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DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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OF LEX

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VERSION: 23 MAY 2018

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

The Icelandic Arbitration Act ("IAA") entered into force in 1 January 1990. The Act's sources of inspiration was the arbitration law of neighbouring jurisdictions, *i.e.* the Norwegian, Danish and Swedish arbitration acts in force at the time as well as the original 1985 version of the UNCITRAL Model Law. Legal practitioners as well as users of arbitration have in recent years been calling for a comprehensive reform of the legal framework of arbitration in Iceland, this is corollary to the increased interest in arbitration as a dispute resolution mechanism in recent years. Thus, it is likely that a comprehensive legislative reform (based on the UNCITRAL Model Law) modernizing the legal framework for arbitration in Iceland is due in the near future.

Key places of arbitration in the jurisdiction	Reykjavik
Civil law / Common law environment?	Civil law
Confidentiality of arbitrations?	Not addressed in the IAA but there is an underlying assumption and expectation of confidentiality
Requirement to retain (local) counsel?	Not required
Ability to present party employee witness testimony?	Permitted
Ability to hold meetings and/or hearings outside of the seat?	Permitted, unless the parties agreed otherwise
Availability of interest as a remedy?	The IAA does not prescribe any principles on awarding interest. This matter is generally regarded as a part of substantive law.
Ability to claim for reasonable costs incurred for the arbitration?	According to IAA the Arbitral Tribunal has discretion to allocate the arbitration costs as it deems appropriate.
Restrictions regarding contingency fee arrangements and/or third-party funding?	The IAA is silent on contingent fees, alternative fee arrangements and third-party funding. It should be noted that the Act on Professional Attorneys specifically permits contingent fees.
Party to the New York Convention?	Yes, since 2002.
Other key points to note	Comprehensive legislative reform modernizing the legal framework for arbitration in Iceland is expected in the near future.
WJP Civil Justice score (2018)	ϕ

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	1 January 1990
UNCITRAL Model Law? If so, any key changes thereto?	No. The original 1985 version of the UNCITRAL Model law was one of the sources of inspiration of the IAA. However, the text of the IAA cannot be described as an UNCITRAL Model Law one. The IAA does not address the competence of the tribunal to rule on its own jurisdiction, nor interim measures. The requirements of independence and impartiality of arbitrators are included therein with reference only to the Act on Civil Procedure. The IAA only provides for setting aside procedures to challenge an award and does not specifically address grounds to refuse recognition and enforcement.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No, arbitration-related matters fall within the jurisdiction of the District Courts in the first instance and the High Court, which is the second instance appellate court.
Availability of *ex parte* pre-arbitration interim measures?	Yes. A request for an interim measure is usually addressed to the District Commissioner (enforcement and administrative body) and subject to subsequent judicial review. The District Commissioner will consider *ex parte* requests taking into account the need for urgency of the requested interim measure and several other factors.
Courts' attitude towards the competence-competence principle?	The IAA does not address the competence of the Arbitral Tribunal to rule on its own jurisdiction. Yet, the domestic courts recognise the fact that the IAA was inspired by international texts and the courts generally have a positive disposition towards arbitration, including the competence-competence principle.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The IAA only provides for ground to have an award set-aside which also apply for recognition and enforcement proceedings. Article 12 of IAA exhaustively lists the grounds for having an award set-aside. Article 12(1)(6) allows *inter alia* for setting aside if the award is founded on unlawful grounds. It is not entirely clear from the drafting history of the IAA what this term "unlawful grounds" entails. The domestic courts have, however, been reluctant to set aside arbitral awards.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	The IAA is silent on this issue. This issue has not been addressed by the domestic courts.
Other key points to note (significant idiosyncrasies not covered elsewhere)?	The standard of arbitrators' independence and impartiality under the IAA derives from a reference to the Act on Civil Procedure making this issue inaccessible for international users of arbitration in Iceland. The Act does not differentiate between setting aside procedures

	on the one hand and the recognition and enforcement procedures on the other and there are no time limits to commence setting aside proceedings.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of arbitration in Iceland

