity, nor the case fell within the exceptions provided under the ADB Charter. Therefore, the court has terminated the proceedings against ADB.

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

The Georgian Law on Enforcement Proceedings and the Georgian Law on State Property provide that enforcement cannot be initiated towards various state properties, such as state roads, minerals, etc.

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

No, the Georgian legislation does not provide any such regulation.

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?

Yes, Georgia is a party to the Washington Convention and the member of Energy Charter Treaty (ECT). However, Georgia is not a party to other multilateral investment treaties.

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

Georgia is a party to 32 BITs, concluded, among others, with the USA, China, Japan, the UK, Turkey, Germany, France, Italy and various CIS countries.

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

No, there have been no such court decisions.

XVII. Resources

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

The English translation of the Georgian Law on Arbitration can be accessed on the following website: https://matsne.gov.ge/en/document/view/89284?publication=8

Furthermore, the Georgian Law on Arbitration is drafted in accordance with provisions of the New York Convention and some of the provisions are verbatim adoptions of the UNCITRAL Model Law (2006 version, with certain exceptions). Therefore, materials discussing the above may be relevant for interested parties.

As for other relevant reference materials, several authors have published guides on arbitration for district and Appellate court judges, which can be freely accessed at the website of the GAA: www.gaa.ge.

(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?

The Georgian Arbitration Days are held every year in the fourth quarter of the year. Information is freely accessible on the website of the GIAC: https://www.giac.ge/en Furthermore, the GAA, which is a non-statutory organization, often conducts various events, amongst which a nationwide moot court in a commercial arbitration and various seminars and conferences. The information on the above can be accessed on the following website: www.gaa.ge.

XVIII. Trends and Developments

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

Throughout the years, arbitration has been gaining popularity in Georgia. However, lack of public awareness remains one of the main obstacles in using arbitration in Georgia. It is noteworthy that various actors are working hard to raise awareness in this regard. A primary role is taken by the Georgian Arbitration Association.

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

Georgia has recently adopted a law on mediation, that makes it possible to enforce mediation agreements and execute settlement agreements reached through mediation. Georgia has also become a party to the Singapore Convention.

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

The recent development in the direction of ADR is associated with establishing the Georgian Mediators Association that takes an active role in fostering mediation as a profession and a tool for alternative dispute resolution. It is currently working on a Mediation Code of Ethics. The same route for adopting ethical standards has been taken and finalised by the Association. Although being a non-statutory (voluntarily set up) organisation, it has recently adopted the code of ethics for arbitrators, already embraced by a number of arbitral institutions in Georgia.

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

The Association has drafted a draft amendment to the Georgian law on Arbitration which introduces many significant amendments to the law. However, as of yet the draft has not been referred to the parliament. Although, in the near future the Association plans to initiate the formal process of amendments to the Law.

(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?

No, the Georgian law on Arbitration does not provide any specific regulations regarding third party funding in arbitration and there have been no such court decisions regarding this matter as of the time of writing this report.

(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?

Generally, the country implements sanctions regime in various fields, especially in the banking sector. However, as of yet, courts neither have addressed sanctions in their decisions nor have there been any decisions rendered on characterization of sanctions as a matter of international public policy.