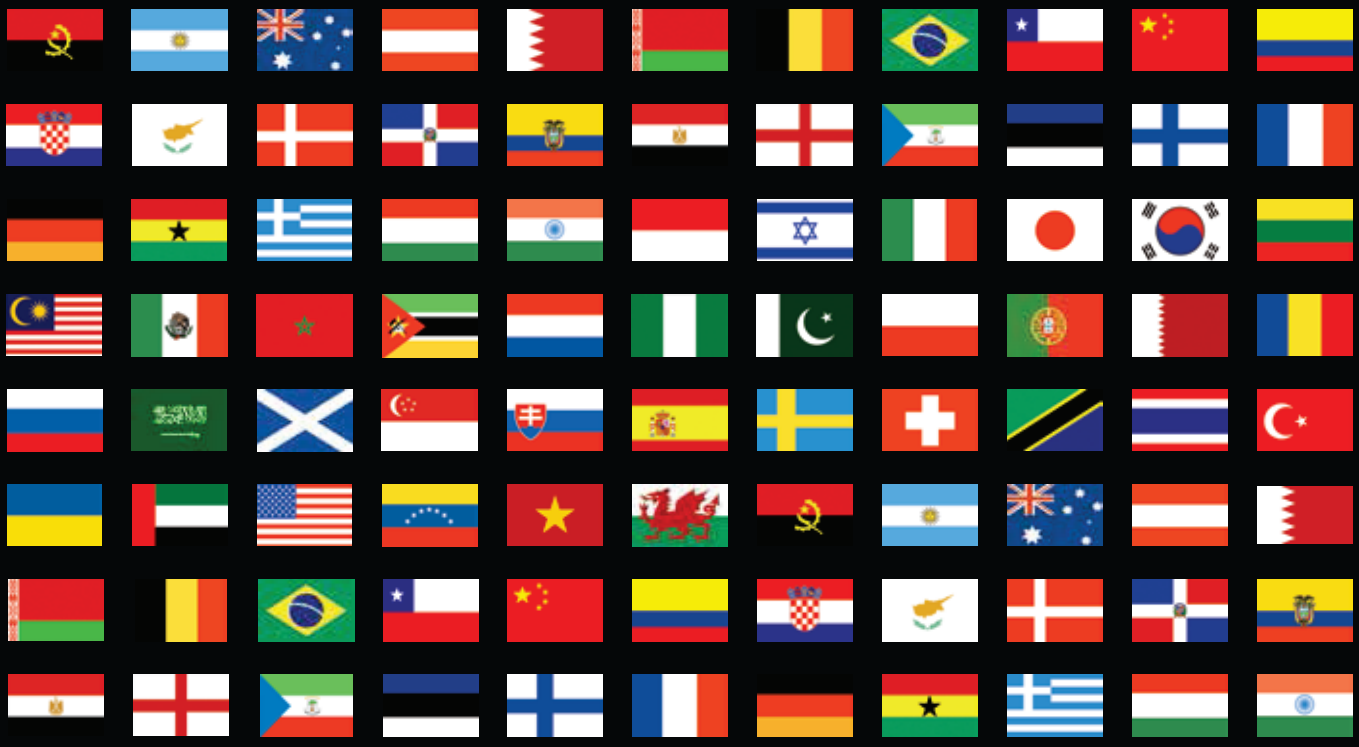
Arbitration

In 60 jurisdictions worldwide

Contributing editors
Gerhard Wegen and Stephan Wilske



2015

GETTING THE DEAL THROUGH

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Arbitration 2015

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Belarus

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Laws and institutions

1 Multilateral conventions relating to arbitration

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Belarus is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention has been in force for Belarus since 13 February 1961. In respect of awards made in the territory of non-contracting states, Belarus applies provisions of the Convention only on the basis of reciprocity.

