

## LATVIA

### DELOS GUIDE TO ARBITRATION PLACES (GAP)

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#### JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

There are 69 registered arbitral institutions in Latvia.<sup>1</sup> Until the adoption of the new Arbitration Law in 2015 (the "**Arbitration Law**"),<sup>2</sup> the number of arbitral institutions was above 200. Thus, the trust towards arbitration was not, and still is not very high. Notably, Latvia has not adopted the UNCITRAL Model Law, there are no setting aside procedures nor any type of assistance from the courts during the arbitration proceeding. The Arbitration Law applies to both domestic and international arbitration.

Latvia is a party to the European Convention on International Commercial Arbitration and to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the "**New York Convention**").

Key places of arbitration in the jurisdiction	Riga.
Civil law / Common law environment?	Civil law.
Confidentiality of arbitrations?	The arbitral procedure is confidential. However, if a party applies for the compulsory execution of the arbitral award before State courts, the matter becomes public.
Requirement to retain (local) counsel?	Natural persons may either choose to be represent themselves, or they may choose to be represented by an attorney at law or any authorized representative. Legal entities may choose to be self-representing through its official representative acting within the scope of his/her authorization, or by any authorized representative of the legal entity (including foreigners).  Any natural person may act as an authorized representative, except for persons who (i) have not attained the age of legal majority; (ii) are under trusteeship; (iii) have been deprived of the right to conduct the matters of other persons; (iv) are in a relationship of kinship up to the third degree, or in a relationship of affinity up to the second degree with one of the arbitrators; (v) have provided legal assistance to the opposing party in this matter or in another related matter; (vi) have participated in mediation in this matter or in another related matter.
Ability to present party employee witness testimony?	Traditionally, parties are not allowed to present witness testimony in the course of arbitration proceedings. This is due to the fact that arbitral tribunals are not legally entitled to take the oath of witnesses – such right belongs exclusively to State court judges. Therefore, in practice, the person who testifies will formally do so as a representative of the party, and not as a witness.
Ability to hold meetings and/or hearings outside of the seat?	If the parties have not agreed otherwise, the tribunal has the right to freely determine the seat of arbitration, taking into account considerations such as efficiency.

<sup>1</sup> See: Register of Arbitral Institutions at Register of Enterprises (in Latvian): <http://www.ur.gov.lv/skirejtijasas.html>.

<sup>2</sup> Šķīrējtiesu likums [Arbitration Law], OP No. 2014/194.1 (in English): [http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Arbitration\\_Law.pdf](http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Arbitration_Law.pdf).

Availability of interest as a remedy?	The tribunal may grant interest to the winning party for the period prior to the execution of the award, at the rate of 6% per year.
Ability to claim for reasonable costs incurred for the arbitration?	The costs for arbitration are determined by the rules of each arbitral institution. However, the arbitral tribunal shall have the right to determine the costs for arbitration taking into account the amount claimed, the complexity of the dispute, the provisions of the arbitration agreement and other significant circumstances.
Restrictions regarding contingency fee arrangements and/or third-party funding?	There are no restrictions regarding third party funding but in practice, the use of third party founding is not very common yet in Latvia.
Party to the New York Convention?	Yes, the New York Convention is applied directly as the Civil Procedure Law, <sup>3</sup> which only prescribes technical provisions for the submission of the application to recognize and enforce the arbitral award.
Other key points to note	<p>The new Arbitration Law introduced very specific rules concerning arbitral institutions and arbitrators. Every permanent arbitral institution shall be registered with the Enterprise Register and shall satisfy several requirements: (i) it must have separate premises suitable for the operation of a court of arbitration; (ii) it must have the necessary personnel; (iii) it must have a website; (iv) it must have a closed list of arbitrators, including the names of at least 10 arbitrators. Arbitrators shall be trained lawyers, with a good reputation and at least three years of practical legal work experience. In order to verify that an arbitrator's qualifications are in conformity with the requirements of the law, the documents confirming such qualifications must be submitted to the Enterprise Register by the arbitral institution. One arbitrator cannot be included in more than three lists of arbitral institutions. In practice, this creates several issues. First, parties cannot appoint non-lawyers as arbitrators. Second, parties may only appoint arbitrators that are included in the lists of arbitral institutions. Third, due to the small number of arbitrators on the lists of arbitral institution, there is a high risk of conflict of interests among arbitrators and counsels.</p> <p>The Arbitration Law does not forbid the parties to agree on ad hoc arbitration. However, given that law is not favourable to <i>ad hoc</i> arbitration, it would not be recommended. For example, the signature of arbitrators on an <i>ad hoc</i> arbitral award must be approved by a notary public. Most importantly, a party cannot request the domestic court to issue the writ of execution of the <i>ad hoc</i> award, as the law only provides for compulsory execution of institutional awards.</p>
WJP Civil Justice score (2018)	φ