The Icelandic Arbitration Act No 53/1989 (the "**Act**"), which entered into force on 1 January 1990, was the first comprehensive legislation that addressed arbitration in Iceland. Prior to its enactment, Icelandic law contained only one provision (found in Danish legislation from 1687) that dealt indirectly with arbitration.[1] As stated in the *travaux préparatoires*, the Act's source of inspiration was sought in the arbitration laws of neighbouring jurisdictions, i.e., the Norwegian, Danish, and Swedish Arbitration Acts in force in 1989 when the Act was drafted, as well as the original 1985 version of the UNCITRAL Model Law on International Commercial Arbitration (the **"UNCITRAL Model Law**").[2] Even though the 1985 version of the UNCITRAL Model Law was one of the sources of inspiration at the time the Act was drafted, the Act does not bear any resemblance to the UNCITRAL Model Law. Accordingly, Iceland cannot in any way be described as a UNCITRAL Model Law jurisdiction.

Regardless of the fact that the first comprehensive legislation on arbitration was only enacted in 1990, arbitration as means of resolving disputes in Iceland can be traced back to the era of the Icelandic Commonwealth, as early as the eleventh century.[3] It is, thus, clear that arbitration, in one form or another, has long been part of Icelandic's legal and cultural history as means of resolving disputes without resorting to arms.[4]

The Act governs both domestic and international arbitration in Iceland and consists of 15 Articles, which can be divided into four sections. The first section deals with the arbitration agreement, the second section with the qualifications, independence and impartiality of arbitrators, the third section addresses the arbitral procedure and procedural issues, and the fourth section deals with the award and the recognition and enforcement of awards. As can be expected, given the Act's brevity, there are various issues that are not addressed in as much detail as in the UNCITRAL Model Law, or even not addressed at all. For example the Act does not address the competence of the tribunal to rule on its own jurisdiction, nor interim measures. Furthermore, the provisions regarding the independence and impartiality of arbitrators and the challenge and replacement procedure are not as detailed as in the UNCITRAL Model Law and the Act does not differentiate between setting aside procedures on the one hand and the recognition and enforcement procedures on the other. The Act is complemented by the accompanying *travaux préparatoires*, and some useful, albeit limited, case law of the Supreme Court of Iceland.[5] Generally, Icelandic courts attribute high interpretative value to the *travaux préparatoires* and this is the same when the courts have to resolve arbitration, as case law demonstrates.[6]

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1 The Norwegian Law of Christian V. from 15 April 1687, Chapter 6. See, also, V. Sigurðsson, *Um samnings-bundna,gerðardóma,* Tímarit lögfræðinga, Volume 40, year 1990, No 1, pp. 28-37, at pp. 28-29; and S. Stefánsson, *Um samningsbundna gerðardóma*, Tímarit lögfræðinga, Volume 40, year 1990, No 1, 38-50, at pp. 38-39, and P. Sigurðsson, *Verksamningar*, Bókaútgáfa Orators (1991), at p. 295.

2 Commentary on the bill on Contractual Arbitration, 111th Legislative Session 1988-89, parliamentary document No 619, parliamentary item No 342, at general comments.

3 F. Madsen, *Commercial Arbitration in Sweden*, Oxford University Press, 2007, at p. 17. Moreover, the decision of the chieftain Thorgeir Ljosvetningagodi at the Althing in the year 1000, which provided for the peaceful conversion of Icelanders to Christianity, bears a resemblance to arbitration. See G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at pp. 2-3.

4 W. Miller, *Bloodtaking and Peacemaking – Feud, Law and Society in Saga Iceland*, the University of Chicago Press, 1990, Chapter 8, "Peacemaking and Arbitration", at pp. 259-300; J. Jochens, "Late and peaceful: Iceland's conversion through arbitration in 1000", Speculum a Journal of Medieval Studies, 1999, pp. 621-655, at p. 623; F. Madsen, *Commercial Arbitration in Sweden*, Oxford University Press, 2007, at p. 17; and J. Byock, *Feud in the Icelandic Saga*, University of California Press, 1982, at p. 99.

5 H. Larusson, and G. Gunnarsson, "Islandia (Iceland)" in *Arbitraje Comercial Internacional en Europa*, Mario Castillo Freyre, 2013, pp. 741-759, at p. 743.

