



Arbitration Guide
IBA Arbitration Committee

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?**

Recent years have been marked as one of the most important years in the process of fostering Arbitration as a tool for Alternative Dispute Resolution (ADR) mechanisms in Georgia both at national and international level. Although the inclusion of arbitration as an integral part of dispute resolution system in Georgia dates back from 1997 and has gradually developed over the last 20 years, major advancements in this regard go back to 2009 with the adoption of the new Georgian Law on Arbitration, influenced by the UNCITRAL Model Law (2006 version), with certain exceptions).

Arbitration as the preferred tool of dispute resolution is commonly used in commercial-corporate contracts, the construction industry, the banking sector, and in international trade arrangements. Within the latter, arbitration is almost used exclusively, because of the confidentiality of proceedings, and the finality of arbitral award and its recognition and enforcement mechanism 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?**

The vast majority of arbitral proceedings conducted in Georgia are institutional. Although, it shall be noted that prior to 2015, the Georgian Law on Arbitration did not envisage the possibility of conducting *ad hoc* arbitration. However, since 2015, the Georgian Law on Arbitration no longer restricts parties from opting for *ad hoc* arbitration.

While there are more than 35 identified institutions in Georgia, two of them are taking the lead: Georgian International Arbitration Center (GIAC) and Dispute Resolution Center (DRC). Both are highly trusted institutions that handle a large portion of domestic and international arbitration disputes.

As for foreign arbitral institutions, parties often refer to the ICC, LCIA, and SCC arbitration rules, among others.

(iii) **What types of disputes are typically arbitrated?**

In practice, as reported by arbitral institutions, the majority of the caseload is comprised of consumer loan disputes, disputes arising from leasing and service agreements, as well as disputes in relation to construction and corporate matters.

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

Depending on the complexity of a case and parties' agreement, proceedings can last around six to ten months from the date of commencement of the arbitral proceedings. However, the majority of arbitral institutions also provide for expedited arbitrations, in which case the duration of proceedings is much less.

(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 governs all arbitral proceedings in Georgia, regardless of whether they are domestic or international. The Law is drafted in accordance with the UNCITRAL Model Law and some provisions are a verbatim adoption of the articles of said Model Law.

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

The law does not distinguish between domestic and international arbitration, with a general exception for recognition and enforcement of foreign arbitral awards, in which case the Supreme Court is the competent authority, while in case of domestic awards, Courts of Appeal recognize and enforce domestic awards.

(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.

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- (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?**

According to the Georgian Law on Arbitration, an arbitration agreement is an agreement in which the parties agree to submit to arbitration all, or certain, disputes that have arisen or which may arise between them based on various contractual or other legal relations. Therefore, the Law provides for two essential elements of the agreement: 1) intent of the parties to submit dispute to arbitration must be proven; 2) the agreement shall define what kind of disputes are referred to the arbitration. As for the form, the law provides that an arbitration agreement shall be made in writing. However, the law further provides that the requirement of the written form will be fulfilled in the following cases as well:

- if an agreement is concluded via electronic notification;
- if an agreement to arbitrate is made with an exchange of a statement of claim and a statement of defence, in which the existence of an arbitration agreement is alleged by one party and not denied by the other;
- the reference in a contract to any document, containing an arbitration clause, is an arbitration agreement in writing, provided that the reference makes that clause a part of the contract.

However, if one of the parties to an arbitration agreement is a natural person or an administrative body, the arbitration agreement must be made in writing in the form of a document and shall be signed by both parties. Therefore, in such cases, a written form is interpreted narrowly and the above-mentioned 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?

Generally, courts enforce arbitration agreements, provided that they are in line with the requirements set out in the Georgian Law on Arbitration, both content and form wise. Moreover, in a 2018 decision rendered by the Supreme Court of Georgia, a clause stipulating that parties “may” refer a dispute to arbitration was considered to be binding once a party exercises that option. Courts send clear messages that arbitration clauses must be construed in a pro-enforcement spirit and supported when the parties’ intention to refer their disputes to arbitration is visible.

However, in case of consumer arbitration or arbitration to which a natural person is a party, courts tend to apply higher thresholds both in terms of the content (requiring clarity of the consent) and the form. For instance, in one decision, the Court of Appeals found an arbitration clause concluded by a natural person online invalid, as the Georgian Law on Arbitration requires that in case a natural person is a party to the agreement, it shall be signed by the natural person and conclusion of the arbitration clause via electronic means is not allowed in such cases.