<sup>3</sup> Civilprocesa likums [Civil Procedure Law] (in English): <http://vvc.gov.lv/image/catalog/dokumenti/Civil%20Procedure%20Law.docx>.

## ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The Arbitration Law became effective as of 1 January 2015. It was revised on 6 October 2016, and this revision became effective since 3 November 2016.
UNCITRAL Model Law? If so, any key changes thereto?	Latvia has not adopted the UNCITRAL Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No.
Availability of <i>ex parte</i> pre-arbitration interim measures?	<p>The court can grant interim measures but only before the commencement of the arbitration proceedings and, according to case law, the interim measures would not include the freezing/attachment of bank accounts. Given that there are many non-residents' bank accounts in Latvia, this is a real disadvantage, in international cases, in which it is often needed to attach those accounts before commencing the arbitration.</p> <p>If the respondent owns property (not money) in Latvia, or if the respondent is domiciled in Latvia, interim measures can be granted <i>ex parte</i> before the initiation of the arbitration proceedings. However, it is rather expensive: the court fee for securing the claim is 0,5% of the total amount claimed, and the fee is not refunded in the event the claim is not secured. The denial of the request for interim measures cannot be appealed. Therefore, claimant is rarely advised to request for interim measures.</p>
Courts' attitude towards the competence-competence principle?	<p>For a long time, courts have misinterpreted the provision of the law stating: "an arbitration court determines jurisdiction regarding a dispute, even in cases where one of the parties contests the existence or the validity of an agreement". The courts referring to this provision considered that only and exclusively an arbitral tribunal shall decide on its competence and the courts shall not accept claims covered by an arbitration clause at all. One of the courts' arguments was that if the parties have decided to settle their disputes outside the court of general jurisdiction, they should not overload the courts with such applications. This provision of the law was challenged in the Constitutional Court. The applicant to the constitutional claim submitted that in his arbitration case, the arbitration agreement was forged. Despite this fact, the arbitral tribunal considered that it was valid and proceeded with the review of the case. The Constitutional Court decided that this rule shall be interpreted in</p>