6 Supreme Court of Iceland, Case No 433/2006 of 29 March 2007.

Iceland ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention") in January 2002 without reservations and it entered into force on 24 April 2002.[7] Iceland has also ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington, D.C., 1965) (the "Washington Convention" or "ICSID Convention"), which entered into force in Iceland on 14 October 1966.[8]

The Act has been revised on two occasions. First, in 2002 following Iceland's ratification of the New York Convention. Second, in 2016 which was purely a formalistic amendment as a result from changes made to the judiciary in Iceland introducing a new appellate instances. As a result the reference to the Supreme Court in the Act was replaced with a reference to the newly established High Court, which commenced operations on 1 January 2018, regarding some issues where the assistance of the domestic courts may be sought. As is evident from the above, Iceland did not adopt the 2006 amendments made to the UNCITRAL Model Law.

2. The arbitration agreement

2.1 Law applicable to the arbitration agreement – mandatory provisions

The Act does not directly address the issue of the law governing the arbitration agreement. According to Article 1(1) of the Act, it is applicable to arbitral proceedings taking place in Iceland. Accordingly, the mandatory provisions of the Act, such as due process, would be applicable for an arbitral proceeding where the place of arbitration is Iceland, even though the substantive dispute in question is governed by a different substantive law. Moreover, the Act applies if parties to an arbitration taking place in Iceland require the assistance of the domestic courts.

With respect to the capacity of the parties to enter into arbitration, the domestic courts shall examine the validity of arbitration agreements with reference to the capacity of the parties pursuant to the law applicable to them.

Thus, arbitral tribunal sitting in Iceland and domestic courts alike are bound by the mandatory provisions of the Act and if there is a choice of law provision in the arbitration agreement itself, the judges or arbitrators should use their best endeavours to enforce the parties' intention. However, in the absence of such a choice of law clause in the arbitration agreement, the judges or arbitrators will use the conflict of law rules they deem appropriate to reach a conclusion on the law governing the arbitration agreement.

2.2 Separability of the main contract and the arbitration agreement

Although arbitration practitioners in Iceland are in agreement that the arbitration agreement is separable from the rest of the contract in which it is set forth, the Act does not provide expressly for the doctrine of separability and the issue has not been addressed by the domestic courts. Yet, the domestic courts recognise the fact that the Act was inspired by international texts such as the UNCITRAL Model Law and that these texts have an important interpretative value.[9] Also, the legislator in other acts recognised the autonomous nature of dispute resolution clauses[10] and the Act recognises the authority of the arbitral tribunal to determine the validity of the arbitration agreement.[11] Accordingly, should the issue arise, the domestic courts will presumably confirm the separability of the arbitration agreement.

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7 Icelandic Law and Ministerial Gazette, C-/2002.

8 Icelandic Law and Ministerial Gazette, C-13/1966.

9 Supreme Court of Iceland, Case No 433/2006 of 29 March 2007.

10 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 27, and Commentary on the bill on Consumer Contracts, 128th Legislative Session 2002-2003, parliamentary document No 904, parliamentary item No 556, commentary on section 49.

11 Commentary on the bill on Contractual Arbitration, 111th Legislative Session 1988-89, parliamentary document No 619, parliamentary item No 342, at commentary on section 4. See, also, G. GUNNARSSON, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 27.

2.3 Formal requirements for arbitration agreements

Article 3(1) of the Act sets out formal positive requirements that an enforceable arbitration agreement must satisfy. Arbitration agreements must (i) be in writing; (ii) unequivocally state the parties' intent to arbitrate; (iii) clearly identify the parties, and (iv) define the subject matter that is to be arbitrated. Although the Act refers to "*in writing*", there is no mentioning of actual signatures as such. As the Supreme Court of Iceland has in its case law confirmed the importance of the Act's international sources of inspiration and that it should be interpreted accordingly.[12] Therefore, it is likely that the domestic courts will consider recent developments in international arbitration, such as, the 2006 amendments to the UNCITRAL Model Law, although the Act has not been amended to reflect these changes, as well as UNCITRAL's recommendations as to the interpretation of Art. II(2) of the New York Convention, when interpreting the Act.[13]

Furthermore, Article 3(2) of the Act provides for negative requirements and notwithstanding the mandatory language of Article 3(1) this provision states that an arbitration agreement is not binding (i) if it materially deviates from the requirements of Article 3(1); (ii) if the dispute is not arbitrable; or (iii) if the provisions pertaining to the appointment of arbitrators, the arbitral procedure or other provisions of the arbitration agreement "*do not ensure adequate judicial protection*". What this entails is not altogether clear as the wording is open-ended and the issue has not been settled by the domestic courts, although it has been addressed. However, it is likely that the provision encompasses generally accepted principles of international arbitration.[14]

