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IBA ARBITRATION COMMITTEE

Arbitration Guide

MOLDOVA

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Serghei Covali

Covali Arbitration
A. Doga str., no 32/7, of. 8
Chisinau, Republic of Moldova

serghei.covali@covali.md

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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?

Arbitration is rather the exception than the rule for dispute settlement in the Republic of Moldova. It represents a very small fraction compared to the commercial disputes before domestic courts. At the same time, arbitration is the preferred method to solve international disputes in infrastructure projects involving Moldovan public authorities.

The main advantages of arbitration are confidentiality, the expertise of the arbitrators, flexibility of the applicable procedures, more efficient timing schedules compared to domestic courts and enforcement of awards across the globe.

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

The majority of arbitrations in Moldova are institutional and most of the subject matters are of a domestic nature. Ad hoc arbitration is used in some international matters related to infrastructure projects.

The Court of International Commercial Arbitration of the Chamber of Commerce and Industry of the Republic of Moldova is the most important arbitration institution. Another important arbitral institution, by the number of cases it has, is the Arbitration Court under the Moldovan Association of Liquidators and Administrators.

(iii) What types of disputes are typically arbitrated?

All types of business disputes are commonly settled through arbitration. In recent years, the most common subject matters are contractual matters related to consumer loans, construction disputes, sale and purchase and service contracts.

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

The arbitration laws are silent on this matter. Some rules provide a term of up to six months to render the award. Most of the domestic proceedings are solved within this term. In more complex cases, the norm is 12 – 18 months.

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

No.

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 Law No. 24/2008 on international commercial arbitration governs international commercial arbitration. The Law No. 23/2008 on arbitration has a general character and it governs domestic arbitration as well as international arbitration that is not covered by the Law No. 24/2008. Provisions on annulment of an arbitral award are found in Law No. 23/2008 and in the Code of Civil Procedure.

Both laws mentioned above are based in large on 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 distinction between domestic and international arbitration is not a major one. These two different types of arbitral proceedings are, in general, regulated by two different laws but, as a matter of concept, they are not far apart.

Law No. 24/2008 on international commercial arbitration offers a broad definition of the arbitration agreement to include agreements concluded through electronic communications, and arbitration agreements recorded in any form even if the main contract was concluded orally. The Law No. 23/2008 on arbitration only mentions that the arbitration agreement has to be in written form.

In domestic arbitration, the arbitral tribunal's ruling on jurisdiction may not be challenged before the courts during the arbitral proceedings, but only by means of a claim to set aside the arbitral award. In international commercial arbitration, the arbitral tribunal's ruling on jurisdiction can be challenged before the domestic courts in 30 days from the day it was communicated to the parties.

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

Moldova is a party to the following treaties:

- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958);
- European Convention on International Commercial Arbitration (Geneva, 1961);
- The Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention, Washington, 1965).

(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?

If the parties have designated the law of a given state as applicable to the merits of the dispute, the arbitral tribunal shall base its award on that law. If the parties have not agreed on the applicable law, the tribunal shall apply the law determined by the conflict of laws rules it considers applicable.

The arbitral tribunal may base its award on what it finds reasonable (*ex aequo et bono*) only if the parties expressly have authorised it to do so.

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?

Under Law No. 23/2008 on arbitration, the arbitration agreement has to be in writing. The consequence for not adhering to the written form is the nullity of the agreement.

Law No. 24/2008 on international commercial arbitration adopts Option I of Article 7 of the UNCITRAL Model Law as the applicable provision for arbitration agreements. Under Article 7, an arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen, or which may arise, between them in the scope of a defined legal relationship. An arbitration agreement must be in writing. However, it will be held to be 'in writing'

if its content is recorded in writing including by electronic means, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means. Furthermore, an arbitration agreement is 'in writing' if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. Finally, the reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract under the general principles of contract law.

(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?

