the global voice of
the legal profession®

IBA ARBITRATION COMMITTEE

Arbitration Guide

LATVIA

UPDATED OCTOBER 2024

Dr. Toms Krūmiņš

COBALT
Marijas iela 13 K-2–3
LV-1050, Riga, Latvia

toms.krumins@cobalt.legal

Maija Tipaine

COBALT
Marijas iela 13 K-2–3
LV-1050, Riga, Latvia

maija.tipaine@cobalt.legal

Table of Contents

1. Background

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

Litigation in ordinary jurisdiction courts is still the more prevalent mechanism for dispute resolution in Latvia. At the same time, given the caseload of Latvian courts and average time to have a dispute settled in three court instances (at least three-five years), arbitration is more and more seen as an effective and swift method for resolving disputes in Latvia.

Compared to other countries, Latvia has a rather high number of arbitral institutions. There are more than 50 arbitral institutions registered, although, based on data from the Ministry of Justice, only around 15-20 are actively administering arbitral processes. This number is still high and naturally results also in a comparably higher number of arbitration cases. Many of such cases are, however, small domestic disputes. Although since adopting the Arbitration Law of the Republic of Latvia (Arbitration Law) in 2015 the number of enforced arbitral awards has reduced (1075 arbitral awards enforced in 2014), in 2021 there were 532 enforcement requests filed to Latvian courts, which shows that arbitration is a widely used dispute resolution mechanism.

Lack of an appeal mechanism, swift arbitral proceedings (on average proceedings take four to six months to complete), low costs and procedural flexibility are seen as the main advantages of arbitration in Latvia.

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

Most arbitration proceedings in Latvia are institutional. Ad hoc arbitration is very rarely used. This is due to the fact that prior the 2024 amendments to the Arbitration Law, ad hoc arbitral awards were not enforceable in Latvia.

Before the Arbitration Law came into effect on 1 January 2015, Latvia had an excessively large number of arbitral institutions. The reason for this was that in late 1990s the Latvian legislator permitted any legal person to establish an arbitral institution.

Although the Arbitration Law sought to reduce the inflated number of arbitral institutions by setting out very specific requirements for their formation, the current number remains very high, with more than 50 registered institutions. However, the majority of these operate only 'on paper' and do not adjudicate any disputes.

Those arbitral institutions that do maintain a regular caseload typically adjudicate domestic disputes. Nonetheless, it is not uncommon for at least one party involved in the proceedings to be from outside Latvia.

The Court of Arbitration of the Latvian Chamber of Commerce and Industry (LCCI) is the most well-known and most-often used arbitral institution in Latvia (https://www.ltrk.lv/en/).

(III) What types of disputes are typically arbitrated?

Generally, all types of business disputes are arbitrated in Latvia (commercial, construction, real estate, shareholder disputes, IT, services/sales disputes etc.).

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

Arbitral proceedings in Latvia on average tend to last from four to six months. Occasionally it may take slightly longer, especially if the dispute is complicated. The Arbitration Law provides that an arbitral award shall be rendered with 14 days from the date the tribunal concluded to hear the case on merits (Article 54(1) of the Arbitration Law).

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

No. Foreign nationals can act as both counsel and arbitrators in arbitration proceedings seated in Latvia.

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?

Arbitration proceedings with the seat in Latvia are governed by the Arbitration Law. It entered into force on 1 January 2015 and replaced the previously in force Chapter D in the Civil Procedure Law of the Republic of Latvia (CPL) that regulated arbitration proceedings in Latvia. The Arbitration Law has been amended several times, with the most recent amendments adopted in June 2024 (2024 amendments). The Arbitration Law governs both domestic and international arbitrations.

The setting aside and recognition and enforcement of arbitral awards, as well as the different types of court assistance in arbitration (appointment, challenge, replacement of arbitrators, issuing of interim and provisional measures, summoning of witnesses, evidence production etc.) are regulated by the CPL.

The Arbitration Law, as originally entered into force on 1 January 2015, was not based on the UNCITRAL Model Law. However, following a recent Latvian Constitutional Court's judgement in Case No. 2022-03-01 of 24 February 2023, whereby the non-existence of the set-aside mechanism was challenged, the Latvian legislator took the necessary steps to amend the Arbitration Law and the CPL and not only introduced a mechanism for setting aside arbitral awards, but also other improvements that bring the Arbitration Law closer to the UNCITRAL Model Law.

Although the Arbitration Law does not in all aspects correspond to the formal layout of the UNCITRAL Model Law in form, its substance, following the 2024 amendments, largely reflects the UNCITRAL Model Law. Compared to the UNCITRAL Model Law, the Arbitration Law and the CPL are slightly more detailed and regulate arbitration proceedings to a greater detail than the UNCITRAL Model law.

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

The Arbitration Law governs both domestic and international arbitration with two minor differences:

- In domestic arbitration, if a party has requested security for claim or interim measures before filing for arbitration, the court sets a 30-day term for filing a request for arbitration. However, if the request for arbitration is to be submitted in foreign arbitration, the term for filing the request for arbitration is set at not more than 60 days.
- The other distinction is in the rules related to recognition and enforcement of foreign arbitral awards – domestic arbitral awards are enforced under the CPL, however, foreign arbitral awards are enforced under the New York Convention.

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

Latvia has ratified the New York Convention, which entered into force in Latvia on 13 July 1992, with no reservations.

Latvia has also ratified the ICSID Convention (acceded on 8 August 1997, entered into force with respect to Latvia on 7 September 1997), the Energy Charter Treaty (signed on 17 December 1994, entered into force with respect to Latvia on 16 April 1998), and the European Convention on International Commercial Arbitration of 1961 (acceded on 20 March 2003, entered into force with respect to Latvia on 18 June 2003).

(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?

No such express rules exist in the Arbitration Law. If parties have designated (in an agreement, for example) the law of a particular state as applicable law to the merits of the dispute, the chosen substantive law shall be applied. If parties have not agreed on the applicable law, the arbitral tribunal will determine the applicable substantive law by applying the respective conflict of laws provisions it deems applicable.

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?

The Arbitration Law provides that an arbitration agreement is an agreement between the parties on submitting a civil dispute to arbitration concluded in accordance with the provisions of the Arbitration Law (Article 10(1) of the Arbitration Law). Article 10(2) of the Arbitration Law further makes it clear that parties may agree to submit to arbitration a dispute that has already arisen or may arise in future.

As to the form of arbitration agreements, Article 12(1) of the Arbitration Law provides that an arbitration agreement shall be concluded in writing. It can be included as a separate provision in any contract (in the form of an arbitration clause), considering the applicable limitations as to arbitrability set out in Article 5(1) of the Arbitration Law. An arbitration agreement can be amended or terminated only by written agreement of the parties.

Until the 2024 amendments, the Arbitration Law required that if an arbitration agreement is concluded via electronic means, it needed to be signed with a secure electronic signature. However, the 2024 amendments did away with this onerous requirement and currently Article 12(2) of the Arbitration Law provides that a simple exchange of electronic communications will be sufficient to prove a concluded arbitration agreement. Likewise, if one party submits a request for arbitration and the other party does not object thereto, this is too considered as a valid agreement to arbitrate under Article 12(2) of the Arbitration Law.