(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, requiring negotiations before initiation of arbitration proceedings are quite common in Georgia. However, depending on the circumstances, unless the procedure of negotiations is not specifically regulated, they may not be considered as a precondition to the arbitration and having a mandatory nature.

As for Med-Arb clauses, they are not often used in Georgia, primarily because the Georgian Law on Mediation was adopted in 2019 and came into effect on January 1, 2020. The aforementioned law enables enforcement of a private mediation agreement and permits conducting a mediation before an arbitration, thus gives effect to Med-Arb clauses.

It should also be noted that the Georgian Law on Mediation makes it viable to limit the mediation proceedings in time or associate its expiration with certain occurrences. In such case, the court or tribunal cannot review the dispute until the conditions of the mediation agreement are fulfilled, unless a claimant confirms that irreparable damage will be caused if the court or arbitration proceedings are not launched.

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

The Law does not distinguish between any requirements for multi-party arbitration clauses and general characteristics. Hence, they become subject to general requirements set for the arbitration agreement.

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

The Georgian Law on Arbitration does not restrict conclusion of such agreements, however, there is no conclusive precedent in this regard. It is noteworthy, that with regards to the consumer arbitration and a natural person being party to the arbitration agreement, courts tend to apply stricter standards to the determination of the validity of the arbitration agreement.

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

Up until now, there is no vivid practice set by Georgian courts evincing that non-signatories could be bound by the arbitration agreement. Since there is a general requirement that natural persons and administrative bodies shall explicitly sign an arbitration agreement, it is unlikely, that non-signatory administrative bodies or natural persons will be bound by such non-signed arbitration agreements. Nonetheless, in case of legal succession or assignment, the assignees and successors become bound by the arbitration agreement as well.

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 describe categories of arbitrable disputes, it does say what kind of disputes can be arbitrated. Namely, the law provides that property disputes of a private nature, which are based on the equality of the parties and can be resolved by the parties' agreement (thus precluding any *erga omnes* effect), can be subject to arbitration. In accordance with special laws, employment disputes and disputes in relation to PPP (Public Private Partnership) agreements can also be arbitrated. Generally, it is accepted that disputes of non-pecuniary claims, child custody, divorce, administrative, tax and criminal cases etc. cannot be subject to arbitration.

The Georgian Law on Arbitration shares a competence-competence principle, enabling arbitrators to decide on their own jurisdiction. A lack of arbitrability is generally a matter 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?**

The courts are not allowed to terminate proceedings at their own discretion, meaning that in case a party initiates court proceedings despite having signed an arbitration agreement, an opposing party shall make a jurisdiction objection within the time set for by the judge. Such time shall be identical to the time set for the submission of a statement of defence by the respondent. Usually, in practice courts give parties around 10 days for submitting such objections.

Provided that parties make a jurisdictional objection, participation in the proceedings for the purposes of pursuing such objections, will not be regarded as a waiver. Otherwise, not raising a claim against jurisdiction within the above time limit, may be regarded as such.

- (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?**

The competence-competence principle is adopted in Georgia in line with article 16 of the Model Law. Nevertheless, in case a party files a lawsuit in court and the opposing party objects to the jurisdiction of the court, as discussed above in para. IV (ii), the court will review whether the arbitration agreement is null and void, inoperative or incapable of being performed. In such cases, depending on the circumstances, especially in consumer disputes, courts could perform a *de novo* review of the agreement.

In case an arbitral tribunal rules as a preliminary question that it has jurisdiction, and such ruling is challenged in court, the court will proceed to a full review 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 authorised to apply to the courts with a request for appointment of the arbitrator.

(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 have a general obligation to disclose any circumstances that give rise to reasonable doubts on their impartiality or independence.

Echoing the UNCITRAL Model Law, in case a challenge is not successful, parties are authorised to apply to the courts within a certain time limit and challenge an arbitrator. The law provides that the court shall render a judgment within fourteen days after the challenge is submitted. This judgment shall be final and is 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?

The Georgian Law on Arbitration provides that a person may not be denied to be appointed as an arbitrator, except when they: a) are a person with limited legal capacity or a beneficiary of support, unless otherwise defined by the court judgment; b) are a state employee, a state political official, a political official or a public servant; c) have been convicted of committing a crime and their conviction has not been vacated or expunged; d) were either a mediator in the same case or another case substantively related to that case.

As for ethical standards, there are no statutory provisions in this regard, but a non-statutory organisation, the Georgian Association of Arbitrators, has enacted a Code of Ethics which was adopted by various arbitral institutions, thus binding arbitrators who act in accordance with the arbitration rules of such institutions.

