Kluwer Arbitration Blog

Arbitration In Armenia: Recent Developments

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Since my last article on this Blog on problems concerning *ad hoc* arbitration in Armenia, new legislative developments have offered an almost complete solution to the issues previously discussed. At the same time, such legislative developments in Armenia have given rise to new unresolved questions which will be explored in this article.

First Issue: Place of Arbitration and the Designated Court under the Act

The first issue relates to a potential legislative trap that arbitration practitioners used to face when choosing Yerevan, the capital of Armenia as the place of arbitration in an *ad hoc* arbitration clause.

The court intervention provision contained in Article 6 of the Armenian Arbitration Act ("Act") referred to the court of the place of arbitration. The problem relates to the fact that several district courts were found in Yerevan, which led to ambiguity in determining the exact designated court to have jurisdiction in performing specified judicial functions under the Act, such as granting of interim measures,[1)] appointment of arbitrators,[2)] challenge procedure,[3)] failure or impossibility to act,[4)] as well as taking of evidence.[5)]

The revised Armenian Judicial Code which entered into force on 25 January 2018, offers a solution by amending Article 2 of the Act and replacing the 7 district courts of Yerevan with a single (united) common jurisdiction court of Yerevan. In reality, the introduction of such revision was intended to solve the unequal case distribution due to the overloading of cases lodged at the courts of the more densely populated-districts of Yerevan, and as an attempt to remedy the protracted court proceedings.

Such amendment however, served coincidentally to cure the ambiguity of ascertaining the designated court under the Act, as there is now only one court in Yerevan which would perform the said judicial functions for arbitrations having Yerevan as the place of arbitration.

For that reason, it can be stated with confidence that the first issue has been resolved and that legal practitioners can avoid the same problem regarding jurisdiction of the court when implementing an *ad hoc* arbitration agreement providing for Yerevan as the place of arbitration.

Second Issue: Interim Measures

The second issue discussed in the previous article relates to the fact that the former wording of the Armenian Civil Procedural Code empowered the courts to grant interim measures only in support of pending arbitrations.

Article 97(1) of the former Armenian Civil Procedural Code stated that interim measures in support of arbitration could only be granted by the courts at any stage of an arbitration, which was construed as requiring an arbitration to have been commenced in order for such provision to apply.

In this regard, the Act provides that an arbitration would be considered pending starting from the moment when an arbitral tribunal is constituted. Accordingly, under the former Armenian Civil Procedural Code, parties to an arbitration would not be able to request for preliminary interim measures in *ad hoc* arbitrations before the appointment of arbitrators,[6)] which would in turn limit the prospect of fostering arbitration as a viable means of dispute resolution in Armenia.

The revised Armenian Civil Procedural Code adopted on 9 February 2018 purposefully tackled this issue by providing in Article 128(2) that, preliminary interim measures can be granted by the courts not only in a pending arbitration, but also before commencement of an arbitration.

It is noteworthy that for the first time, pursuant to Article 137 of the revised Armenian Civil Procedural Code, the notion of preliminary measures is introduced to the Armenian jurisdiction as interim measures could previously only be obtained in the course of a litigation or arbitration already initiated. Therefore, under the revised regime, the courts cannot reject applications for preliminary interim measures based on an absence of pending arbitration proceedings.

Third Issue: Appointment of Arbitrators by National Courts

The third issue addressed in the previous article relates to the appointment of arbitrators by a national court where parties to an *ad hoc* arbitration fail to reach an agreement on arbitrators' appointment.

The problem arose from the fact that the former Armenian Civil Procedural Code did not clearly set out the scope of the courts' powers to appoint an arbitrator under Articles 11(3) and 11(4) of the Act, which provide that where a party fails to nominate an arbitrator within thirty days from the receipt of a request to do so from the other party, or where the first two arbitrators fail to jointly nominate the third arbitrator within thirty days from their appointment, such appointment shall, upon request by a party, be made by the courts or other authority specified under the Act. As a result, the courts' practice in handling such requests was unstandardized.

By way of example, in dealing with requests for arbitrators' appointment under Article 6 of the Act, the courts would on some occasions conduct court hearings while in others only request for additional information from the parties, and at times, the courts would only respond to such requests after 15 days or more. On this issue, I have proposed in my previous article that the Armenian Civil Procedural Code may be amended to expressly regulate the procedures for addressing applications for appointment of arbitrators by the courts.

The revised Armenian Civil Procedure Code has addressed this issue to a certain degree through

the introduction of a new Chapter 48, which puts in place procedures to govern the provision of courts' assistance to arbitration proceedings regarding granting of interim measures, appointment of arbitrators, challenge of arbitrators, arbitrators' failure or impossibility to act, and taking of evidence.

However, a closer look at the newly added Chapter 48 would reveal unresolved issues that require further attention, particularly in relation the appointment of arbitrators by a national court where parties to an *ad hoc* arbitration fail to agree.

