

BELARUS recent developments

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Frankfurt



www.sorainen.com



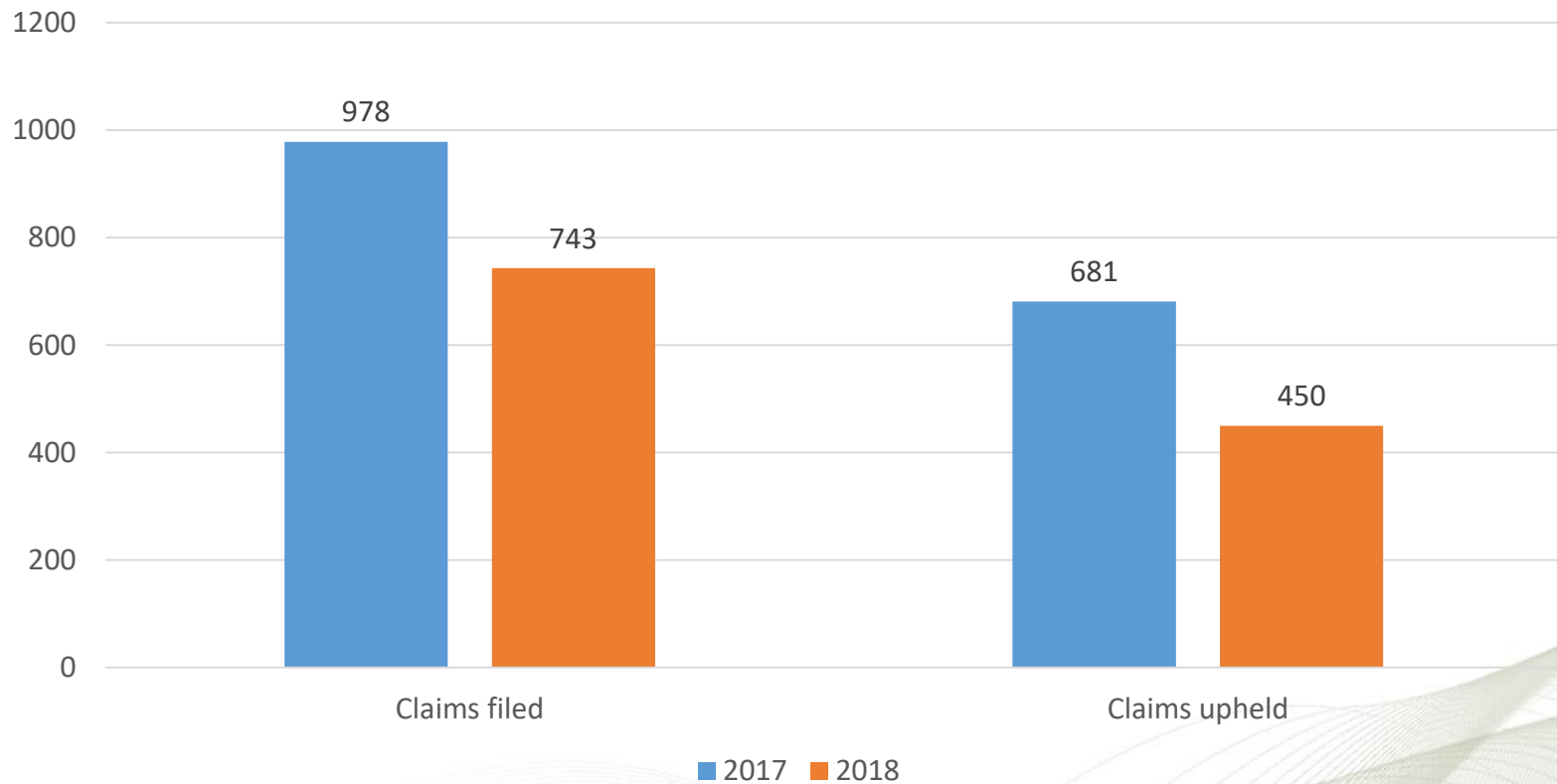
Some facts about Belarus

- Population **9,481,100** (on 207.600 sq.km)
- GDP **decline** in 2015-2016, **modest growth** in 2017-2018
- Devaluation in 2014 (**30%**), denomination in 2016 (~~0000~~)
- **Around 5 %** inflation in 2017-2018
- **Slightly negative** foreign trade balance (positive in **services**)
- “**Uberisation**” of economy (High-Tech Park)
- **38th** place in WB Doing Business 2018 (**24th** in Enforcing Contracts, but only **68th** in Resolving Insolvency)
- **State dominance** in the economy, **civil** legal system, “**inquisitorial**” process
- Party to **NYC, CISG, ICSID, DTTs and BITs** with main trade partners (including most of EU members states)
- **NOT [yet] a WTO** member (**expected in 2020**)
- Faced first three **investments claims** in 2018 (UNCITRAL, ICSID AF, ICSID)