The Arbitration Law in its Article 12(3) further provides for certain recommended elements that parties may include in their arbitration agreement. The parties may agree on: institutional arbitration or ad hoc arbitration; the place of arbitration proceedings; the language of arbitration proceedings; the number of arbitrators (which must be an odd number, see Article 29(1) of the Arbitration Law); allocation of arbitration costs; and other issues that the parties consider important.

As to the effect of arbitration agreement, Article 13(1) of the Arbitration Law provides that parties that have concluded an arbitration agreement are bound by it, unless the arbitration agreement is amended or annulled either by an agreement or by a court. If the arbitration agreement is included as a separate provision in another agreement concluded by the parties, the arbitration agreement is considered an independent agreement (the principle of separability). The arbitration agreement is enforceable even if the underlying contract has expired or declared void (Article 13(3) of the Arbitration Law).

Notably, the Arbitration Law codifies a long-standing Latvian court practice (Supreme Court decision in Case No. SPC-59, 25 August 2004 and many others) with regard to the effect of arbitration agreement in case of an assignment. Namely, Article 13(4) of the Arbitration Law provides that in case of an assignment, the assignee is transferred only the right of claim, but, due to the principle of separability, not the arbitration agreement contained in the underlying contract. This means that when assigning the right to claim (N/B under Latvian law only the right to claim is assigned, not the underlying rights and obligations per se), the assignee is not bound by the arbitration agreement. This peculiarity has been criticized by many practitioners and legal scholars.

(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?

Courts are obliged to enforce agreements to arbitrate.

In case a party submits a claim to an ordinary jurisdiction court despite a concluded arbitration agreement, the court must dismiss such a claim, unless the subject of the claim relates to the validity of an arbitration agreement (Article 132(1)(3) of the CPL), or, if the matter is already initiated, terminate the proceedings and refer parties to arbitration (Article 223(6) of the CPL). If court proceedings concern the validity of an arbitration agreement, the court will hear the matter and arbitration proceedings (if any) may run in parallel.

As explained, in case of an assignment, the principle of separability is interpreted very strictly, and the assignee is not bound by the arbitration agreement contained in the underlying contract between the assignor and the debtor. Courts will not enforce an arbitration agreement between the assignee and the debtor in case of an assignment.

(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?

Generally, multi-tier clauses are not very common. At the same time, it is not unusual that parties agree to try to solve their dispute by amicable means (such as negotiation) before resorting to arbitration. In practice, parties rarely choose mediation or adjudication as steps before arbitration proceedings can be commenced. It is not settled whether such agreement would be enforceable, however, there is nothing in law or in court practice that would suggest that they would not be enforceable.

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

The Arbitration Law does not prescribe particular requirements to such agreements. General rules for the conclusion of a valid arbitration agreement apply also to multi-party arbitration agreements.

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

There is no specific provision on this in the Arbitration Law. However, in practice, an arbitration agreement is expected to give equal rights to both parties, so arbitration agreements that give rights to only one of the parties are also contrary to the principle of equality of parties.

It should be noted, however, that arbitration agreements which, for example, give a right of choice to the claimant rather than to one of the parties (eg, claimant having the right to choose between courts and arbitration) are recognised in practice, given that either party may become the claimant.

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

Latvian law is very strict with regard to the possibility of arbitration agreements binding also non-signatories.

The general rule is that arbitration agreements bind only signatories.

The provisions on arbitrability, in particular Article 5(1)(1) of the Arbitration Law, are very specific that disputes infringing upon the rights of non-signatories are not arbitrable in Latvia.

Moreover, as explained, in case of an assignment, the assignee under Latvian law is transferred solely the right of claim, but, due to the principle of separability, not the arbitration agreement contained in the underlying contract. This means that in case of an assignment the assignee is not bound by the arbitration agreement and the new creditor loses the right to arbitrate, and instead must file a claim in ordinary courts.

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

There is no settled court-practice as to the determining of the law governing the arbitration agreement. The currently in force Arbitration Law replaced the previously in force Chapter D in the CPL that regulated arbitration proceedings in Latvia and did provide in its Article 494 that the law governing the arbitration agreement shall be determined pursuant to the law chosen in the arbitration agreement. If the arbitration agreement does not specify the law governing it, the governing law is determined in accordance with conflict of laws provisions in the Latvian Civil Law (Articles 19 and 25).

According to Article 19 of the Latvian Civil Law, if parties have not chosen the applicable law, then it must be assumed that the parties have subjected their obligation, according to its content and consequences, to the law of the country where the obligation must be performed. In case of arbitration agreements, the country where the obligation must be performed would be considered the place where arbitration takes place (seat of arbitration).

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

No such distinction is made. It would be unusual for an arbitration seated in Latvia to have the venue of meetings/hearings elsewhere. If it happens, the courts would not distinguish between the legal seat of the arbitration and the venue of meetings/hearings. The latter would not have any legal consequences.

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

There is no specific guidance on the arbitrability of blockchain- or NFT-related disputes. Provided that a dispute does not pertain to any of the defined grounds of non-arbitrable disputes in Latvia, such a dispute, even if relating to blockchain or NFT, would be arbitrable in Latvia.

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

Given the significant number of arbitral institutions, the question of inoperability of an arbitration agreement has been assessed in cases where the arbitral institution specified in the arbitration agreement has been dissolved. In such cases, the courts have repeatedly held that the parties' dispute should be heard in court, which is attributable mainly to the fact that ad hoc arbitral awards were not enforceable in Latvia until the 2024 amendments. This practice is now likely to change.

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?

There is a defined list of non-arbitrable disputes in the Arbitration Law. Pursuant to Article 5 of the Arbitration Law the following disputes are non-arbitrable in Latvia:

- disputes that may infringe upon the rights of non-signatories;
- disputes where one of the parties is the State or a municipal body, or where the arbitral award could infringe upon the rights of the State or a municipal body;
- disputes pertaining to the entries in civil registers;
- disputes regarding rights and obligations of persons under guardianship or trusteeship;

- disputes over the establishment, alteration or termination of rights in rem, provided that a party to the dispute is a person whose rights to acquire ownership, possession or use of an immovable property have been restricted;
- eviction disputes (with respect to natural persons);
- individual employment disputes;
- insolvency disputes; and
- disputes with regard to which the CPL (see, in particular, Article 251 thereof) provides for a special adjudication procedure (adoption, trusteeship, inheritance, insolvency of credit institutions, among others).

It is generally the arbitral tribunal that first decides whether a matter is capable of being submitted to arbitration in line with the above Article 5 of the Arbitration Law. If a party is of a different opinion, it may challenge the arbitral tribunal's separate decision on jurisdiction before ordinary jurisdiction courts. This, however, would not stay the arbitration proceedings which may continue in parallel. A party may also challenge the validity of the arbitration agreement before national courts in separate proceedings.

It is not settled whether the lack of arbitrability would be a matter of jurisdiction or admissibility. It would most likely be considered a matter of jurisdiction rather than admissibility. However, if only one of the submitted claims would relate to a non-arbitrable matter, it could be that an arbitral tribunal deems it a matter of admissibility and continues with hearing the rest of the claims.

