The International Comparative Legal Guide to:

International Arbitration 2005

A practical insight to cross-border International Arbitration work

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Chapter 37

Lithuania

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1 Arbitration Agreements

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

The primary source of Lithuanian law regulating issues of both national and international commercial arbitration is the Law on Commercial Arbitration of the Republic of Lithuania (2 April 1996, No I-1274) (the “Law on Commercial Arbitration”). An arbitration agreement is defined in the said Law as an agreement between the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, and which may be the subject matter of arbitral examination. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate contract concluded by the parties.

According to the Law on Commercial Arbitration and the Civil Code of the Republic of Lithuania (18 July 2000, No VIII-1864) (the “Civil Code”), an arbitration agreement must be executed in writing. Pursuant to the Law on Commercial Arbitration, the requirement of the written form is satisfied if:

■ agreement is made in a document jointly signed by the parties;
■ agreement is concluded by an exchange of letters, telefaxes, telegrams or other documents that provide a record of the agreement; or
■ parties exchange statements of claim and defence, in which the existence of an arbitration agreement is alleged by one party and is not denied by the other, or there is other written evidence confirming that the parties have concluded an arbitration agreement or recognise its existence.

When executing an arbitration agreement, the following provisions of the Civil Code should also be taken into account:

■ Written agreements shall be made either by drawing up one document signed by all the parties or by the parties exchanging separate documents.
■ Documents signed by the parties and transmitted by means of telegraph, facsimile communication or over any other means of communication terminal equipment shall be conferred the same power as having been made in the written form, provided the protection of the text is guaranteed and the signature can be identified. Therefore, according to the laws of the Republic of Lithuania arbitration agreement can be executed by electronic means (i.e. by adhering to online contract or general terms and conditions containing an arbitration clause) if the above-mentioned requirements are met.

■ The parties may establish additional requirements for the written form of the transaction (signatures of certain persons, using a seal on the document, assignment of a special form for the document, etc.) and agree on legal consequences for non-compliance with such requirements. Should the parties fail to comply with the established requirements, the agreement shall not be considered made, unless the parties agree otherwise.

If a contract of the parties refers to a document containing an arbitration clause, such reference would constitute an arbitration agreement provided that the contract is in writing and the reference is an inseparable part of such contract.

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

Although the Law on Commercial Arbitration does not set out the detailed requirements for the contents of an arbitration agreement, it is advisable to incorporate the following elements into an arbitration agreement:

■ the parties to the agreement;
■ a definition of the scope of the parties’ agreement;
■ the seat of the arbitration;
■ an express statement that the arbitration is either ad hoc or institutional; if the arbitration is institutional, the parties should select an arbitral institution as well as applicable rules of procedure;
■ the number of arbitrators and method of appointment; it is advisable also to agree on qualifications of arbitrators;
■ confidentiality rules; and
■ in case of international arbitration agreements, it also should establish:
■ the language of the arbitration; and
■ a choice of law. According to the Law on Commercial Arbitration, in international commercial arbitration, in absence of such choice, the arbitral tribunal shall apply the law determined under applicable rules of conflict of laws, while in national commercial arbitration the laws of Lithuania would apply.

According to the Rules of Arbitration of Vilnius Court of
Although Lithuania has no long tradition of arbitrating disputes, generally the courts uphold arbitration agreements. As relevant Lithuanian laws on commercial arbitration recognise party autonomy, the case law shows that the approach of the national courts to the enforcement of arbitration agreements has become more positive recently, even if their practice is still not always consistent. According to judgements of the Lithuanian Supreme Court (which has the power of unifying the case law of Lithuanian national courts), the fact that an arbitration agreement does not address certain issues, e.g. the number of arbitrators, the method of appointment of arbitrators, etc., is not sufficient for rejection of such agreement as an arbitration agreement. In addition, any doubt on the existence of an arbitral agreement should be construed in favour of existence of such agreement, i.e. the principle in favor contractus should be applied. Therefore, if the will of the parties to submit their dispute to arbitration is evident, the courts should not refuse to enforce such an agreement.