	<p>a way that the court also has competence to decide on the validity of the arbitration clause.<sup>4</sup></p> <p>In practice, the judgment of the Constitutional Court did not solve the problem, as illustrated by the following example. If a party submits an application to the court asking to acknowledge that the arbitration agreement is void and to hear the dispute on the merits; while the other party submits the statement of claim to the arbitral tribunal; despite the first party's challenge, the arbitral tribunal may find that it has jurisdiction and render an award regardless. In this case, even if the court finds that the arbitration agreement is not valid, the award cannot be set aside.</p>
<p>Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?</p>	<p>Pursuant to Article 536 of the Civil Procedure Law, a judge may refuse to issue a writ of execution (for a domestic award issued in Latvia) if:</p> <ol style="list-style-type: none"> <li>1) the dispute could only be resolved in court;</li> <li>2) the arbitration agreement has been entered into by a natural person who had restricted capacity to act, or by a minor;</li> <li>3) the arbitration agreement, in accordance with the applicable law, has been revoked or declared null and void;</li> <li>4) the party was not notified of the arbitration proceedings in an appropriate manner, or due to other reasons was unable to submit his or her observations, and this has or could have significantly affected the proceedings;</li> <li>5) the party was not notified of the appointing of an arbitrator in an appropriate manner, and this has or could have significantly affected the arbitration proceedings;</li> <li>6) the arbitrator does not comply with the requirements of the Arbitration Law, the arbitral tribunal was not appointed, or the arbitration proceedings did not take place in accordance with the provisions of the arbitration agreement or of the Arbitration Law;</li> <li>7) the dispute that gave rise to the award was not provided for in the arbitration agreement or did not conform to the provisions of the arbitration agreement, or the issues decided by the arbitral tribunal were not within the scope of the arbitration agreement.</li> </ol> <p>There is no public policy ground for refusing to issue a writ for compulsory execution of the domestic arbitral awards.</p> <p>If a writ is denied, the party can form an appeal within 10 days. However, the decision to issue a writ may not be appealed. Moreover, the law is silent as to the validity of the arbitral award if the court has denied issuing the writ. Theoretically, the award does not automatically become invalid, and thus could still be recognised abroad.</p>

<sup>4</sup> The Constitutional Court of the Republic of Latvia judgment in the case No. 2014-09-01 dated 28 November 2014 (in English): [http://www.satv.tiesa.gov.lv/wp-content/uploads/2014/03/2014-09-01\\_Spridums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2014/03/2014-09-01_Spridums_ENG.pdf).

<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>φ</p>
<p>Other key points to note?</p>	<p>Courts issue writs of execution on application of the winning party to entail forced execution of the arbitral award. A writ of execution can be obtained only for awards rendered by the permanent arbitral institution, not for awards rendered by <i>ad hoc</i> arbitral tribunals. This is a strong disincentive to the use of <i>ad hoc</i> arbitrations where enforcement in Latvia is sought.</p> <p>The procedure to seek the issuance of the writ of execution of the award rendered by the permanent arbitral institution is written. Application is made by the winning party and the losing party may subsequently object. There is thus no hearing of the parties. The court verifies whether there are procedural grounds to deny the application for the writ. The decision can only be based upon the application and the reply of the parties.</p>

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

The Arbitration Law was adopted on 11 September 2014, and it entered into force on 1 January 2015.<sup>5</sup> Since its adoption, the Arbitration Law was revised on 6 October 2016, and the amendments became effective as of 3 November 2016. The Arbitration Law is not based on the Model Law. For instance, there is almost no court assistance to arbitration. Therefore, Latvia is a very particular place for arbitration.

The main purpose of this Law was to fight against the multiplication of arbitral institutions in Latvia (before the Arbitration Law, there were more than 200 arbitral institutions in Latvia). These institutions were called “pocket arbitral institutions”, and in most cases, they relied on a biased structure of institution and arbitrators.

Due to the application of stricter requirements for arbitral institutions and arbitrators under the new Arbitration Law, some of the arbitral institutions ceased to exist because they were not able to fulfil those requirements, or because they failed to renew their registration, or because they were excluded from the register by the Enterprise Register. Therefore, the Arbitration Law provides that if the parties have agreed to refer their disputes to a permanent arbitral institution which has been excluded from the register or which has ceased its operations, the parties shall agree on another arbitral institution. If no agreement may be reached, the dispute shall be resolved in court in accordance with ordinary civil procedure (Section 5 of the Transitional Provisions of the Arbitration Law).

### 2. The arbitration agreement

#### 2.1 How do the courts in jurisdiction determine the law governing the arbitration agreement?

The Arbitration Law is silent regarding the applicable law to the arbitration agreement, and there is no extensive case law in this regard.