2.4 Extension of the arbitration agreement to third parties

As stated above, one of the conditions an enforceable arbitration agreement must satisfy is to identify clearly the parties. Notwithstanding the above, there are two instances where the domestic courts have extended the binding effects of an arbitration agreement to a third party, on the basis of established principles of private law – such as agency and succession.[15] Therefore, arbitration agreements can presumably be extended to third parties in exceptional circumstances.[16]

2.5 Arbitrability

The general principle under Icelandic law is that natural persons, legal persons, and the State alike can enter into arbitration agreements.[17] Although Article 3(2) makes a reference to the concept of arbitrability, the Act is otherwise silent on the substantive criteria of arbitrability. Moreover, Article 1(1) of the Act expressly states that parties can only arbitrate matters where they would be able to reach a settlement. "*Therefore, one can expect to find in Iceland the 'usual suspects' which are generally considered to fall outside the scope of international arbitration, such as various matters falling within the fields of criminal law, family law, intellectual property law and civic rights.*"[18]

There is currently no legislation in force that restricts the use of arbitration by specific persons. Furthermore, neither the Icelandic Constitution nor any general legislation seems to preclude arbitration when it comes to agreements entered into with the Icelandic state or state entities. Indeed, State organs have in the past participated in arbitral proceedings and the Icelandic Parliament has granted the

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12 Supreme Court of Iceland, Case No 433/2006 of 29 March 2007.

13 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 12.

14 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 15.

15 Supreme Court Case, No 386/1996 of 23 October 1996 and Supreme Court Case, No 433/2006 of 29 March 2007.

16 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 26

17 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at pp. 32-34.

18 H. Larusson, and G. Gunnarsson, "Islandia (Iceland)" in *Arbitraje Comercial Internacional en Europa*, Mario Castillo Freyre, 2013, pp. 741-759, at p. 745.

government the authority to enter into arbitration agreements on various occasions in the past,[19] although such permission is not a prerequisite for the State concluding such agreements.

Thus, a dispute is arbitrable under Icelandic law if (i) the domestic courts would have jurisdiction in the absence of a valid arbitration agreement, and (ii) the parties would be able to reach a legally valid, binding, and enforceable settlement in relation to the dispute if they so choose.[20]

3. Intervention of domestic courts

The Act explicitly states that the domestic courts are obliged to dismiss a case brought before the courts, if a responding party requests dismissal on the grounds that there is a valid arbitration agreement in existence. This slightly differs from what is stated in the New York Convention, which states that the courts shall refer the parties to arbitration. The obligation to dismiss a case, pursuant to such a request from the responding party, remains the same regardless of the fact whether the place of arbitration is in Iceland or abroad. The case law available from the domestic courts confirms that the courts consistently uphold and enforce arbitration agreements by dismissing cases brought before them despite there being a valid arbitration agreement in existence.[21] If, however, the claimant refutes the validity of said arbitration agreement, the domestic courts may undertake a full review regarding the existence and validity of said arbitration agreement.[22] Furthermore, the issue of injunctions by arbitrators to stay litigation proceedings has seemingly not arisen before the domestic courts. Additionally, the Act is silent on whether the domestic courts can intervene in arbitrations seated outside of Iceland.

4. The conduct of the proceedings

4.1 Party representation

The Act is silent on issues regarding party representation in arbitral proceedings. Considering that party autonomy is the prevailing principle of the Act, it is safe to assume that the disputing parties are free to choose whether they retain outside counsel or represent themselves. Similarly, there is no obligation under Icelandic law that local counsel must be retained with respect to arbitrations which provide for Iceland as the seat of arbitration.

