GETTING THE DEAL THROUGH

Dispute Resolution

in 46 jurisdictions worldwide

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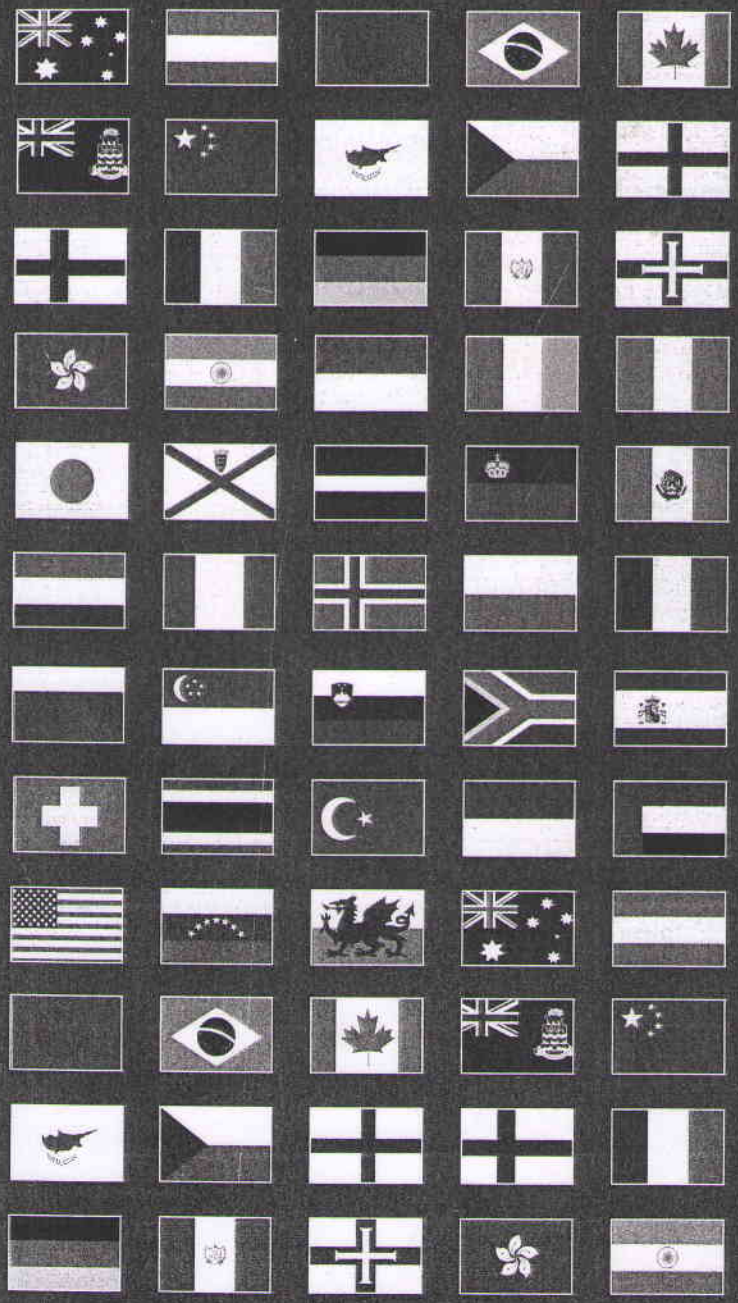

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Litigation

1 Court system

What is the structure of the civil court system?

Latvia has a three level court system: there are 36 district courts, five regional courts and the Supreme Court with a total of around 500 judges.

The district court is the first instance except for cases that are under the jurisdiction of the regional court, ie, the regional court has jurisdiction as the first instance where: (i) there is a dispute regarding property rights of the real estate; (ii) cases arise from rights in regard to obligations, if the amount of the claim exceeds 150,000 lats (approximately €214,285); (iii) regarding patent rights and protection of trademarks; and (iv) regarding insolvency and liquidation of credit institutions. For the other cases, the regional court is the appeal instance.

The Supreme Court's Civil Matters Panel hears the appeals from the regional courts but the senate is final – cassation instance.

2 Judges and juries

What is the role of the judge and, where applicable, the jury in civil proceedings?

In the first instance, the case is heard by sole judge but in the next instances the case is adjudicated by three judges. There is no jury in Latvia.

