

The International Comparative Legal Guide to:

International Arbitration 2009

A practical insight to cross-border International Arbitration work



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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of Lithuania?

Under the Law on Commercial Arbitration (1996) (hereinafter - the **Law**), an arbitration agreement or an arbitration clause (which is a non-excludable part of some broader agreement) shall be concluded between the Parties in writing. The conclusion of the written agreement may be any of these:

- written document, signed by both parties (including the written agreement which includes arbitration clause);
- exchange of documents (notices, telegrams, faxes or other documents) between the parties. These documents shall indicate the subject of arbitrage agreement; or
- exchange of claim and response to claim between the parties. In these documents one of the parties shall claim the arbitration agreement and the other shall not dispute it.

1.2 Are there any special requirements or formalities required if an individual person is a party to a commercial transaction which includes an arbitration agreement?

There are no special requirements prescribed by Lithuanian laws.

1.3 What other elements ought to be incorporated in an arbitration agreement?

Arbitration agreement shall include the settlement of the parties to transfer their disputes (all or part of them) to the arbitration. This is the main element of agreement. There are other elements common in practice, such as the name of the arbitration institution, seat of arbitration, number of arbitrators, language of procedures, and procedural rules, governing material law, that are highly recommended but not compulsory.

1.4 What has been the approach of the national courts to the enforcement of arbitration agreements?

According to the Code of Civil Procedure, courts may not commence proceedings or must terminate the trial, if the parties have made an arbitration agreement and the defendant relies on it (without delay), except if the validity of the arbitration agreement is disputed in the statement of claim.

The Supreme Court states that if the parties do not agree on the specific arbitration body, it does not make the arbitration agreement invalid.

1.5 What has been the approach of the national courts to the enforcement of ADR agreements?

Alternative dispute resolution (**ADR**) is encouraged in Lithuania. If the parties reach the agreement through the ADR procedures (as the pre-trial procedures, e.g. conciliatory mediation) and conclude the amicable agreement, they may provide it for the national court to approve (the final resolution of dispute, which is equal to judgment).

According to the Law on Conciliatory Mediation in Civil Disputes (2008), conciliatory mediation shall apply on the basis of a written consent of parties to a dispute. If parties to a dispute agree to resolve the dispute by way of conciliatory mediation, they shall attempt to resolve the dispute by this procedure before they refer to the court or arbitration. A court hearing a civil case may suggest to parties to a dispute that they attempt resolving the dispute by way of conciliatory mediation. If the parties to the dispute accept the court's suggestion, the court shall adjourn the case.

There are no reported cases regarding ADR agreements.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in Lithuania?

The Code of Civil Procedure of Lithuania 2002 (hereinafter - **CCP**), the Civil Code (hereinafter - **CC**) and the Law on Commercial Arbitration (1996) govern the enforcement of arbitration proceedings and awards.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do the laws differ?

The same laws regulate both domestic and international arbitration proceedings.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the governing law and the Model Law?

UNCITRAL Model Law has influenced the Law. Most differences are not significant. The Law also states those institutions which have powers in these matters (District courts and the Lithuanian Court of Appeal), regarding the issues that are not arbitrable, as well as recognition and execution of the award. The Law states that in

absence of the agreement of the parties on the law to be applicable, the arbitration shall apply the law which is applicable according to the *applicable* conflict of laws rules. Meanwhile the Model Law says that the arbitration shall apply law determined by the conflict of laws rules *which it considers applicable*. What is more, the Law also: allows the dissent opinions of the arbitrators; provides specific provisions which may show doubts about the impartiality and neutrality of the arbitrator (see question 5.4); provides some prohibitions to practice arbitration permanently for judges, prosecutors and alike officers; and states limitation of the arbitration to refuse approval of the settlement of the parties (amicable agreement) on the basis that this agreement lacks validity according to the applicable law and others laws.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in Lithuania?