4.2 Arbitrators' independence and impartiality

Article 6(2) of the Act requires the arbitrators to fulfil the special requirements imposed on District Court judges for hearing individual cases, which includes a standard of both independence and impartiality.[23] This derives from a case law of the Supreme Court from 1964, where it was considered appropriate that the same standard would apply to arbitrator as is bestowed upon judges.[24] The fact that the Act refers to the Act on Civil Procedure No 91/1991 has been criticised as it illustrates the Act's lack of emphasis on international arbitration.[25] The Act is silent as to the arbitrators' duty to disclose circumstances which might compromise their independence and impartiality. Considering the facts that arbitrators are deemed to have the same obligations as domestic courts judges in this respect, "it is likely that there is an implied duty that the arbitrators themselves ensure their independence and impartiality in the same manner as national

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19 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at pp. 32-37.

20 H. Larusson, and G. Gunnarsson, "Islandia (Iceland)" in *Arbitraje Comercial Internacional en Europa*, Mario Castillo Freyre, 2013, pp. 741-759, at p. 745.

21 See for example Supreme Court Case, No 530/2002 of 10 December 2002.

22 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 32.

23 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 41.

24 Supreme Court Case, No 127/1964 of 20 May 1964, where an award was set-aside *inter alia* on the grounds that one of the arbitrators was also a disputing party. See, also, Commentary on the bill on Contractual Arbitration, 111th Legislative Session 1988-89, parliamentary document No 619, parliamentary item No 342, at commentary on Article 6.

25 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 40.

court judges."[26] The limited case law that exists regarding challenges of arbitrators does not, unfortunately, provide much guidance as to the degree to which the domestic courts will police the arbitrators' independence and impartiality.

4.3 Assistance from the domestic courts in the constitution of the Arbitral Tribunal

In the case of ad hoc arbitration, the Act provides for clear rules regarding supportive actions and the assistance from the domestic courts when it comes to the constitution of the Arbitral Tribunal. According to Article 4 of the Act the parties may request that the domestic courts appoint an arbitrator or arbitrators in the event (i) that the arbitration agreement is silent on the number of arbitrators or the appointment procedure; (ii) the parties do not agree on the constitution of the arbitral tribunal; or (iii) a party refused to appoint an arbitrator. Moreover, Article 5 of the Act promotes efficiency with respect to the domestic courts' supportive actions.[27] In the same vein, the *travaux préparatoires* expressly state that under such circumstances the domestic courts shall only perform a *prima facie* review of the existence and validity of the arbitration agreement.[28] In practice, the domestic courts have been readily available to undertake the necessary supportive actions in favour of arbitration when requested to do so.[29]

4.4 The authority of domestic courts to issue interim measures in connection with arbitrations and their willingness to consider ex parte requests

A disputing party can request the District Commissioner, which is the enforcement and administrative body of the government, to issue certain interim measures against the other party. If the request is granted and an interim measure is issued the applicable rules require the requesting party to file a suit before the District Court, the court of first instance, to confirm the District Commissioner's decision. Furthermore, the *travaux préparatoires* specifically state that the Act must be interpreted as to not exclude a request for interim measures by a party.[30] Thus, it is possible in Iceland to have interim measures issued by competent State organ, which is the District Commissioner. The District Commissioner will consider ex parte requests in extraordinary circumstances and only if the conditions of Article 21(3) of the Enforcement Act 90/1989 are fulfilled.

4.5 Confidentiality of the arbitral proceedings

When it comes to the issue of confidentiality of the arbitration and the eventual award, the Act is silent. The *travaux préparatoires*, however, mention that one of the advantages of arbitration is that the dispute is less likely to become public.[31] Thus, there is an underlying assumption of confidentiality. Nonetheless, in order to ensure confidentiality of the arbitral process from the beginning to the end, it is prudent for the parties to provide specifically for confidentiality, if that is their intent.

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26 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at pp. 41-42.

27 Commentary on the bill on Contractual Arbitration, 111th Legislative Session 1988-89, parliamentary document No 619, parliamentary item No 342, at commentary on Articles 4 and 5. V. Sigurðsson, *Um samningsbundna,gerðardóma,* Tímarit lögfræðinga, Volume 40, year 1990, No 1, at pp. 28-37, at p. 36; G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010,at p. 34.

28 Commentary on the bill on Contractual Arbitration, 111th Legislative Session 1988-89, parliamentary document No 619, parliamentary item No 342, at commentary on Article 5. See, also, G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 34.

29 See, for instance, Judgements of the District Court of Reykjavík in case Ö-1/2010 of 2 February 2010 and the judgement of the District Court of Reykjavík in case Ö-7/2010 of 19 May 2010.