Moldovan courts recognise arbitration agreements and their effects. As far as it is known, there are no cases of anti-arbitration injunctions or any other similar form of court denial of arbitration agreements.

At the same time, an arbitration agreement will not be enforced if it is null and void, inoperative or incapable of being performed.

(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 are common only for disputes arising from FIDIC contracts which provide for a number of steps which shall be pursued before commencing arbitration: the determination of the Engineer, a decision of the Dispute Board in case one of the parties is dissatisfied with the determination of the Engineer and a period of amicable settlement.

When the pre-arbitration procedures have not been complied with, an arbitral tribunal may either stay or dismiss the arbitration on the basis that the matter is not ripe for adjudication although the qualification of such failure (whether it impacts the tribunal's jurisdiction) is in the purview of the arbitrators.

At the same time, if the first tier of dispute resolution is loosely formulated as a duty to 'negotiate' or attempt to find an amicable solution, an arbitral tribunal and the supervising court alike, will most probably disregard such a provision, as there is a general understanding that where a dispute has escalated to a degree of a judicial confrontation there is little or no chance that negotiations or conciliation attempts will bring about a successful result.

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

The requirements are the same as for arbitration agreements involving only two parties.

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

Although there is no specific provision in this regard, there is a high chance that a court would deem such an arbitration agreement as null and inoperable, due to its asymmetrical nature.

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

Generally, non-signatories cannot be bound in Moldova in the absence of an agreement. Both domestic and international arbitration agreements extend to successors and assignees of parties of an agreement, which incorporates by reference another document with an arbitration clause.

Another situation which can amount to a waiver, is the failure to object to arbitration in proceedings by silence in procedural submissions following the first statement of the other party regarding jurisdiction of the tribunal.

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

There is no specific provision in this regard. Most probably, the courts will apply the law of the seat of arbitration (legal place) as the *lex arbitri*. At the same time, it cannot be ruled out that the courts may apply the law of the contract where the arbitration agreement is included.

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

The courts will make a difference between the seat and the venue of the hearings.

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

Technically yes, although no such cases are known until now.

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

The author is unaware of any practical situations but, since the law provides such a possibility, inoperability of an arbitration agreement will have to be recognised by a court when such circumstance will occur.

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?

Any dispute in a civil or commercial matter which can be settled by agreement between the parties may be referred to arbitration. Disputes related to family law, home rentals and houses for living in general are not arbitrable.

Both the courts and arbitral tribunals may decide whether a matter is arbitrable, depending on who is addressed. The lack of arbitrability is 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?

If court proceedings are initiated despite an arbitration agreement in place, the court will refer the matter to arbitration, provided that the opposing party invokes the arbitration agreement before it states its case on the merits in court. If the arbitration agreement is invoked in time, the court can only determine whether the arbitration agreement is valid, in force and applicable to the dispute.

The court cannot decline jurisdiction because of an arbitration agreement unless the arbitration agreement is invoked by a party. If a party does not object to the jurisdiction of the court in its first statement on the merits of the dispute, he or she loses the right to invoke the arbitration agreement.

(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 principle of *competence-competence* is fully recognised under Moldovan law. Once a dispute has been referred to arbitration, the arbitral tribunal is competent to decide on its own jurisdiction.

In domestic arbitration, the arbitral tribunal's ruling on jurisdiction may not be challenged before the courts during the arbitral proceedings, but only by means of a claim to set aside the arbitral award.

In international commercial arbitration, the arbitral tribunal's ruling on jurisdiction can be challenged before the domestic courts in 30 days from the day it was communicated to the parties.

The law is silent on the scope of control by domestic courts on the jurisdiction assumed by arbitral tribunals. The assumption, in such cases, is that the issue will be considered under full review.

V. Selection of Arbitrators

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

The parties are free to agree on a procedure of appointing the arbitrator or arbitrators. Failing such agreement in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators appointed shall appoint the third arbitrator.