The common rule of application of mandatory provisions in Lithuania state, that neither parties nor the Lithuanian courts may avoid applying the mandatory rules of Lithuania. If this rule is not followed, problems in recognition and enforcement of the award may occur.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of Lithuania? What is the general approach used in determining whether or not a dispute is "arbitrable"?

Constitutional, labour, family and administrative disputes, also disputes arising in competition, patents, trade marks and service names, bankruptcy and consumer relationships are not arbitrable. The dispute shall not be transferred to Arbitration if one of the parties is a governmental/municipal body or governmental/municipal enterprise and the prior written consent of its incorporator was not received. The Government itself may conclude arbitration agreements in its commercial activities.

The general approach is that the more the dispute is related to the mandatory rules of the state, the less it is arbitrable.

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

The arbitrator is entitled to *competence competence* rule and may rule on his own jurisdiction, including but not limited to his competence to decide on validity and scope of the arbitration agreement.

3.3 What is the approach of the national courts in Lithuania towards a party who commences court proceedings in apparent breach of an arbitration agreement?

The plaintiff may claim in courts despite the apparent arbitration agreement and the dispute may be settled by Lithuanian courts, provided that the defendant doesn't demand to apply the arbitration agreement. There is a significant change in the approach, since under previous legislation Lithuanian courts refused to start court proceeding or discontinued the started proceedings irrespective of defendant's position (i.e. a valid arbitration agreement used to be an absolute obstacle to any court proceedings).

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal?

The court may address the issue of the arbitration competence in these situations:

- if one of the parties provides the claim in the court and the other party claims the effective arbitration agreement to be applicable in this dispute;
- if the arbitration agreement is pronounced to be null and void on the common basis of invalidity of contracts;
- if the party made an appeal to the Court of Appeal to contest the award of the arbitration; or
- if the party applied to the Court of Appeal for the recognition and enforcement of the arbitration award.

3.5 Under what, if any, circumstances does the national law of Lithuania allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

Lithuanian laws do not regulate this issue. There are some cases in court practice that in the event of cession (which is understood broadly) transferees are treated as parties to an agreement to arbitrate.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in Lithuania and what is the typical length of such periods? Do the national courts of Lithuania consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Limitation periods are considered to be substantive rules and depend on the law which is chosen by the parties. If Lithuanian law is applicable, the usual limitation period is ten years.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

The parties of the arbitration agreement may choose the substantive law applicable to their dispute. If parties did not choose any applicable law, the arbitration shall apply the law determined according to the conflict of law rules.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

Mandatory laws prevail over the applicable law chosen by the parties in any case.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

The Lithuanian Civil Code state that the Arbitration clause shall be regulated by the same law which regulates the whole agreement the clause is part of. If this agreement is invalid, the law of the state where the arbitration agreement was concluded shall apply (*lex loci actus*). If this state cannot be identified, the law of the arbitration seat state shall apply.

The common rules of the Civil Code regulate agreement form issues. The provisions state that the law of the state where the agreement was concluded shall apply to its form. In any case the law of the state which recognises the form of the concrete agreement shall apply (*lex validatis*).

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

The party may choose the arbitrator (capable natural person) despite the arbitrator's citizenship, except if otherwise agreed by the parties. In all cases the arbitrator shall admit to be appointed and the number of arbitrators shall be uneven. There are no other strict limits provided by the laws, except some restrictions on the continuing arbitration practice and arbitrator fees applicable for judges, prosecutors etc.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

There is a default procedure stated in the Law - if the parties do not agree otherwise:

- when the arbitration shall consist of 3 arbitrators, each of the parties shall appoint its arbitrator and these arbitrators shall appoint the third one;
- when the arbitration consists of 1 arbitrator and the parties cannot agree on its candidature, the arbitrator shall be chosen by the chairman of the arbitration institution upon the request of any of the parties; and
- if the arbitration shall consist of 3 arbitrators and any of the parties failed to appoint his arbitrator within 30 days or the 2 appointed arbitrators fail to appoint the third arbitrator within 30 days since their appointment, the arbitrator shall be appointed by the chairman of the arbitration institution upon the request of any of the parties.