(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?

In case a party submits a claim to the court of general jurisdiction despite the arbitration agreement, the court must dismiss such a claim, unless the subject of the claim relates to the validity of an arbitration agreement (Article 132(1)(3) of the CPL). In practice, however, when receiving a statement of claim the court may not be aware of underlying arbitration agreement. If court proceedings are initiated notwithstanding a concluded arbitration agreement, the defendant should raise jurisdictional objections when first providing response on merits. The time-limit to provide a response on merits is usually set at no longer than 30 days from the date of sending the statement of claim to the defendant (Article 148(1) of the CPL).

In case the court, after initiating the court proceedings, is informed by the defendant that parties have entered into an arbitration agreement, Article 223(6) of the CPL provides the court with an obligation to terminate the court proceedings and refer parties to arbitration.

Participation in court proceedings without invoking the arbitration agreement and without objecting to the court's jurisdiction amounts to a waiver of the right to arbitrate.

(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 Arbitration Law codifies the principle of *kompetenz-kompetenz* by providing that an arbitral tribunal has competence to decide on its own jurisdiction and any objections to the existence or validity of the arbitration agreement (Article 24 of the Arbitration Law).

A decision on jurisdiction can be rendered at any time of arbitration proceedings. In case of a valid arbitration agreement, Latvian courts have an obligation to refer parties to arbitration.

Until 2014, the principle of *kompetenz-kompetenz* was interpreted and applied by Latvian courts very strictly, providing an arbitral tribunal with an exclusive right to rule on its jurisdiction, without the possibility to challenge an arbitral tribunal's decision before ordinary jurisdiction courts. However, following the Latvian Constitutional Court's ruling of 28 November 2014 in Case No. 2014-09-01, this strict approach was considered unconstitutional. Article 24(1) of the Arbitration Law, insofar as it prohibits challenging the competence of arbitral tribunals in ordinary jurisdiction courts, was considered as inconsistent with the right to fair trial provided in Article 92 of the Latvian Constitution.

Following the Constitutional Court's judgment of 2014, the CPL was amended to allow parties to challenge the validity of arbitration agreements also before Latvian courts.

The 2024 amendments extend this court control even further by allowing parties to not only challenge in courts the validity of arbitration agreements, but also to challenge an arbitral tribunal's decision on its jurisdiction. If an arbitral tribunal decides on its jurisdiction in a separate decision, such a decision is challengeable before first instance courts within 30 days of receipt thereof. Arbitration proceedings continue in parallel to the challenge proceedings. There is no appeal to the first instance court's decision on arbitral jurisdiction.

V. Selection of Arbitrators

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

Parties are free to agree on the procedure for the selection of arbitrators (Article 30(1) of the Arbitration Law). Article 12(3) of the Arbitration Law explicitly provides that parties may agree on the procedure for the selection of arbitration in the arbitration agreement. The number of arbitrators must be odd. If parties have not agreed on the number of arbitrators and if the rules of the arbitral institution do not stipulate otherwise, the arbitral tribunal shall consist of three arbitrators (Article 29(1) of the Arbitration Law).

Until the 2024 amendments, in institutional arbitration arbitrators could only be selected from a closed list of arbitrators that each arbitral institution is obliged to maintain. Although the obligation to maintain such a list (with at least ten arbitrators included therein) is still in place (Article 8(2) of the Arbitration Law), parties are no longer obliged to select arbitrators from the list maintained by the chosen arbitral institution.

The closed list approach was severely criticized by practitioners since it unreasonably limited party autonomy to elect an arbitrator of choice that is not included in the closed list maintained by the arbitral institution. In institutional arbitration parties are now free to elect an arbitrator of their choice, irrespective of him or her being included in the list of arbitrators of the arbitral institution. Arbitrators are appointed in accordance with the agreement of the parties and the institutional rules, having due respect to the equality of the parties.

Courts may play a role in the appointment of arbitrators. This is possible in case the other party, the appointed arbitrators or the arbitral institution does not adhere to the appointment procedure provided in Article 30 of the Arbitration Law.

Appointment of arbitrators by courts is regulated under Article 532.2 of the CPL. In the application the party shall specify the name of the arbitrator to be appointed and his/her contact details. The application should be accompanied by a confirmation signed by the arbitrator-elect and a declaration that there are no restrictions for him or her to be elected as an arbitrator. In case of a sole arbitrator, the other party has a right to provide its candidate as an arbitrator. The court appoints an arbitrator either from the candidates suggested by the parties, the list of arbitrators maintained by the arbitral institution, or a list of arbitrators maintained by the Latvian Bar Association, having due regard to the requirements for the arbitrator agreed by the parties.

(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?

The Arbitration Law provides for detailed rules on the arbitrator's conflict of interest.

Article 16(1) of the Arbitration Law provides that an arbitrator is prohibited to accept the appointment and participate in arbitration proceedings if he or she:

- has been a party's representative, expert or witness in a case in which the parties participated;
- is related to the third degree or brother-in-law to the second degree with one of the parties to the dispute or their representatives;
- is related to the third degree or sister-in-law to the second degree with one of the arbitrators hearing the case;

- is in employment relationship with any of the participants in the dispute or their representatives or if the arbitrator provides legal assistance to a party; or
- his or her spouse, or a relative up to the third degree, or a business partner, or a commercial company, which is a party to the dispute and of which this arbitrator or his relative up to the third degree is a member, shareholder, member, supervisory, control or executive body member, has a financial interest in the outcome of the dispute.

The above grounds were inspired by the IBA Guidelines on the Conflicts on Interest in International Arbitration, but have been criticized as providing only a limited number of cases when the arbitrator is prohibited from accepting the appointment.

Generally, however, if an arbitrator becomes aware of circumstances (not limited to the above grounds) that may cause reasonable doubts about his or her objectivity and independence, the arbitrator shall remove himself or herself from hearing the case.

The 2024 amendments to the Arbitration Law introduced a mandatory statement (form) of impartiality and independence. Article 14(6) of the Arbitration Law now provides that before a person expresses consent to be appointed as an arbitrator, he or she must disclose in writing to the parties, the arbitral institution or other arbitrators, if any have been already appointed, or to the district (city) court, any facts and circumstances which may cause reasonable doubt about his or her objectivity and independence. If such conditions have arisen or become known during the arbitration proceedings, the arbitrator shall immediately disclose such facts and circumstances to the parties.

(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 Arbitration Law provides for relatively detailed provisions on who may serve as an arbitrator. The below requirements, however, only apply to arbitrators that are included in the list of arbitrators maintained by arbitral institutions or arbitrators that are appointed by courts. Parties may freely elect arbitrators not included in the list of arbitrators of an arbitral institution and not satisfying the below requirements.

Namely, Article 14(2) of the Arbitration Law provides that any adult that has agreed in writing to be an arbitrator may be appointed as such, provided that the person has no legal guardian, has flawless reputation and has higher education degree.