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

In Lithuania, commercial arbitration is governed by:

- **special law** – the Law on Commercial Arbitration;
- **Civil Code**;
- **1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards** (the “New York Convention”), ratified by Lithuania on 17 January 1995. Noteworthy that when ratifying the New York Convention, Lithuania made a reservation on the basis of Article 1 (3) of the Convention that awards made in the territories of non-contracting states will be recognised and enforced only on the basis of reciprocity; and

The above-mentioned national laws establish the principle of supremacy of international law, i.e. where provisions set forth in international treaties of Lithuania are different from those established in the national laws, the relevant provisions of international agreements shall be applied.

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

The Law on Commercial Arbitration applies to both national and international commercial arbitration. In particular, it applies to arbitration where the place of arbitration is in the territory of Lithuania, as well as when separate procedural actions are carried out in the territory of Lithuania. In addition, certain provisions (e.g. on arbitration agreement and its judicial recognition, recognition and enforcement of foreign arbitral awards, etc.) apply notwithstanding the place of arbitration.

Noteworthy that Lithuanian law differs in respect of recognition and enforcement of local and foreign arbitral awards. In case of national arbitral award, the respective party has to apply to the district court for a writ of execution, i.e. no formal procedure of recognition is required. However, in accordance with the Law on Commercial Arbitration, the district court may refuse to issue a writ of execution on grounds which are very similar to those set forth in the New York Convention (Article V). In case of foreign arbitral award, the respective party has to apply to the Lithuanian Court of Appeals and the procedure of recognition of award provided for in the New York Convention shall be applied.

According to the Law on Commercial Arbitration, arbitration is considered international commercial arbitration if one of the following criteria is satisfied:

- at the time of conclusion of the arbitration agreement, the parties have their places of business in different states. If a party has more than one place of business, the place of business is that which has the closest relationship to arbitration agreement; if a party does not have a place of business, reference is to be made to his permanent place of residence;
- place of arbitration is situated outside the state in which the parties have their places of business;
- location, where a substantial part of the obligations arising from commercial relations of the parties is to be performed, is situated outside the state in which the parties have their places of business;
- parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country; or
- one or both parties to the dispute are Lithuanian economic entities in which foreign capital is invested.

Whereas national commercial arbitration is defined as arbitration for resolution of disputes between economic entities of Lithuania, except for the cases which fall under the definition of international commercial arbitration.

There are two significant differences provided for in
the Law on Commercial Arbitration between national and international commercial arbitration:

- in international commercial arbitration, in the absence of a choice of law, the arbitral tribunal shall apply the law determined under applicable rules of conflict of laws, while in national commercial arbitration the laws of Lithuania will apply, unless the parties had agreed otherwise; and
- in national commercial arbitration, the case will be heard in the Lithuanian language, while in international commercial arbitration, the parties are free to agree on the language(s) to be used in 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?

The Law on Commercial Arbitration is based on the 1985 UNCITRAL Model Law on International Commercial Arbitration (the “Model Law”). However, the Law on Commercial Arbitration differs from the Model Law in the following key respects:

- in contrast to the Model Law, the Law on Commercial Arbitration applies to both national and international commercial arbitration;
- the Law on Commercial Arbitration contains an additional criterion, as compared to the Model Law, for determination whether arbitration is considered as international, i.e. if one or both parties to the dispute are Lithuanian economic entities in which foreign capital is invested; and
- differently from the Model Law, the Law on Commercial Arbitration does not allow the arbitral tribunal to order any party to take such interim measures, as the tribunal may consider necessary. The Law on Commercial Arbitration only provides the arbitral tribunal with the right to order a security deposit, while only the court may grant any other interim measures.

