GETTING THE DEAL THROUGH

Dispute Resolution

in 38 jurisdictions worldwide

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LITIGATION

1 Court system

What is the structure of the civil court system?

In Estonia the court of general jurisdiction of the first instance is the city court (*linnakohus*) or county court (*maakohus*). Starting from 1 January 2006 the current city and county courts shall all be known as county courts. After that, the courts of first instance will be county courts and administrative courts (*halduskohus*). The appellate courts will be regional (or circuit, or district) courts (*ringkonnakohus*) and the court of cassation shall be the National (or Supreme) Court (Riigikohus).

The territorial jurisdiction of county and city courts and the number of judges in each county, city or district court is determined by the minister of justice. The number of judges in the Supreme Court is 19. Most cases in the first instance courts are heard by a single judge. In civil proceedings two lay judges may assist the judge, if the parties so request. In district courts a panel of three judges hears cases. In the Supreme Court a panel of a minimum of three judges hears cases.

2 Judges and juries

What is the role of the judge and, where applicable, the jury in civil proceedings?

The Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*) follows the principle of competitive procedure. Thus, the judge has in theory a passive duty (in practice judges sometimes have become more active by eg pointing out that a party has failed to produce evidence or to respond to an argument presented). It is for the parties to raise arguments and submit evidence to the court. Each party shall prove the facts on which the claims and objections of the party are based. Evidence is submitted by the parties and other participants in a proceeding. The court may propose that the parties and other participants submit additional evidence. The court may collect evidence on its own initiative only to protect the public interest. Upon making a judgment, a court shall evaluate the evidence; decide which facts are established, which Act or legislation established on the basis of an Act applies in the matter and whether the action should be satisfied. If several claims are filed in a matter, the court shall make a judgment concerning all of the claims.

3 Limitation issues

What are the time limits for bringing civil claims?

Conditions for the expiry of a claim may be alleviated by contract. The alleviated conditions for expiry shall not be applied if the obligated person intentionally violated his own obligations. By agreement of the parties, a limitation period of less than 10 years may be extended but not by more than 10 years.

There are several different limitation periods in several laws such as the General Provisions of Civil Law Act (*Tsiviilseadustiku üldosa seadus*) and the Law on Obligations Act (*Võlaõigusseadus*). Thus, expiry should be checked pursuant to a specific claim. However, the general limitation period for a claim arising from a transaction is three years. Exceptions to this general rule include, eg, the limitation period for a claim arising from a contract for services due to deficiencies in a structure (five years). The limitation period of a claim begins when the claim falls due unless otherwise provided by law. Laws foresee several exceptions.

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

There are no specific actions or pre-action steps that the plaintiff must perform before lodging a claim with the court.

5 Starting proceedings

How are civil proceedings commenced?

Under Estonian rules the initiation of civil court proceedings is regulated by the Code of Civil Procedure. A new code is currently pending and shall probably enter into force in the beginning of 2006.

As a rule civil procedure is started with filing a claim. The court procedure always starts from the first instance. Civil matters are heard by county and city courts. A state fee is charged upon submission of a claim, appeal etc. State fees are stipulated in the State Fees Act (*Riigilõivuseadus*). As a rule in monetary claims the fee is stipulated on the basis of the amount of the claim (a fixed fee, not a percentage).

6 Timetable

What is the typical procedure and timetable for a civil claim?

Typical procedure consists of a written and oral stage. If a statement of claim is accepted, the court shall promptly notify the defendant. The court shall send copies of the statement of claim and of documentary evidence on which the claims of the plaintiff are based annexed thereto to the defendant and to third parties. The defendant shall answer the court in writing. The court shall send copies of the written answer and of documentary evidence annexed thereto to the plaintiff and to third parties.

Thereafter a preliminary hearing is held. During the preliminary hearing, the parties and other participants in the proceeding shall explain all their claims and objections orally to the court and specify all the evidence on which their claims and objections

are based. The hearing of witnesses is decided. The defendant notifies whether it wants to file a counterclaim or admit the claim. The court determines the date, time and place of the court hearing, ascertains whether the parties want the matter to be heard collegially, verifies the relevance and admissibility of the evidence etc.

After the preliminary hearing has ended, as a rule, no additional evidence is admitted (exceptions exist). After pre-trial proceedings, the matter is heard in a court sitting. Court hearings are oral.