Belarus is a party to the European Convention on International Commercial Arbitration of 1961. Notwithstanding the fact that the International Centre for Settlement of Investment Disputes indicates that Belarus has signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965, it is not clear whether Belarus has passed all the required ratification procedures.

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Sixty-three bilateral investment treaties exist for the promotion and reciprocal protection of investments for Belarus with other countries.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

A dual legal regime is established in Belarus whereby the Law On International Arbitration Court of 9 July 1999 No. 279-Z (International Arbitration Law, IAL) should apply mainly to international arbitration (both institutional and ad hoc), while the Law On Domestic Arbitration Courts from 18 July 2011 (Domestic Arbitration Law, DAL) is supposed to be applicable to domestic arbitration (also both institutional and ad hoc).

The Commercial Procedural Code and Civil Procedural Code contain a provision regarding arbitration applied by the courts. In addition, the following Resolutions of the Plenum of the Supreme Commercial Court or Supreme Court dealing with arbitration proceedings and recognition and enforcement of awards should be noted:

- On the Order of Proceedings by Commercial Courts of Cases on Recognition and Enforcement of Foreign Judgments and Foreign Arbitration Awards, on the Appeal of Awards of International Arbitration Courts Situated on the Territory of the Republic of Belarus, and Issue of Enforcement Documents of 29 June 2006 No. 10;
- On Certain Issues of Proceedings of the Commercial Courts of the Republic of Belarus on Cases Involving Foreign Parties of 31 October 2011 No. 21;
- On Jurisdiction after the Assignment of Right or Debt Transfer of 23 December 2005 No. 34;
- On Application by the Courts of Legislation of Recognition and Enforcement of Foreign Court Decisions and Foreign Arbitral Awards of 23 December 2014 No. 18.

Belarusian legislation does not directly specify a definition of foreign arbitration proceedings or foreign arbitration court. It may be concluded that a foreign international arbitration court is an arbitration court that is neither permanent international arbitration court created according to the established procedure in Belarus nor an ad hoc arbitration court placed in the territory of Belarus.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The IAL is based on the UNCITRAL Model Law of 1985 and does not include amendments of 2006. Domestic arbitration procedure set forth under the DAL is based on the main principles offered by the Model Law.

The following major differences between the IAL and the UNCITRAL Model Law should be noted:

- disputes of economic nature between national parties could be also submitted to international arbitration court in Belarus (not a foreign one);
- indication of institutional international arbitration court in arbitration agreement leads to application of its arbitration rules, unless otherwise stipulated by the parties;
- the IAL provides for constitution order of institutional international arbitration court in Belarus;
- according to the UNCITRAL Model Law, the issue of jurisdiction may also be resolved in the award; and
- the IAL does not provide for amiable compositeur.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The IAL sets forth a certain mandatory provisions on international arbitration procedure, in particular:

- principles for international arbitration courts, including equal treatment for parties;
- requirements regarding the arbitration agreement form;
- the arbitral award shall be made in writing and shall be signed by the sole arbitrator or by the majority of all the members of the arbitral tribunal if the reason for absence of other signatures is indicated; and
- the parties may not derogate from the procedure applicable under the IAL for setting the arbitral awards aside.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The arbitral tribunal of the international arbitration court settles disputes in accordance with the law chosen by the parties as applicable to the dispute. Any indication of the law or the system of law of any state should be

interpreted as direct reference to the material law of this state, but not to the conflict of laws rules. Unless the parties agreed otherwise, the arbitral tribunal of the international arbitration court applies the law determined in accordance with the conflict of laws rules which it considers applicable (article 36 of the IAL).

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

Out of only two international arbitral institutions the one effectively operating is:

The International Arbitration Court at BelCCI (IAC)
220029, Minsk, Belarus
Kommynisticheskaya str, 11, office 309
+375 17 288 20 76, 288 20 67
E-mail: iac@cci.by
Official internet site: www.iac.by/

The list of recommended arbitrators names Belarusian arbitrators as well as foreign ones. According to the IAC Arbitration Rules (Arbitration Rules), only a person included in the list can be nominated as an arbitrator for disputes between Belarusian parties. In other cases parties are not limited to the list. In case of foreign arbitrator nomination, the nominating party shall pay advance payment for the cost of this arbitrator's participation.