### 3 Jurisdiction

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

The Law on Commercial Arbitration governs relations arising from commercial disputes. According to the Law on Commercial Arbitration, a commercial dispute is a controversy between parties arising from contractual or non-contractual legal relations, except disputes that may not be submitted to arbitration. The Law does not aim at expressly specifying those matters that are capable of settlement by arbitration. On the contrary, the Law on Commercial Arbitration provides for the following list of non-arbitrable disputes:

- disputes arising from relationships governed by constitutional, employment, family or administrative legal norms;
- disputes arising from consumer agreements;
- disputes related to competition law, patents, trademarks and service marks, as well as bankruptcy; and
- disputes, the party to which is a state or municipal enterprise, institution or organisation, except for the Bank of Lithuania (the central bank), may not be submitted to arbitration, unless an advance consent to such agreement has been given by the founder of such enterprise, institution or organisation.

According to the Rules of the Vilnius Court of Arbitration, it shall hear and settle commercial disputes arising from both contractual and non-contractual legal relations with the exception of disputes that cannot be settled by arbitration. Therefore, according to the Lithuanian law, any dispute either of contractual or non-contractual nature may be arbitrable, provided it does not fall within the list of non-arbitrable disputes set forth in the Law on Commercial Arbitration.

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

The arbitral tribunal is entitled to rule on its own jurisdiction (jurisdiction de jurisdiction), including any objections with respect to existence or validity of the arbitration agreement. For that purpose, an arbitrator clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso iure the invalidity of the arbitral clause. In addition, a plea of the party that the arbitral tribunal has no jurisdiction shall be raised not later than the submission of the statement of defence. The party is not precluded from raising such a plea by the fact that the party participated in the appointment of an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its competence shall be raised as soon as the matter alleged to be beyond the scope of its competence is raised during the arbitral proceedings. The arbitral tribunal may admit a later plea if it considers the delay justified. According to the Law on Commercial Arbitration, the arbitral tribunal may also rule on a party’s plea that the arbitral tribunal does not have jurisdiction either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within 30 days after having received notice of that ruling, the chairman of the arbitral tribunal to decide on the matter. The arbitral tribunal chairman’s decision shall be subject to no appeal. While such request of the party is pending, the arbitral tribunal may continue the arbitral proceedings, but it shall not make a final decision regarding the essence of the dispute.

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

The state court may address the competence of an arbitral tribunal when:

- issuing writ of the execution;
- considering an application to set aside an award (see 9.1);
- the state court may not resolve a dispute, which is subject to arbitration, provided the arbitration agreement is binding on the parties:
  - the state court must refuse to initiate the civil suite and consider the case; or
  - if the case is initiated – to dismiss the case.
4 Selection of Arbitral Tribunal

4.1 Are there any limits to the parties’ autonomy to select arbitrators?

The arbitrator may be any natural person, who:
- has full capacity to enter into obligations; and
- has full civil and public rights.

According to the Law on Commercial Arbitration, persons who are prohibited by the Lithuanian laws to engage into other paid employment relationships, may not practice arbitration on a permanent basis, neither are they allowed to be paid for arbitration (with the exception of procedural fees). However, this rule is not applicable to advocates and assistant advocates.

The Law on Commercial Arbitration provides for that parties are free to appoint any competent natural person, irrespective of his nationality, to act as an arbitrator, however, the person’s consent to act as an arbitrator is always required. Parties are also free to determine the number of arbitrators, but in all cases the number must be odd. Moreover, parties are allowed to agree on a procedure of appointing the arbitrator or arbitrators. However, every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.

Noteworthy that according to the Law on Commercial Arbitration, in case of international commercial arbitration, when an arbitral tribunal consist of sole arbitrator or in case of appointment of the third arbitrator, it is recommendable to appoint such arbitrators of nationality other than those of the parties to the dispute.