Statistics – state courts

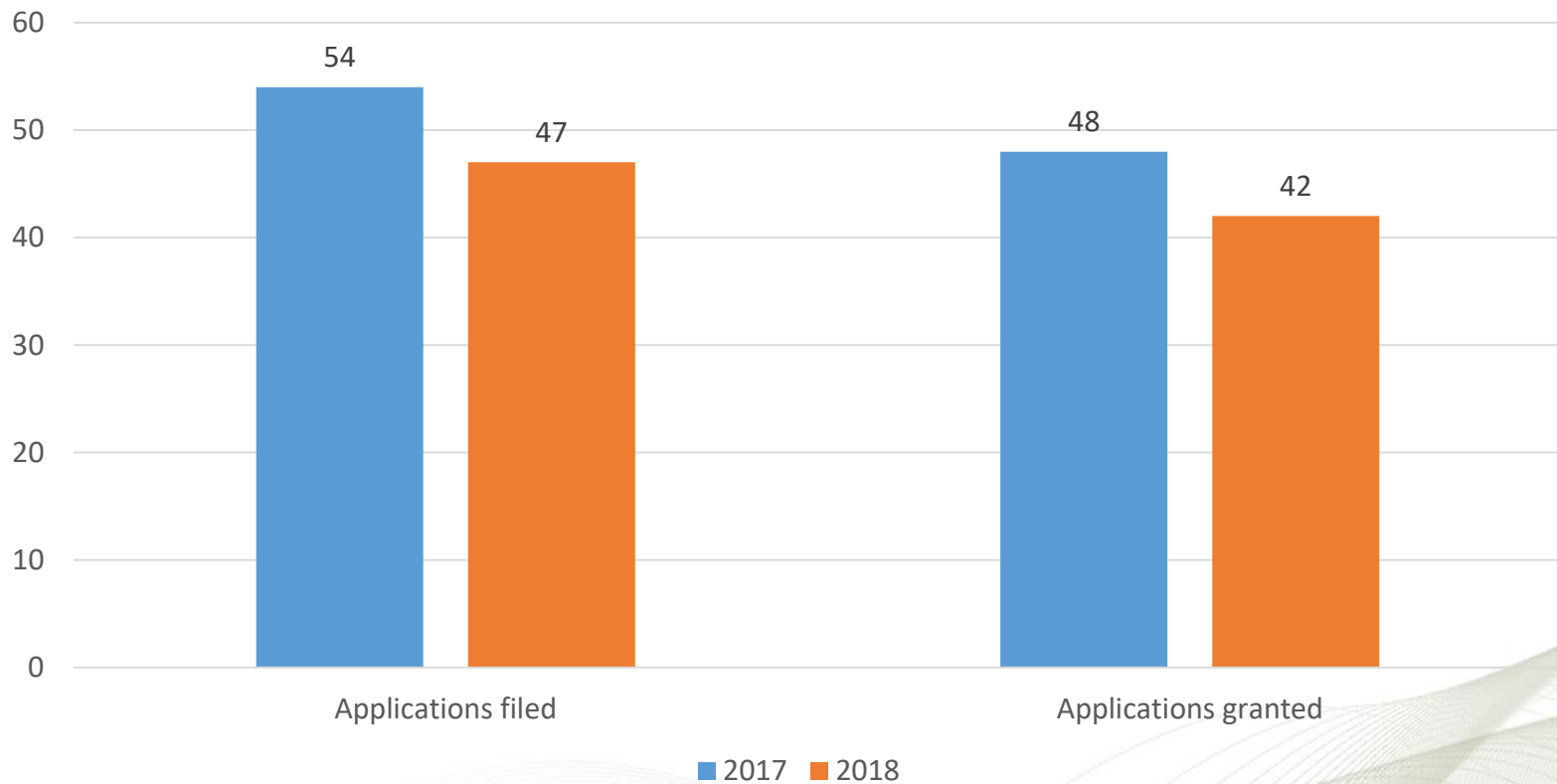
Disputes with foreign parties





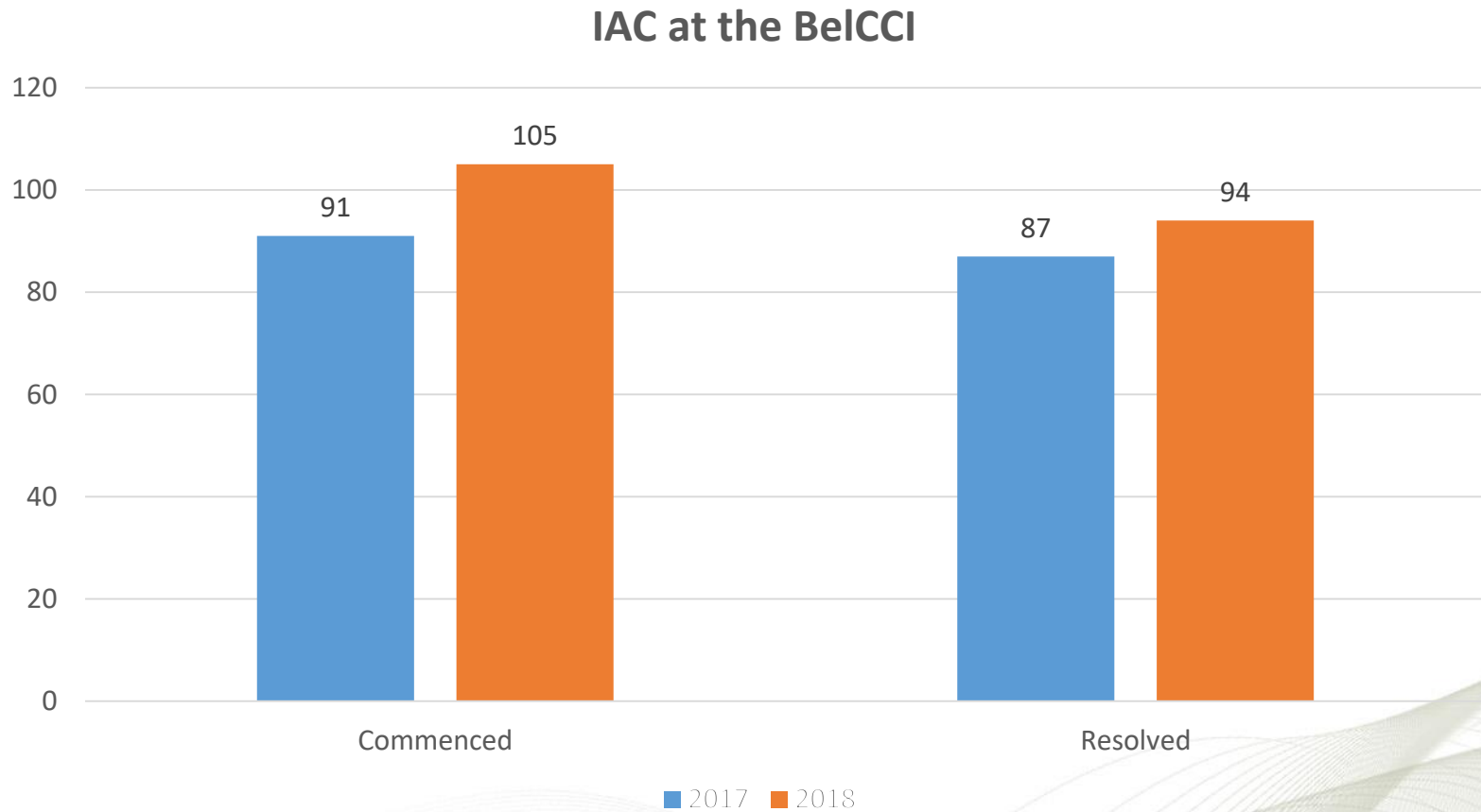
Statistics – state courts