For example, Article 333 (6) of the revised Armenian Civil Procedural Code requires that, an application to request court interference or assistance to arbitration proceedings must be accompanied by a decision on acceptance of the case issued by the arbitral tribunal. When adopting this amendment, the legislators may have overlooked the difficulty for parties to obtain such required decision of the arbitral tribunal in an *ad hoc* arbitration, given that the parties would be requiring courts' assistance with appointment of arbitrators in the first place.

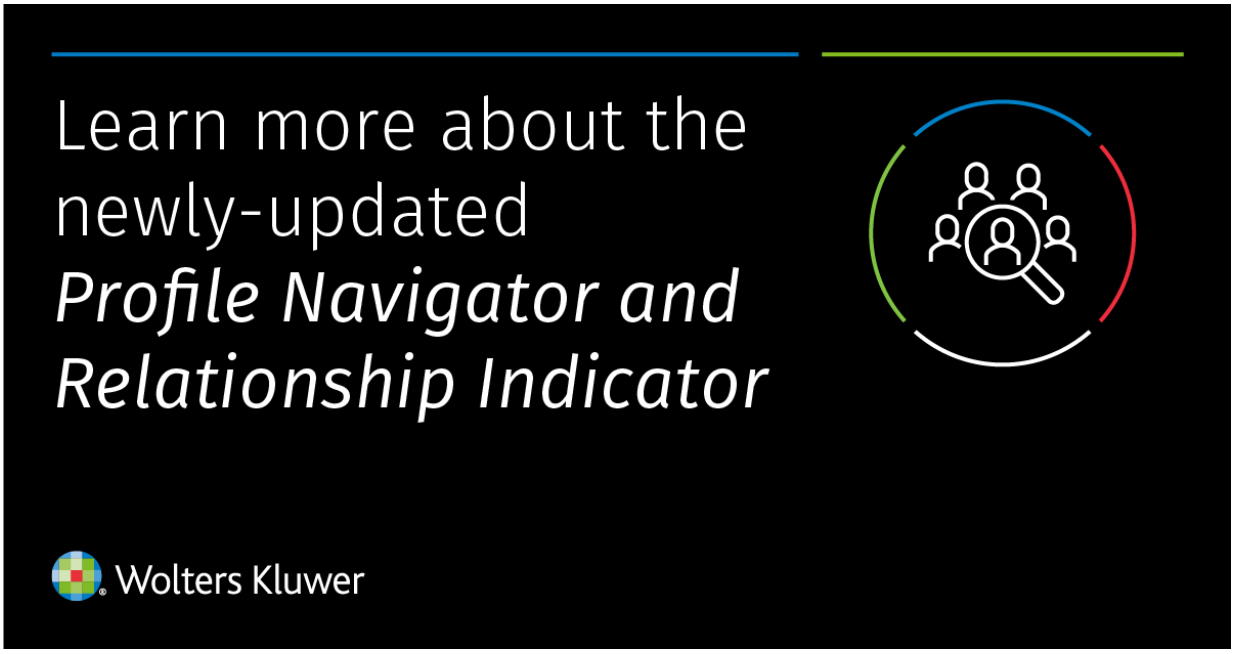
One solution to this issue may be a further amendment to the Armenian Civil Procedural Code to include additional exceptions from such requirement, especially for cases where an application is submitted for the courts' assistance with arbitrators' appointment.

Concluding Remarks

Certainly, arbitration practitioners would welcome the resolution of ambiguity with ascertaining the designated court in *ad hoc* arbitrations where Yerevan is chosen as the place of arbitration, as well as the enhanced viability of interim measures applications in the context of *ad hoc* arbitrations in Armenia.

However, parties to an *ad hoc* arbitration who fail to agree on arbitrators' appointment may continue to find themselves in "deadlocks" when seeking assistance from national courts. One effective solution could be the designation of more specialized local institutions such as the Arbitrators Association of Armenia, as appointing authority in an arbitration agreement.

In sum, although having given rise to new issues, the revised Armenian Civil Procedural Code offers various solutions to problems previously faced in commercial arbitrations in Armenia, which signifies one giant step forward in developing Armenia as an arbitration-friendly jurisdiction.



References

?1 Article 9 of the Act.

?2 Articles 11(3) and 11(4) of the Act.

?3 Article 13(3) of the Act.

?4 Article 14 of the Act.

?5 Article 27 of the Act.

?6 *See* for example, the decision of the Court of General Jurisdiction of Arabkir and Qanaqer-Zeytun Administrative Districts dated 18 May 2017 (case number ?-8175/17).

This entry was posted on Friday, February 28th, 2020 at 9:00 am and is filed under Ad hoc arbitration, Appointment of arbitrators, Armenia, Interim measures, Place of arbitration
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