Any of the parties may apply to the chairman of the arbitration institution (unless otherwise agreed by the parties) with request to take measures to appoint the arbitrator, if the procedure of appointment of arbitrators was settled between the parties but cannot be exercised because (for any of these reasons):

- any of the parties fail to follow this procedure;
- the parties or the arbitrators appointed by the parties cannot reach the agreement upon the appointment of the arbitrator; or
- the third person fails to exercise any of the functions related to the appointment of the arbitrator.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

There are no provisions of the laws that would state this possibility.

5.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality?

The arbitrators shall be independent, neutral and impartial. The arbitrator shall announce before the arbitration procedures any of the circumstances that may cause doubts on his neutrality and impartiality. The arbitrator may be removed only if these circumstances denying his neutrality and impartiality become known: he is dependent on the party either because of his work position or

because of other circumstances; he is a relative of the party; he is directly or indirectly concerned about the conclusion of the dispute on behalf of any of the parties; he participated in the procedures of the pre-arbitral mediation; or there are other circumstances that provide doubts about the arbitrator's impartiality. These provisions might be concretised in some regulations of arbitration institutions (Vilnius International and National Commercial Arbitration, Vilnius Court of Commercial Arbitration).

5.5 Are there rules or guidelines for disclosure of potential conflicts of interest for arbitrators imposed by law or issued by arbitration institutions within Lithuania?

The Law provides specific circumstances which may show doubts about the possible conflicts of interest of the arbitrator (mentioned in question 5.4 above). The arbitrator shall announce before the arbitration procedures any of the circumstances that may cause doubts on his neutrality and impartiality.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in Lithuania? If so, do those laws or rules apply to all arbitral proceedings sited in Lithuania?

If the parties did not agree on the procedural matters of the arbitration, the arbitration institution may choose the order which is suitable to be applied.

National permanent arbitration institutions have adopted their own rules governing arbitration proceedings. The CCP may be applied additionally if certain questions are not regulated by these regulations.

6.2 In arbitration proceedings conducted in Lithuania, are there any particular procedural steps that are required by law?

The Law states that the parties shall be noticed in advance about the arbitration hearings. Also the appointed arbitrator shall pronounce any circumstances that may provide doubts on his impartiality and neutrality. Unless otherwise agreed by the parties, the arbitral tribunal proceedings shall commence on the date on which a request for the dispute to be referred to arbitration has been received by the respondent. The procedure issues not agreed by the parties shall be decided by the arbitrator (also *see question 6.4*).

6.3 Are there any rules that govern the conduct of an arbitration hearing?

The hearings of the arbitration should be held in writing or orally, according to the agreement of the parties. Any documents provided to the arbitration by the parties or by experts shall be provided to the other party or to both parties.

6.4 What powers and duties does the national law of Lithuania impose upon arbitrators?

There are variant rights and duties of the arbitrators, the most important might be stated in the agreement of the parties. Others are stated in the Law:

- the right to object to being the arbitrator for the parties, also the right to challenge himself or to resign;

- the right to solve arbitration's competence questions;
- the obligation to announce to the parties any circumstances that may cause doubts on his impartiality and neutrality;
- the obligation to avoid any delay in performance of his obligations;
- the right to accept documents from the parties that were delivered to the arbitration overdue (notices that the arbitration does not have competence, the renewed claims and responses);
- on the request of the party, to oblige the other party to provide the concrete sum as the interim measures or to apply for the District court to apply these measures;
- the right to apply to the District Court for the assistance in taking evidence;
- the right to decide on the order of the procedures in the absence of the agreement between the parties; and
- the procedural rights and obligations during the arbitration procedures and when they are finished (conduct the hearings, approve or refuse to approve the amicable agreements, terminate the procedures or to continue them when the special circumstances stated by the Law exist, to appoint the expert, to demand for additional information from the parties, to correct the mistakes in the awards or to explain awards etc.).