For example, in one recent case between Scottish and Latvian parties, there was a dispute regarding the validity of the arbitration agreement. The parties concluded a sale of goods contract governed by English law, with an arbitration agreement referring to a non-existent court of arbitration (“Latvian court of Arbitration”), The claimant (a Scottish party) referred to the general rules contained in the Article 19 of the Civil Law,<sup>6</sup> providing that: *“if there is no agreement, it shall be presumed that the contracting parties have made their obligation, in accordance with its substance and consequences, subject to the laws of the state where the obligation is to be performed.”* In this case, the claimant argued that, considering that the parties had made a specific reference to Latvia in their arbitration agreement, it would have to be performed in Latvia. At the time of conclusion of the arbitration agreement, there were two arbitration courts with names similar to that agreed by the parties. However, at the time of the dispute, one of the institutions was liquidated, and the other institution's name in Latvian translated into English did not fully correspond to the one referred by the parties. Therefore, in the claimant’s opinion, the arbitration agreement was not valid. In its judgment, the court stated that there was no dispute between the parties regarding the law applicable to the arbitration agreement, and therefore, the court did not develop this issue. The court determined that the arbitration agreement was not valid and proceeded with the merits of the case.<sup>7</sup> The court did not apply the New York Convention.

<sup>5</sup> Šķirējtiesu likums [Arbitration Law]. Available in English at [http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Arbitration\\_Law.pdf](http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Arbitration_Law.pdf).

<sup>6</sup> [http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/The\\_Civil\\_Law.doc](http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/The_Civil_Law.doc)

<sup>7</sup> Rīgas pilsētas Ziemeļu rajona tiesa lieta Nr. C32370115, 18.05.2017.

## 2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

According to Article 13 of the Arbitration Law, if an arbitration agreement has been included in a contract as a separate provision, it shall be considered as independent from the rest of the contract. Therefore, if the underlying contract has expired, or if it is declared null and void, the arbitration agreement shall remain effective. Also, the courts acknowledge this principle stating also that due to the independent character of the arbitration agreement, different laws may apply to the arbitration agreement and to the underlying contract.<sup>8</sup>

## 2.3 What are the formal requirements for an enforceable arbitration agreement?

According to Articles 10 and 11 of the Arbitration Law, an arbitration agreement is an agreement entered into between any natural person with the capacity to enter into agreements, or a legal entity governed by private law or by public law in the area of private law; which refers a civil legal dispute which has already arisen or may arise in the future to resolution by way of arbitration.

There are specific requirements as regards the form and content of an arbitration agreement. An arbitration agreement shall be in written form but if it is concluded by the electronic means, it shall be recorded with a safe electronic signature (Article 12 of the Arbitration Law). The Arbitration Law also specifies that, in addition, the parties may agree *inter alia* on the type of arbitration, the place of arbitration, the language, the arbitrators, the procedure for covering the costs of arbitration and other conditions (Article 12(3) of Arbitration Law). Given that there are many arbitral institutions in Latvia, and that many of them have similar names, it is common in practice for the arbitration agreement to contain a specific reference to the registration number of the arbitral institution.

## 2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

First, it should be noted that Article 5(1) of the Arbitration Law states that an arbitral tribunal shall not resolve a dispute that may infringe the rights of a third party who is not a party to the arbitration agreement. This rule is very strictly interpreted by State courts. Therefore, third parties cannot be bound by an arbitration agreement in any case. Second, in the case of assignment, only claims may be assigned, not an arbitration clause that was included in the initial contract (Article 13(4) of the Arbitration Law). Therefore, case law shows that parties wishing to avoid arbitration proceedings often decide to assign the agreement containing the arbitration clause.

## 2.5 Are there restrictions related to arbitrability?

Article 5 of the Arbitration Law explicitly covers both subjective and objective arbitrability. The following disputes cannot be resolved by way of arbitration:

- 1) Disputes which infringe the rights of a third party, or rights, obligations, or interests protected by law;
- 2) Disputes relating to entries made in the Civil Records Register, over the establishment, alteration or termination of property rights regarding immovable property, if a party to the dispute is a person whose rights to acquire the immovable property for ownership, possession or use are restricted by law and the disputes regarding the eviction of natural persons from residential premises;
- 3) Disputes which involve persons who are under guardianship or trusteeship;
- 4) Disputes regarding individual employment relations;
- 5) Disputes regarding the rights and obligations of persons who have entered into insolvency proceedings;

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<sup>8</sup> Rīgas pilsētas Ziemeļu rajona tiesa lieta Nr. C32370115, 18.05.2017. See footnote: 7.