After the hearing on the merits of the matter is terminated, the court shall hear the summations. Participants have the right to make closing arguments in the summations. The closing arguments may only refer to the facts which have been presented in the hearing on the merits of the matter and to the evidence which has been examined in a court session.

The code provides several procedural time limits, however due to high work load of courts, the limits regarding by when a hearing should take place are often not followed. The deadlines set for the parties are however strictly followed. A written notice of the filing of an appeal shall be submitted to the court which adjudicated the matter within 10 days after the judgment is made public. The term for filing an appeal for a participant in a proceeding who notifies the court within ten days shall be 20 days after the judgment is made public. The parties and other participants in a proceeding may submit a cassation against a judgment of a circuit court within 30 days after the decision is made public, or within 30 days after receipt of a copy of the judgment if the judgment is made in a written proceeding.

7 Case management

Can the parties control the procedure and the timetable?

As a rule the procedure and the timetable are controlled by the court. Often time is wasted due to the fact that parties do not take full advantage of the written procedure and submit evidence at the preliminary hearing. Consequently the other side may request additional time to examine the evidence and to respond etc, which causes the hearing to be postponed. The parties can expedite the procedure by being more thorough at the written stage, submitting evidence and petitions etc. By introducing arguments and evidence before the oral hearings, it is possible to reduce the number of oral hearings.

8 Evidence

What is the extent of pre-trial exchange of evidence? Is there a duty to preserve documents and other evidence pending trial? How is evidence presented at trial?

Evidence is submitted during the written stage and the preliminary hearing. During a pre-trial proceeding, the court shall adjudicate the applications of the participants in the proceeding, including those for an expert assessment or on-the-spot inspection, for the hearing of a witness on the basis of a letter of request and those requesting the submission of physical or documentary evidence. Witnesses are questioned during the court hearing. A participant in a proceeding does not have the right to submit new evidence after expiry of the term specified by the court for the submission of evidence. A court may reject evidence which is submitted later if it becomes evident that a participant in the proceeding intends to delay the proceeding, surprise the opposing party or achieve some other improper aim.

9 Interim remedies

What interim remedies are available?

The Code of Civil Procedure allows applications for securing a claim. The measures for securing an action are: the establishment of a judicial mortgage on an immoveable asset belonging to the defendant; the making of a notation in a property register concerning a prohibition on disposal of property; seizure of a moveable asset belonging to the defendant which is in the possession of the defendant or another person; a prohibition on a defendant from departing from his or her residence; a prohibition on the defendant from entering into certain transactions or performing certain acts; a prohibition on other persons from transferring property to the defendant or performing other obligations with regard to the defendant; in the case of the filing of an action for release of property from seizure, suspension of the compulsory sale of the property; suspension of collection in an execution proceeding if the execution document is contested by the filing of an action. A court may apply several measures concurrently to secure an action. A court shall consider the value of the action when securing it. A court may fine a person who violates a prohibition arising from a measure for securing an action. A plaintiff has the right to request that the person at fault compensate for damage arising from failure to execute a ruling on securing an action.

The above can be applied by a ruling of the court on the application of a party. An action may be secured throughout the proceeding in a matter if failure to secure the action may render compliance with the judgment difficult or impossible.

10 Remedies

What substantive remedies are available?

Various types of remedies are available. For example claims for recognition of ownership, recognition of nullity, performance of obligations etc are available. As a rule punitive damages do not exist. The principle in awarding damages is to restore the position of the applicant to that which the applicant would have been in without the damaging act. This does not exclude the possibility of claiming lost profits or moral damages (for defamation etc). Interest rates are laid down in the Obligations Act.

11 Enforcement

What means of enforcement are available?

A decision obtained in a court of an EU member state can be enforced under the Council Regulation 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

If enforcement is sought in Estonia the Estonian Enforcement Code (*Täitemenetluse seadustik*) is applicable. Enforcement procedures are carried out by bailiffs who act under the Bailiffs Act (*Kohtutäituri seadus*) that came into effect in spring 2001. Reform of the Enforcement Code is expected in 2006.