Applications for enforcement of foreign judgements/awards





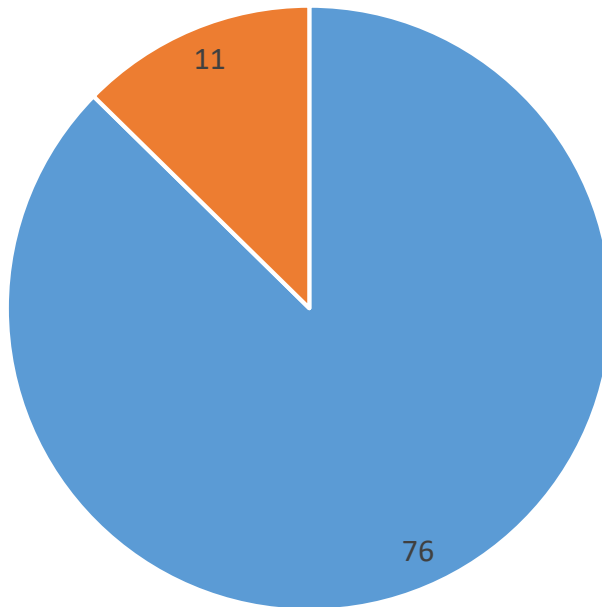
Statistics – arbitration (caseload)





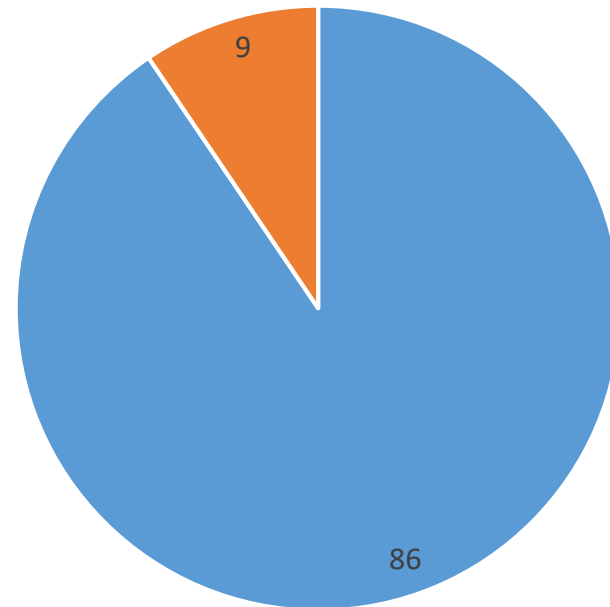