If a party fails to appoint the arbitrator within 15 days (for domestic arbitration) or 30 days (for international arbitration) of receipt of a request to do so from the other party, the appointment shall be made by a third party. The same occurs if the two arbitrators fail to agree on the third arbitrator within 15 to 30 days of their appointment or when the parties fail to appoint the sole arbitrator. The appointing authority would be a third party (in international arbitration), the institution for institutional arbitration, and the domestic court for ad hoc arbitration (in domestic arbitration).

(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?

An arbitrator must be impartial, independent and qualified. An arbitrator must, if he or she does not decline the appointment, immediately disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality and independence. An arbitrator has this obligation throughout the arbitral proceedings.

In domestic arbitration, the challenge is submitted with the arbitral institution (for institutional arbitration) or the courts (for ad hoc arbitration). In international arbitration, the challenge is submitted with the appointing authority.

(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?

Any person with full capacity to exercise his/her rights may act as an arbitrator, without any other criteria such as citizenship or residence needing to be met (unless such criteria are set by the parties themselves).

An arbitrator's ethical duties derive from the requirements of impartiality and independence and the requirement that an arbitrator is obliged to provide the parties with sufficient opportunity to present their case. An arbitrator should adopt best practices and decide the case with sufficient professionalism, but there are no separate ethical guidelines in this regard.

(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 codes concerning conflicts of interest for arbitrators. However, one of the grounds for challenging an arbitrator includes justifiable doubt as to the arbitrator's impartiality. Arbitrators are also required to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. The IBA Guidelines are not widely used.

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?

Arbitral tribunals are empowered to order any interim measure of protection they consider necessary. It is also provided that prior to formation of a tribunal an institution may grant interim measures. In the case of international arbitration, domestic courts may enforce the order/award.

The local court whose jurisdiction covers the seat of the arbitration may grant protective measures and interim relief, at the parties' request, before or during the arbitral proceedings.

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

According to the law, the courts are able to issue any interim measure necessary to aid the arbitral proceedings. These measures may be ordered before and after the constitution of the arbitral tribunal and will remain in force following the constitution of the arbitral tribunal.

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

In international arbitration a party may request court assistance to have a witness heard under oath, a witness or an expert examined in court or a document or other evidence produced.

In the case of domestic arbitration, the law is silent on this issue. At the same time, there are no reasons to believe that such a measure cannot be granted from a court.

Such measures are requested (from a court) by the arbitral tribunal or by a party with the arbitral tribunal's consent.

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

The law does not regulate this issue in any way. There is no case law in this field either.

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

The law does not regulate this issue in any way. There is no case law in this field either.

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

No.

VII. Disclosure/Discovery

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

Moldovan law, being a civil law system, does not recognise the possibility of discovery or disclosure of documents as contemplated in the American legal system. Each party should be prepared to support their case with documents they have in their possession.

However, if the parties opt for the application of the IBA Rules on the Taking of Evidence in International Arbitration or somehow provide for disclosure as a procedural step, then disclosure of documents shall be possible.

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

Such limits are not provided by the law.

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

No.

VIII. Confidentiality

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

Confidentiality in arbitration is declared as a principle in the law. Beyond that, there are no other provisions that would regulate it. As a consequence, arbitral proceedings are presumed confidential unless the parties opted out from this rule.

Arbitration-related proceedings that may be brought before state courts are not confidential. If there is an application to the court in respect of arbitral proceedings, a party wishing to maintain confidentiality may file a respective motion.

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

No.

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

No. At the same time, general rules of privilege apply.

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 for parties and arbitral tribunals to adopt the IBA Rules on Taking of Evidence in International Arbitration. If that transpires, it is more of an exception than a rule.

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

There are no limitations regarding the discretion of an arbitral tribunal except that hearings must be conducted in accordance with the parties' agreements and must be in line with due process. The parties must be treated with equality and the arbitrators must give each of the parties a sufficient opportunity to present their case.