- 6) Disputes where at least one of the parties is a State or local government authority, or an award regarding which by the court of arbitration may infringe the rights of the State or local government authority. The latter disputes are not arbitrable only in domestic cases.

According to the case law of the European Court of Justice, and pursuant to Article 6(3)(7) of the Law on Consumer Rights Protection, a clause included in a consumer agreement which provides for dispute settlement exclusively by means of arbitration is unfair.<sup>9</sup>

Finally, special laws limit the arbitrability of certain disputes, such as patent, copyright, or competition disputes.

### 3. Intervention of domestic courts

In general, it should be noted that, in Latvia, as a non-UNICTRAL Model Law country, there is limited assistance by the domestic courts in arbitration proceedings. Namely, the courts of general jurisdiction may grant interim measures, but only before arbitral proceedings are initiated (Article 139 of the Civil Procedure Law) and can issue or deny to issue the writ of execution for the compulsory enforcement of domestic arbitral awards (Article 536 of the Civil Procedure Law). However, the Arbitration Law does not provide for any setting aside procedure, and the courts may not provide any assistance in the gathering of evidence, the appointment of arbitrators, etc.

Traditionally, courts used to consider that only arbitral tribunals could rule on their jurisdiction, and therefore refused to accept applications to acknowledge the invalidity of an arbitration agreement in any circumstances (for example, even if one party claimed that the arbitration agreement was forged). However, the Constitutional Court declared that preventing parties from contesting the jurisdiction of arbitral tribunals before courts of general jurisdiction was unconstitutional,<sup>10</sup> and recognized that the competence-competence principle does not exclude the possibility that the jurisdiction of an arbitral tribunal be examined by a court of general jurisdiction. As a result, courts can accept the claim if it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. However, it should be stressed that there is no provision in the Arbitration Law that the party may request the court to rule on the arbitral tribunal's award on jurisdiction. Therefore, in practice, the judgment of the Constitutional Court did not solve the problem. For example, if a party submits an application to the court asking to acknowledge that the arbitration agreement is void and to hear the dispute on the merits; while the other party submits the statement of claim to the arbitral tribunal; despite the first party's challenge, the arbitral tribunal may find that it has jurisdiction and render an award regardless. In this case, even if the court finds that the arbitration agreement is not valid, the award cannot be set aside.

Latvian courts frequently use the mechanism enshrined in Article 4(5) of the European Convention on International Commercial Arbitration, which provides that where the parties have agreed to submit their disputes to a permanent arbitral institution without determining the institution in question and cannot agree thereon, the claimant may request the determination of such institution in conformity to the President of the competent Chamber of Commerce of the place of arbitration. If the place of arbitration is not agreed on, then the claimant is entitled to apply to the President of the competent Chamber of Commerce of the country of the respondent's habitual place of residence or seat at the time of the introduction of the request for arbitration, or to the Convention's Special Committee (Article 4(3)). This provision permits to uphold the validity of an arbitration agreement which would otherwise be null and void under the applicable law for non-existence or ambiguous determination of the arbitral institution to which the dispute should be referred.

<sup>9</sup> Patērētāju tiesību aizsardzības likums [Consumer Rights Protection Law] (in English): [http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Consumer\\_Rights\\_Protection\\_Law.pdf](http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Consumer_Rights_Protection_Law.pdf).

<sup>10</sup> The Constitutional Court of the Republic of Latvia judgment in the case No. 2014-09-01 dated 28 November 2014 (in English): [http://www.satv.tiesa.gov.lv/wp-content/uploads/2014/03/2014-09-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2014/03/2014-09-01_Spriedums_ENG.pdf).