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

According to the Law on Commercial Arbitration, any party may request the chairman of an arbitral tribunal to take the necessary measures for the appointment of an arbitrator, unless the agreement on the appointment procedure provides other means for securing the appointment of arbitrators, if:
- a party fails to act as required under procedure agreed by the parties;
- the parties or two arbitrators, appointed by them, are unable to reach an agreement on appointment of an arbitrator according to the procedure agreed by the parties; or
- third parties fail to perform any function with regard to the appointment of arbitrators.

When appointing an arbitrator or arbitrators the chairman of an arbitral tribunal must have due regard to any qualifications required of the arbitrator by the agreement between the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. In addition, decisions on the said matters entrusted to the chairman of arbitral tribunal shall not be subject to appeal.

The Rules of Vilnius Court of Commercial Arbitration provide for the following rules on the appointment of the arbitrator(s) in case of the failure by the parties to elect arbitrators, unless parties agree otherwise:
- in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he/she shall be appointed, upon request of a party, by the chairman of the Court of Arbitration;
- if a party fails to appoint the arbitrator within a fixed period of 30 days, the appointment shall be made, upon request of a party, by the chairman of the Court of Arbitration;
- if two arbitrators appointed by the parties to the dispute fail to agree on the third arbitrator within 10 days from the date of appointment of the last arbitrator, the third arbitrator shall be appointed by the chairman of the Court of Arbitration.

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

It is generally considered that national courts (courts of the state) cannot intervene in the selection of arbitrators.

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

The independence, neutrality and impartiality of the arbitrator are central in the arbitration process. In accordance with the Law on Commercial Arbitration, an arbitral tribunal deciding on the matters must be independent. No court of the state has the right to intervene in an arbitral tribunal’s work except in instances provided by the law.

The provisions of the Law on Commercial Arbitration defining the grounds and procedure of challenging an arbitrator, the restrictions to act as an arbitrator serve to ensure independence, neutrality and impartiality of an arbitrator. According to those provisions, when a person is approached in connection with his/her possible appointment as an arbitrator, he/she must reveal any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

Moreover, an arbitrator, from the time of his appointment and throughout the arbitral proceedings, must reveal such circumstances if he/she has not done that yet. Furthermore, an arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence (e.g. an arbitrator is officially or otherwise dependent on one of the parties; is a relative of one of the parties; is directly or indirectly concerned with the outcome of the case in favour of one of the parties; participated in pre-arbitral mediation procedure, etc.).

The Rules of Vilnius Court of Commercial Arbitration sets forth that every arbitrator must be and remain impartial and independent of the parties involved in the arbitration and define the grounds and procedure of challenging an arbitrator.

5 Procedural Rules

5.1 Are there laws or rules governing the procedure of arbitration in your country? If so, do those laws or rules apply to all arbitral proceedings siting in your country?

The procedural rules set forth in the Law on Commercial Arbitration are applicable to arbitration proceedings that have their seat in Lithuania. In addition, the said law is also applicable to individual procedural actions, if they are carried out in the territory of the Republic of Lithuania. Those rules apply to all arbitral proceedings sited in Lithuania, irrespective of the citizenship or nationality of the parties to the dispute, as well as
irrespective of whether the arbitral process is organised by a permanent arbitral institution or not.

However, the general principle is that the parties are free to determine the mode of proceedings to be applied in the arbitration.

In addition, the Rules of Vilnius Court of Commercial Arbitration are also applicable to the procedure of settling commercial disputes irrespective of the national or international character of arbitration, in situations where the disputing parties either agree in writing to refer their disputes for settlement to the Vilnius Court of Commercial Arbitration or to settle disputes by arbitration in accordance with these Rules.

5.2 In arbitration proceedings conducted in your country, are there any particular procedural steps that are required by law?