There is no restriction on place of arbitration. As a general rule, proceedings are held in the premises of the IAC.

The language of arbitration proceedings in the IAC depends on agreement of the parties considering the abilities of the arbitrators. In the absence of such an agreement, the language of the proceedings shall be Russian or Belarusian.

Determination of applicable law based on the principles stipulated by the IAL. The main difference is a possibility to adjudicate a dispute ex aqua et bono, which requires direct consent of the parties and shall not contradict the mandatory rules of legislation.

The Arbitration Rules (article 47) divide the costs of the arbitration into the arbitration fee and costs related to consideration of the case.

The arbitration fee covers all administrative expenses of the IAC and arbitrators' fees. The exact amount of the arbitration fee depends upon the residence of the parties, the nature of claim and the claimed amount in accordance with the scale of costs and fees for disputes between subjects if either is located or resides outside the Republic of Belarus.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

The IAL does not specify non-arbitrable disputes. Such disputes are indicated in other legal acts. In particular, disputes on economic insolvency (bankruptcy), on establishment, registration, reorganisation and liquidation of the entities, certain disputes connected to shareholders relations, and protection of professional reputation in economic sphere are under the special jurisdiction of state economic courts.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

The arbitration agreement shall be in a written form: to be contained in a document signed by the parties or in an exchange of letters or other means of telecommunication which provide a written record of parties' consent, or in an exchange of statement of claim and statement of defence in which one party offers to refer a dispute to international arbitration court and the other party does not object. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in written form and the reference makes that clause a part of the contract.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Belarusian law recognises the concept of separability of the arbitration agreement. An arbitration agreement is not enforceable under the following circumstances:

- the requirements for an arbitration agreement are not met;
- the dispute is non-arbitrable;
- the arbitration agreement is recognised as null and void, inoperative or incapable of being performed;
- if the party waived its right to duly present the jurisdictional objections to the court where an action is brought in a matter which is the subject of an arbitration agreement; or
- the parties agree to terminate the arbitration agreement.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

As a general rule, anarbitration agreement is binding only for its parties. Assignment of an arbitration agreement is strictly forbidden in Belarus.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The IAL does not make any provisions with respect to third-party participation in arbitration.

The Arbitration Rules indicate only the order of arbitral tribunal nomination in case of third-party participation.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The 'group of companies' doctrine is not recognised in Belarusian legislation in regard to international arbitration.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The IAL does not contain any provisions regarding third-party participation in arbitration.

As regards the tribunal composition, the Arbitration Rules provide that in the case of the arbitral tribunal being composed of three arbitrators, the multiple claimants and the multiple respondents shall each choose one arbitrator. If they fail to reach an agreement on the choice of the arbitrator, an arbitrator will be appointed by the IAC chairman.

In practice the IAC multiparty arbitration agreements are considered to be consistent with Arbitration Rules and IAL provided consent of the parties is obtained. The IAC or the arbitration tribunal acting under the Arbitration Rules cannot on their own motion order the parties to be joined.

Constitution of arbitral tribunal

15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

The IAL does not contain any specific restrictions for arbitrators except for the parties may agree upon specific qualifications or nationality of arbitrators; and when an arbitrator is being appointed by the appointing authority, all the requirements ensuring appointment of a qualified, independent and impartial arbitrator must be complied with.

In domestic arbitration the above requirements and restrictions are much stricter: the arbitrator must have no criminal record, the qualification agreed by the parties or provided under the respective arbitration rules, and a higher education plus three years' working experience (for a sole or presiding arbitrator – legal education and experience). Also civil servants are not allowed to serve as arbitrators in domestic arbitration, as well as persons of certain professions within three years of being dismissed for professional misconduct.