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in Lithuania and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in Lithuania?

There are no such restrictions. In any cases, the Law clearly expresses that the arbitrator might be any capable natural person despite his citizenship, who is chosen by the parties.

6.6 To what extent are there laws or rules in Lithuania providing for arbitrator immunity?

There are no provisions on an arbitrators' immunity.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The national courts have no competence in procedural issues of arbitration, except if the arbitration itself or the parties, knowingly by the arbitration, applied for the assistance of the court in interim measures or taking of evidence. The arbitration is independent while it solves arbitration issues.

6.8 Are there any special considerations for conducting multiparty arbitrations in Lithuania (including in the appointment of arbitrators)? Under what circumstances, if any, can multiple arbitrations (either arising under the same agreement or different agreements) be consolidated in one proceeding? Under what circumstances, if any, can third parties intervene in or join an arbitration proceeding?

These questions are not regulated by national laws. The parties are free to settle these issues in their agreement. The arbitration may also solve the questions of arbitration order as far as they are not agreed by the parties.

6.9 What is the approach of the national courts in Lithuania towards *ex parte* procedures in the context of international arbitration?

The Law provides that in certain circumstances the arbitration may

conduct *ex parte* procedures. On the other hand, the arbitral award may be provided for the appeal procedures if the party was not properly informed about the appointment of the arbitrator, hearings of arbitration or if the party could not provide its explanations because of any other serious reason. This provision in practice is also taken into consideration by the courts as the one, which is the basis to revoke the arbitral award.

7 Preliminary Relief and Interim Measures

7.1 Under the governing law, is an arbitrator permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of any party, make the other party pay a deposit to secure the claim. This is the only interim relief that the arbitral tribunal has at its disposal, while any other interim measures may only be granted by the court.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

According to the Law, it is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, interim relief from a court and for a court to grant such relief. The adoption of an interim measure does not prejudice the jurisdiction of the arbitral tribunal. A court may grant interim relief if there is a real threat that in the absence of such measures the execution of a future award may become more onerous or impossible.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

In practice national courts grant such measures if the mandatory requirements (as set out in *question 7.2* above) are fulfilled.

7.4 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

According to the CCP, a court may order the requesting party to guarantee the compensation of loss which the other party may incur due to the imposition of interim measures. Such a guarantee cannot be required by arbitral tribunal.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in Lithuania?

Unless otherwise agreed by the parties, the arbitral tribunal may determine the admissibility, relevance, materiality and weight of any evidence. The arbitral tribunal may order that any documentary evidence shall be translated into the language agreed upon by the parties or determined by the arbitral tribunal.

8.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure of discovery (including third party disclosure)?

This issue is not regulated by Lithuanian law.

8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

According to the Law the arbitral tribunal or a party with the approval of the arbitral tribunal may request from the local district court assistance in taking evidence. The court must execute the request according to the rules of the CCP.

8.4 What is the general practice for disclosure / discovery in international arbitration proceedings?

There is no general practice for disclosure/discovery in international arbitration proceedings.

8.5 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal? Is cross-examination allowed?

Unless otherwise agreed by the parties, the arbitral tribunal may, following the rules of the Law, determine at its discretion the procedure for the investigation of the case. According to the Law the arbitrator may, unless otherwise agreed by the parties, appoint one or more experts to report to it on specific issues to be determined by the arbitrator and/or require a party to give the expert any relevant information, to produce or provide access to any relevant documents, goods or other property for his inspection. Unless otherwise agreed by the parties and if a party so requests or if the arbitral tribunal considers it necessary, the expert shall participate in a hearing and deliver his written or oral report, as well as answer the questions put to him by the parties.

8.6 Under what circumstances does the law of Lithuania treat documents in an arbitral proceeding as being subject to privilege? In what circumstances is privilege deemed to have been waived?

This issue is not governed by Lithuanian law.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award?