Moreover, Article 15 of the Arbitration Law provides for certain cases when a person will not be able to be included in the list of arbitrators maintained by a particular arbitral institution, or to be appointed as an arbitrator by a court. This will be the case if:

- the person does not meet the requirements of Article 14(2) of the Arbitration Law;
- the person is recognized as a suspect or accused in criminal proceedings for committing an intentional criminal offense;
- criminal proceedings for committing an intentional criminal offense have been terminated on a non-rehabilitative basis;
- the person has been sentenced for committing an intentional criminal offense - regardless of the expungement or removal of the criminal record;
- the person was convicted of committing an intentional criminal offense, although exempted from serving the sentence due to statute of limitations, pardon or amnesty; or
- within the last five years the person has been declared insolvent.

As submitted, the above do not apply to party elected arbitrators not included in the list of arbitrators of an arbitral institution.

If an arbitrator is an attorney at law practicing in Latvia, he or she is bound by the ethical duties and rules adopted by the Latvian Bar Association. Generally, the Arbitration Law provides that arbitrators shall be impartial, independent and just (Article 14(5) of the Arbitration Law).

(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?

Apart from the provisions in the Arbitration Law and institutional arbitration rules, there are no specific rules or codes of conduct concerning conflict of interest for arbitrators. The IBA Guidelines on Conflicts of Interest in International Arbitration are not mandatory. Depending on the knowledge of the specific arbitrator, the IBA Guidelines may be applied in practice as a further point of reference concerning conflict of interest.

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?

Arbitrators are entitled to take any procedural decisions they deem appropriate prior the hearing of the matter on merits (Article 52 of the Arbitration Law). The arbitral tribunal's decision shall take the form of a decision.

The most common form of interim measures, however, is request for evidence under Article 43 of the Arbitration Law which provides for a general rule that the arbitral tribunal may order any of the parties to submit relevant evidence. This may be done upon a motivated request of a party.

Interim measures issued by arbitrators are not enforceable in courts.

(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?

Up until the 2024 amendments, granting a provisional relief was one of the few court assistance powers that Latvian courts exercised in support of arbitration proceedings. However, prior the 2024 amendments, this could be done only before submission of the arbitration request, and not during arbitration proceedings.

Article 33 of the Arbitration Law provides that a party intending to submit an arbitration request can lodge an application before the respective district (city) court (determined pursuant to the location of the debtor or the location of the property of the debtor), requesting to secure the claim before it is submitted to arbitration. The procedure for submitting the request for securing the claim is governed by the applicable CPL provisions (Chapter 19 of the CPL). The same district (city) court can, pursuant to a request by a party or the arbitral tribunal, revoke or amend the issued decision on securing the claim. Thus, as such and absent a request by the opposing party or the arbitral tribunal, the court ordered provisional relief will remain in force following the constitution of the arbitral tribunal.

Article 33(2) of the Arbitration Law further provides that a request for the securing of a claim or an application for revoking or amending the issued decision on the security of a claim is not considered as a failure to observe the arbitration agreement and does not impede the deciding of the dispute by means of arbitration.

The 2024 amendments to the Arbitration Law extend the above courts' powers to grant a provisional relief also during arbitration proceedings.

Moreover, following the 2024 amendments, the courts not only have the power of granting a provisional relief in the form of securing the claim (by one of the means of securing a claim under Article 138 of the CPL), but also have the power of issuing orders for interim protection (imposing one of the means under Article 138.1 of the CPL).

Article 137(1) of the CPL provides that the securing of a claim may be applied in claims of a financial nature if there are grounds to believe that the enforcement of a judgment may become problematic or impossible.

In turn, Article 137(2) of the CPL provides that interim measures may be applied in claims of a financial or non-financial nature if there are grounds to believe that the rights of a claimant are infringed or could be infringed until the moment

when the ruling comes into effect, and if the application of interim measures is required for preventing a substantial harm. Interim measures may also be applied in cases when it is necessary to temporarily settle the disputed relations until the ruling enters into force, and if this is necessary to prevent possible significant damage to the claimant.

(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?

Until the 2024 amendments Latvian courts did not have powers to grant evidentiary assistance in support of arbitration proceedings. However, the 2024 amendments introduced the courts' power to assist the arbitral tribunal in gathering evidence.

Provided that the arbitral tribunal is unable to obtain the required evidence from parties, Latvian courts may secure evidence upon the arbitral tribunal's request, indicating the nature of the dispute and circumstances to be determined/evidence to be gathered by the court. If the arbitral tribunal requests that the court summons and hears witnesses, the request shall indicate questions to be asked to the witnesses. Arbitrating parties may participate in court hearings (Article 41.1 of the Arbitration Law; Article 101.1 of the CPL).

Costs associated with the arbitral tribunal's request to the court and the court's evidentiary assistance are born by the party having made such a request to the arbitral tribunal. If the request is made by both parties, costs are born equally by both parties (Article 41.1(3) of the Arbitration Law).

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

There is no settled approach in Latvia as regards the enforcement of decisions made by emergency arbitrators. Latvian arbitration law does not regulate emergency arbitration, or the enforcement of decisions made by emergency arbitrators in arbitration proceedings with a seat outside Latvia.

Provided that a decision by emergency arbitrator is in the form of a partial award, finally resolving a certain part of a dispute, it may be enforced in Latvia as any other final arbitral award.

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

There is no settled approach in Latvia as regards anti-suit injunctions or injunctions by arbitrators preventing parties form initiating litigation proceedings. It is unlikely that courts would honour such injunctions issued by arbitral tribunals. If parties have concluded a valid arbitration agreement, courts will refer parties to arbitration and either not initiate the court proceedings in the first place or, if initiated, terminate such proceedings, unless the validity of an arbitration agreement is challenged.

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

Until recently (the 2024 amendments), Latvian courts provided only limited assistance to arbitration. Court assistance in relation to document disclosure was introduced only with the 2024 amendments to the Arbitration Law.

At the same time, courts did assist with granting requests for the securing of the claim (before the 2024 amendments this was possible only prior the filing of the request for arbitration), and such requests could be submitted also in aid of foreign-seated arbitrations.

VII. Disclosure/Discovery

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

Latvian arbitration law does not provide for detailed rules on disclosure or discovery in arbitration. Article 43 of the Arbitration Law provides for a general rule that the arbitral tribunal may order any of the parties to submit relevant evidence.

This may be done upon a motivated request of a party. The party requesting that the arbitral tribunal request written evidence from the other party must describe this evidence and motivate why it believes that the evidence is with the opposing party. If the party refuses to submit the requested written evidence to the arbitral tribunal within the time limit specified by it, without denying that this evidence is in its possession, the arbitral tribunal may recognize as proven the facts for the confirmation of which the opposing party referred to this written evidence.

The IBA Rules on the Taking of Evidence in International Arbitration are not often used in practice.

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

Article 43 of the Arbitration Law provides that the requesting party shall describe the requested evidence and motivate why it believes that the evidence is with the opposing party. Article 41(5) of the Arbitration Law in turn provides that it is the arbitral tribunal that decides on the permissibility and admissibility of evidence. Thus, when requesting that specific evidence is disclosed, the requesting party shall motivate why it considers that the evidence has relevance to the arbitration proceedings and shall identify as precisely as possible desired evidence.

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

There are no specific rules in this regard for arbitral proceedings. General rules for handling electronically stored information would apply.

