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Latvia Introduces a Set-Aside Mechanism and Other Needed Changes to Its Arbitration Law

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Latvia has recently taken significant steps to amend its arbitration law, introducing a set-aside mechanism among other necessary changes. This article provides an overview of the background to these changes, the specifics of the new set-aside mechanism, and other amendments made to the Latvian arbitration law.

Background

Elimination of any or all grounds for setting aside of arbitral awards has been a hot topic ever since Belgium in 1985 (see, e.g., [here](#)) did away with the setting aside of arbitral awards issued in Belgium unless one of the parties to arbitration was Belgian. In 1989, Switzerland amended its Private International Law Act (PILA) and in Article 192(1) provided arbitrating parties with a right to voluntarily exclude the opportunity to challenge arbitral awards at the post-award stage.

Belgium's approach was criticized as being too "radical" (see, e.g., [here](#)). The Swiss example, on the other hand, served as a role model for a handful of other jurisdictions, such as France, Sweden, and, indeed, Belgium, which amended its arbitration law in 1998 to align with Switzerland. Nowadays, the possibility to voluntarily exclude the right to setting aside is a relatively common phenomenon, which is made available to arbitrating parties in many jurisdictions. At the same time, given its adverse implications, it is rarely used in practice.

Despite discussions about the necessity of setting-aside proceedings as such (see, *inter alia*, [here](#)), apart from the somewhat unsuccessful, and later also abandoned Belgium's attempt to eliminate the setting aside of arbitral awards, only a handful of States have excluded the setting aside of arbitral awards altogether from their *leges arbitri*. Formerly this has also been the case in Malaysia (see, e.g., [here](#)), and currently in Kyrgyzstan (see, e.g., [here](#)).

Until recently this was the case also in Latvia. Between 1918 and 1940, the possibility of challenging arbitral awards was explicitly regulated by the then-applicable procedural law in Latvia. During the Soviet occupation (1944-1990), State arbitration courts existed as part of the judicial system of the then Latvian Soviet Socialist Republic and had little to do with arbitration as it was known in the West. As such, there was no set-aside mechanism available. When Latvia regained independence, its draft arbitration law, although "on paper" influenced by the

UNCITRAL Model Law (“Model Law”), nevertheless was more an unfortunate continuation of the former State arbitration. It failed to provide for the Model Law-type of court assistance to arbitration, including the set-aside mechanism. For long, arbitral awards issued in Latvia could not be set aside.

However, following the conclusions of the Latvian Constitutional Court in its judgement in Case No. 2022-03-01 of 24 February 2023 (refer to our previous post [here](#)), the Latvian legislator has taken the necessary steps to introduce a mechanism for setting aside arbitral awards. The amendments to the law are underway in the Latvian Parliament, with the draft amendments being adopted at the second reading, and the third reading expected by the end of May 2024. However, already as of 1 March 2024, arbitrating parties have the right to apply to the general jurisdiction courts to have an arbitral award set aside directly referencing to the Latvian Constitutional Court judgement.

Using the Model Law as a roadmap, in introducing the set-aside mechanism in Latvia, the Latvian legislator has generally followed Article 34 of the Model Law. However, given that the set-aside mechanism is incorporated into the [Latvian Civil Procedure Law](#) (“LCPL”) (Articles 533¹ to 553⁵ of the LCPL), it has been tailored to comply with the general rules and principles, as well as the overall structure of the LCPL. Furthermore, numerous sections of the current arbitration regulations remain unchanged, thus preserving their original, non-Model Law phrasing and continuing to uphold certain regulations, such as those concerning the formation of arbitral institutions and their registry.

Right to Submit Application for Set Aside

The new rules will grant arbitrating parties a right to request the annulment of an arbitral award within 30 days from the date it is rendered. If a party misses this deadline because it has not yet received the arbitral award or for other justifiable reasons, it will be permitted to request the court to renew this procedural time limit in accordance with the general rules of the LCPL. The 30-day time limit was set because it is the standard time limit for filing appeals against judgments in Latvian courts. Accordingly, for the sake of uniformity and by analogy, it was decided that the time limit for an application for set aside should be the same.

Processing of the Application for Set Aside

Applications for set aside will be heard by competent first instance courts, with a possibility (albeit only with respect to a decision dismissing the application; see below) to submit an appeal to competent regional courts. Thus, Latvia will provide a somewhat limited two-tier set-aside procedure. No further appeal to the Supreme Court will be possible.

As regards the grounds for set aside, the Model Law’s “4+2” approach is followed, differentiating between grounds that are to be proved by the applicant and grounds that may be invoked by the court *ex officio*.

After receipt of the application for set aside, the court will forward it to other parties, granting 20 days for a response. A failure to provide a response will not preclude the court from deciding the

application for set aside. The court will decide it within 20 days after the received response has been forwarded to the applicant or within 20 days after the term for providing a response has lapsed and no response has been submitted. As a general rule, set-aside applications will be decided in written proceedings. If it deems necessary, the court may decide to hold a hearing.

Impossibility to Appeal a Decision Setting Aside an Arbitral Award

A party submitting the challenge will have a right to lodge an appeal, albeit only if the court rejects the application for set aside. The court's decision to set aside an arbitral award is not subject to appeal. This right to appeal against a negative decision is symmetrical with the right of the party in whose favour the arbitral award was rendered to appeal against the refusal of the court to issue a writ of execution. Thus, each party in the proceedings it has initiated has a right to appeal a negative decision of the court, but not otherwise. The appeal can be submitted within 10 days after receiving the court's decision.

Other Amendments

Together with the set-aside mechanism, the Latvian legislator will introduce several other amendments addressing many of the existing legislative loopholes. The most notable improvements include allowing to hear witnesses in arbitration (previously not possible), abandoning compulsory closed lists of arbitrators, eliminating the necessity to have a legal education for arbitrators, as well as introducing the much-needed increased court support. Now the Latvian courts (in addition to their previously already existing powers to hear recognition and enforcement requests, challenges to the validity of arbitration agreements, and requests for securing claims before the arbitration is initiated) will also have powers to grant requests for security of claims and other interim measures during arbitration proceedings, to appoint, challenge and replace arbitrators, to secure evidence, summon witnesses, and hear challenges to arbitral tribunal's jurisdiction in case the arbitral proceedings are bifurcated and a decision on jurisdiction is adopted prior the final award.

Conclusions

The set-aside mechanism is a natural part of arbitration proceedings that parties are usually hesitant to give up, even if permitted to do so, e.g., through the so-called exclusion agreements. For a long time, Latvia rather uniquely failed to regulate the set-aside mechanism in its arbitration law. After this drawback was successfully challenged in the Latvian Constitutional Court, the Latvian legislator took the necessary steps to finally introduce the set-aside mechanism also in Latvia.

Together with the set-aside mechanism, the Latvian arbitration law will witness a number of other long-needed improvements. Although it remains to be seen whether these improvements are enough to elevate Latvia to the status of a Model Law-country, they will certainly improve the overall quality of arbitration in Latvia.

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