As mentioned above (5.1), the parties to the dispute are free to determine the procedures applicable to settlement of their disputes. Relevant Lithuanian laws do not provide for any particular procedural steps to be followed in arbitration proceedings that are strictly distinct from the usual arbitration procedure. However, it is worth noting that according to the Law on Commercial Arbitration, unless otherwise agreed by the parties, the arbitral proceedings shall commence on the date on which a request for the dispute to be referred to arbitration has been received by the respondent.

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

The Law on Commercial Arbitration allows parties to choose the rules on how the hearings should be arranged. In any case the tribunal is required to act fairly and impartially as between the parties. According to the Law on Commercial Arbitration, in case of absence of agreement between the parties, the arbitral tribunal may, subject to the provisions of the said law, conduct the arbitration in such manner as it considers appropriate. The powers conferred upon the arbitral tribunal include the power to determine the admissibility, relevance, materiality and weight of any evidence.

In accordance with the Rules of Vilnius Court of Commercial Arbitration, the proceedings before the arbitral tribunal shall be governed by the rules of procedure agreed on by the parties, the rules of procedure determined under the laws of the place of arbitration, and the Rules. Where the parties fail to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate.

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

The Law on Commercial Arbitration provides that no court of the state shall intervene in the work of an arbitral tribunal except where so provided by this law. Therefore, the arbitral tribunal or a party with the approval of the arbitral tribunal may request assistance in taking evidence, application of interim measures from the district court operating in the same location as the arbitral tribunal. The court must execute the request according to the rules laid down in the Code of Civil Procedure.

6 Preliminary Relief and Interim Measures

6.1 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?

According to the Law on Commercial Arbitration, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of any party, rule the other party to pay a deposit to secure the claim. Under the same conditions the arbitral tribunal may address the district court operating in the same location as arbitral tribunal to grant an injunction.

One may consider that an arbitral tribunal may award preliminary or interim relief pursuant to the arbitration agreement. In such case, the parties shall be obliged to follow the decision of the arbitral tribunal. If parties act in good faith, the assistance of a state court is not required. In addition, parties may always apply directly to the state court to grant preliminary or interim relief in connection with arbitration proceedings. However, the relevant provisions of an arbitration agreement or institutional rules must be observed.

6.2 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 on Commercial Arbitration and the Rules of Vilnius Court of Commercial Arbitration, each party to the arbitration agreement is entitled to make a request, before or during arbitral proceedings, for preliminary relief from a state court.

In accordance with the Lithuanian legislation, in case dispute is examined in arbitral tribunal, there are two possibilities in respect of application of preliminary or interim relief measures:

- party to the dispute may independently address the respective Lithuanian court with the request on application of preliminary or interim relief; or
- party to the dispute may request arbitral tribunal for granting preliminary or interim relief, and in case of award of arbitral tribunal to grant the requested relief, such a party should:
  - address the Lithuanian Court of Appeals for the recognition and enforcement of such award adopted by the foreign arbitral tribunal, or
  - apply to the district court for a writ of execution, if such award is made by the national arbitral tribunal.

See Question 2.2.

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

Generally, one may consider that the Lithuanian courts follow the liberal approach to requests for interim relief by parties to arbitration agreements. Lithuanian case law reflects that the courts may recognise awards of foreign arbitration tribunals on preliminary or interim relief in accordance with the New York Convention, as well as may grant interim relief subject to the request of the parties to the arbitration agreement.
7 Evidentiary Matters

7.1 What rules of evidence (if any) apply to arbitral proceedings in your country?

Subject to provisions of the Law on Commercial Arbitration, the arbitral tribunal may order that any documentary evidence shall be translated into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Arbitral tribunal or a party, having approval of the arbitral tribunal, may request assistance in taking evidence from the district court operating in the same location as the arbitral tribunal. The court must process the request according to the rules of the Code of Civil Procedure.