VIII. Confidentiality

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

Unless the parties have agreed otherwise, arbitration proceedings in Latvia are confidential, arbitral hearings are closed and arbitrators are statutorily required not to disclose any information in relation to arbitration to third parties (Article 23(1) of the Arbitration Law). In exceptional cases, information regarding arbitration proceedings may be disclosed to law enforcement authorities, provided it is necessary to carry out their statutory duties.

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

There are no such specific provisions in Latvian arbitration law.

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

There are no such specific provisions in Latvian arbitration law.

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?

No, it is not common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings.

Most arbitration proceedings in Latvia are domestic and evidentiary issues are regulated under the Arbitration Law.

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

The Latvian arbitration law does not provide any particular limitations regarding the discretion of an arbitral tribunal to govern the hearings. Having due regard to the concluded arbitration agreement, arbitration proceedings are conducted either orally or in writing (if both parties agree so and none of them request an oral hearing). In written proceedings the case is settled pursuant to the parties' submissions and evidence in the file. See, in particular, Articles 21, 26 and 40 of the Arbitration Law.

The arbitral tribunal must ensure that arbitrating parties have equal procedural rights, ie equal opportunity to present their case and exercise their lawful rights (Article 19 of the Arbitration Law).

If requested by any of the parties, arbitral hearings shall be recorded in minutes (Article 49 of the Arbitration Law).

(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?

Up until the 2024 amendments, the Latvian arbitration law rather uniquely did not permit the hearing of witnesses in arbitration proceedings. Witness testimonies were not one of the permitted types of evidence used in arbitration under Article 41 of the Arbitration Law.

The reason for this peculiarity was that, in the eyes of the Latvian legislator, arbitration as a means of private dispute settlement, could not guarantee that a witness may be held criminally liable for knowingly giving false testimony or unjustifiably refusing to testify (as is the case in court proceedings). Moreover, in case a witness fails to appear before the arbitral tribunal, the Latvian legislator believed that this would unnecessarily delay arbitration proceedings.

Therefore, the only possibility to provide a witness statement in arbitration was by means of a written notarized statement submitted as written evidence. No oral examination, including cross examination, of witnesses was possible in arbitration proceedings in Latvia.

In practice, persons with knowledge of certain facts or events have appeared in arbitration proceedings as a counsel on the basis of a power of attorney, thus blurring the line between representation and attestation of facts or events.

Previously, even in cases where the arbitration agreement provided for the hearing of witness, arbitral tribunals seated in Latvia have expressly refused to hear witnesses, referring to the absence of legal framework in this regard under the Arbitration Law.

The 2024 amendments, however, did away with this rather unusual and considerable drawback, and supplemented the permitted types of evidence in arbitration also with witness testimonies (Article 41 of the Arbitration Law). Hearing of witnesses in arbitration is now possible also in Latvia.

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

See above. Until the 2024 amendments, Latvian arbitration law did not permit the hearing of witness in arbitration seated in Latvia.

With the Arbitration Law now being amended, there are no restrictions on who can or cannot appear as a witness. There are neither any mandatory rules on oath nor affirmation.

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

See Section IX(iii) above. Given that up until recently witness testimonies were not permitted in arbitration proceedings seated in Latvia, parties tended to appoint persons (in-house counsel, directors, employees etc.) as their counsel on the basis of a power of attorney and convey relevant information to the arbitral tribunal during oral hearings this way.

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

Typically, the expert provides his testimony in the form of a written opinion.

Expert testimony is one of the permitted types of evidence under the Arbitration Law (Article 41(3) of the Arbitration Law). Experts are typically appointed by parties. Unless the arbitration agreement provides otherwise, the arbitral tribunal may also, at the request of a party, appoint one or more experts. If requested by the arbitral tribunal, parties are obliged to provide necessary information, documents etc. to the tribunal-appointed experts. If any of the parties so request, the arbitral tribunal invites the expert to participate in a hearing where parties can question the expert (Article 44 of the Arbitration Law). Costs for tribunal-appointed expert are born by the requesting party or both parties (if both have requested that expert be appointed).

The Arbitration Law does not provide for any formal requirements regarding independence and/or impartiality of expert witnesses.

(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?

See above. Generally, it is not common that arbitral tribunals appoint experts beside those that may have been appointed by the parties. There are no specific requirements for tribunal-appointed experts.

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

No, it is not common to use witness conferencing in arbitration seated in Latvia.

(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 requirements in Latvia as to the use of arbitral secretaries. The Arbitration Law permits the use of arbitral secretaries. For example, Article 49 of the Arbitration Law is explicit that the minutes of a hearing shall be taken by an arbitral secretary. In turn, Article 45 of the Arbitration Law explains that the costs of an arbitral secretary shall be borne by the party requesting that an arbitral secretary shall be used in the proceedings.

Generally, the use of arbitral secretaries and their role as such in arbitration proceedings is limited to the writing of minutes, following a party's request.

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

Counsel and arbitrators that are attorneys at law are bound by the ethical and professional standards for attorneys. Such standards are provided in the Advocacy Law and regulations adopted by the Latvian Bar Association (https://www.advokatura.lv/en).

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

The Arbitration Law stipulates that any individual may serve as a representative of the parties in arbitration proceedings, with the exception of:

- an individual who has not reached the age of majority, ie 18 years;
- an individual who has a guardian;
- an individual who has been prohibited by a court judgment from managing the affairs of others;
- an individual who is related by blood up to the third degree or by marriage up to the second degree to the arbitrator adjudicating the civil dispute;
- an individual who has provided legal assistance to the opposing party in the dispute or in another related case; and
- an individual who has been involved in mediation in this or related dispute.

Should any of the aforementioned conditions be identified, the arbitral tribunal must disqualify such a representative.

Furthermore, the Arbitration Law imposes an additional limitation on party representation: an individual who is, or has been within the last three years, on the list of arbitrators compiled by arbitral institutions, is not permitted to represent a party as counsel in arbitration proceedings conducted by that specific arbitral institution.

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

The Arbitration Law broadly provides that in case of oral proceedings an arbitral tribunal shall hold a hearing, without further specifying whether hearings are held in person or remotely. In practice, especially during the Covid-19 pandemic, arbitral tribunals often held remote hearings. We are not aware of any court decisions in relation to remote arbitration hearings.

X. Awards

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

The Arbitration Law provides for a number of formal requirements that arbitral awards must satisfy.

Article 51(1) of the Arbitration Law provides that all rulings made by an arbitral tribunal (both decisions and arbitral awards) consisting of three or more arbitrators must be made by a majority vote. The only exception is in case the parties or other arbitrators have agreed that procedural decisions are taken solely by the chair of the arbitral tribunal.

Moreover, Article 54(1) of the Arbitration Law states that an arbitral award must be rendered within 14 days from the date the tribunal concluded to hear the case on merits.

Arbitral awards issued in Latvia must be made in writing (Article 54(2) of the Arbitration Law). An arbitral award must be signed by all arbitrators (Article 54(3) of the Arbitration Law).