Statistics – arbitration (domestic vs international)

2017



■ International (76) ■ Domestic (11)

2018

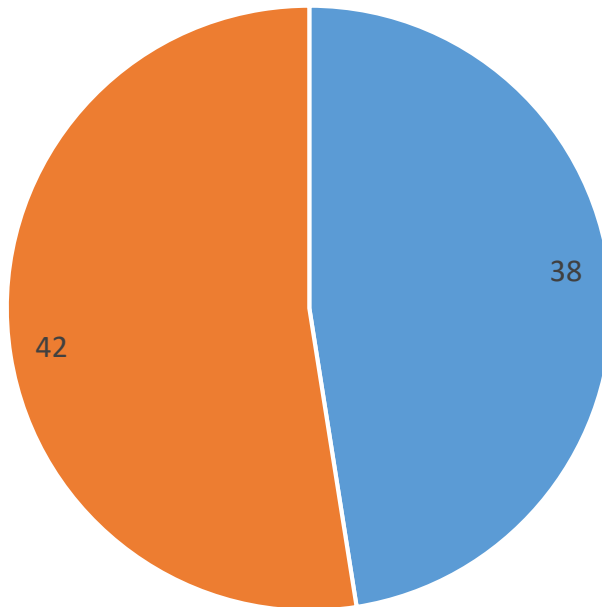


■ International (86) ■ Domestic (9)