To the extent the parties have not agreed on the procedures applicable to the hearings, the arbitral tribunal is free to govern the hearings as it sees fit – taking into consideration the provisions of the law and taking into account the requirements of impartiality and speed.

- (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?**

Witness statements are rarely used. When used, it is mainly an oral declaration with questions from the tribunal and the other party. The law does not regulate this part in any way.

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

No mandatory rules on oath or affirmation apply to witnesses examined by arbitral tribunals. Any person, including the parties' executives, employees, consultants and the like, may appear as a witness. The witness is typically instructed by the chairman of the arbitral tribunal that he or she is expected to provide truthful and honest testimony.

- (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?**

No. The weighing of such testimony and its persuasiveness is a matter for the arbitrators to decide.

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

Expert witness testimony can be presented either in writing, orally or both. The parties are free to appoint expert witnesses. The arbitrators are then to evaluate the credibility of the expert witness testimony when determining what has been proven.

The arbitral tribunal may also appoint one or more experts on its own accord.

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

It is not very common that arbitrators appoint experts in addition to experts appointed by the parties. At the same time, the tribunal may appoint one or more experts. The parties may be ordered to present to the expert all the relevant information. Where considered necessary by the tribunal or where a party so requests it, the expert will be present during the hearings and the parties may ask questions or present the opinion of its own expert.

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

No.

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

No such rules exist and arbitral secretaries are not common. At the same time, some arbitral institutions, provide secretaries who help with the administration of the case.

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

No.

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

No.

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

The law does not regulate remote hearings in any way. Several arbitral institutions adapted their rules to contemplate the holding of remote 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 award shall be made in writing and signed by the arbitrators. The arbitral award has to contain at least the following information:

- The composition of the arbitral tribunal, and the date and place of the award;
- The residence of the parties;
- A description of the dispute;

- The factual and legal reasons for the award;
- The signature of the arbitrators.

There is no specific provision in the arbitration law as to the type of remedies available to the parties. Therefore, there is no limitation on the type of remedies that an arbitral tribunal may grant, other than the limitation imposed by the parties' claims in the sense that the arbitral tribunal can only grant what was requested, regardless of the nature of the claim.

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

Yes, arbitrators can award punitive or exemplary damages, if such a possibility is expressly provided by the contract or the law. They can also award interest. Compound interest may be awarded only if provided by the contract.

(iii) Are interim or partial awards enforceable?

Partial awards are enforceable to the extent they contain a final determination of part of the respective issues to be resolved by the tribunal.

Interim measures are not binding on the parties. A party wishing to enforce such order must resort to the domestic courts (ie, the court at the place of arbitration) and request that such interim measures be imposed.

(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?

Yes, dissenting opinions are allowed. The dissenting opinion should include the factual and legal elements it is based on.

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

If, during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal may record the settlement in the form of an arbitral award.

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

A party with notice to the other party may request the arbitral tribunal to make typographical or clerical corrections. Further, if contracted, a party with notice to the other party may request the arbitral tribunal to clarify or explain any part of the arbitral award or reasoning.

Unless otherwise agreed by the parties, a party with notice to the other party may request the arbitral tribunal to make an additional arbitral award as to claims presented in the proceedings but omitted from the arbitral award.

XI. Costs

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

The costs of organising and conducting the arbitration, the remuneration of the arbitrators, the costs of administering evidence, the remuneration of experts and translators, travel expenses and other expenses are borne according to the agreement between the parties.

If there is no agreement between the parties regarding the arbitration costs, they are borne by the party that lost the dispute, depending on the full or partial acceptance of the request.

In the case of institutional arbitration, the costs of arbitration are established and paid according to the rules of the specific institution.

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

This includes the costs of organising and conducting the arbitration, the remuneration of the arbitrators, the costs of administering evidence, the remuneration of experts and translators, travel expenses and other expenses and the fees of the arbitral institution, where applicable.

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

Yes, the arbitral tribunal has jurisdiction to decide on its own costs, unless otherwise provided in a manner binding on the arbitrators, for example in institutional rules.