### **3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?**

According to Article 223(6) of the Civil Procedure Law, a court shall terminate the court proceedings if the parties have agreed to submit their dispute to arbitration. Thus, if there is a valid arbitration agreement, the court shall not initiate the proceedings at all. The Constitutional court suggested that courts shall retain jurisdiction if it is evident that the arbitration agreement is null and void, inoperative or incapable of being performed. However, the law is silent on such criteria.

### **3.2 How do courts treat injunctions by arbitrators enjoying such courts to stay litigation proceedings?**

Under the Arbitration Law, arbitrators have no power to issue any injunctions. However, courts would most likely disregard such injunctions.

### **3.3 On what grounds can the courts intervene in an arbitration seated outside of the jurisdiction?**

There are no such grounds provided in the law. An interesting provision is included in the Civil Procedure Law, in the section regarding "Recognition and enforcement of foreign arbitral awards": Article 649(2) provides that, when deciding on recognition of the foreign arbitral award, Latvian courts may request additional information from the foreign arbitral institution that has made the award. The Law does not specify what information can be requested and on what grounds. However, there are no cases reported where the Latvian court has used this provision.

## **4. The conduct of the proceedings**

### **4.1 Can parties retain outside counsel or be self-representing?**

The Arbitration Law contains very detailed rules regarding representation of parties in arbitration proceedings. Article 32 states that natural persons may choose to be self-representing, or they may choose to be represented by any authorized representative (including foreigners). Legal entities may choose to be self-representing through their official representative acting within the scope of his/her authorization as provided in the law, articles of association or statutes, or by any authorized representative of the legal entity.

Any natural person may act as an authorized representative, except for persons who (i) have not attained the age of legal majority; (ii) are under trusteeship; (iii) have been deprived of the right to conduct the matters of other persons; (iv) are in a relationship of kinship up to the third degree, or in a relationship of affinity up to the second degree with one of the arbitrators; (v) have provided legal assistance to the opposing party in this matter or in another related matter; (vi) have participated in mediation in this matter or in another related matter.

A person who is or has been or - during the last five years - has been on the list of arbitrators of the relevant permanent arbitral institution may not represent a party, and he or she may not be invited to provide legal assistance in proceedings of this permanent arbitral institution.

Parties may invite advocates to provide legal assistance during arbitration proceedings. There are no restrictions to invite the foreign representative.

### **4.2 How strictly do courts control arbitrators' independence and impartiality?**

In theory, arbitrators and arbitral institutions are controlled not only by the courts, but also by the Enterprise Register, which is in charge of the registration of the permanent arbitral institutions in Latvia. The Arbitration Law in this regard is very strict.

The Arbitration Law provides specific rules regarding the organisational structure of arbitral institutions in Latvia. Every permanent arbitral institution shall be registered with the Enterprise Register and shall satisfy several requirements: (i) it must have separate premises suited for the operation of a court of arbitration; (ii) it must have the necessary personnel; (iii) it must have a website (Article 4); and (iv) it must have a closed list

of arbitrators with at least 10 arbitrators (Article 8). If the arbitral institution does not fulfil those requirements, the Enterprise Register shall exclude it from the register and it will cease to exist.

Namely, the Arbitration Law imposes very specific requirements regarding arbitrators as well. Arbitrators shall be trained lawyers, with a good reputation and at least three years of practical legal work experience. In order to verify that an arbitrator's qualifications are in conformity with the requirements of the law, the documents confirming such qualifications must be submitted to the Enterprise Register by the arbitral institution (Article 14). One arbitrator cannot be included in more than three lists of arbitral institutions. In practice, this creates several issues. First, parties cannot appoint non-lawyers as arbitrators. Second, parties may only appoint arbitrators that are included in the lists of arbitral institutions. Third, due to the small number of arbitrators on the lists of arbitral institution, there is a high risk of conflict of interests among arbitrators and counsels.