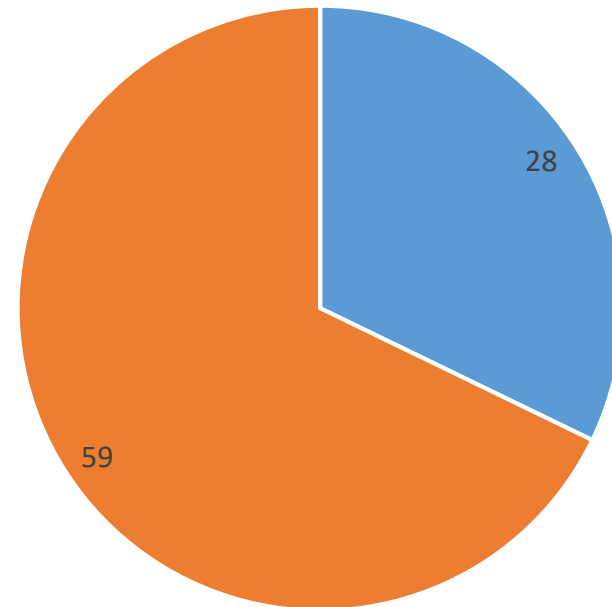
Statistics – arbitration (foreign parties)

2017



■ Claimants ■ Respondents

2018