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

An arbitral tribunal is free to apportion the costs between the parties in such a manner as it considers appropriate having regard to the circumstances of the case (eg, if both parties have won in part on the merits).

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

No.

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?

An arbitration award may be challenged within three months from the date on which the party making an application had received the award. Grounds for challenging both domestic awards and international awards are based on the UNCITRAL Model Law.

An award may only be challenged by means of a set aside application on one of the following grounds:

- the dispute is non-arbitrable;
- the arbitration agreement is void;
- the arbitral award does not contain the dispositive and the reasoning, the place/date of its issuance and the signature of the arbitrators;
- the dispositive part of the award contains points that cannot be enforced;
- the constitution of the arbitral tribunal or the arbitral procedure were not in accordance with the arbitration agreement;

- the party requesting the setting aside of the award was not duly notified of the appointment of arbitrators, or about the hearings (the date/hour/place) when the main arguments were heard and was absent when the hearing took place.
- the tribunal ruled on a dispute that is not provided for by the arbitration agreement or that does not fall under the terms of the agreement, or the arbitration award contains provisions on issues that exceed the limits of the arbitration agreement. If the provisions in the issues included in the arbitration agreement can be separated from the provisions that do not arise from the agreement, the court can set aside only that part of the arbitration decision which contains provisions that are not included in the arbitration agreement;
- the award failed to mention the tribunal's decision on the relief sought and did not include the reasoning behind the decision, the date and place of the decision or the signatures of the arbitrators;
- the arbitral award violates fundamental principles of the legislation of the Republic of Moldova.

The court should start examining it within a month from the request for setting aside. As a matter of practice, the first level court will take around two to three months until they issue a ruling on such a request. As a matter of practice, the appeal may take around six months.

Technically, challenging the award does not influence in any way the enforcement procedure. At the same time, the court may suspend the enforcement of the challenged award when there is imminent substantial harm arising from the enforcement.

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

The parties cannot waive their right to challenge an arbitration award in the arbitration agreement. The parties can waive their right to challenge an award only after such an award is issued.

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

No. Awards cannot be appealed. An award can only be challenged on the grounds mentioned above.

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

No.

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

No.

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

The arbitrators are not allowed to amend and/or replace the wrongly invoked law.

XIII. Arbitrator Liability

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

The law does not expressly mention immunity. At the same time, Law No. 23/2008 on arbitration mentions the cases when an arbitrator bears responsibility:

- after acceptance, unjustifiably renounces the appointment;
- does not participate without justified reason in the hearing of the dispute or does not issue the award within the agreed term;
- does not respect the confidential character of the arbitration, publishing or disclosing data that they become aware of in the capacity of arbitrator without the authorisation of the parties;
- flagrantly violates their obligations.

There are no similar provisions for experts, translators, interpreters and/or other participants in arbitration proceedings.

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

No.

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 party shall file an application for recognition and enforcement of a foreign arbitral award with one of the Appeal Courts. The decision of the Appeal Court can be challenged at the Supreme Court.

A foreign award shall not be recognised in Moldova against a party that can prove that the (i) arbitration agreement was not valid or one of the parties did not have capacity, (ii) that the party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case, (iii) the arbitral tribunal has exceeded its authority, (iv) the composition of the arbitral tribunal or the arbitral proceedings substantially deviated from the agreement or the *lex arbitri*, or (v) the arbitral award has not yet become binding on the parties or it has been declared null and void or set aside or suspended in the state in which, or under the law of which, that award was made.

Enforcement or recognition can also be refused if the court finds that the subject-matter of the dispute is not capable of settlement by arbitration under Moldovan law or if the recognition or enforcement of the award would be contrary to the public policy of the Republic of Moldova.

The opposition to the recognition and enforcement of the foreign arbitral award does not stay the enforcement of the said award.

(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?