A judge has a passive role in the civil proceedings, as she or he decides the case only upon the parties' submissions and taking in account the principle of adversary proceedings.

3 Limitation issues

What are the time limits for bringing civil claims?

According to the article 1895 of the Civil Law, all obligation rights shall be terminated if the party entitled to them does not use them within a 10-year period if the special laws do not provide otherwise. The special periods of limitation are provided for insurance, labour and a few other claims.

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

There are no special rules on pre-action behaviour of the parties. However, the claimant may secure evidence or its claim prior submission of the statement of claim as described below (see questions 8 and 9).

5 Starting proceedings

How are civil proceedings commenced?

The civil proceedings are commenced by submitting a written statement of claim to the court.

6 Timetable

What is the typical procedure and timetable for a civil claim?

Upon receipt of a statement of claim in the court, a judge shall take a decision within three days regarding acceptance of the statement of claim and initiation of a matter; refusal to accept the statement of claim; or leaving the statement of claim not proceeded with.

If the proceedings are initiated the statement of claim and true copies of documents attached shall be sent, without delay, to the respondent by registered mail, therewith setting the time period for submitting a written explanation – 15 to 30 days from the day the statement of claim was sent.

The first instance court's judgment may be appealed within 20 days but the second instance's may be appealed within 30 days from the day a judgment has been pronounced (articles 415 and 454 of the Civil Procedure Law).

The Civil Procedure Law does not provide for a period of time within which cases should be heard and at what time the judgment is due. According to the official courts' statistics 41.9 per cent of cases in the first instance and 49.7 per cent of cases in appellate are heard within three months. However, practically, the process is much longer, especially in damages cases, due to the courts' caseload.

7 Case management

Can the parties control the procedure and the timetable?

A judge manages and controls the procedure. He or she may call parties for the preparatory hearing and question them regarding the case, as well as explain their procedural rights and duties. The judge shall invite parties to settle and will take all necessary steps in order to achieve the parties' settlement (article 149 of the Civil Procedure Law).

Procedural actions shall be carried out within the time periods prescribed by law. If the law does not prescribe the procedural time periods, a court or a judge shall determine them. Therefore, for example, the parties cannot shorten the length of the proceedings (article 46 of the Civil Procedure Law).

8 Evidence

What is the extent of pre-trial exchange of evidence? Is there a duty to preserve documents and other evidence pending trial? Are any documents privileged? Would advice from an in-house lawyer also be privileged? How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence shall be submitted by the parties and by other participants at least seven days before the court hearing but if the parties or other participants are unable to submit evidence, the court shall, at their motivated request, require such evidence (article 93 of the Civil Procedure Law).

The claimant may secure evidence before the submission of statement of claim if he or she has cause to believe that the submission of necessary evidence on their behalf may later be impossible or problematic (article 98 of the Civil Procedure Law). The party also may ask for the securing of evidence during the proceedings.

The Civil Procedure Law does not provide privilege status for any documents, and there is only attorney–client privilege regarding the information that becomes known to the attorney in providing legal assistance (article 6 of the Law on Advocacy).

If the party requests the examination of a witness, he or she shall indicate what facts relevant to the case the witness may affirm and a witness shall not have the right to refuse to give testimony, except persons whose position or profession does not permit them to disclose certain information entrusted to them. A person called as a witness shall attend at the court and give oral testimony (articles 104 to 109 of the Civil Procedure Law). Witnesses shall be excluded from the courtroom until their examination commences, and they are warned regarding their liability for refusing to testify or for knowingly providing false testimony. The court may examine a witness a second time during the same or at another court sitting, as well as confront witnesses with each other (articles 158, and 169 to 173 of the Civil Procedure Law).

In the court hearing, first an expert opinion shall be read ad subsequently judges and parties may put questions to the expert in the same order as with respect to witnesses (article 175 of the Civil Procedure Law).

9 Interim remedies

What interim remedies are available?

A claimant may secure its claim prior submission of the statement of claim or during the process, if the debtor, with the purpose of avoiding performance of their obligation, removes or alienates their property, leaves their place of residence without informing the creditor, or performs other actions which evidence that the debtor is not acting in good faith or has not observed regulatory enactments. If the application is submitted before the proceedings are commenced, a judge shall set a time period for the claimant within which they must submit a statement of claim to the court (article 139 of the Civil Procedure Law).