Unless otherwise agreed by the parties, in arbitral proceedings with three or more arbitrators, any decision of the arbitral tribunal shall be made by a majority of votes of the arbitrators. Questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

The award must be made in writing and must be signed by the arbitrator(s). In arbitral proceedings with three or more arbitrators, the signatures of the majority of all arbitrators are sufficient, provided that the reason for any omitted signature is declared. The arbitrator(s) who refused to sign the award have the right to express their individual opinion in writing which must be adjoined to the award.

The award must state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is made on the basis of the conditions of settlement agreement. The award must state whether the claim is satisfied or rejected, as well as the amount of arbitration fees, trial costs and their allocation between the parties. The award must state the date and place of its issuance, the name(s) of arbitrator(s), the parties to the dispute, their place of residence or office, representatives of the parties. Each of the parties shall be served with the copy signed by the arbitrators in accordance with the Law

10 Appeal of an Award

10.1 On what bases, if any, are parties entitled to appeal an arbitral award?

According to Article 37 of the Law an arbitral award may be set aside by the Court of Appeal if:

- 1) The party making the application provides evidence that:
 - a) a party to the arbitration agreement was under some incapacity, or the said agreement is not valid under applicable laws;
 - b) the party has not been properly informed of the appointment of an arbitrator or of the arbitral proceedings or was unable to submit its explanations for other valid reasons;
 - c) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement; or
 - d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with provisions of the Law from which the parties could not derogate, or, failing such agreement, was not in accordance with the Law.
- 2) The court finds *ex officio* that:
 - a) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Lithuania; or
 - b) the award is in conflict with public order established by the laws of Lithuania.

10.2 Can parties agree to exclude any basis of appeal or challenge against an arbitral award that would otherwise apply as a matter of law?

The parties are not allowed to exclude any grounds of appeal against an arbitral award.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

According to the courts practice, an arbitral award can be revised only on the grounds provided in the Law.

10.4 What is the procedure for appealing an arbitral award in Lithuania?

An application for annulment of an arbitral award may be submitted to the Court of Appeal within 3 months after the arbitration award and, in case the award is corrected, supplemented or clarified, within 3 months after the relevant award of the arbitral tribunal. During the annulment proceedings, the execution of the award may

be stayed at the request of one of the parties. The Court of Appeal may, if so requested by a party, suspend the setting aside proceedings for a definite time period in order to enable the arbitral tribunal to resume the arbitral proceedings or take such other action as in the opinion of the Court would eliminate the grounds for setting aside the arbitral award. The Court's decision can be the subject of a complaint to the Supreme Court. However, Lithuanian courts are not authorised to change the content of an arbitral award.

11 Enforcement of an Award

11.1 Has Lithuania signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Lithuania ratified the Convention on 17 January 1995. It has entered one reservation that awards made in the territories of non-contracting states will be recognised and enforced only on the basis of reciprocity.

11.2 Has Lithuania signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Lithuania has not signed or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards.

11.3 What is the approach of the national courts in Lithuania towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

In most cases Lithuanian courts have recognised foreign arbitral awards and declared them enforceable. The party willing to commence proceedings for the recognition and enforcement of an arbitral award has to submit a written request and the original arbitration award or its copy, as well as the original arbitration agreement or its properly certified copy. In case the arbitral award or/and the arbitration agreement is not made in Lithuanian, a certified Lithuanian translation shall also be submitted. According to the Law, a court may refuse to recognise or enforce the arbitral award on the same grounds as provided in Article 5 of the New York Convention.

Awards of the national arbitral tribunal are binding from the moment of their adoption, without recognition by the court. In case one of the parties refuses to execute the award, the other party has a right to apply to the local district court and request for a certificate of enforcement. The district court may refuse to issue the certificate of enforcement on the grounds provided in the Law.

11.4 What is the effect of an arbitration award in terms of *res judicata* in Lithuania? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

According to the Law, national courts shall not initiate proceedings if an arbitral award which has become effective exists between the same parties on the same subject matter and on the same ground.