If parties choose the Vilnius Court of Commercial Arbitration as the arbitral tribunal, rules of procedure of the Vilnius Court of Commercial Arbitration will be applied. According to the Rules, for the purposes of resolving their dispute, parties may agree in writing to depart from certain provisions of these Rules, with the exception of provisions on arbitration fees. Where such agreements are made, the arbitral tribunal shall either settle the dispute in accordance with the procedure established in the arbitration agreement of the parties or follow the procedure under those Rules, taking into account the limitations imposed by the parties to the dispute. Issues relating to the arbitration procedure which are not regulated by the applicable arbitration law, the Rules, or the arbitration agreement, shall be resolved by the arbitral tribunal responsible for resolving the dispute or the chairman of the Court of Arbitration if the tribunal has not yet been formed. Also see Question 7.5.

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

Disclosure / discovery are not known in the Lithuanian legal system. It is not customary to disclose any evidence to the opposite party before proceedings are initiated and it is not regulated in any way by the Code of Civil Procedure or other Lithuanian laws. However, it is not forbidden for parties in arbitration to agree on disclosure / discovery but, as mentioned, the procedure of disclosure / discovery would have to be defined by the parties themselves, as neither laws nor the Rules of the Vilnius Court of Commercial Arbitration address the issue.

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

See Question 7.2.

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

See Questions 7.1 and 7.2.

7.5 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?

The Law on Commercial Arbitration does not contain any specific rules regarding the production of written and/or oral witness testimony.

The Rules of Vilnius Court of Commercial Arbitration establish the following procedures:

- If the arbitral tribunal or any of the parties so wish, witnesses and experts may give evidence. The party requesting the summons and questioning of a witness shall, not later than within 15 days of the hearing, notify the arbitral tribunal thereof and submit the following information: (i) name, (ii) surname, (iii) the place of residence of the witness, (iv) the facts of the case that the witness may confirm or refute, and (v) the language in which the witness will testify. Should the party fail to fulfill the aforementioned requirements, the arbitral tribunal may refuse to summon the witness.

- Should the witness be unable to attend the hearing, the arbitral tribunal may accept and examine written evidence signed by the witness or a report produced after questioning of the witness, provided the witness was questioned by a national court at the request of the arbitral tribunal.

In case of arbitration by several arbitrators, the arbitral tribunal may commission one of the arbitrators to interview the witness. In such case, the report of the interview shall be submitted to the arbitral tribunal and to the parties to the dispute.

The information on the place, time and date of the main hearing of the arbitral tribunal shall be communicated in advance to the parties or to their representatives as well as to the witnesses and experts to be questioned during the hearing. The arbitral tribunal shall hear the case in camera. In addition, the arbitral tribunal may order the removal of any witness(es) or expert(s) when other witnesses or experts testify. Furthermore, the arbitral tribunal shall establish the procedure for hearing the witnesses and experts at its own discretion.

As to the oath before the tribunal and cross-examination, one may consider, bearing in mind that the issues are not regulated neither by the relevant legislation nor the Rules of Vilnius Court of Commercial Arbitration, that there is no requirement for witnesses to be sworn in before the tribunal, unless parties agree otherwise and that cross-examination is not forbidden, unless parties agree otherwise.

8 Making an Award

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

Pursuant to the Law on Commercial Arbitration, in case of arbitral proceedings with three or more arbitrators, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, 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 relevant Lithuanian legislation requires the award to be made in writing and be signed by the arbitrator or arbitrators. In arbitral proceedings with three or more arbitrators, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is indicated. The arbitrator or arbitrators who refused to sign the award shall have the right to state their individual opinion in writing which shall be adjoined to the award.
According to the Law on Commercial Arbitration, the award must contain the following information:

- arguments upon which it is based, unless the parties have agreed that no reasons are to be given or unless, at the request of the parties, the record of settlement is executed in the form of an arbitral award on agreed terms;
- whether the claim is satisfied or denied;
- sum of arbitration fee, expenses of the proceedings and their allocation between the parties;
- date and place of issuing thereof. The arbitral award shall be deemed to have been made at the location which is indicated in the award;
- name(s) of arbitrator(s);
- parties to the dispute;
- place of residence or office of the parties to the dispute; and
- representatives of the parties.

