GETTING THE DEAL THROUGH

Dispute Resolution

in 38 jurisdictions worldwide

2005

Published by
GETTING THE DEAL THROUGH
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LITIGATION

1 Court system

What is the structure of the civil court system?

Approximately 700 judges deal with civil and criminal cases in Lithuania. The civil court system is organised in a four-level, but three-instance court system. Depending on the value and the subject of the case district courts and regional courts act as the courts of the first instance. As a rule, all disputes the value of which exceed the threshold of LTL100,000 (approximately €29,000) or involve trademarks, public procurements, bankruptcy, restructuring, squeeze-outs, etc are heard before the regional courts. Regional courts also deal with the appeals against the judgments of the district courts, whereas, the appeal against the judgments of regional courts are brought before and heard in the Court of Appeal. The Supreme Court is the third instance or cassation court, which deals with petitions for cassation against the judgments of the second instance courts, however, only if the matter involves a question of law and the value thereof exceeds LTL5,000 (approximately €1,450).

2 Judges and juries

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

The Lithuanian Civil Procedure Code provides for an adversarial civil process. It is up to the plaintiff to define the scope of the dispute, but during the hearing of the case, the judge has an obligation to be proactive and to establish, whether the facts which the parties base their arguments on are true and thus the judge may, at their discretion, appoint experts, hear witnesses, investigate evidence, etc.

Lithuanian law does not provide for the circumstances under which a jury would be involved in a civil process.

3 Limitation issues

What are the time limits for bringing civil claims?

Pursuant to the Lithuanian Civil Code time limits for bringing a claim commences from the day on which the right to bring an action may be enforced by one of the parties. The general time limit is a period of 10 years, however, in respect of certain subject matters of the claim, the laws may establish shorter time limits. The expiration thereof will be effected by the court only if invoked by a rival party. The time limit may not be renounced in advance, nor may the time limit and the calculation thereof be modified by the agreement of the parties.

4 Pre-action behaviour

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

In general, there are no specific pre-action requirements that a party must meet before bringing a civil claim, nor are pre-trial examinations for discovery commenced, nevertheless, different laws may provide for preliminary extrajudicial resolution of disputes, where the parties must try to solve the dispute before commencing court proceedings. One instance of such obligatory extrajudicial resolution of disputes is established by the Labour Code, under which the Labour Disputes Commission, formed from an equal number of representatives of the employees and the employer, is a mandatory body for dispute resolution in certain disputes.

5 Starting proceedings

How are civil proceedings commenced?

Civil proceedings in Lithuania are commenced by filing a written statement of claim, which must satisfy certain requirements with regard to the form and content of the document. Having received the statement of claim, the court sends a copy thereof to the defendant. However, the civil process will not be effected by the court until the receipt of the payment of stamp duty.

6 Timetable

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

Civil proceedings generally comprise the following stages:

- **The opening stage**. Having registered the statement of claim the chairman of the court appoints the judge, forwards the received statement of claim to the rival party and third parties, sets the terms for submission of the statement of defence and executes other actions needed for hearing of the case before the court. Subsequently, the judge decides, whether a written preliminary procedure or a pre-trial hearing will be commenced.
- **The preparatory stage**. Here the parties to a dispute and the third parties have to provide the court with all the evidence and information, relevant to the case. The aim of this stage is to prepare the case for the concentrated main hearing of the case on the merits.
- **The main hearing**. During the main hearing the court analysis and examines all the evidence already submitted to the court and facts, as well as discusses on the merits of the case.
- **The announcement of the judgment**.

In general, the length of the civil proceedings in the first instance courts in uncomplicated cases varies from six months up to one

year from filing a claim until the judgment is adopted. It may additionally take up to two years for the case to undergo the appeal and cassation procedures, or even longer in extremely complicated disputes.

7 Case management

Can the parties control the procedure and the timetable?

Civil proceedings are controlled by a judge, who opens, chairs and closes the proceedings, as well as allows parties to the proceedings to address the court. Parties to the proceedings have the right to raise questions to witnesses, request the other party or the court to provide the court with evidence, or request the appointment of experts. On the other hand, a judge has an obligation to observe that proceedings are not unreasonably delayed.

The timetable of the proceedings is set by the court, however, a judge tends to agree with the parties upon the date of the hearing. In addition, the parties may ask the court to extend time limits, to cancel or postpone a scheduled hearing, request additional time for submission of evidence or for providing explanations. Overall, the parties have little possibilities to influence the timetable of the proceedings.