In addition, an arbitrator is not allowed to participate in an arbitration if he/she: (i) has been a representative of any of the parties, or an expert or witness in a matter where the same parties have participated; (ii) is in a relationship of kinship to the third degree, or relationship of affinity to the second degree, with any participant in the matter or representatives thereof; (iii) is in a relationship of kinship to the third degree, or relationship of affinity to the second degree, with any arbitrator who is a member of the arbitral tribunal; (v) is in an employment relationship with any participant to the dispute or their representative, or if the arbitrator provides legal assistance to any of the parties; or (vi) if his/her spouse, or kin to the third degree, or business partner, or commercial company, which is a party to the dispute and whose participant, shareholder, member, or member of supervisory, control or executive body is this arbitrator or his or her kin to the third degree, has financial interest in the outcome of the civil legal dispute.

According to Article 536(1)(7) of the Civil Procedure Law, one of the grounds for not issuing the writ of execution is that an arbitrator in the arbitration proceedings did not fulfil the legal requirements. This concerns the qualification (law degree, education and practical experience) of the arbitrators, as well as their independence and impartiality.

The Constitutional Court explicitly stated that, when issuing a writ of execution, the State courts shall determine high standards regarding the legality of the arbitration procedure, including the independence and impartiality of arbitrators. In this sense, the Constitutional Court noted that the lack of independence and impartiality of arbitrators can be observed not only in cases where it has been established, but also in cases where there are justifiable doubts. The structure of the arbitration court, previous relations of the arbitrators with the parties as well as other factors may serve as indicators justifying such doubts.<sup>11</sup> The court can deny the issuance of the writ of execution if it finds that such doubts exist.

There is no set aside procedure in Latvia, thus the courts can only control the arbitrator's independence and impartiality when issuing the writ of execution for compulsory enforcement of the arbitral award. As the control of the court is only at the stage of compulsory execution, thus if there is award that does not need execution and a writ of execution then there is no control over such award.

In practice, even if the formal legal requirements are fulfilled by the arbitral institution and arbitrators, understanding of impartiality and independence may vary. For example, the requirement to include 10 arbitrators in the closed list does not guarantee the absence of conflicts of interests and due process.

#### **4.3 On what grounds do courts intervene to assist in the constitution of the arbitration tribunal**

The Arbitration Law does not provide for any court assistance in the constitution of the arbitral tribunal. Moreover, Article 17(2) of the Arbitration Law states that if the challenged arbitrator does not resign, the arbitral tribunal or the arbitrator himself/herself shall decide on the removal within five days after receipt of the notice. However, if the sole arbitrator decides not to resign, there are no other available remedies. The

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<sup>11</sup> Judgment of the Constitutional Court of the Republic of Latvia in the case No. 2004-10-01 dated 17 January 2005.

only possible solution is for the interested party to object it in the court's procedure of issuance of the writ of compulsory execution of the arbitral award.

#### **4.4 Do courts have the power to issue interim measures in connection with arbitration, if so, are they willing to consider ex parte requests**

Pursuant to Article 139 of the Civil Procedure Law, courts have the power to issue interim measures. However, they may only do so before the commencement of the arbitration proceedings. In practice, this raises some difficulties. First, this is only applicable in institutional arbitration proceedings, not to *ad hoc* arbitration. Secondly, the application for interim measures shall be submitted to a court based on the location of the debtor or of his/her property. However, the meaning of "property" does not include monies in the bank accounts. Thus it is established in the case law that if the claimant whose domicile is in other country wishes to attach the bank account in Latvia of the respondent, whose domicile is also in other country before the commencement of an arbitration that is not seated in Latvia, the attachment of the bank account will not be granted because the courts separate two concepts: "money" and "property" and the law refers only to "property."<sup>12</sup>

The court shall decide on the application for interim measures within one day, without notice to the parties, taking into account *prima facie* formal legal grounds and proportionality between legal interests of the parties. If the court satisfies the application for interim measures, it also determines the time period within which the claimant shall submit the claim to the permanent court of arbitration. If the court denies the application, the decision is not appealable.