Under the Lithuanian law, it is required that a copy of an award signed by the arbitrators be delivered to each party to the dispute.

### 9 Appeal of an Award

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

According to the Law on Commercial Arbitration, an appeal of an arbitral award may be made to the Lithuanian Court of Appeals. Noteworthy, procedural grounds for an appeal established in the said Law are similar to those listed in the Model Law.

An arbitral award may be set aside by the Lithuanian Court of Appeals if the party making the application furnishes proof that:

- a party to the arbitration agreement was under some incapacity, or the said agreement is invalid under the laws to which the parties have subjected it or, if the parties fail to agree on governing law, under the laws of the country where the arbitral award was made;
- the party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was unable to present his case for other valid reasons;
- the award deals with the dispute not contemplated by or falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement between the parties, unless such agreement was in conflict with a provision of the Law on Commercial Arbitration from which the parties cannot derogate, or, failing such agreement, was not in accordance with the Law on Commercial Arbitration.

An arbitral award may also be set aside by the Lithuanian Court of Appeals, if it finds that:

- the subject matter of the dispute is not arbitrable under the Lithuanian laws; or
- the arbitral award is in conflict with the public policy established by the Lithuanian laws.

In addition, according to the Law on Commercial Arbitration, the Lithuanian Court of Appeals has the following procedural rights in relation to the appeal of an award:

- Lithuanian Court of Appeals, after it has accepted application for the setting aside, at the request of a party may suspend the enforcement of the award;
- if the parts of the arbitral award on matters submitted to arbitration may be separated from those not so submitted, only those parts of the award which contain provisions on matters not submitted to arbitration may be set aside;
- the Lithuanian Court of Appeals shall refuse to accept an appeal if three months have elapsed from the date of the arbitral award; and
- the Lithuanian Court of Appeals may, if so requested by a party asking to set aside an award, 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 actions as in the opinion of the Lithuanian Court of Appeals would eliminate the grounds for setting aside the arbitral award.

### 10 Enforcement of an Award

#### 10.1 Has your country signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? What is the relevant national legislation?

The New York Convention was ratified by Lithuania on 17 January 1995. The relevant national legislation is the Law on Commercial Arbitration and the Code of Civil Procedure.

Also see Question 2.1.

#### 10.2 What is the approach of the national courts in your country towards the enforcement of arbitration awards in practice?

The Lithuanian Court of Appeals (which is the institution that performs the function of recognising and enforcing foreign arbitral awards in the Republic of Lithuania) is not able to provide, on request, any statistics on the number of requests to recognise and enforce foreign arbitral awards accepted and declined.

There have been several notable cases when there was a refusal by the Lithuanian Court of Appeals to recognise and enforce a foreign arbitral award, specifically, on the following grounds:

- the recognition or enforcement of the award would be contrary to the public policy of the Republic of Lithuania (as enforcement of the award would have resulted in bankruptcy of the defendant, a large industrial firm, and, consequently, increased unemployment, less paid taxes to the budget);
- the party against whom the award is invoked was not given proper notice of the arbitration proceedings; or
- the arbitration agreement was not valid.

Also see Question 2.2.

### 11 Confidentiality

#### 11.1 Are arbitral proceedings sited in your country confidential? What, if any, law governs confidentiality?

The Law on Commercial Arbitration contains no specific provisions on confidentiality issues. According to the Rules of Vilnius Court of Commercial Arbitration, all the
hearing of the arbitration court are private, unless otherwise agreed by the parties.

11.2 Can information disclosed in arbitral proceedings be referred to and/or relied upon in subsequent proceedings?

If a party discloses such information, such a party will be liable for breach of arbitration agreement, provided the said agreement established confidentiality of arbitral proceedings, including the private hearings.

Also see Question 7.2.