In turn, Article 54(4) of the Arbitration Law provides for a list of issues that an arbitral award must contain:

- information on the members of the arbitral tribunal;
- the date of rendering the award and place of arbitration proceedings;
- information regarding the parties;
- the subject matter of the dispute;
- reasoning, unless otherwise agreed by the parties;
- the operative part, indicating whether the claim is satisfied (in full or in part);
- the amount to be recovered, if the judgement is rendered regarding recovery of monetary amounts, indicating separately the principal debt and the interest, the time period for which the interest has been adjudged, the rights of the claimant regarding receipt of interest for the time period prior to the execution of the arbitral award, including also a reference to the extent thereof;
- the specific property and the value thereof, which is to be recovered in the event that the property does not exist, if the arbitral award is rendered regarding recovery of property in kind;
- what actions, by whom, and within what time period are to be fulfilled, if the arbitral award imposes a duty to fulfil certain actions;
- which part of the arbitral award refers to which claimant, if the arbitral award is made for the benefit of more than one claimant, or which part of the arbitral award is to be fulfilled by which defendant, if the arbitral award is made against more than one defendant;
- arbitration costs and the distribution of such costs among the parties;
- legal expenses and the distribution of such expenses among the parties; and
- other information that the arbitral tribunal deems necessary.

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

Under Latvian law, whether an arbitral tribunal may award interest is not a procedural question, but a question of substantive law.

Latvian substantive law does not permit the awarding of punitive or exemplary damages, but only delay interest or contractual penalty. However, arbitral tribunals generally could award both exemplary interest and compound interest, if parties have contractually agreed on so or it is permitted under the applicable law.

(iii) Are interim or partial awards enforceable?

Interim arbitral awards are not enforceable in Latvia. If a partial order finally resolves a certain part of a dispute, it may be enforced in Latvia as any other final arbitral award.

(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?

Arbitration Law provides that arbitral awards are rendered by a majority vote. There are no specific provisions on the issuing of dissenting opinions. In practice, it is not common to issue such opinions.

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

Parties may settle their dispute at any stage of arbitration proceedings, unless the settlement violates the rights and lawful interests of other persons in which case a settlement is not possible (Article 53(1) and (2) of the Arbitration Law).

Provided that parties enter into a settlement, the arbitral tribunal terminates arbitration proceedings and, if so requested by the parties and agreed by the arbitral tribunal, draws up a settlement in the form of an arbitral award setting out the conditions on which the settlement has been reached (Article 53(3) of the Arbitration Law).

Arbitral awards by consent have the same legal status and force as other arbitral awards and may be subject to recognition and enforcement.

The Arbitration Law outlines also other means (other than an arbitral award) how arbitration proceedings may be terminated. The arbitral tribunal will terminate the proceedings if 1) the claimant withdraws its claim; 2) the arbitration agreement has ceased to exist (either by means of a separate agreement or it has been declared invalid by a court); 3) the arbitral tribunal decides that it has no jurisdiction; and 4) if a natural person who is one of the parties to the proceedings dies, or a legal person that is one of the parties to the proceedings ceases to exist, and the disputed legal relationship does not allow for the taking over of rights, or the parties have agreed that in such case the arbitration proceedings are to be terminated (Article 57(1) of the Arbitration Law).

Notably, if parties settle the matter or the claimant withdraws its claim from arbitration, it is not possible to repeatedly bring a dispute between the same parties, over the same subject, and on the same basis either before arbitration or a court. If, however, arbitration proceedings are terminated for the second, third or fourth reasons above, it is possible to submit a dispute between the same parties, over the same subject, and on the same basis to a district (city) court (Article 57(2) and (3) of the Arbitration Law).

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

Powers of the arbitral tribunal to correct, explain and to render an additional award are regulated under Article 55 of the Arbitration Law.

Correction of an award is possible at the initiative of the tribunal or at the request of a party. Correction relates solely to typographical and mathematical errors. Such errors may be corrected without the participation of parties. If, due to correction of the award, its resolutive part changes, but the reasoning of the award does not change, the arbitral tribunal invites parties to express their opinion.

Unless the parties have agreed otherwise, parties may also request the tribunal to explain the rendered arbitral award without changing its substance. The explanation then becomes an integral part of the rendered award. A request for explanation of an award must be submitted within 30 days from the date when the award was notified to the requesting party.

Parties may also request the tribunal to render an additional arbitral award in the event that the arbitral tribunal failed to address any of the claims specifically raised by the parties. The same 30-day time limit applies.

Parties are informed (at least 15 days in advance) of the hearing where the tribunal will hear the request for explaining the award or rendering an additional award.

XI. Costs

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

Unless the parties have agreed on the awarding (distribution) of costs in the arbitration agreement (Article 12(3)(5) of the Arbitration Law), arbitral tribunals seated in Latvia have a rather broad discretion in relation to the awarding of costs.

The Arbitration Law provides that the arbitral award shall contain reasoning on the costs of arbitration and the distribution between the parties thereof (Article 54(4)(11) and (12) of the Arbitration Law). It is therefore within the discretion of the arbitral tribunal to decide which party bears the costs and in what proportion. In practice arbitral tribunals often hold that costs are borne by the unsuccessful party, albeit there have also been cases where arbitral tribunals order that each party bears its own costs.

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

The elements of costs typically awarded in arbitration in Latvia include:

- administrative fee of arbitral institution;
- arbitrators' fees;
- costs related to arbitral proceedings (costs related to taking minutes of the hearing);
- costs for collection of evidence (expert opinion costs, notary fees, translation costs); and
- parties' legal costs.

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

The Arbitration Law does not directly address arbitral tribunal's own costs and in practice it is rarely addressed at all.

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

Yes, see Section XI(i) above. Arbitral tribunals have broad discretion to decide which party bears the costs and in what proportion. This is explicitly provided by Article 54(4) (11) and (12) of the Arbitration Law.

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

No such power is granted to courts in Latvia.

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 challenging of arbitral awards in Latvia is a relatively new phenomenon.

In the period between 1918 until 1940, the possibility of challenging arbitral awards was explicitly regulated by the then applicable procedural law in Latvia, very much resembling the most essential elements of the set-aside procedure of nowadays.

During the Soviet occupation (1944-1990), State *arbitration courts* existed as part of the judicial system of the then Latvian Soviet Socialist Republic and had little to do with arbitration as it was known in the West. As such, there was no set aside mechanism available. When Latvia regained independence in 1990, its draft arbitration law (Part D of the CPL, adopted in 1998), although 'on paper' influenced by the UNCITRAL Model Law, nevertheless was more an unfortunate continuation of the former State arbitration. It failed to provide for the Model Law-type of court assistance to arbitration, including the set-aside mechanism. For long, arbitral awards issued in Latvia could not be set aside.

This major drawback was declared unconstitutional by the Latvian Constitutional Court in its judgement in Case No. 2022-03-01 of 24 February 2023. Following the conclusions of the Latvian Constitutional Court, as of 1 March 2024 (ie date as of which the challenged legal provisions were declared unconstitutional) the challenging of arbitral awards is possible also in Latvia. With the 2024 amendments, the Latvian legislator has taken the necessary steps to (re)introduce the set-aside mechanism in Latvia (see Articles 533.1 to 533.5 of the CPL).