#### **4.5 Other that arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration**

##### **4.5.1 Confidentiality**

Article 23 of the Arbitration Law states that arbitration proceedings shall be confidential, unless the parties have agreed otherwise. Arbitration hearings shall be closed, and the tribunal shall not disclose to any third parties, or publish information concerning the arbitration proceedings, unless the parties have agreed otherwise. Persons who are not parties to the arbitration proceedings may only be present at the hearing with the consent of the parties.

However, if a party applies for the compulsory execution of the arbitral award before State courts, the matter becomes public.

##### **4.5.2 Length**

Specific and imperative deadlines are included in the Arbitration Law (Article 28 of the Arbitration Law). First, the notice of the first hearing shall be sent to the parties through registered mail not later than 15 days in advance, unless the parties have agreed on a shorter time period (Article 31(4)). Secondly, an arbitration tribunal shall render an award not later than 14 days after the dispute is fully decided on the merits of the case (Article 54). The tribunal shall determine other procedural deadlines in accordance with the rules of the permanent arbitral institution.

##### **4.5.3 Place**

If parties have not agreed on the place of arbitration, the arbitration tribunal has the right to freely determine the place of arbitration bearing in mind efficiency considerations (Article 25 of the Arbitration Law).

##### **4.5.4 Interim measures**

Arbitral tribunals have no rights to grant interim measures under Latvian law.

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<sup>12</sup> Decision by Riga Regional court dated 17 June 2010, unpublished.

#### 4.5.5 Admit/exclude evidence

First, it must be noted that under Latvian law, witness testimony is not available in the context of arbitration proceedings. This is due to the fact that arbitral tribunals are not legally entitled to take the oath of witnesses – such right belongs exclusively to State court judges. Therefore, witnesses are not allowed in arbitration proceedings, even if the parties agree to witness testimony. However, parties can submit explanations, documentary evidence (written documents, audio and video recordings, electronic data, etc.), material evidence and expert opinions.

Evidence shall be submitted by the parties and each party shall prove the circumstances used by it to support its claims and objections. Arbitrators shall determine the admissibility and eligibility of evidence (Article 41 of the Arbitration Law). If a party refuses to submit the documentary evidence requested by the arbitral panel within the time period provided by it, without denying that the party possesses such evidence, the arbitral panel may admit as proven the facts, which the opposite party sought to prove by referring to such documentary evidence (Article 43 of the Arbitration Law).

According to the Article 42 of the Arbitration Law an arbitration tribunal shall identify in the reasoning of the award why it has given preference to certain pieces of evidence rather than to others, and why it has found certain facts as proven, and others as not proven.

#### 4.5.6 Mandatory hearing

If the parties have not agreed to resolve their dispute in writing, then the arbitral tribunal shall hold the hearing. However, even if the parties have agreed on a written procedure, if one party requests that a hearing be held, the tribunal must hold a hearing (Article 40 of the Arbitration Law).

#### 4.5.7 Award of interest

The Arbitration Law provides that, in their award, arbitrators shall, *inter alia*, indicate the rights of the winning party to receive interest for the time period prior to the execution of the award (Article 54(7)). Article 1765 of the Civil Law provides for 6% per year as a rate set by the law.

#### 4.5.8 Allocation of arbitration costs

Article 45(2) of the Arbitration Law provides that the amount of costs of arbitration proceedings, as well as the term and procedures for payment thereof shall be determined by the court of arbitration, taking into account the amount claimed, the complexity of the civil legal dispute, the provisions of the arbitration agreement, as well as other significant circumstances. The Law explicitly does not incorporate the principle that “loser pays all costs”, but the Rules of the permanent institution can specify that.

Article 45(3) of the Arbitration Law states that, unless otherwise agreed upon by the parties, in the arbitration agreement, fees for participation of a secretary, interpreter or expert in arbitration proceedings, as well as other costs of arbitration proceedings shall be paid in accordance with the Rules of the arbitral institution, by the party who submitted the request regarding participation of a secretary, interpreter or expert, as well as regarding performance of an expert-examination during arbitration proceedings. If such request has been submitted by both parties, they shall pay the costs equally.