The claimant may ask for various means of interim remedies, such as an arrest of moveable property, including monetary funds, ships, entry of the prohibitory endorsements in the public registers or the pledge rights endorsement in the land book register.

In submitting the application for the recognition of the foreign judgment or arbitral award, a party may ask the court to secure it in accordance with the standard procedure described above (article 643 of the Civil Procedure Law).

10 Remedies

What substantive remedies are available?

The Civil Law incorporates the principle of full compensation of damages and amount of damages shall correspond to the equivalent in money to the damage caused.

According to article 1775 of the Civil Law any loss that is not accidental shall be compensated. One has a duty to compensate losses if the following is proven: unlawful action of the person; fault of that person; existence of the losses and amount of damages; and causal relation between the illegal act and damages.

The Civil Law provides for a duty to pay the interest based either on agreement or law (article 1756 of the Civil Law). If the agreement is silent about the amount of interest, the rate shall be established on the basis of law, which is around 6 per cent per annum.

11 Enforcement

What means of enforcement are available?

Court judgments and decisions shall be executed after they come into lawful effect, except in cases where pursuant to law or the court judgment they are to be executed without delay (article 538 of the Civil Procedure Law). If the judgment or decision is not executed voluntarily, the aggrieved party may request the court to issue a writ of execution.

Pursuant the writ of execution the court bailiff may use compulsory execution measures such as recovery directed against money, immoveable and moveable property of a debtor, including property in the possession of other persons and intangible property, by sale thereof etc.

The writ of execution may be submitted for compulsory execution within 10 years from the day when adjudication comes into effect.

12 Public access to court records

Are court hearings held in public? Are courts documents available to the public?

Court hearings are open, except for matters regarding the parentage of children, adoption, divorce and similar, and the court may also declare the hearing closed by its own initiative or pursuant to a reasoned request by a party due to the special circumstances of the case, for example, if it is necessary to protect official or commercial secrets, private life of persons, etc (article 11 of the Civil Procedure Law).

Court documents are not available to the public, except judgments or decisions and only when the data by which the person may be identified is deleted.

13 Inter partes costs

Does the court have power to order costs?

Adjudication costs are of two types: court costs (state or chancellery levies, etc) and trial costs (such as attorneys fees, costs related to gathering of evidence, etc) (article 33 of the Civil Procedure Law).

Court costs shall be paid to the state budget. Civil Procedure Law provides the limits for reimbursing the trial costs, for example, attorneys fees shall be reimbursed in actual amount but no exceeding 5 per cent of the claim. If an attorney and a client have not agreed in writing on the fee for legal assistance, a fee shall be determined in accordance with the official rate set by the Ministry of Justice. In the matter of official rates, these have not changed for several years and do not correspond to the real situation.

A claimant is not required to provide security for the respondent's costs.

14 Fee arrangements

Are 'no win, no fee' agreements or other types of contingency fee arrangements available to parties? May parties bring proceedings using third party funding? If so, may the third party take a share of any proceeds of the claim?

Trial costs shall be recovered against the respondent in favour of the claimant, if the claimant's claim has been satisfied fully or in part, or if the claimant does not maintain the claims because the respondent has voluntarily satisfied them after the claim is brought (article 44 of the Civil Procedure Law). The parties may bring proceedings using third-party funding; however, law does not directly address this issue and does not provide for the third party share of any proceeds of the claim.

15 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

If the party considers the judgment of the first instance is incorrect he or she has a right to appeal it fully or in part. In the appeal, the party may not alter the claim or include new claims that were not submitted in the first instance. However, the party may make the claim more precise, increase the claim amount as a result of increase in market prices and add interest, etc.

The party may submit new evidence with an explanation as to why this evidence was been submitted in the first instance (articles 416 and 418 of the Civil Procedure Law).

A judgment of the appeal court may be appealed in accordance with the cassation procedure but only in cases where the court has breached norms of substantive or procedural law or has acted outside its competence (articles 450 of the Civil Procedure Law).

