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What Has Changed in Six Years Since the Latvian Arbitration Law "Reform" and What Needs to Be Changed?

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Latvia is an infamous unicorn in the field of arbitration because of its record-number of institutional arbitration courts. In November 2013, there were 214 arbitration courts in Latvia. Regretfully, this is not because we as a nation love arbitration that much. Liberal regulations have allowed any legal entity to establish an arbitration court which to a large extent has been misused by creating the so-called "pocket" arbitration courts. This term reflects that, in practice, the Latvian courts have frequently dealt with cases involving legal entities (or their subsidiaries) that at the same time were the founders of the arbitration court. In other words, on many occasions, the operation of an arbitration court raised questions regarding its impartiality.

Since the entry into force of the newly adopted Arbitration Law, the number of institutional arbitration courts in Latvia has dropped to 68 in February 2021. Although this number is still extremely high, the Latvian Parliament's efforts to combat the "pocket" arbitration courts and to raise society's trust in arbitration have generally been effective.

This post illustrates why Latvia nevertheless has a mile to go to be considered as an arbitration-friendly country. Furthermore, I suggest **five areas** that the Latvian Parliament must immediately address to raise the credibility of Latvian institutional arbitration courts and Latvia as a country for the safe recognition and enforcement of foreign arbitral awards. Overall, this post demonstrates why currently Latvia cannot be considered as a potential seat of international arbitration.

Area 1: Form of the Arbitration Agreement

Latvian law only allows arbitration agreements signed by hand (wet ink) or with a secure electronic signature. Although the legislator's initial aim was to follow Article 7 of the UNCITRAL Model Law on International Commercial Arbitration, it appears that the fear of "pocket" arbitration courts misusing their powers was decisive in the exclusion of arbitration agreements concluded over e-mail. Accordingly, parties to the arbitration agreement from Latvia (or from states which are not parties to the 1960 European Convention on International Commercial Arbitration) will find that their arbitration agreements concluded over e-mail are treated under Latvian law as void. If a Latvian arbitration court accepts its jurisdiction under an arbitration agreement in an e-mail format, recognition and enforcement of an arbitral award in such a case would still be impossible. In Latvia, the state ensures control over the local institutional

arbitration courts at the setting aside stage, which means that in such a scenario the Latvian state courts would deny recognition and enforcement. Likewise, it is likely that such an arbitral award would not be recognised and enforced under the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

Area 2: Appointment of the Arbitrators

The Latvian arbitration courts operate on the basis of closed arbitrator lists. Each arbitration court must have a list of at least 10 arbitrators from which the parties must appoint an arbitrator for their dispute. 60% of the arbitration courts have listed 10 arbitrators, 31% have listed up to 15, and only 9% have listed more than 16 (with the maximum being 58) arbitrators. Accordingly, in almost all cases the parties will have a very limited choice of arbitrators for their dispute. The choice narrows down even more if most of those potential arbitrators are not attorneys-at-law or do not speak the language chosen by the parties to be used in their arbitral proceedings.

Area 3: Court Support for Arbitration

Latvian arbitration courts do not have the competence to grant interim (provisional) measures. This power lies only with the Latvian state courts and is limited in time. The Latvian state courts can grant interim measures in support of local (or international) arbitration only prior to the commencement of arbitral proceedings. This means that the Latvian state courts will not provide any support in terms of interim measures after the case is already in the arbitration court.

The legislator's reasoning behind this set-up was to maintain the speed and, thus, efficiency, of arbitration as a means of dispute resolution. According to the Latvian legislator, if state courts had the competence to grant interim measures during the arbitral proceedings, courts would have to request the case file from the arbitration court to make such a decision. As the legislator argued, this would extend the arbitral proceedings which would decrease their efficiency. Moreover, the Latvian state courts would not be able to request the case file and make a decision on interim measures in the 10 days prescribed by law.

Regrettably, Latvian state courts will not provide any support also at the recognition and enforcement stage. The law only allows to secure the enforcement of a Latvian court decision on recognition and enforcement of a foreign arbitral award. In practice, this is most often when the most valuable assets have already disappeared due to the simple fact that, in Latvia, the recognition and enforcement of foreign arbitral awards is decided in an open court hearing with the participation of parties.

Enforcement of partial (separate) international arbitration court awards, such as awards on advance payment of costs, is likely possible in Latvia. This is not explicitly addressed in the law and the Latvian court practice is very undeveloped in this respect.

Area 4: Witness Evidence

The law does not recognise party-appointed expert witnesses or any fact witnesses at all. The legislator has been of the opinion that, once more, the main advantage of arbitration, as opposed to litigation, is the speed of proceedings. Examination of witnesses, in the opinion of the Latvian legislator, is nothing more than a waste of time. Accordingly, written witness statements, which are commonplace in international arbitration, are also not allowed under Latvian law. In practice, this flaw in the law may be partially circumvented by a party authorising a fact witness through a power of attorney (e.g., a company management board member or an accountant) to give explanations as their authorised representative.

When it comes to experts in the arbitration, the law only allows experts appointed by the arbitral tribunal. The parties can submit expert reports, e.g. on quantum, as written evidence. However, the examination of a party-appointed quantum expert is not possible, unless the quantum expert appears in the arbitration court hearing as an authorised representative of a party.

Therefore, you will be able to properly argue your case in a Latvian arbitration court with fact witnesses and expert witnesses appearing as authorised representatives. An arbitral tribunal composed of attorneys in law experienced in international arbitration will obviously treat such authorised representatives as who they really are.

Area 5: Other Procedural Aspects

The procedural rules on recognition and enforcement of foreign arbitral awards are overly formalistic in respect of determining the Latvian court's jurisdiction and the compensation of legal costs.

The law states that the application on recognition and enforcement of a foreign arbitral award must be submitted to a district (city) court based on the place of enforcement of the arbitral award or the declared place of residence (or legal address) of the defendant. Therefore, if you apply to the Latvian court because the non-Latvian defendant may own assets in Latvia, you must provide credible evidence regarding the location of the assets in Latvia. If you have merely a suspicion that the defendant may have a bank account in Latvia, this surprisingly will not be enough for the Latvian court to establish its jurisdiction.

As regards legal costs, the law does not prescribe compensation of attorney fees incurred as a result of the recognition and enforcement proceedings of a foreign arbitral award in Latvia. Although the state fee is symbolic (max. EUR 285) and it is awarded to be compensated by the defendant, the claimant must take into account that he will have to bear the attorney fees himself.

Conclusion

The current arbitration situation in Latvia is an example of how a very liberal regime may severily undermine the trust in arbitration as an effective and generally recognised means of dispute resolution. This loss of trust in arbitration has further resulted in an overly restrictive regime for conducting arbitration in Latvia. The procedure is far from how the international arbitration courts operate. Bringing Latvia closer to the international arbitration community should take at least six more years, but it is not impossible, provided that the legislator initiates reform in the areas

outlined in this post.

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