Bailiffs act as independent judicial officers who recover debt after a positive judgment is made by a court of law or an arbitral tribunal. Bailiffs are responsible for their activity, ie damage caused by bailiff in the enforcement procedures must be compensated by the bailiff. Bailiffs have compulsory liability insurance with the minimum amount of EEK1 million.

Execution of court judgments and arbitral awards is carried out according to the Enforcement Code. The same rules apply to the enforcement of foreign arbitral awards and judgments of foreign courts if the respective conventions or bilateral treaties per-

mit the execution of these decisions. Requirements and orders of court bailiffs are mandatory for all persons in the territory of Estonia. The bailiff has a right to enter the debtor's buildings and premises.

Applications for execution may be submitted within 30 years after the date of the judgment or arbitral award. Law provides for cases when the execution procedure could or must be suspended or even terminated. For instance, the execution procedure may be suspended upon application of the creditor. Similarly, the execution procedure has to be terminated if the parties have reached an amicable solution as approved by a court of law.

Court judgments and arbitral awards may be executed as decided by the court, including by way of seizure and sale of the debtor's property whether moveable or immoveable, including property in possession of third parties; deductions from the debtor's salary and other cash resources; seizure of objects following a court judgment and turning such objects over to the creditor; securing the creditor's possession over the property in question; other means provided for in the instrument subject to execution.

If a court order is disobeyed, the court has the right to fine the party on the condition that the party has been warned in advance of the possibility of a fine.

12 Inter partes costs

Does the court have power to order costs?

A court shall, at the request of the party in whose favour a judgment is made, order that the other party pay the necessary and justified legal costs of the first party. If an action is satisfied in part, the legal costs to be borne by the plaintiff shall be calculated in proportion to the satisfied claims and the legal costs to be borne by the defendant shall be calculated in proportion to the part of the action which was dismissed. If an action is satisfied in part, the court may decide that the legal costs of both parties will be borne by the parties themselves. If a party fails to submit a list of legal costs and expense receipts to the court before the summations, the party does not have the right to request compensation for costs. A court shall order that the other party pay to the party in whose favour a judgment is made the necessary and justified costs of the legal assistance provided by the representative of such party; in the case of an action for a specified value, in an amount equal to up to five per cent of the value of the satisfied part of the action in favour of the plaintiff or in an amount equal to up to five per cent of the value of the dismissed part of the action in favour of the defendant; in the case of an action for an unspecified value, as determined by the court, but not more than the amount established by the minister of justice.As a rule a claimant is not required to provide security for the defendants costs.

13 Fee arrangements

Are 'no win no fee' agreements or other types of contingency fee arrangements available to parties?

The fee arrangements are currently regulated rather liberally. According to the Bar Association Act (*Advokatuuriseadus*) a fee can be determined on the basis of time (hourly fee), in a fixed amount (flat fee), contingent on the recovery obtained for the client as a result of the provision of the legal services (contingency fee). A fee shall be paid in money. On the basis of an agreement with a client, a fee may be determined as contingent on the results of the work of the advocate or other circumstances.

14 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Everyone has the right of appeal to a higher court against the judgment in his or her case pursuant to procedure provided by the law. The decisions of county, city and administrative courts are reviewed by circuit courts in the second instance by way of appeal proceedings. There are three circuit courts: Tallinn Circuit Court, Tartu Circuit Court and Viru Circuit Court.

The National Court as the highest court in the state reviews decisions by way of cassation proceedings, and performs the constitutional review. In cases and pursuant to the procedure provided by law, the National Court reviews decisions by way of proceedings for revision or proceedings for the correction of court error, and performs other duties arising from law. Acceptance for proceedings of matters which fall within the jurisdiction of the National Court is decided by a panel of at least three members of the National Court on the basis provided for in law regulating judicial procedure. A matter is accepted for proceedings if the hearing thereof is demanded by at least one justice of the National Court.

15 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

In Estonia the Council Regulation 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is directly applicable. Estonian courts recognise and execute foreign judgements only if Estonia has concluded a valid international agreement with the specific country or is a member to an international treaty. As a rule, a written application for recognition and execution is submitted to the court of first instance.

16 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

The procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions are covered with the 1970 Hague Convention On The Taking Of Evidence Abroad In Civil Or Commercial Matters. Furthermore, the European Union Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between courts of the member states in the taking of evidence in civil or commercial matters provides a set of rules in getting evidence for support of civil proceedings in foreign jurisdictions within the EU.