16 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

The enforcement of foreign judgments is regulated by the Civil Procedure Law and international treaties ratified by Latvia. The Civil Procedure Law defines 'foreign court judgment' as any ruling given by a foreign court, whatever this ruling may be called. After the recent amendments, there are a few new principles introduced in this law: a three-level appeal system of the decision on the recognition of the foreign court judgment; an option to request the court for interim measures in the process of recognition of the foreign court's judgment; and recognition and enforcement shall be possible not only when such procedure is set out in the international treaties. Previously, foreign judgments were not enforceable in Latvia unless there were bilateral agreements on judicial cooperation signed with Latvia. For example, judgment rendered by the courts of United States of America was not enforceable in Latvia.

Amendments to the national law are harmonised with European Union law, for example, with EU Council Regulation No. 44/2001 of 22 December 2000 on Jurisdiction, and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. This regulation is directly applied, and any ruling rendered by the EU member state's court is enforceable in Latvia and vice-versa.

17 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

The Latvian courts shall carry out requests from a foreign court for legal assistance (such as performance of procedural activities, regarding the sending of court and extrajudicial documents and others) and the Latvian courts may send such requests to foreign courts pursuant international treaties, European Union laws and laws of the Republic of Latvia (article 652 of the Civil Procedure Law).

Latvia is a party to the Hague Convention on Civil Procedure, Convention on Taking Evidences Abroad in Civil and Commercial Matters, Convention Abolishing the Requirement of Legalisation for the Foreign Public Documents, etc.

Arbitration

18 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Theoretically, Civil Procedure law, part D on Arbitration was drafted on the basis of the UNCITRAL Model Law, however, draft provisions with respect to court assistance in the formation of an arbitral tribunal and during the arbitral process, as well as with setting aside the arbitral award, were deleted before the Law was enacted.

19 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

Article 492 of the Civil Procedure Law provides that the arbitration agreement shall be in writing. The agreement, entered into by exchange of letters, faxes or telegrams or through other means of telecommunication, ensure that the intent of both parties to refer a dispute or a possible dispute for resolution to an arbitration court is recorded, and shall also be considered an agreement in writing. If the parties have agreed to settle their dispute in a permanent arbitration institution, the name of this institution shall be stated in the arbitration agreement.

20 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the parties have not agreed on number of arbitrators in their arbitration agreement and if the rules are silent, according to the Civil Procedure law, the arbitration shall consist of three arbitrators (article 498 of the Civil Procedure Law). The procedure regarding appointment of arbitrators shall be determined by the parties and if they have felt to do that and rules do not provide for such order, each party shall appoint one arbitrator who, agreeing between themselves, shall appoint the third arbitrator, who shall be the chairperson of the arbitration court panel (article 499 of the Civil Procedure Law).

An arbitrator may be suspended if facts exist that create well-founded doubt as to his or her objectivity and independence as well as if his or her qualification does not conform to those agreed to by the parties (article 501 of the Civil Procedure Law).

Update and trends

A new separate law, which would replace the existing chapter on arbitration of the Civil Procedure Law, was planned to be drafted. But after the change of government, it is no longer a topical question. The legal community expected that the new law would decrease the number of arbitral institutions and improve due process in arbitral proceedings, for example, the setting aside procedure would be introduced in Latvia.

Although this mechanism is not in place, the Constitutional Court has suggested that "it is necessary to completely exercise of the supervision of the arbitration court activities, envisaged in the existing normative regulation. When issuing a writ of execution the State courts shall determine high standards (requirements) in regard to legality of the arbitration court procedure, including independence and impartiality. [...] The structure of the arbitration court, previous relations of the arbitrators with the parties as well as other factors may serve as the reason for doubt of impartiality and independence". (Judgment of the Constitutional Court of Latvia On the Compliance of article 132 (item 3 of the First Part) and article 223 (item 6) of the Civil Procedure Law with article 92 of the Republic of Latvia Constitution, 17 January 2005).

21 Procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The parties have the right to freely determine the procedure of arbitration (article 506 of the Civil Procedure Law). If the parties have agreed to resolve the dispute to a permanent arbitration institution, the arbitral proceedings shall be commenced according to the rules of this institution. In ad hoc arbitration the tribunal shall have authority to determine the procedure itself if the parties' agreement is silent.

There are disputes that may not be resolved by the arbitration such as the adjudication of which may infringe the rights or the interests protected by the law of a person who is not a party of the arbitration court agreement; in which a party is a state or local government institution; which is related to amendments in the Civil Records Registry (for example, marriage, birth and death registration in a special register); or persons declared insolvent; regarding persons' eviction from living accommodations, between employee and employer, if the dispute has arisen by concluding, amending, terminating or performing labour contract (article 487 of the Civil Procedure Law).