12 Confidentiality

12.1 Are arbitral proceedings sited in Lithuania confidential? What, if any, law governs confidentiality?

Although the issues of confidentiality are not explicitly governed by Lithuanian law, they are subject to the parties' agreement or to the rules of the relevant arbitration institution.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

There are no specific provisions which would prevent a party from seeking to rely, in subsequent proceedings, upon information disclosed in arbitration.

12.3 In what circumstances, if any, are proceedings not protected by confidentiality?

See questions 12.1 and 12.2 above.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Arbitral tribunals have the same types of remedies at their disposal as the national courts. As Lithuanian law provides for damages which are compensatory in nature (and not punitive), an award granting punitive damages under foreign law could be deemed as contrary to Lithuanian public policy.

13.2 What, if any, interest is available, and how is the rate of interest determined?

If there is no agreement between the parties, statutory interest may be applied. Under Lithuanian substantive law a party may always claim interest of 5% p.a. (or 6% p.a., if both parties are businessmen or private entities). Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions has been transferred into the Lithuanian law, and the Law on the Prevention of Late Payment in Commercial Transactions entitles in most cases to claim higher interest equal to a monthly VILIBOR interest rate (interbank offered rate, at which banks are willing to lend funds *in litas* to other banks), increased by 7 percentage points.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Unless otherwise agreed by the parties, an arbitrator decides on the allocation of fees and/or costs of the arbitral proceedings. In practice, the costs of the winning party are usually entirely compensated at the expense of the other party, unless otherwise agreed by the parties.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

An award itself is not subject to tax, but the awarded amounts may

influence the parties' tax obligations (e.g. income tax); it depends on the domicile of the receiving party and on the applicable law.

14 Investor State Arbitrations

14.1 Has Lithuania signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965)?

Lithuania signed the Convention on 6 July 1992.

14.2 Is Lithuania party to a significant number of Bilateral Investment Treaties (BITs) or Multilateral Investment treaties (such as the Energy Charter Treaty) that allow for recourse to arbitration under the auspices of the International Centre for the Settlement of Investment Disputes (ICSID)?

Lithuania is a party to nearly 50 BITs. Most of them provide for recourse under the ICSID as one of a few possible venues. Lithuania is also a member to the Energy Charter Treaty.

14.3 Does Lithuania have standard terms or model language that it uses in its investment treaties and, if so, what is the intended significance of that language?

Lithuania does not have standard terms or model language that it uses in its investment treaties.

14.4 In practice, have disputes involving Lithuania been resolved by means of ICSID arbitration and, if so, what has the approach of national courts in Lithuania been to the enforcement of ICSID awards and how has the government of Lithuania responded to any adverse awards?

The only case involving Lithuania in the ICSID arbitration was *Parkerings-Compagniet AS v. Republic of Lithuania*. As Parkerings' claims were accordingly dismissed in their entirety, there is no practice of national courts on the enforcement of ICSID awards.

14.5 What is the approach of the national courts in Lithuania towards the defence of state immunity regarding jurisdiction and execution?

There are few cases concerning state immunity decided by the national courts. However, the Supreme Court has stated, on several occasions, that Lithuania recognises the doctrine of restrictive state immunity, e.g. that commercial acts (*acta jure gestionis*) are not covered by the principle of state immunity.

15 General

15.1 Are there noteworthy trends in the use of arbitration or arbitration institutions in Lithuania? Are certain disputes commonly being referred to arbitration?

Arbitration is still a new notion in Lithuania, because most of the commercial disputes are commonly adjudicated through the courts. Disputes arising from construction, lease, purchase of immovable property and supply and carriage of goods are most commonly referred to arbitration. With regard to international disputes, they are mostly "arbitrable" disputes.

15.2 Are there any other noteworthy current issues affecting the use of arbitration in Lithuania, such as pending or proposed legislation that may substantially change the law applicable to arbitration?

There are no noteworthy issues at the moment.



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