ARBITRATION

17 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

The Court of Arbitration of the Estonian Chamber of Commerce and Industry (ECCI) Act (*Seadus Eesti Kaubandus-Tööstuskoja Arbitraazikohtu kohta*) governs arbitral procedure. The Act only regulates procedure in the sole institutional arbitral tribunal and there is no law on arbitration in general. It follows that there is no ad hoc arbitration in Estonia today. The above-mentioned Act provides that rules of the Court of Arbitration of the ECCI shall be adopted on the basis of UNCITRAL Arbitration Rules. The actual arbitral procedure is regulated in detail in the Rules of the

Court of Arbitration of the ECCI (1992) which is based on the UNCITRAL Arbitration Rules (1976), not on the Model Law.

Currently the parliament is finalising the implementation act of the new Code of Civil Procedure, which will include more detailed provisions regarding arbitral procedure (including for ad hoc arbitration) and will probably enter into force on 1 January 2006. The basis of the new Code regarding arbitral procedure are: 1) UNCITRAL Model Law on International Commercial Arbitration (1985); 2) Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958); and 3) the practice of civil law countries (mainly German law) currently in the process of amending their corresponding legislation.

18 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The Court of Arbitration of ECCI shall settle disputes provided that: 1) the parties have concluded a written agreement to refer an existing or possible dispute to the Court of Arbitration of ECCI for settlement; 2) the claimant submits a claim and the respondent's action evidences its voluntary subjection to the jurisdiction of the Court of Arbitration of ECCI; 3) the dispute falls within the jurisdiction of the Court of Arbitration of ECCI under international agreements.

19 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If there is no agreement on the composition of the tribunal or parties fail to compose one during the term given by the Council of the Court of Arbitration of ECCI, the tribunal will be appointed by the Council. In this case tribunal will consist of one or three arbitrator(s) depending on the complexity of the dispute and also the value of the controversy.

If a party has doubts concerning an arbitrator's impartiality they shall have the right to submit a written reasonable request for disqualifying the arbitrator until a decision on the dispute is made. The Council may also, after consulting the parties, discharge an arbitrator if the arbitrator fails to fulfil his obligations properly or personally wishes to do so.

20 Procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The procedure is regulated by the Act regarding the Court of Arbitration of ECCI and the Rules of the Court of Arbitration of ECCI. There are some minor differences from the UNCITRAL Model Law, eg according to Estonian law a party may not itself request competent court assistance in taking evidence (cf Model Law Article 27) which is only taken by arbitral tribunal; when applying for nullifying the arbitral award on the basis that the composition of the arbitral tribunal or the procedure of the Court of Arbitration of ECCI was not in accordance with the agreement of the parties or with the Rules of the Court of Arbitration of ECCI. Such infringement must substantially also have affected the award (Model Law Article 34). The ECCI requires the arbitration fee to be paid in advance.

In general parties are quite free to agree on the main issues of the dispute, eg applicable law, arbitrators, language of the procedure etc.

21 Court intervention

On what grounds can the court intervene during an arbitration?

In general a court of law cannot intervene during arbitration. A court of law has a supporting function only if the Court of Arbitration of ECCI asks for assistance (application for interim measures, collection of evidence etc). Such powers cannot be overridden by agreement.

22 Interim relief

Do arbitrators have powers to grant interim or conservatory relief?

Unless otherwise agreed by the parties, the Court of Arbitration of ECCI may, at the request of a party, apply the following interim measures: the entry of a prohibition note on transfer, or the establishment of a judicial mortgage, on real property belonging to the respondent, attachment of moveable property or money; or prohibition on conducting certain transactions and acts.

For the recovery of possible damages caused by interim measures, the Court of Arbitration of ECCI may demand for the applicant to make a deposit.

23 Award

When and in what form must the award be delivered?

The Court of Arbitration of ECCI must resolve the dispute as quickly as possible but no later than six months after the submission of the claim along with its appendices to the arbitrator or arbitrators. If necessary, the Council of the Court of Arbitration of ECCI may extend the deadline at the request of the arbitrator or arbitrators.