22 Court intervention

On what grounds can the court intervene during an arbitration?

The national law does not provide for any state court's assistance or intervention in the arbitral proceedings, except for granting interim measures or executing the award.

23 Interim relief

Do arbitrators have powers to grant interim or conservatory relief?

The article on interim measures ordered by the arbitral tribunal was excluded from the Civil Procedure Law thus the arbitrators do not have powers to grant interim relief. The state court may secure the claim but only before the arbitral proceedings have been initiated (article 138 of the Civil Procedure Law).

24 Award

When and in what form must the award be delivered?

The award shall be made in writing and shall be signed by the arbitrators. Awards shall include information on parties and arbitrators, the time and place of rendering the award, the reasons for award unless otherwise agreed by the parties, the amount to be recovered, allocation of the costs etc (article 530 of the Civil Procedure Law).

The law does not provide any terms for rendering the award, however, each party has the right to unilaterally withdraw from the arbitration agreement the tribunal has not rendered the judgment within a period of one year from the initiation of the proceedings or if the arbitrators have not appointed or no procedural activities have been performed for more than four months.

25 Appeal

On what grounds can an award be appealed to the court?

According to Latvian law, there is no appeal of the arbitration award possible in any case.

26 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

The Civil Procedure Law provides a separate order for enforcement of the foreign and domestic awards.

An award of a foreign arbitral tribunal is a binding adjudication irrespective of its designation (article 645 of the Civil Procedure Law). The enforcement and recognition of a foreign arbitral award shall be commenced in accordance with the Civil Procedure Law and international treaties to which Latvia is a party. Latvia has adopted the Law on Accession of 1958, the New York Convention On the Recognition and Enforcement of Foreign Arbitral Awards and the 1961 European Convention on Commercial Arbitration.

An application for the recognition and execution of a foreign arbitral award shall be submitted to a district (city) court on the basis of the place of execution award or on the basis of the place of residence of the respondent or location (legal address). An original or a true copy of the award and the arbitration agreement shall be attached to the application. The court examines the application in the open hearing inviting the parties and the court may request explanations from parties or additional information from the foreign arbitration court, which rendered the award.

After new amendments to the Civil Procedure Law only the domestic permanent arbitration court awards shall be executable in Latvia.

The Civil Procedure Law stipulates that the arbitral tribunal shall give the parties at least five days for the voluntary execution of the domestic award. If the award is not executed voluntarily, the interested party shall apply for issue of a writ of execution to the first instance court located in the jurisdiction of the permanent arbitration's legal address.

The application for the issue of a writ of execution shall be attached to the award and the arbitration agreement and the state

fee shall be paid. When the application is received by the court, one copy of it shall be sent to the other party identifying the term no shorter than 15 days when the other party's explanations shall be submitted. In the explanations, the losing party may prescribe the objections against the claim and their justifying evidence. However, the absence of explanations is not an obstacle to consider the application by the court. Afterwards the judge hears the case in camera on the basis of the submitted documents and the decision to issue a writ of execution shall be rendered within 10 days from the day when the term for submitting the explanations expires. It comes into force immediately.

The Civil Procedure Law provides the same grounds as the New York Convention article 5 part 1 when recognition and enforcement of the domestic or foreign awards may be refused.

27 Costs

Can a successful party recover its costs?

If the arbitration agreement and rules are silent on the procedure and terms for the payment of the costs, the arbitral tribunal, taking in account the amount claimed, complexity of the dispute, shall determine them and shall provide for the allocation of the costs in the award.

ALTERNATIVE DISPUTE RESOLUTION

28 Obligatory ADR

Is there a requirement for the parties to litigation or arbitration to consider alternative dispute resolution before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process? What types of ADR process are commonly used? Is a particular ADR process popular?

There is no obligatory ADR before or during court or arbitral proceedings. Moreover, alternative dispute resolution is not popular and it is not commonly used in any form.

MISCELLANEOUS

29 Are there any specific features of the dispute resolution system not addressed in any of the previous questions?

Because of the gaps in the Civil Procedure Law – that practically any legal person may establish an arbitration institution – there are more than 110 arbitral institutions in Latvia and thus the quality of the proceedings cannot be predicted in all cases.

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