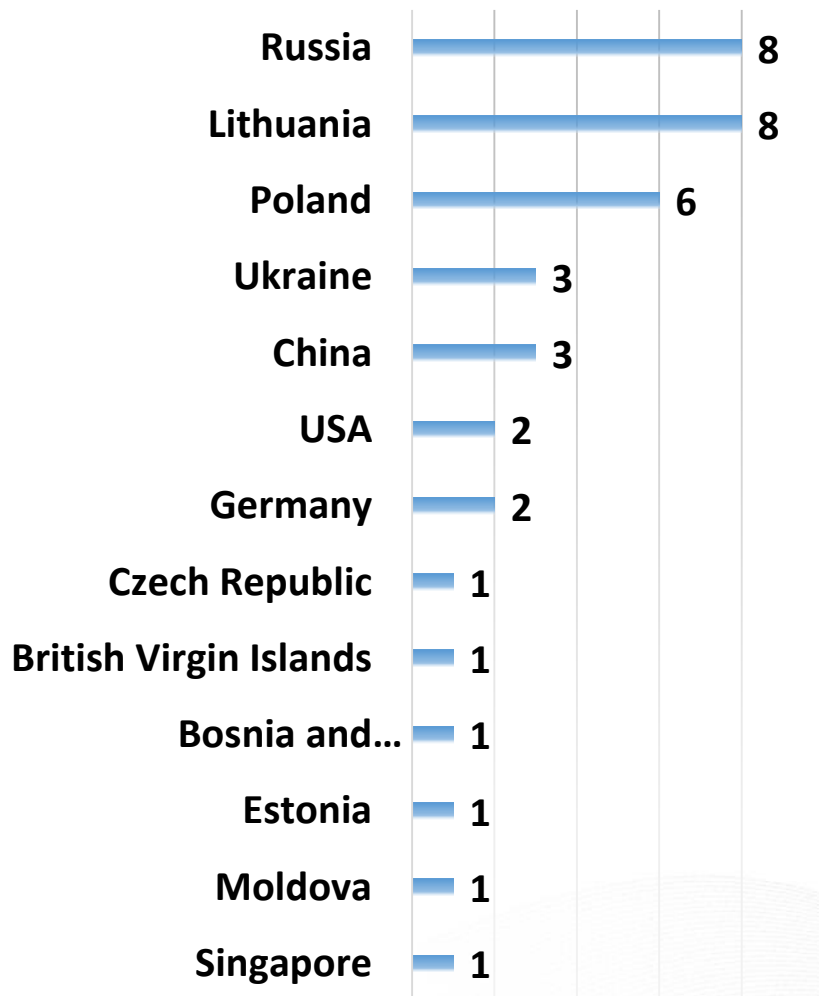


■ Claimants ■ Respondents

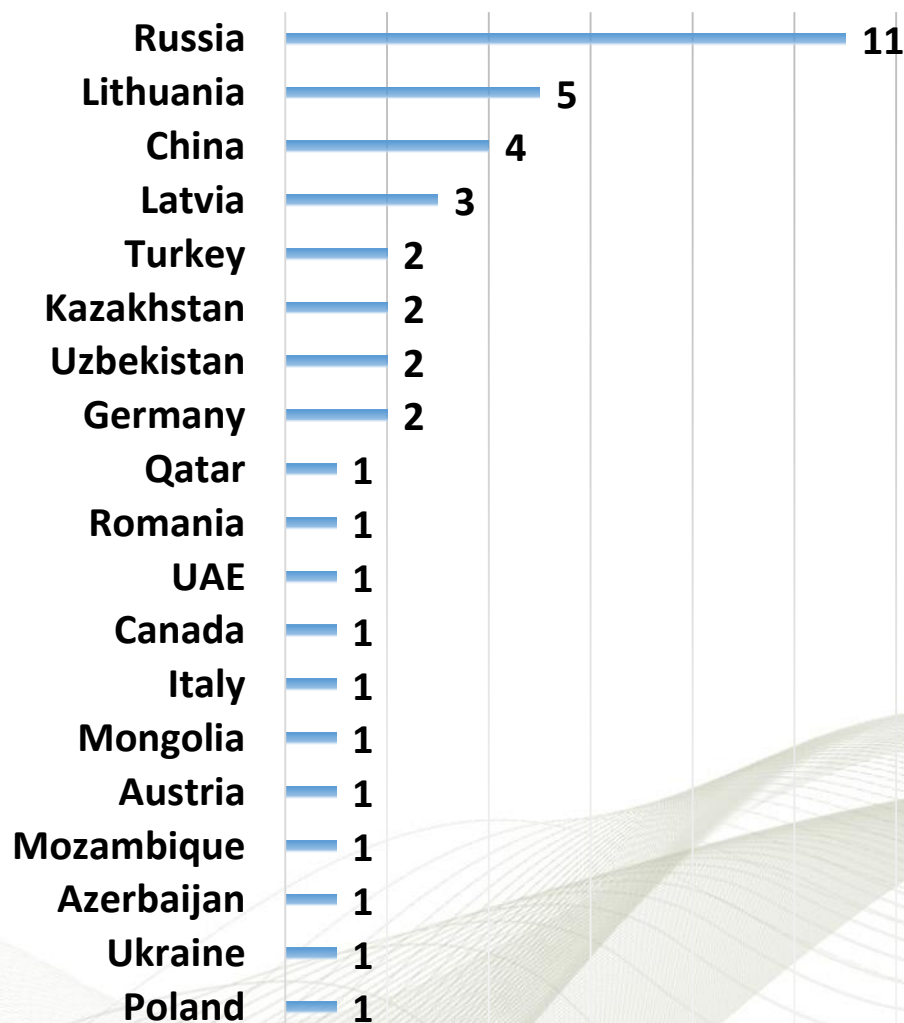


Statistics – arbitration (geography, 2017)