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?

The Lithuanian Civil Procedure Code does not provide for pre-trial discovery. Thus the party basing its arguments on certain facts, has a burden to prove those facts and submit the supporting evidence to the court. If the party or other participants in the proceedings are unable to submit evidence, the court may, at the request of either party, require such evidence from third parties. However, all of the evidence must be submitted before the main hearing of the case and will be accepted later by the court only if the party submitting the particular evidence proves its previous unawareness of the presence of such evidence and shows that the delivery of new evidence would not protract the examination of the case.

The Lithuanian Civil Procedure Code provides for a number of possible forms of evidence, including witness testimony, expert reports, inspection reports, documents, photos, etc. Nevertheless, such data must satisfy the main criterion of the evidence, ie, to prove the existence or non-existence of circumstances relevant to the case.

As a general rule, all evidence that the court bases its judgment on must be examined during the main hearing. Thus, witnesses, experts or parties, if requested, must appear and give their testimony before the court.

9 Interim remedies

What interim remedies are available?

The Lithuanian Civil Procedure Code allows several types of injunctions, so-called interim protective measures. A court may grant an interim protective measure, if in case of failure to grant it, the execution of the court's decision may become cumbersome or impossible.

The following interim protective measures are available:

- Attachment of the defendant's real property
- Recording in the public register a prohibition of transfer of ownership title
- Attachment of moveable objects, financial means or material rights belonging to the defendant and which are held by the defendant or third persons
- Retention of items belonging to the defendant
- Appointment of an administrator of the defendant's assets
- Prohibition imposed upon the defendant participating in certain transactions or performing certain acts
- Prohibition imposed upon other persons transferring assets to the defendant or performing other obligations
- In exceptional cases, prohibition imposed upon the defendant leving their permanent place of residence
- Suspension of the realisation of the assets, if a claim against annulment of the attachment of these assets is submitted
- Suspension of exaction in the process of execution
- Adjudgment of temporal material maintenance or imposition of temporary restrictions
- Orders to perform acts to prevent the emergence or aggravation of damage
- Other measures provided for in laws, failure to adopt which may render the execution of the court's final decision cumbersome or impossible

A court may grant several interim protective measures, however the total amount of these may not materially exceed the amount of a claim.

Following its accession to the EU on 1 May 2004, Lithuania is bound by Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels Regulation). Pursuant to the Brussels Regulation Lithuanian courts shall provide interim measures in support of foreign proceedings. Article 31 of the Brussels Regulation stipulates that application may be made to the courts of a member state for such provisional, including protective, measures as may be available under the law of that state, even if, under this Regulation, the courts of another member state have jurisdiction as to the substance of the matter.

10 Remedies

What substantive remedies are available?

The Lithuanian Civil Code provides inter alia for the following list of remedies:

- Acknowledgement of a right
- Reinstatement of the situation that existed before the violation of a right
- Prevention of unlawful acts or prohibition to perform acts that pose a reasonable threat of damage occurring (preventive action)
- Interruption or modification of a legal relationship
- Declaration of the invalidity of an unlawful act of the state or municipal institution and the officials thereof
- Specific performance
- Recovery of pecuniary or non-pecuniary damages from the person who infringes the law and, in cases established by the law or contract, recovery of a penalty (fine, interest)

The Lithuanian Civil Code forbids the parties to agree on punitive damages, however, the plaintiff may claim for and the court may order payment of interest from the day of commencing of the proceedings to the day of full satisfaction of the awarded amount.

11 Enforcement

What means of enforcement are available?

If the judgment debtor does not satisfy the claim awarded by the court's judgment during the period of time set forth by the bailiff's request, the bailiff, not later than within 10 days of the deadline set by him, has to start enforcing the court order by coercive measures.

The law provides for a number of means of enforcement, inter alia including:

- Recovery from the assets, property or property rights, or income of the judgment debtor
- Seizure of documents evidencing the rights of the judgment debtor
- Administration of the judgment debtor's property and use of income gained
- Prohibition imposed upon other persons transferring assets to the judgment debtor or performing other obligations
- Seizure of particular property

If the court order or bailiff orders are disobeyed, the court upon the bailiff's request may impose a monetary fine or order arrest for a term up to 30 days. In certain cases breach of the orders of court or bailiff may become subject to criminal liability.