(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 regulating conflicts of interest of arbitrators. Therefore, reliance on such rules depends on the parties' agreement. As for IBA Guidelines, they are occasionally agreed upon by the parties and thus relied upon by arbitrators. See also V (iii).

VI. Interim Measures

- (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 Parties' consent and upon their application to the tribunal provisional measures can be invoked before or at any stage of arbitration proceedings. The arbitral tribunal in writing is authorised to order a party to:

- a) maintain or restore the status quo before rendering the final award;
- b) take measures that would prevent causing damage to the other party or to the arbitral proceedings;
- c) provide a means of preserving assets out of which a subsequent award may be satisfied;
- d) preserve and maintain evidence that may be relevant to the dispute and its resolution.

An interim measure issued by an arbitral tribunal is binding and must be enforced by filing an application to a court, regardless of the country in which the arbitration award on interim measures was rendered. The court also has the power to reformulate interim measures without modification of its substance to the extent necessary for the enforcement of the interim measure in accordance with 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?**

Unless otherwise provided for by the arbitration agreement, any party, before commencement of arbitration proceedings or at any time during such proceedings but before an arbitral award is rendered, may request the arbitral tribunal to grant interim measures. Moreover, under the existing practice and the Civil Procedural Code of Georgia, a party may request security measures even before submitting an arbitration claim. However, if a court grants such security measures, but the claimant fails to prove that the arbitration claim has been submitted within 10 days after such measures were granted, the court will lift 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?**

Under the Georgian Law on Arbitration, at any stage of the arbitration proceedings, the arbitral tribunal or a party, with the consent of the arbitral tribunal, may request from a court assistance in taking evidence. This evidence shall be presented to the party (parties) or arbitral tribunal at any stage of the arbitration proceedings. The arbitral tribunal is authorised to ask the court to compel attendance of witnesses as well.

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?**

There is no specific regulation in regard to arbitration. However, Georgia has adopted the Georgian Law on Electronic Documents and Electronic Trusted Services that may be of relevance. Namely, said law, among others, regulates e-signatures, the legal nature of electronic documents and its application and force in all administrative and legal proceedings. It is also noteworthy, that following the declaration of Covid-19 pandemic, one of the leading arbitral institutions in Georgia, such as the GIAC has adopted a Protocol for conducting remote hearings,

which may be adopted either by the party agreement or by the decision of the arbitral tribunal.

VIII. Confidentiality

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

The Georgian Law on Arbitration provides that unless otherwise provided for by law or agreement of the parties, all arbitration proceedings must be confidential and no documents, evidence, written or oral statements of the proceedings shall be published, or transferred to and used in another judicial or administrative proceedings. Arbitrators and any person participating in the arbitration proceedings are subject to this duty of confidentiality.

(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 VII (i).

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

There is no specific regulation provided under the Georgian Law on Arbitration. However, various special laws may provide such regulations for each individual circumstance (for instance, for counsels who are admitted to the bar etc.)

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 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 aforementioned principle is enshrined in various provisions of the Law, ensuring the right of fair hearing, inter alia, giving parties 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) 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 is not prevalent that arbitrators appoint experts solely at their own discretion. Nonetheless, unless otherwise regulated by the party's agreement, arbitrators are not restricted to appoint such experts. The relevance and the value of an expert opinion depends on the circumstances of the case. As for the list, there is no mandatory list of experts that the tribunal shall adhere to.

(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 organising 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. 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% 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 interests 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 a 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 thirty 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;
- 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 authorised, at its own discretion, within thirty 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 authorised, 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 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.
- 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.

(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.

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- (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.

XIII. 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, i.e. 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 statistical data, in 2020 the Supreme Court has heard 5 motions on recognition and enforcement of foreign arbitral awards, 2 out of which were fully satisfied, 1 was partially satisfied and the remaining 2 were either dismissed or proceedings terminated. The Tbilisi Court of Appeals, which hears the majority of cases concerning the recognition and enforcement of domestic arbitral awards, has enforced awards in 61% of cases and refused to enforce them in 1% of cases; remaining percentages are attributed either to termination of proceedings, or finding a motion inadmissible.

However, it is noteworthy, that in case of consumer arbitration, courts tend to apply stricter standards.

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.

XIV. 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 in ADB had neither waived its immunity, nor did the dispute fell within the exceptions provided under the ADB Charter. Therefore, the court accepted the immunity and 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.

XV. 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. 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, various CIS countries, etc.

XVI. 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 Georgian Arbitrators Association: 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: www.giac.ge. Furthermore, the Georgian Arbitration Association, 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

- (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 deploying 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 Georgian Arbitrators 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.