CLAIMANTS



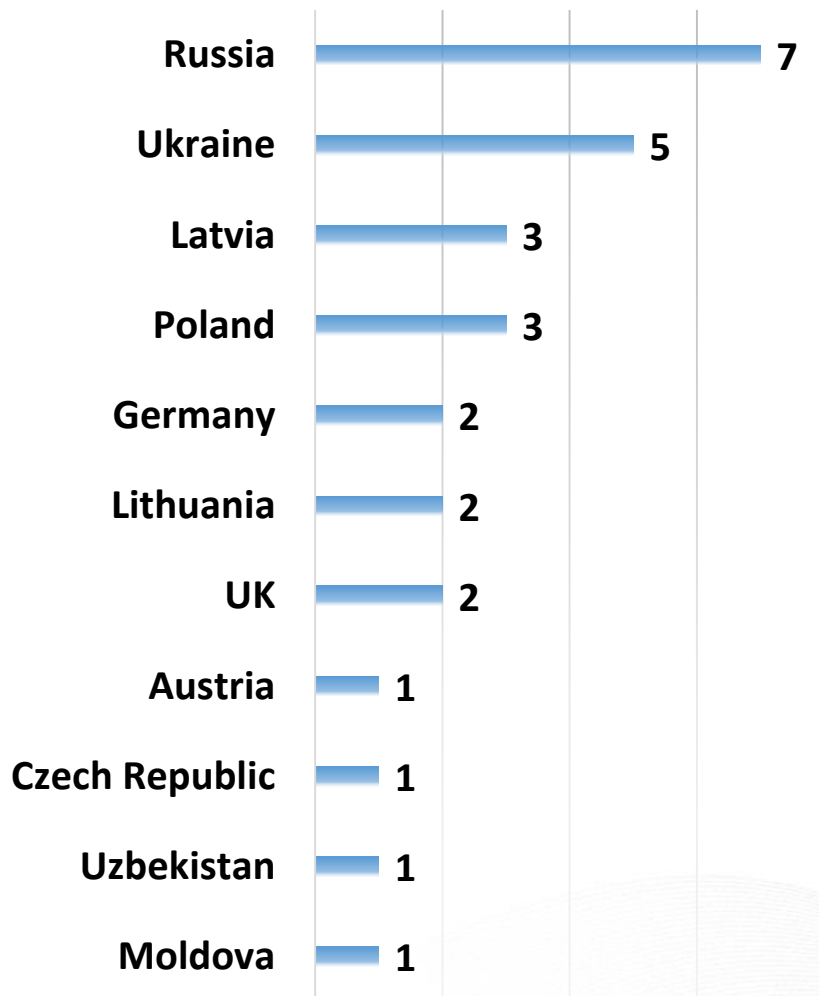
RESPONDENTS



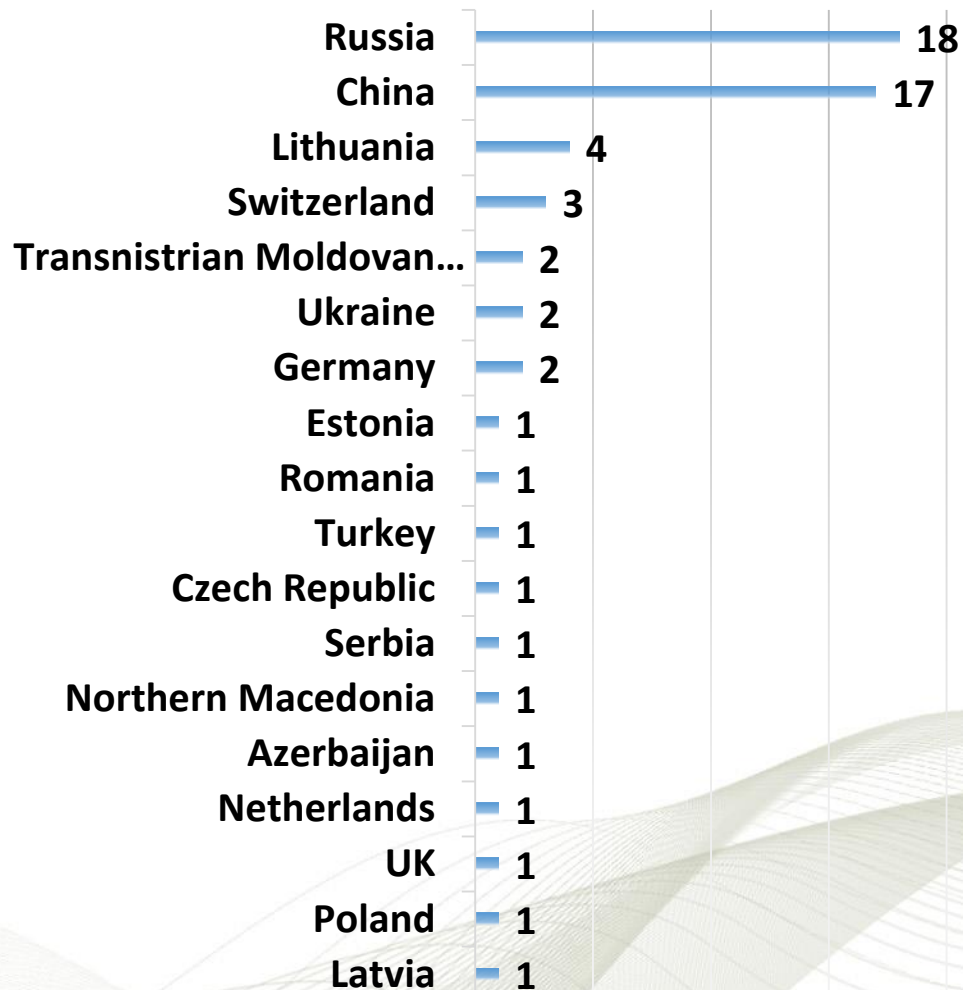


Statistics – arbitration (geography, 2018)

CLAIMANTS



RESPONDENTS





Status quo



- “Overall, after the [2014] reform **unified court system** is able to serve its purpose, while certain **optimisation of the caseload** allows moving forward – **improve the quality and effectiveness of justice.**”

V.O. Sukalo, Chairman of the Supreme Court of Belarus

25 February 2019



So where to solve your conflict in Belarus?

Mediation



Litigation



Arbitration





Mediation

- Natural response to heavy caseload (1000+ cases per judge per year)
- Enforceability of settlement agreements reached in mediation
- Financial incentives
- The only effective way to resolve corporate disputes
- Low public awareness and business culture
- Lack of qualified mediators
- Law on Mediation, 2013



Litigation

- Cheap
- Fast
- Low corruption
- Interim measures
- Focus on documentary evidence
- 3 levels of appeal, but low chances to overrule the 1st instance
- Financial incentives to use simplified proceedings and conciliation
- More difficult to litigate against state and state-owned companies
- Code on Commercial Procedure, 1998 (2004 edition)



Arbitration

- Arbitration-friendly environment
- More expensive and slower than state courts, though much cheaper and generally faster than foreign alternatives
- Few local arbitrators and counsel with international experience
