

Kluwer Arbitration Blog

Arbitration in Latvia: Was a Restart a Failure?

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Latvian courts annually enforce approximately 1000 arbitral awards. Just a few years ago this number was even higher – reaching 7000 requests in 2004 (statistics of the Court Information System available [here](#)) – since also consumer disputes could have been submitted to arbitration, as non-negotiated arbitration clauses were not presumed to be unfair and thus invalid contract terms. Only 5 – 7 % of all requests for enforcement are refused. For a small country like Latvia, these numbers are impressive. However, during all these years the reputation of arbitration in Latvia has been questioned due to ‘pocket arbitrations’, in which arbitration institution established by one of the parties to an agreement (or its affiliated entity) administers the resolution of disputes which arise from an agreement, negatively affecting the neutrality and fair treatment of a dispute.

The *Saeima*, the Latvian parliament, has tried to improve the situation for a number of times. However, all these improvements have only introduced new restrictions and limitations. On 11 September 2014, the *Saeima* adopted new Arbitration Act, which came into force on 1 January 2015 (the “Arbitration Act”). As the Arbitration Act is celebrating its first anniversary, this is an excellent moment to ask whether it has brought any improvements, and whether it has necessary qualities to exclude further “sham” awards (see [Decision in case no. Ö 4842-14](#) of the Swedish Supreme Court (available in Swedish)).

First of all, it must be noted that the new Arbitration Act is not based on the UNCITRAL Model Law. Secondly, in its essence, it is just an extraction from the Latvian Civil Procedure Law: a chapter containing provisions on arbitration, which was previously encompassed by the Civil Procedure Law, was extracted into a new legislative instrument, i.e. the Arbitration Act, leaving in the Civil Procedure Law only those provisions which prescribe court’s duties in relation to arbitration.

The main aim of the Arbitration Act was to establish more specified requirements for arbitrators, and a procedure for the establishment of arbitration institutions. Its drafters hoped that introduced requirements would reduce the number of arbitration institutions and would improve the quality of the arbitration procedure; however, the new amendments seem to be fighting with the consequences rather than dealing with the causes.

The legislator decided to reach these aims by providing for the following requirements:

- an arbitration institution can be established only by an association which aim, according to the articles of association, is to establish arbitration institution (previously any legal entity could establish an arbitration institution);

- an arbitration institution must have separate premises, personnel, working-hours, website, etc.;
- an arbitration institution must publish a list of available arbitrator-candidates (at least 10 candidates);
- arbitration rules of an arbitration institution must be published at the website of the Latvian Register of Enterprises;
- an arbitration institution must annually verify its compliance with the requirements of the Arbitration Act by submitting a verification to the Latvian Register of Enterprises (failure to do so would lead to deletion from the Register of Arbitration Institutions).

Indeed, the number of arbitration institutions was rather high, i.e. 200 arbitration institutions in 2012, and currently, after the introduction of above listed requirements, the number of institutions has decreased to 83 (list of all arbitration institutions is published by the Latvian Register of Enterprises and it is available [here](#)). However, it is not the number of institutions that harms the reputation and quality of arbitration in Latvia, but rather a lack of proper control.

Until the recent [Constitutional Court Judgment](#) was rendered, the court's control over arbitration proceedings was available only at the enforcement stage. Same as before the adoption of the Arbitration Act, the courts provide no assistance throughout the arbitration proceedings. That means that there is no court assistance regarding the challenge of arbitrators, collection of evidence, challenges on jurisdiction, and there is even no setting aside procedure. The only available court involvement is for securing the claim, but that is available only before the commencement of arbitration proceedings. Following the recent Constitutional Court Judgment, now the courts of general jurisdiction will review the validity of arbitration agreements if the claimant has challenged the existence or validity of the arbitration agreement in a separate court action.

Although there have been attempts to extend the court involvement in arbitration process, all attempts have failed due to heavy objections raised by judges claiming that this would bring a heavy workload.

Moreover, while international *ad hoc* awards are recognized and enforced in Latvia in accordance with the New York Convention, domestic *ad hoc* awards are not enforceable. The legislator has argued that it is impossible to control *ad hoc* arbitration proceedings, and therefore only institutional arbitration awards shall be recognized by state. At the same time, the Arbitration Act neither prohibits entering into *ad hoc* arbitration agreements, nor does it render them invalid. Therefore, those who do not know of this Latvian phenomenon can find themselves in a deadlock situation with a valid and enforceable domestic *ad hoc* arbitration agreement, while the arbitration award, rendered pursuant to such an agreement, will not be enforceable. This is one of the main reasons of the high number of arbitration institutions since the names of these institutions very much remind of the terminology commonly used in *ad hoc* arbitration agreements, allowing in that way the parties to convert *ad hoc* arbitration into institutional. The names of these arbitration institutions are, for example, "Arbitrage", "Latvian Arbitration", "Independent Arbitration", "Arbitration", or "International Commercial Arbitration".

Another noteworthy group of introduced restrictions covers requirements for arbitrators. Only a person with legal capacity and an impeccable reputation who has acquired higher education and the qualification of a lawyer, and who has at least three-year experience in the position of academic staff in law or in another position specializing in law may be appointed as an arbitrator. Furthermore, a person may be listed as a candidate-arbitrator in the list of arbitrators of not more

than three arbitration institutions. Once listed, for the next five years a person cannot be a party representative or provide legal services to the parties involved in arbitration proceedings conducted under the rules of the respective arbitration institution.

One would have expected that a new act will bring new, fresh breezes in the Latvian arbitration. But, on the contrary, the Arbitration Act, with its additional requirements towards arbitrators and arbitration institutions, has not improved the existing situation: it has excluded from serving as an arbitrator all other professionals besides lawyers, provided for peddling and useless restrictions for arbitration institutions, and still it does not provide for an effective court support and control of arbitration.

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