Annulment of an arbitral award shall be requested within 30 days from the date the award is rendered. If a party misses this deadline because it has not yet received the arbitral award or for other justifiable reasons, it is permitted to request the court to renew this procedural time limit in accordance with the general rules of the CPL.

Applications for set-aside are heard by the competent first instance courts, with a possibility (albeit only with respect to a decision dismissing the application) to submit an appeal to competent regional courts. Thus, Latvia provides a somewhat limited two-tier set-aside procedure. No further appeal to the Supreme Court is possible.

Latvia provides for the UNCITRAL Model Law-type "4+2" approach, differentiating between grounds that are to be proved by the applicant and grounds that may be invoked by the court *ex officio*.

After receipt of the set-aside application, the court will forward it to the other parties, granting 20 days to file a response. A failure to provide a response does not preclude the court from deciding the application. The court will decide it within 20 days after the received response has been forwarded to the applicant or within 20 days after the term for providing a response has lapsed and no response has been submitted. As a general rule, set aside applications are decided in written proceedings. If it deems necessary, the court may decide to hold a hearing.

Notably, the party submitting the challenge has a right to appeal the first instance court's decision on annulment, albeit only if the court rejects the application for set aside. The court's decision to set aside an arbitral award is not subject to appeal. This right to appeal against a negative decision is symmetrical to the right of the party in whose favour the arbitral award was rendered to appeal against the refusal of the court to issue a writ of execution. Thus, each party in the proceedings it has initiated has a right to appeal a negative decision of the court, but not otherwise. The appeal can be submitted within ten days after receiving the court's decision.

Given that the challenge procedure was introduced in Latvia only recently, currently there is no court practice in this regard. Given the strict procedural deadlines, it is expected that challenge proceedings will be swift.

Challenge proceedings as such do not stay enforcement proceedings.

(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?

No, Latvian arbitration law does not provide for the possibility to waive the right to challenge an arbitration award, ie, to conclude the so-called exclusion agreements like it is possible, albeit rarely used, in other countries (Switzerland, Sweden, France, Belgium and certain others).

As explained, until recently Latvia did not at all provide for the right to challenge an arbitration award.

In its judgment in Case No. 2022-03-01 of 24 February 2023, the Constitutional Court, *inter alia*, emphasised various the so-called 'non-waivable' rights that are so important in a democratic society that parties even voluntarily may not exclude them from application. In other words, the parties' freedom to waive the fundamental rights contained in the Latvian Constitution extends only to the extent that it does not threaten the functioning of the legal system of a democratic legal state. The non-waivable rights include, eg, equal treatment of the parties, the right to be heard and the right to an independent and impartial tribunal.

In case parties do contractually waive the right to challenge an arbitration award, such an agreement could be set aside by national courts, insofar it relates to the non-waivable rights.

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

Arbitral awards cannot be appealed. This is expressly provided in Article 51(2) of the Arbitration Law. Arbitral awards can only be challenged.

(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, the courts cannot remand an award to the tribunal.

In case the award is set aside on grounds of a party to the arbitration agreement being under some incapacity or the agreement being invalid; the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; or non-arbitrability, the dispute cannot be referred back to arbitration and must be settled by courts.

If, however, the award is set aside on grounds of the party making the application not being given proper notice of the appointment of an arbitrator or of the arbitral proceedings or not being otherwise able to present its case; the composition of the arbitral tribunal or the arbitral procedure not being in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of law from which the parties cannot derogate; or public policy, parties may start new arbitration proceedings.

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

No, no such court exists in Latvia.

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

There is no post-award communication between the courts and arbitrators, ie courts cannot revert the award back to arbitrators to allow amend and/or replace wrongly invoked law or the law not invoked by the parties.

Wrongly invoked law or application of the law not invoked by the parties does not constitute a ground for setting aside the award.

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?

Latvian law is silent on immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate.

We are not aware of any court decision or judgement where these issues would have been examined.

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

Latvian Criminal Law (Article 198(3)) provides criminal liability for arbitrators for unauthorised receipt of benefits:

> *'The unlawful acceptance of material goods, benefits of a pecuniary or other nature, or an acceptance of an offer thereof, [..] by a person, who is empowered by law or by a legal transaction to settle disputes or take binding decisions, but is not a public official, for doing or not doing any act in the exercise of his or her authority, whether the material goods, property or other benefits accepted are intended for that person or for any other person, -*
>
> *shall be punished by deprivation of liberty for a term up to four years or by temporary deprivation of liberty or by probation supervision or by community service or by a fine, with or without confiscation of property and disqualification from holding a certain office for a term not exceeding three years.'*

If the same is committed on a large scale or by a group of persons by prior agreement, or if a benefit of material value, property or of any other nature is claimed, this act shall be punishable by deprivation of liberty for a term up to five years, or by temporary deprivation of liberty, or by probation supervision, or by community service, or by a fine, with or without confiscation of property, and by disqualification from holding a certain office for a term from two to five years.

'Large scale' with the meaning of Latvian Criminal Law is 50 minimal salaries, which as of today in Latvia is EUR 700, thus making it at least EUR 35,000.

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 New York Convention and the CPL govern the recognition and enforcement of arbitral awards. If the arbitral award is not enforced voluntarily in time set by arbitral tribunal, the concerned party is entitled to apply to a court requesting to enforce the arbitral award and requesting a writ of enforcement (a court document upon which the court bailiff commences enforcement proceedings).

The competent court would be the district court where the debtor has its registered address, or where the award should be enforced.

The application for enforcement must be submitted together with the arbitral award; document containing arbitral agreement and document on payment of state fees. The state fee for reviewing the application for the enforcement of arbitral award is one per cent from the amount of debt but in any case, not more than EUR 285.

Upon receipt of the application, the court forwards it to other parties inviting them to reply within a period that is not shorten than 20 days. In the response, the party against which the award is enforced must:

- state if it recognizes the award in full or partially;
- state if it has objections and what are these objections;
- submit evidence supporting objections and refer to the law supporting objections;
- express requests to the court on acceptance or collection of evidence; and
- indicate any other circumstances it considers to be important for considering the matter.

The reply is sent by the court to the other parties. Failure to submit reply does not prevent the court from deciding the question on recognizing and enforcing award.

Article 536 (1) of the CPL defines the grounds for refusing recognition and enforcement of arbitral award:

(1) The court shall decide on the refusal to issue a writ of execution to enforce an arbitral award if it is proved that:
   a. a party to the arbitration agreement was not entitled to enter into the arbitration agreement or the arbitration agreement is invalid;
   b. the party to be bound by the arbitration award was not duly informed of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise denied the opportunity to defend his or her rights;
   c. the arbitral award was made in respect of a dispute not provided for in the arbitration agreement; or is inconsistent with it or exceeds the limits of the claim or the competence of the arbitral tribunal;
   d. the arbitral tribunal was not constituted or the arbitration was not conducted in accordance with the parties' the agreement of the parties or, in the absence of such an agreement, the laws and regulations of the country where the arbitral award was rendered;
   e. the arbitral award has not yet become binding on the parties or the arbitral award has been annulled in the State under the law of which it was made.