- Specifics of arbitration law, rules and local practice in relation to:
 - ✓ conduct of proceedings (no PO1/ToR/PT, several 1 day hearings, often postponed at short notice, focus on documentary evidence, etc.)
 - ✓ appointment of foreign arbitrators
 - ✓ mandatory bifurcation if jurisdictional objection raised
 - ✓ scrutiny by the IAC Chairman
 - ✓ cession/assignment of arbitration agreement
- Law on International Arbitration, 1999 (UNCITRAL Model Law based)



Few tips to consider

- Mind **state courts** as good alternative (particularly in straightforward cases and when “**fast-track**” options are available)
- If Belarusian law is unavoidable – mitigate with **international law** (e.g. CISG) and **lex mercatoria** (e.g. Incoterms, FIDIC, UNIDROIT Principles)
- Work on **settlement** (either through direct negotiations or mediation) before rushing to the courts

DON'T SAVE ON LOCAL COUNSEL

– hire **experienced** one 😊

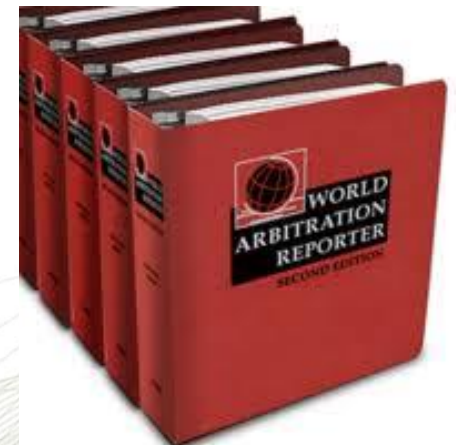


More information

- www.pravo.by – National Legal Internet Portal
- www.court.by – Supreme Court of the Republic of Belarus
- www.minjust.by – Ministry of Justice of the Republic of Belarus
- www.iac.by – International Arbitration Court at the BelCCI
- <http://newyorkconvention1958.org/> – 5 NYC cases
- **Case Law on UNCITRAL Texts (CLOUT)** – 18 CISG cases
- **World Arbitration Reporter (WAR) - Second Edition**

National reports on *Belarus* (volume 1)

and *IAC at the BelCCI* (volume 2)



Thank you!

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