Once a foreign arbitral award is recognised, in order to enforce the award, the same procedure as enforcing a national award applies.

When a final and binding exequatur is obtained, there is no recourse available to challenge it. The actual enforcement may be contested, for example, based on the fact that payment has already been made or based on the statute of limitations, but the exequatur itself cannot be challenged.

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

There are no separate provisions on conservatory measures pending enforcement of an award. As such, a court may grant such interim measures that the authority in question has the power to grant.

(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?

The courts in Moldova can generally be considered 'arbitration-friendly'. The issue of enforcing awards set aside at the place of arbitration has not received judicial attention. Most probably, in light of the formalistic approach adopted in Moldova, a foreign award which had been set aside by the courts at the place of arbitration, will not be recognised and enforced in Moldova.

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

The time it takes to enforce an award will vary depending on the particularities of the award rendered and it depends on whether the award is challenged or not. At the Supreme Court level, cases are progressing slowly due to ongoing comprehensive reforms to the Court. To note, the time limit for seeking the enforcement of an award is three years from the date when the award became binding upon the parties.

XV. Sovereign Immunity

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

Under the laws of Moldova, a state can be a party to an arbitration agreement. By doing so, states are generally considered to have waived their right to invoke immunity.

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

No.

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

No.

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, Moldova is party to the ICSID Convention. Moldova is also party to the Energy Charter Treaty.

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

Moldova has signed multiple bilateral investment treaties with countries including Canada, the United Arab Emirates, Turkey, Montenegro, Qatar, Estonia, Slovakia, Cyprus, Spain, Albania, Slovenia, Kuwait, Latvia, Lithuania, Greece, Israel, France, the United Kingdom, Poland, Germany, and the United States.

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

No.

XVII. Resources

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

There is currently no updated source or treatise on arbitration in Moldova. There is however an assessment dated 2021 of the Arbitration Law and Practice in Moldova, published by the International Development Law Organization and the European Bank for Reconstruction and Development, and authored by Mary Mitsi, Serghei Covali, Roger Gladei and Valeriu Cernei accessible through the following link: https://justice.gov.md/sites/default/files/document/attachments/eng_ebrd_idlo_assessment_report_clean.pdf.

- (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?**

In 2024, the local arbitration community initiated the Moldovan arbitration days, where local and international professionals shared updates, ideas and approaches to various developments and challenges in the field.

The local Chisinau International Court of Commercial Arbitration (by AmCham) has been hosting arbitration related events once a year. The European Business Association hosted an arbitration related event in 2023.

XVIII. Trends and Developments

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

Arbitration has not entirely developed as a real alternative to court proceedings. Arbitration is opted for as a solution by a limited number of companies which understand arbitration as a method of dispute resolution and intend to avoid domestic courts.

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

In the recent years, mediation has been growing in Moldova. According to an EBRD report, commercial mediation grew from 99 cases (in 2017) up to 560 cases (in 2020). Although the growth is considerable when comparing the 2017 figure with the 2020 figure, when considering the tens of thousands of commercial cases in Moldova, commercial mediation is rather insignificant.

The general trend in relation to ADR is one of growth but there is still a long way to go for when arbitration or mediation would take a significant load of work from the domestic courts.

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

A group of local professionals supported by EBRD and IDLO, among which is the author of this report, drafted a new draft law on arbitration. The draft law is with the Ministry of Justice and should be presented for public debates in due time.

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

Yes. There is a new draft law on arbitration but the changes brought in by this law are not of a deep structural nature. The two pieces of legislation on arbitration would merge into a single one but the core provisions will remain oriented towards the UNCITRAL Model 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 under the laws of Moldova.

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

Moldova aligned itself with a series of international sanctions of the EU and the UN Security Council. Local courts have not yet considered if the sanctions regime forms part of international public policy, although it is suspected that they would decide along this direction should this issue be placed in front of the courts. There are no court decisions on the impact of sanctions on international arbitration proceedings as of yet.