(2) The court shall decide on the refusal to issue a writ of execution to enforce an arbitral award if it finds that:
   a. the civil dispute in question can be resolved only by a court;
   b. the arbitral award is contrary to public policy.

The judge decides the application requesting writ of execution on the basis of documents without summoning the parties within 20 days after the reply of the party against which the award is to be enforced has been sent to other parties, or within 20 days when the term for filing the reply has expired.

When deciding the request, the judge will also decide the question on legal costs related to the party's representation in enforcement proceedings.

The decision of the judge is issued to the parties within three days after it is adopted. If the judge has refused to enforce the award, a copy of the decision is sent also to the arbitral institution who administered particular arbitral process.

The Arbitration Law allows the judge to request the arbitral institution who administered particular arbitral process, to provide a copy of the case file and to provide any other information that the judge could need for deciding the matter.

Only the decision to refuse the enforcement is subject to appeal. The appeal can be submitted within ten days after the decision of the judge by submitting a complaint to the regional (appellate) court.

(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?

Arbitral award does not have to be registered or notified to any institution after it is adopted.

Once the court has decided to enforce the arbitral award and has issued a writ of enforcement, the enforcing party is entitled to revert to the court bailiff and commence the enforcement proceedings.

The recourse to a court at that stage is possible only if there are new circumstances discovered that serve as a ground to review the question de novo. The party against which the award is enforced also is entitled to ask the court to split the enforcement of the awarded sum in instalments.

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

The party enforcing award may request the court to secure the enforcement of the arbitral award by granting security for costs measures provided in Article 138 of the Civil Procedure Law. These measures *inter alia* involve arrest of the bank accounts, registration of prohibition to alienate or encumber on real estate or other assets subject to registration, and other means of protection.

(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?

Latvian courts are rather arbitration friendly and, unless there are ground for non-enforcement, will enforce both domestic and also foreign arbitral awards.

We are not aware of court practice regarding the enforcement of foreign awards set aside by the courts at the place of arbitration.

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

If the enforcement of an arbitral award is not challenged, Latvian courts will decide rather quickly, on average within three months from the date of filing the application. If, however, the enforcement is challenged, proceedings before the appellate court and the Supreme Court may take up to five years.

Latvian arbitration law does not explicitly provide for the statute of limitations for the enforcement of arbitral awards. The general limitation period of ten years under the Latvian Civil Law (Article 1895) will apply and parties will be able to file for enforcement within ten years from the date of the rendering of the arbitral award. By a mere reminder of the obligation, however, this term may be interrupted (Article 1905 of the Latvian Civil Law).

XV. Sovereign Immunity

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

There are no specific regulations about the immunity of the State parties under Latvian laws.

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

There are no special rules applicable to the enforcement of an award against a State or state entity.

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

There are no requirements for arbitrations involving sovereign entities.

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, Latvia is a party to the 1965 ICSID Convention. Latvia acceded to the 1965 ICSID Convention on 8 August 1997 and it entered into force with respect to Latvia on 7 September 1997.

Latvia is also a party to the 1994 Energy Charter Treaty. Latvia acceded to the Treaty on 17 December 1994, and it entered into force with respect to Latvia on 16 April 1998.

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

Latvia has in force several bilateral investment protection treaties with countries such as Canada, China, Singapore, Iceland, Ukraine, Turkey, Egypt, Vietnam, Armenia, Azerbaijan, Georgia, Kyrgyzstan, Kazakhstan, Moldova, the United States of America, Uzbekistan and Switzerland among others.

Latvia's concluded intra-EU bilateral investment treaties have been denounced and terminated.

Recently, Latvia has denounced its investment treaties also with countries such as Belarus, India, the United Kingdom and Norway.

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

We are not aware of such decisions. Exclusive competence to hear intra-European investor-state disputes is vested with the Economic Court (in Latvian – *Ekonomisko lietu tiesa*), established in 2021 (Article 24(1.1) (3) of the CPL).

XVII. Resources

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

The local law periodical *Jurista Vārds* (https://juristavards.lv/) occasionally publishes articles on arbitration in Latvia (albeit only in Latvian).

Commentary to the previously in force Part D of the CPL governing arbitration in Latvia until the entry into force of the Arbitration Law on 1 January 2015 (commentary done by Inga Kačevska and Prof. K.Torgāns) provides a very good general overview of arbitration in Latvia. A large part of it is also relevant to the interpretation of the now in force Arbitration Law.

Below is a non-exhaustive list of materials in English that provide an insight of arbitration in Latvia:

- Z.Ūdris, Chapter on Latvia in *Arbitration Law and Practice in Central and Eastern Europe*, C.Liebscher, A.Fremuth-Wolf (eds.), Juris Publishing, 2020.
- I.Kačevska, Latvia: Recognition and Enforcement of Arbitral Awards in *Recognition and Enforcement of Foreign Arbitral Awards in Russia and Former USSR States*, R.Zykov (ed.), Kluwer Law International, 2021.
- G.Žukova, I.Kačevska, Chapter on Latvia in *The World Arbitration Reporter,* Second Edition, L.Mistelis, L.Shore (eds.), 2016, Juris Publishing.

- T.Krūmiņš, *Arbitration and Human Rights: Approaches to Excluding the Annulment of Arbitral Awards and Their Compatibility with the ECHR*, Springer, 2020.
- T.Krūmiņš, Arbitration in Latvia: A Cautionary Tale?, 34(2) *Journal of International Arbitration*, 2017.

(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?

Baltic Arbitration Days traditionally take place in Rīga, Latvia in the beginning of June each year. For more details see https://www.balticarbitration.legal/

XVIII. Trends and Developments

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

Litigation in courts is still the more prevalent method of dispute resolution in Latvia. Arbitration is the most common form of alternative dispute resolution.

The Latvian arbitration framework for long has been somewhat defective and failed to reflect generally accepted arbitration principles and standards. Due to the deficient arbitration framework, parties have often shied away from arbitration and instead preferred dispute resolution in courts. However, in recent years, especially in commercial disputes, arbitration has become more and more popular and is often preferred over litigation. Hopefully with the 2024 amendments that finally remedy most of the existing deficiencies, arbitration will become a real alternative to court proceedings in Latvia.

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

When compared to arbitration, other forms of ADR, such as mediation, are not as popular in commercial disputes.

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

Yes, the already mentioned 2024 amendments to the Arbitration Law and the CPL introduced various long-awaited and needed mechanisms in support of arbitration proceedings.

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

With the 2024 amendments the Latvian arbitration law witnessed noticeable changes, in particular in relation to increased court assistance to arbitration and the overall quality and effectiveness of arbitrations seated in Latvia. At least for now, there are no official plans to make further reforms to the Latvian arbitration 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?

There are no rules governing third-party funding in Latvia. There are neither any obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including third-party funders. We are not aware of Latvian courts addressing the issue of third-party funding.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider internati(onal 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?

Being part of the European Union (EU), Latvia has implemented the EU's sanctions regime. In recent cases Latvian courts have considered the EU's sanctions regime as part of its public policy and refused recognition and enforcement of Russian court judgments. We are not aware of any recent court decisions in relation to the impact of sanctions on international arbitration proceedings.