30 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 68.

31 Commentary on the bill on Contractual Arbitration, 111th Legislative Session 1988-89, parliamentary document No 619, parliamentary item No 342, at general comments. See, also, G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 6.

4.6 Expediency of the arbitral proceedings

The Act affords the parties the right to agree on the expediency of the proceedings in the arbitration agreement. In the absence of such provisions in the arbitration agreement, Article 7(2) of the Act expressly states that the arbitrators shall expedite the proceedings to the extent possible. Furthermore, in the event that the arbitral process is significantly delayed for reasons attributable to the neglect of an arbitrator or arbitrators, Article 9(1) of the Act affords each of the disputing parties individually the right to bring action before the District Court to have said arbitrators removed.

4.7 Hearings and/or meetings outside the seat

The Act does not regulate the place where hearings and/or meetings may be held. As party autonomy is the prevailing principle of the Act one may assume that hearings and/or meetings can be held wherever the arbitral tribunal deems appropriate after having consulted with the parties.

4.8 The authority of the Arbitral Tribunal to issue interim measures

The Act is silent as to whether the arbitral tribunal has the authority to issue interim measures. This issue of interim measures ordered by arbitral tribunals has been decided by the domestic courts. However, based on the principle of party autonomy, there is a general view that the parties can agree to grant the arbitral tribunal such powers, whether in the arbitration agreement or in a subsequent agreement between the parties.[32] Regardless of whether the arbitral tribunal may be granted the authority to issue interim measures, there are certain interim measures, such as freezing of assets, that are considered "*to fall within the exclusive jurisdiction of the State and the parties must apply to the District Commissioner for such measures.*"[33] Thus, when disputing parties have empowered an arbitral tribunal to issue interim measures, such measures must not contravene with those measures that are reserved for the exclusive jurisdiction of the State, and the competent State organs.[34]

4.9 Is it mandatory to hold an oral hearing?

It is not mandatory to hold an oral hearing. The Act leaves it up to the parties to decide in the arbitration agreement whether they prefer oral hearings or a documents-only procedure. If the arbitration agreement does not address this issue specifically, the arbitral tribunal has broad discretion when it comes to making procedural decisions, including the format of the proceedings. Regardless of this broad discretion, the arbitral tribunal is still obligated to adhere to the mandatory provisions of the Act and, thus, the arbitrators must afford the parties a full opportunity to present their respective cases. Thus, the arbitral tribunal should proceed with caution in deciding whether to hold a documents-only hearing if the parties are not in agreement. Here, it may also be relevant to take into consideration that the principle encompassed in the Act on Civil Procedure is that the parties shall present their respective cases orally. Hence, if a party requests an oral hearing it is reasonable to assume that the arbitrators must accommodate such wish, as long as it does not violate the principle of party equality.[35]

4.10 Principles on the awarding interest

The Act does not prescribe any principles on awarding interest. Nevertheless, in order to avoid issues when it comes to the enforcement of awards where interest has been awarded the arbitral tribunal would do well to provide clearly in the dispositive section of the award the interest rate and the interest period.

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32 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 68.

33 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 68.

34 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 69.

35 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 54.

4.11 Does the Act prescribe general principles governing the allocation of arbitration costs?

Article 11 of the Act stipulates that the Arbitral Tribunal has discretion to allocate the arbitration costs as it deems appropriate, unless the parties have agreed otherwise in the arbitration agreement. The principle of 'cost follows the event' is commonly adhered to.

Article 10 of the Act addresses the arbitrators' fees and states that the arbitrators are entitled to remuneration for services rendered including any costs incurred. If a dispute arises with respect to the arbitrators' fees, a party may request a decision from the District Court, which is subject to an appeal to the newly established High Court. Thus, in order to avoid the involvement of the domestic courts on issues of the arbitrators' fees, arbitrators in ad hoc proceedings should establish the manner by which they intend to be remunerated for their services from the outset.