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The default number of arbitrators is three. If parties or parties' appointed arbitrators fail to agree, the IAL entitles the chairman of the permanent international arbitration court (the president of Belarusian Chamber of Commerce and Industry – for ad hoc arbitration) to appoint the arbitrator(s). The same procedure is established by the Arbitration Rules.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

An arbitrator may be challenged if he or she does not possess the qualifications envisaged by the parties or there are grounded concerns in his or her independence and impartiality. An arbitrator may be challenged by a party appointed him or her for reasons which that party became aware of after that arbitrator was appointed. A party who intends to challenge an arbitrator shall do so by sending a written notice to the tribunal within 15 days.

If a challenged arbitrator does not withdraw voluntarily, the issue is resolved by the two remaining arbitrators prior the proceedings commence. If they fail to reach consent on the issue, or if there is more than one challenge, or if a sole arbitrator is being challenged the issue is to be resolved by the chairman of the international arbitration court (the president of Belarusian Chamber of Commerce and Industry – for ad hoc arbitration). While the issue is being resolved the proceedings are stayed.

No limitations on the right of an arbitrator to withdraw are stipulated by the IAL. An arbitrator desiring to be withdrawn within 10 days from the date he received the notice on appointment files an application on withdrawal and the chairman of the international arbitration court shall consider it within one week.

There are certain conditions that make termination of arbitrator authorities obligatory, in particular, if an arbitrator becomes de jure or de facto unable to perform his functions or otherwise fails to act without undue delay.

It is not a tendency in Belarus to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

The IAL does not address the issue of the relationship between parties and arbitrators, nor the remuneration and expenses of the latter. It contains only a general provision about the independence and impartiality of arbitrator.

Additional requirements regarding the relationship between parties' legal counsel and arbitrators are established by the Rules of Professional Ethics of Legal Service Providers.

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

Liability of arbitrators for their conduct in the course of the arbitration is not explicitly regulated in Belarus unless fraud is involved.

Jurisdiction and competence of arbitral tribunal

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

The court shall leave an action without consideration only if the respondent during the proceedings but not later than its first statement on the substance of the case applies for transfer of the dispute to the international arbitration court where such a possibility still exists.

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

Under the IAL the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. Any jurisdictional objections shall be raised not later than by the submission of the statement of defence.

If arbitral tribunal accepts its jurisdiction, any party within 15 days after receiving notice of it may ask the presidium of the international arbitration court to make a final ruling on the issue of jurisdiction.

Arbitral proceedings

22 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

In the absence of prior agreement of the parties, the IAL gives arbitral tribunal full freedom to decide upon the venue of the proceedings taking into account the circumstances of the case and the will of the parties.

An arbitral tribunal on its own discretion shall determine the language of the arbitral proceedings considering the parties' wishes and arbitrator's capabilities.

23 Commencement of arbitration

How are arbitral proceedings initiated?

The IAL refers the procedure of arbitral proceedings commencement, as well as requirements to statement of claim and statement of defence to the relevant arbitral rules of the institutional international arbitration court. As for ad hoc arbitration, the arbitral proceedings commence from the date of the respondent's receipt of the statement of case, unless otherwise agreed by the parties.

According to the Arbitration Rules, arbitration commences on the day when the duly executed claim has been filed with the IAC and the arbitration fee has been duly paid. The claim is deemed to be filed from the moment when the registration fee was duly paid. Content of the statement of claim shall include parties' details, claimant claims and their amount, applicable law and relevant rules to be applied, indication of arbitration agreement and compliance with pre-arbitration order, application on number and names of arbitrators to be nominated, signature and date of sending and relevant appendices. There should be enough copies for each arbitrator, arbitration institution and other party.

24 Hearing

Is a hearing required and what rules apply?

According to the IAL, the tribunal is free unless any of the parties insist on having an oral hearing to decide on the dispute on the basis of the written submission. In the Arbitration Rules priority is given to the oral hearings, but they provide for expedited document-only resolution of minor disputes between Belarusian residents.