The award shall be recorded in writing. The resolution shall bear the seal of the Arbitration Court of the ECCI. The written award shall be delivered within 30 days of its pronouncement.

24 Appeal

On what grounds can an award be appealed to the court?

A party can file a claim for nullification of the arbitral award on grounds very similar to Article 34 of the Model Law. Within one month after the receipt of the award of the Court of Arbitration of ECCI, any interested party may apply for the award to be nullified by the Tallinn District Court if: 1) the person who concluded the arbitral clause was not legally competent at the time of concluding such an agreement; 2) the referred agreement is invalid under law; 3) the party was unable to present or defend its views in the case; 4) the award deals with a dispute not subject to settlement in the arbitration under the agreement between the parties; 5) the composition of the tribunal or the procedure was not in accordance with the agreement of the parties or with the Rules of the Court of Arbitration of ECCI and such an infringement has substantially affected the award; 6) the settlement of the dispute does not fall within the jurisdiction of the Court of Arbitration of ECCI under Estonian laws; or 7) the recognition or enforcement of the award shall conflict with the constitutional order or public policy.

An application for nullification of an arbitral award shall be rejected if the applicant refers to infringements, of which the applicant may have notified the Court of Arbitration of ECCI during the procedure but has failed to do so in due time. Nullification, however, will not nullify the arbitration clause. Appeals to court on other grounds are not allowed.

25 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Arbitral awards may be enforced in all countries that have joined the 1958 New York Convention. Foreign arbitral awards may be enforced in Estonia under the same Convention.

A foreign arbitral award shall be recognised in accordance with the New York Convention. An application for recognition shall be heard by the Tallinn City Court. Awards of the Court of Arbitration of ECCI shall be enforced without recognition or declaration of enforcement by a court unless they shall be enforced in relation to foreign persons.

If a foreign arbitral award is to be enforced in Estonia, the judgment shall be declared to be enforceable. The county or city court within the territorial jurisdiction of which the award is to be enforced shall hear an enforcement application.

An application for the recognition or the enforcement application of a foreign arbitral award shall be submitted in writing. The county or city court makes a ruling on enforceability of an arbitral award in the territory of Estonia. The ruling with all the documents can then be sent to the bailiff of the debtor's residence for enforcement.

26 Costs

Can a successful party recover its costs?

If a claim is awarded, the claimant shall be fully compensated for the expenses of arbitration fees at the expense of the respondent. If a claim is awarded partially, such compensation will be provided in proportion to the amount to be collected from the respondent according to the award. If a non-monetary claim is partially awarded, the claimant shall receive compensation for the expenses related to the payment of arbitration fees, at the expense of the respondent and in an amount determined by the Court of Arbitration of ECCI. In case the procedure is discharged upon the approval by Court of Arbitration of ECCI of a settlement between the parties or if the procedure is suspended, the arbitration fee and registration fee shall not be reimbursed to the parties. If a claim is discontinued before it is passed on to an arbitrator or arbitrators or if the dispute falls outside the jurisdiction of the Court of Arbitration of ECCI, the parties will be reimbursed 90 per cent of the arbitration fee, and no reimbursement will be offered for the registration fee. If a claim is discontinued after it is passed on to an arbitrator or arbitrators, no reimbursement will be offered for the arbitration or registration fees. Other costs (including legal costs) will not be compensated for unless otherwise agreed by the parties.

ALTERNATIVE DISPUTE RESOLUTION

27 Obligatory ADR

Is there a requirement for the parties to litigation or arbitration to consider alternative dispute resolution before or during proceedings?

There is practically no legal basis for mediation/conciliation in Estonia. The closest thing to a formal mediation in Estonia is probably conciliation procedure with the public conciliator in collective labour disputes and procedure in Committee of Copyright Specialists that resolves disputes related to copyright and related rights by way of conciliation of the parties.

28 Specific features

Are there any specific features of the dispute resolution system not addressed in any of the previous questions?

Members of the Bar have three qualifications: sworn advocate, senior clerk and junior clerk (collectively advocates). Any advocate may be the contractual representative of a party in criminal proceedings in the National Court. However in administrative proceedings only sworn advocates or senior clerks, and in civil proceedings sworn advocates solely may act for clients before this court. In courts of first instance and courts of appeal any person may act as a contractual representative provided they hold a bachelor of law degree.

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