12 Inter partes costs

Does the court have power to order costs?

As a general rule, all costs relating to civil proceedings, including counsel fees, expert fees, translator fees, expenses for delivery of documents, etc have to be borne by the defeated party. If only a part of the claim is satisfied, fees and expenses will be divided proportionally to the amount of the satisfied claim. The exact amount of fees and expenses to be covered will be established by the final judgment of the court, which is subject to a separate appeal.

Upon the request of a defendant, foreign plaintiffs must deposit a security for the court. This requirement is not applicable in cases when the plaintiff owns sufficient real property in Lithuania or when such security is forbidden by international law and other legal acts.

13 Fee arrangements

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

The main rules on agreement on and payment of attorneys fees are provided by the Law on the Bar. Under the Law on the Bar, in civil litigation the attorney and the client are permitted to agree upon the amount of the attorneys fee in such a manner that the amount thereof would depend on the outcome of the case. However, such agreement must not contradict the principles of attorney practice.

14 Appeal

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

Each of the parties may submit a petition for appeal to a court of higher instance within 30 days (a 40-day term is imposed in case one of the parties is a foreigner) against the judgment from the day of its adoption at first instance. Appeals are heard by a panel of three judges in regional courts and the Court of Appeal.

The appeal is not possible if the value of the case does not exceed LTL250 (approximately €72), however, this threshold is not applied in disputes related to payment of wages and other labour-related allowances, alimony, compensation for damages, or disputes arising out of personal injury, death or occurrence of the employment related injury.

After the matter is dealt with at the appeal stage, the parties can present a petition for cassation to the Supreme Court. The Supreme Court deals with petitions for cassation against the judgments of the appeal courts, however, only if the matter involves a question of law and the value thereof exceeds LTL5,000. Furthermore, cassation is not possible against decisions regarding the application or non-application of interim measures.

15 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

As a general rule, an applicant wishing to recognise and enforce a foreign judgment must submit a request to the Court of Appeal.

Recognition and enforcement of the judgments adopted in the courts of the member states of the European Union (except of Denmark) is governed by Council Regulation (EC) No. 44/2001 of 22 December 2000.

Recognition and enforcement of the judgments adopted in the courts of the countries outside the European Union and EFTA is ensured by a number of bilateral treaties on recognition and enforcement. In cases where there is no international agreement, under the procedure prescribed by the Lithuanian Civil Procedure Code, the Court of Appeal recognises the judgment, if no grounds for refusal (eg the parties were not duly informed of the process, etc) are present.

16 Foreign proceedings

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

The procedure for taking oral or documentary evidence in Lithuania for use in civil proceedings in other jurisdictions varies depending on the foreign country in which civil proceedings take place. Regulation (EC) No. 1206/2001 of 28 May 2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters governs this issue in cases where the proceedings take place in one of the member states of the European Union (not applicable to Denmark).

Taking of evidence in Lithuania after receiving a request from other jurisdictions is governed by the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, as well as bilateral and multilateral agreements. If there is no international agreement between Lithuania and the country where a court intends to collect evidence in Lithuania, a request for legal assistance must be filed under the procedure set forth by the Civil Procedure Code.

ARBITRATION

17 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

The Lithuanian Law on Commercial Arbitration (the Law), which was enacted by the Lithuanian Parliament (Seimas) in 1996, is based on the UNCITRAL Model Law on International Commercial Arbitration, with several modifications.

It is worth mentioning that on 6 July 1992 Lithuania ratified the 1965 Washington Convention on the Settlement of Invest-

ment Disputes between States and Nationals of Other States. On 17 January 1995 Lithuania ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Based on Article 1(3) of the New York Convention, Lithuania made a reservation that awards made in the territories of non-contracting states will be recognised and enforced only on the basis of reciprocity.

18 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The Law defines an arbitration agreement 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. It is specifically foreseen that 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.

The arbitration agreement must be concluded in writing. The Law establishes that the arbitration agreement is considered to be concluded in writing if:

- Executed in a joint document signed by the parties
- Concluded by an exchange of letters, telefax, telegrams or other documents which provide a record of the agreement
- Concluded in an exchange of statements of claim and defence in which the existence of an arbitration agreement is alleged by one party and not denied by another, or there is other written evidence proofing that the parties have concluded an arbitration agreement or recognise it

It should be mentioned that the Law lays down the categories of disputes that may not be submitted to arbitration. It is foreseen that disputes arising from constitutional, employment, family, administrative legal relations, as well as disputes connected with competition, patents, trade marks, bankruptcy and disputes arising from consumption agreement may not be submitted to arbitration. Further, disputes, the party to which is a state or municipal enterprise, as well as a state or municipal institution or organisation, 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.