Under the Arbitration Rules the tribunal dealing with international cases may only avoid oral hearings if the parties agree so either explicitly, or impliedly (when the claimant requested proceedings on the basis of written documents and the respondent either agreed or accepted all the claims). Moreover, if during the examination of written submissions the tribunal finds them insufficient to deliver a substantiated award, a procedural

order for written proceedings shall be cancelled and oral hearings shall be held anyway. The IAL is silent on whether the parties' agreement to decide the case only on the basis of written documents would be legally binding on the tribunal.

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

In terms of evidence a general standard of proof adopted in civil and commercial litigation is applied. The procedure has an adversarial nature and each party is obliged to prove its case and evidence any facts and circumstances it invokes. There is a tendency towards party-appointed experts. Belarusian law does not provide for any mandatory disclosure or exchange of documents.

The parties are free to choose any appropriate documentary evidence containing information about circumstances that may be relevant to the case with possibility to acknowledge and verify the authentication of a document. Documents are produced in original, or in the form of a duly certified copy.

There is no explicit procedure or rules of witness interrogation, and examination of witnesses is not common. In those rare cases when witnesses are involved, general principles of arbitration law in combination with rules of commercial procedure are used. Cross-examination of witnesses can be allowed if the tribunal deems it necessary.

There is no tendency to apply or seek guidance from the IBA Rules on the Taking of Evidence in International Arbitration.

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

According to the IAL, the arbitral tribunal, or the party after approval from the tribunal, can apply to state courts or a foreign court for assistance with interim measures or taking of evidence.

The court is not entitled to intervene in the arbitral proceedings.

27 Confidentiality

Is confidentiality ensured?

Confidentiality is considered by the IAL and the Arbitration Rules as one of main arbitration principles.

According to the Arbitration Rules, arbitration proceedings are held behind closed doors unless the parties agree otherwise and allow a third person (not a party or its representative) to participate in the hearing. All participants in arbitration hearings must keep all information about the case confidential. The confidentiality of the proceedings usually extends to confidentiality of the award.

Interim measures and sanctioning powers

28 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Belarusian law formally contains indication of a possibility of interim measures to be ordered by courts before initiation of arbitration proceedings. In practice, however, initiation of arbitration proceedings is required.

An arbitral tribunal on request of the party can apply such interim measures as it considers appropriate and requests either of the parties to ensure such measures.

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Neither Belarusian law nor the Arbitration Rules provide for an emergency arbitrator prior to the constitution of the arbitral tribunal.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

The arbitral tribunal may issue an order to compel the party to adopt interim measures of protection as it deems appropriate if the other party applied for that. If interim measures are granted the tribunal may request that the other party provide sufficient security in regard to such interim measures.

There are no specific rules for security for costs. The arbitration proceedings generally commence upon receipt by the IAC of an arbitration fee. The claimant is allowed to apply to the IAC chairman and ask for a 50 per cent fee payment to commence proceedings and cover the remaining sum before the first hearing takes place.

DAL, though silent on the powers of tribunal to grant interim measures, explicitly provides for the possibility of a party to apply to the state court for such measures after commencement of arbitral proceedings.

31 Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration?

The IAL provides for a general provision that the tribunal has the right to conduct arbitration in such manner as it considers appropriate, without any details as to the list of means available to the tribunal to ensure good faith conduct during the proceedings. As actual sanctions against a defaulting party, the tribunal may continue the proceedings if a party fails to submit documentary evidence or objection, or to appear at the hearing within the established terms without good cause.

Awards

32 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

The arbitral tribunal renders an award by the majority of votes of the arbitrators. Procedural matters may be solved by the chairman-arbitrator solely if he or she is authorised to do this by the parties or other arbitrators. If an arbitrator dissents, he or she can write a dissenting opinion (question 33).