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

Parties are generally free to agree on confidentiality of proceedings and scope thereof. Therefore, arbitration proceedings are not protected by confidentiality only if parties agree that the hearings shall be open.

12 Damages/interests/costs

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

As mentioned above, the parties to an arbitration agreement agree on the procedural issues. According to Lithuanian law damages are considered to be a part of substantive law. If parties choose Lithuanian law as applicable law, it must be noted that punitive liability is not known in the Lithuanian legal system, i.e., according to the Civil Code, in case both damages and penalty are awarded (e.g. LTL 100,000 of damages and LTL 50,000 of penalty), the whole amount of award will equal LTL 100,000, as penalty is included in damages but not added to the latter.

12.2 What, if any, interest is available?

As mentioned above, the parties to an arbitration agreement agree on the procedural issues. According to Lithuanian law the interest is a part of substantive, rather than procedural law. If parties choose Lithuanian law as applicable law, the Civil Code shall be applied. According to the Civil Code, interest of 5 per cent shall be paid for the breach of the term to fulfil a pecuniary obligation (6 per cent if both parties are legal entities or businessmen), unless parties have agreed on a higher interest rate. Unreasonably high interest rates may be challenged in court. In addition, the debtor shall also be bound to pay the aforementioned interest on the sum adjudged to the creditor for the period from the moment of the commencement of the case in the court until the final execution of the judgement.

12.3 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?

As mentioned above (Question 8.1), according to the Law on Commercial Arbitration, the award must contain information inter alia on expenses of the proceedings and their allocation between the parties. However, the Law on Commercial Arbitration contains no specific provisions on the recovery of fees and costs.

Noteworthy that if the parties to the dispute agree that the Vilnius Court of Commercial Arbitration shall be the arbitration court, the Rules of the Vilnius Court of Commercial Arbitration would be applied and fees and cost would be awarded to the party that won the case from the losing party, unless the parties agreed otherwise.

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

According to the Law on Income Tax of Individuals of the Republic of Lithuania (2 July 2002, No IX-1007), indemnity for material damage and amounts awarded by court and recovered under executive documents as indemnity for moral damage shall be exempt from personal income tax. According to the opinion of State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania, amounts received in any way (hence, including by way of arbitration) as indemnity for material damage shall be exempt from personal income tax, while amounts awarded as indemnity for moral damage shall be exempt from personal income tax only if awarded by the court (i.e. not by the arbitration court, which cannot be equated to a state court according to the commentaries by the State Tax Inspectorate).

In accordance with the Law on Profit Tax of the Republic of Lithuania (20 December 2001, No IX-675), damages recovered are exempt from tax on profits of legal entities. As no emphasis on the damages to be awarded by a state court is made, it can be construed that damages awarded by the arbitration court would also be exempt from corporate tax.

13 General

13.1 Are there noteworthy trends in the use of arbitration or arbitration institutions in your country? Are certain types of disputes commonly being referred to arbitration?

Arbitration is not a popular forum for settling disputes in the Republic of Lithuania. Commercial disputes in Lithuania are currently most commonly adjudicated through the national state courts. The practice of arbitration institutions began after the Law on Commercial Arbitration was passed in 1996. Since then, arbitration has been continuously gaining popularity, especially in relation to international business transactions.

Noteworthy that there were ca. 20 cases adjudicated in 2002, 8 cases in 2003, 12 cases so far in 2004. It is considered in legal circles that the popularity of arbitration should increase.

13.2 Are there any other noteworthy current issues affecting the use of arbitration in your country?

Lithuania has one arbitral institution, namely the Vilnius Court of Commercial Arbitration, which was established on 27 October 2003, by merging two arbitration institutions: Court of Arbitration by the International Chamber of Commerce Lithuania and the Vilnius Court of International Commercial Arbitration. The rules and relevant Lithuanian legislation are published on the official web-site: http://www.arbitrazas.lt.
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