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?

The parties are free to determine the number of arbitrators. However, the Law establishes that, failing such determination, the number of arbitrators have to be three. In all cases the number of arbitrators must be uneven.

The parties are free to agree on a procedure of appointing the arbitrators. Failing such agreement, the procedure for appointing the arbitrators set by the Law should be followed. In case the parties fail to appoint the arbitrators, the party may request the chairman of the 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.

An arbitrator may be challenged only if there are circumstances that give rise to justifiable doubts as to their impartiality or independence, namely:

- 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;
- there are other circumstances that give rise to justifiable doubts as to their impartiality.

An arbitrator may also be challenged if they do not possess qualifications agreed to by the parties.

20 Procedure

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

The Law entrenches the general principle that the parties may agree on the procedure of the arbitral tribunal. Without such agreement, the arbitral tribunal may, subject to the provisions of the Law, conduct the arbitration as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance and materiality of, and weight to be given to, any evidence.

21 Court intervention

On what grounds can the court intervene during an arbitration?

The Law expressly provides that the arbitral tribunal deciding on matters is independent and no court could intervene in its work except where so provided in the Law. Therefore, court intervention is very limited. The arbitral tribunal may, upon request of the arbitral tribunal or a party to the dispute, assist in taking evidence and in granting interim measures.

22 Interim relief

Do arbitrators have powers to grant interim or conservatory relief?

The Law establishes that the arbitral tribunal may, at the request of any party, make the other party pay a deposit to secure the claim, unless otherwise agreed upon by the parties. However, differently from the UNCITRAL Model Law, the arbitral tribunal may not order party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may only, at the request of any party, address the district court operating in the same location as the arbitral tribunal to grant interim relief, unless otherwise agreed by the parties.

23 Award

When and in what form must the award be delivered?

The award must be made in writing and must be signed by the arbitrator or arbitrators. In arbitral proceedings with three or more arbitrators, the signatures of the majority members of the arbitral tribunal is sufficient, provided that the reason for any omitted signature is stated. The arbitrator/arbitrators who refused to sign the award has/have the right to state their individual opinion in writing which must be added 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. Further, it should be stated whether the claim is satisfied or denied, as well as the sum of arbitration fee, expenses of the proceedings and their allocation between the parties.

24 Appeal

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

An appeal to the award may be made to the Lithuanian Court of Appeal. The procedural grounds for the appeal against the award corresponds to those enlisted in the UNCITRAL Model Law. Further, it is expressly established that an arbitral award may be set aside by the Lithuanian Court of Appeal if the Court finds that:

- the subject matter of the dispute is not capable of settlement by arbitration under the laws of the Republic of Lithuania; or
- the arbitral award is in conflict with the public policy of the Republic of Lithuania.

Please note that recourse to the Lithuanian Court of Appeal against an arbitral award stops the enforcement of arbitral award. This creates an incentive to appeal against an arbitral award. The decision of the Court of Appeal might be further appealed to the Lithuanian Supreme Court. Practice reveals that parties tend to appeal to the Supreme Court.

25 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

An arbitral award takes effect from the moment it is made and has to be enforced by the parties. In the event one party refuses to enforce the award, the other party has the right to address the district court operating in the same location as the arbitral tribunal with the request to issue an executive order. In Lithuania, arbitral awards are enforced in the same order as judgments of the courts.

The party applying for the recognition and enforcement of a foreign arbitral award must supply the Lithuanian Court of Appeal with the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement or a duly certified copy thereof. If the arbitral award or arbitration agreement is not made in Lithuanian, the party shall supply a duly certified translation thereof into the Lithuanian language.

It is worth noting that an arbitral award made in any state which is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, is recognised and enforced according to the provisions of the Law and the New York Convention mentioned above.

26 Costs

Can a successful party recover its costs?

As a general rule, the losing party should compensate arbitration expenses of the winning party; if the claim is satisfied partially, the expenses are allocated proportionally. However, the parties may agree otherwise.

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?

The laws does not require the parties to litigation or arbitration to consider ADR before or during proceedings.

28 Specific features

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

No.

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