33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The Arbitration Rules allow dissenting opinion and provide that it shall be submitted in writing and attached to the award.

34 Form and content requirements

What form and content requirements exist for an award?

According to article 40 of the IAL, the award shall be in writing and contain as a minimum the following requirements:

- the date when the award was issued;
- the place of the arbitration proceedings; and
- the reasons on which the award is based, unless the parties agreed otherwise or it is the award on agreed terms.

Additional requirements are established by the Arbitration Rules (eg, the composition of the tribunal, the substantiation of jurisdiction, applicable law, etc).

The award shall be signed by all arbitrators. The award is still valid if it is signed by the majority of arbitrators and provided that the reason for the absence of the remaining signatures is indicated in the award.

35 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

The Arbitration Rules impose an obligation on the tribunal to decide the dispute and produce the award within six months of the moment of appointment of the tribunal. However, the IAC chairman may grant an extension of time upon a motivated application of a sole arbitrator or a chairman-arbitrator.

36 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The applicable time limits for challenging an award or requesting corrections of the award commence on the day of receipt of the award by the relevant party.

37 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

Apart from the final award on the merits, the arbitral tribunal may issue interim awards granting interim measures of protection.

Default awards whereby a party fails to avail itself of the opportunity to present its case (ie, fails to submit statement of defence, evidence or documents, or fails to appear at the proceedings) are also allowed.

Awards on agreed terms are quite common phenomena in arbitration practice, have full legal force and are subject to recognition and enforcement under the usual procedure.

Partial awards are not common and there is no explicit provision in that regard.

38 Termination of proceedings

By what other means than an award can proceedings be terminated?

Proceedings are terminated when:

- the claimant waives his claims, unless the defendant forwards objections against termination of proceedings, and the arbitral tribunal recognise the interest of the defendant as legal in receipt of the final award;
- the parties agree upon termination of proceedings; or
- the arbitral tribunal comes to a conclusion that continuation of proceedings has become impossible for whatever reason.

39 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

According to the Arbitration Rules, the arbitral tribunal awards the winning party the reimbursement of all arbitral expenses incurred, including legal counsel's fee, from the party that lost the dispute. If the claim was upheld partially, the expenses are divided between the parties proportionally. Irrespective of the decision on the substance, if the party acted in bad faith it may be obliged to compensate the additional expenses of the other party caused by such unfair misconduct.

40 Interest

May interest be awarded for principal claims and for costs and at what rate?

Interest may be awarded for the principal claims, if it is provided under the material law applicable to the dispute. As a rule, such interest is calculated as a lump sum by the date of the arbitral tribunal as the latest.

Proceedings subsequent to issuance of award

41 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Either party, upon a notification of the other one, may request the arbitral tribunal to modify any calculation mistake, slip of a pen, misprint or any other errors of similar nature made in the award, as well as request giving an interpretation of any concrete clause or a part of the award within 30 days after receipt of an award. If the arbitral tribunal considers the request well grounded, it should introduce corresponding corrections or give an interpretation within 30 days after its receipt.

The corrections or interpretation may be made by the arbitral tribunal on its own initiative, having sent to the parties a notice of such corrections or interpretation.

42 Challenge of awards

How and on what grounds can awards be challenged and set aside?

Arbitral award may be set aside by the economic court on the application of the party only on certain grounds, in particular if:

- a party to the arbitration agreement was fully or partially incapable or the arbitration agreement is invalid under the applicable law;
- a party was not served with a proper notice on the arbitrator appointment or on the arbitral proceedings or was otherwise unable to make its representations;
- an award was rendered on a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains provisions on matters beyond the arbitration agreement's scope; or
- the composition of the arbitral tribunal or the arbitration procedure was not in accordance with the parties agreement.

These grounds are only applied if a party refers to them and provides relevant evidence.

An arbitral award may be also set aside if the economic court finds that the subject matter of the dispute cannot be the subject matter of the arbitration procedure under the law of Belarus or the award is in conflict with Belarus public policy.

