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PRINCIPLES OF THE ARBITRATION PROCEDURE

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Introduction. Settlement of disputes by arbitration becomes more and more popular in Lithuania. Therefore it is important to discuss the basic principles of the arbitration procedure. The major difference between the arbitration procedure and the court procedure is that in the latter, the state establishes a consequesnt sequence of actions starting with bringing into court and up to giving a decision or implementation of it. In the arbitration procedure the parties may decide between themselves both the manner and the course of the procedure for settling the dispute. In the event parties have not set forth the procedure for settlement of the dispute by arbitration, the dispute is to be settled in accordance with the regulations of the respective institutional arbitration or following UNCITRAL rules in cases of *ad hoc* arbitration.

Though settling of disputes by arbitration depending on the contents of the agreement between the parties may vary a lot, the following are the basic principles of the arbitration procedure, which nevertheless may be educed. Some of the principles have been set in the legislation governing the arbitration, some others, though not being set in legislation, have been universally recognised as the result of the common arbitration practice and doctrine.

Independence of the parties and disposition. Autonomy of the parties is one of the basic principles of arbitration. The theory of law states that the principle of autonomy is closely related to the principle of disposition. Some of the authors even make no distinction between them. Both principles comprise all the provisions on the right of the parties to freely agree about the procedure of settling the dispute: the language of the arbitration procedure, the place, arbitrators, rules to be followed, etc. The essence of the principles is that parties may freely operate both their material and procedural rights. Parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary for the public interest. Courts should not interfere. Thus the course of the arbitration depends on the initiative and will of the parties. The arbitration itself may be started only if initiated by the parties of the dispute. The parties are free to amend both the subject and the background of the claim, as well as to decrease or increase the claim in action (the above-specified rights are used very often), to conclude

friendly settlement agreement, a plaintiff may waive its claim, and a defendant may acknowledge a claim. The execution of the award as well as the revision of the award is subject to the initiative of the parties. Thus for instance, pursuant to the UNCITRAL Arbitration Rules (1976), if the parties to a contract have agreed in writing that disputes in relation to that contract shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree in writing. However the parties of the dispute shall: (i) follow the national legislation of the country in which an arbitration of a dispute is to take place; (ii) the arbitration procedure established by the parties shall not confront with the public order of the country, where the arbitration procedure is going to take place; (iii) the parties shall not infringe the international law regulations, when setting forth the rules of the arbitration procedure. In case of violation of the above mentioned provisions, the arbitration award may not be recognised and the execution of the award may be cancelled pursuant to Article 5 of the New York Convention on the Recognition and Enforcement of Arbitral Awards.

One of the most active and known arbitration institutions in Lithuania is the Arbitration Court at the Association International Chamber of Commerce – Lithuania (ACAICC-Lithuania), www.arbitrazas.lt. This Arbitration institution will be reorganized soon. The principle of autonomy is also laid in Article 5 of the Rules of Arbitration of ACAICC - Lithuania.

Equal protection. The essence of the equal protection principle is the equal rights of both parties to prove both the statements of claim and defence, to annex all the documents they deem necessary, to replace arbitrators, etc. Thus for instance, according to the Rules of ICC Arbitration (1998) the Arbitral Tribunal is in full charge of the hearings, at which all the parties are entitled to be present. The Rules of ACAICC – Lithuania provides for the equal protection of the parties.

Adversary system. The principle of the adversary system is one of the most important principles of the arbitration procedure. Both the court and arbitration procedure contains the elements of the "fight", i.e. each party shall have the burden of proving the facts relied on to support his claim or defence. Such principle is established in the UNCITRAL Arbitration Rules, in ICC Rules and in the ACAICC - Lithuania Rules. The major burden in the "fight" lies on the parties, however the role of an arbitrator is also not of least importance.

Confidentiality. The principle of confidentiality is of utmost importance in settling commercial disputes. The principle of confidentiality is in fact the principle differentiating the arbitration procedure from the court procedure, as the latter is public and the provision of publicity is set forth in the Constitution of the Republic of Lithuania.

Arbitration hearings are confidential, private meetings in which the media and members of the public are not able to attend. In addition, final decisions are not published, nor are they directly accessible. This is particularly useful to the businesmen who does not want his 'dirty laundry' being aired.

Rules of ICC Arbitration provide that the Arbitral Tribunal may take measures for protecting trade secrets and confidential information. According to the Rules of ICC Arbitration, the sessions of the Court, whether plenary or those of a Committee of the Court, are open only to its members and to the Secretariat. The documents submitted to

the Court, or drawn up by it in the course of its proceedings, are communicated only to the members of the Court and to the Secretariat and to persons authorised by the Chairman to attend Court sessions. Any documents, communications or correspondence submitted by the parties or the arbitrators may be destroyed unless a party or an arbitrator requests in writing within a period fixed by the Secretariat the return of such documents.

Pursuant to the UNCITRAL Arbitration Rules, hearings shall be private unless the parties agree otherwise. The award may be made public only with the consent of both parties.

This one of the most important principles of arbitration is mentioned in the ACAICC – Lithuania Rules.

Efficiency. A dispute should be resolved with reasonable promptness. Hearings should be convenient, efficient, and fair for all. The latter requirements comply with the nature of commercial activities. As the arbitration procedure is simpler than the court procedure all the above requirements may be met. The terms may be decided by the parties themselves, by arbitration resolving the dispute or by legislation governing the arbitration. Arbitration can usually be heard sooner than it takes for court proceedings to be heard. As well, the arbitration hearing should be shorter in length, and the preparation work less demanding.

The ICC Arbitration Rules provide that the Arbitral Tribunal shall proceed within as short time as possible to establish the facts of the case by all appropriate means. The time limit within which the Arbitral Tribunal must render its final award is six months.

The Rules of ACAICC – Lithuania provides that the arbitration court shall resolve the case in a fair and prompt way. The Rules of ACAICC – Lithuania provides that the dispute shall be resolved by announcing an award within no longer than six month from bringing the case into the court of arbitration. It is a very short period of time, especially bearing in mind that the award of the court of arbitration is a final one. A court case may go to appeal and then to further appeal to the Supreme Court (in some cases). Therefore a long period of time may pass before the final settlement of the dispute. Nevertheless, I would like to note that in my four years long practice as an arbitrator, the term of six month has always been followed and I hope will always be.

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