43 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

Arbitral awards can be challenged to the economic court (question 42). As a general rule, the economic court renders its order on the challenge of the award within one month. The state fee for the challenge of the award amounts to 10 basic units (approximately €110 as of the date of writing). The order may be appealed according to general procedure.

44 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

The recognition and enforcement of foreign arbitral award may be refused by the economic court if:

- the arbitral award has not entered into force under the law of the state where it was issued, or is not otherwise provided for by an international treaty of Belarus;
- the party against which the arbitral award was issued was not duly notified of the time and venue of the proceedings;
- the dispute in accordance with Belarusian legislation or an international treaty of Belarus is subject to exclusive competence of the Belarusian state courts;
- an arbitral award between the same parties, on the same subject and on the same grounds was issued by a Belarusian court;

Update and trends

The new Resolution of the Plenum of the Supreme Court on Application by the Courts of Legislation on Recognition and Enforcement of Foreign Court Decisions and Foreign Arbitral Awards was adopted in Belarus on 23 December 2014. As it is noted in the Resolution, strict following of procedure and terms with regard to recognition and enforcement of foreign arbitral awards helps to increase international authority and is a guarantee of fulfilment of international obligations in the sphere of protection of persons' and entities' rights.

In 2014 the CIS Economic Court based in Belarus found that the dispute resolution provision of the Convention for the Protection of Investors' Rights dated 28 March 1997 in force for Belarus, Tajikistan, Armenia, Kazakhstan, Kyrgyzstan and Moldova constitutes only a precondition for arbitrating investor-state disputes, but not an arbitration agreement.

- proceedings on a dispute between the same parties, on the same subject and on the same grounds commenced in a Belarusian court prior to the proceedings abroad;
- the term for filing an application on the recognition and enforcement of a foreign arbitral award in Belarus has expired or has not been revived by the court; and
- the foreign arbitral award does contradicts to public policy of Belarus.

According to established procedure, the party shall fill an application on recognition and enforcement of foreign arbitral award to the court. The term for this procedure is one month.

In practice courts tend to look favourably upon enforcing arbitral awards in Belarus.

45 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Recognition and enforcement of foreign awards set aside by the courts at the place of arbitration are not explicitly prohibited in Belarus.

46 Cost of enforcement

What costs are incurred in enforcing awards?

The state fee of 10 basic units is charged for consideration of an application to recognise and enforce a foreign arbitral award or to obtain enforcement documents for a domestic arbitral award.

Other

47 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

As regards discovery or production of documents general standards of proof adopted in civil and commercial litigation are applied. Belarusian law does not provide for any mandatory disclosure or exchange of documents.

Written witness statements are not common and there have been cases when the tribunal decided that they were inadmissible as a matter of principle and their acceptance would contradict the general principles of the IAL.

48 Professional or ethical rules applicable to counsel

Are specific professional or ethical rules applicable to counsel in international arbitration in your country? Does best practice in your country reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

The general set of professional and ethical rules for advocates set forth in the Rules on Professional Advocate Ethics established by the Regulation of the Ministry of Justice of the Republic of Belarus No. 39 of 6 February 2012 is applicable to advocates representing a party in arbitration.

The Rules on Professional Ethics of legal service providers established by the Regulation of the Ministry of Justice of the Republic of Belarus No. 37 of 8 June 2007 stipulate provisions in respect of domestic and international arbitration courts, mainly referring to the arbitration principles.

Both these ethical rules generally do not contradict the IBA Guidelines on Party Representation in International Arbitration.

49 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Requirement for foreign practitioner to obtain advocate licence or licence to provide legal services in Belarus to represent the client in the arbitration formally may be applied under Belarusian law. In practice, it is not required for participation in particular cases. No licence is required to be an arbitrator in Belarus.

A Belarusian visa is required in regard to the majority of countries with several exceptions, in particular CIS countries.

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