4.12 Liability

The Act is silent on the issue of arbitrators' liability, whether civil or criminal. The Act on the Judiciary No. 50/2016 provides for the civil immunity for domestic court judges and, therefore, this immunity does not extend to arbitrators. "*As this issue has not been settled by national courts and absent a statutory immunity in the Icelandic Arbitration Act, the most logical presumption is that arbitrators can become liable in a similar manner as other professional experts.*"[36]

With respect to possible criminal liability, it is reasonable to assume that the same standard would be applied to arbitrators as is applicable to domestic court judges. According to Article 130 of the Penal Act No. 19/1940, a holder of public judiciary power may be prosecuted for having deliberately and unjustly administered and/or decided a case with the intention to wrongly or unjustly decide the case. Furthermore, in relation to Iceland's ratification of the additional protocol to the Council of Europe's Criminal Law Convention on Corruption, the Icelandic Penal Act was amended in 2013 and, thus, Article 128 of the Penal Act now makes bribery a punishable offence. Thus, arbitrators may be prosecuted if they have accepted or offered to partake in bribery in relation to their functions as arbitrators.

5. The Award

5.1 Can the parties waive the requirement for the award to provide reasons?

No. The Act contains a mandatory provision to the effect that an award must be sufficiently reasoned.

5.2 Can the parties waive the right to seek the annulment of the award?

The Act does not expressly permit the parties to waive in advance the right to seek the annulment of the award. In the absence of a statutory provision to this effect, such advance waivers in the arbitration agreement have not been considered possible under the Act.[37] Article 12(2) of the Act, however, provides that the parties may be deemed to have waived their rights to challenge an award on specific grounds known to them, where they fail to object in a timely manner. Thus, a waiver of the right to seek the annulment of the award may be validly given with respect to circumstances already known to the parties at the time such waiver is given.

The Act does not provide for any express time limits to bring an action to have an award set aside or annulled. The absence of a time limit to bring such annulment action has been criticised, *"[t]he fact that there are no time limits for having an award set aside creates uncertainty for the prevailing party and undermines the finality of the award."*[38]

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36 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 49.

37 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 97.

38 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 96.

5.3 What are the mandatory requirements applicable to awards in Iceland?

Article 8 of the Act describes the requirements necessary for the rendering of a valid award and it is clear from the *travaux préparatoires* state that these are mandatory provisions.[39] The award must be in writing, clearly drafted, sufficiently reasoned, and signed by the assenting arbitrators. Moreover, an additional requirement may be derived from the *travaux préparatoires* that entails that if an award is not signed by all the arbitrators, the award must specify the reasons for the omission of a signature from the dissenting arbitrators.[40]

5.4 Is it possible to appeal an award?

No.

5.5 What procedures exist for the recognition and enforcement of awards, what time limits apply and is there a distinction to be made between local and foreign awards?

According to Article 14(3) of the Act, the enforcement procedures of foreign arbitral awards is the same as is applicable to foreign judgments. Therefore, the provisions of the Enforcement Act No 90/1989 will apply when seeking enforcement of a foreign arbitral award in Iceland. "*[P]arties seeking enforcement of foreign arbitral awards shall apply to the District Court to have the award declared enforceable. In most cases the District Court simply endorses the application and the party seeking enforcement can go to the District Commissioner to have it enforced*."[41] For awards that are rendered in the territory of a Contracting State of the New York Convention, the District Court may only refuse endorsement on the grounds stated in Article V of the New York Convention. This is the only manner by which the Act makes a distinction between local and foreign awards, whereas in the case of a local award the party seeking enforcement can directly request enforcement before the District Commissioner. The Act does not impose any time limits for having an award enforced in Iceland. Although, there are various factors that may impact the time-efficiency, the procedure to enforce an award in Iceland is efficient.

5.6 Does the introduction of an annulment proceedings automatically suspend the right to enforce an award?

No, not automatically. However, pursuant to a request from a party, the District Courts may, according to Article 12(3) of the Act, decide to suspend the award until a decision has been made in the annulment proceedings. The District Court's decision is subject to an appeal to the High Court.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforceable in Iceland?

The Act is silent on this issue. As Iceland is Contracting State of the New York Convention and given the previous case law of the Supreme Court, it is reasonable to assume that it is not precluded, although possible.[42]

5.8 Are foreign awards readily enforceable in practice?

Yes. According to Article 14(1) of the Act, the recognition and enforcement of arbitral awards rendered in accordance with international conventions to which Iceland is a party shall be recognised and enforced in Iceland. Moreover, Article 14(2) states that foreign awards, other than those that fall within the scope of

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39 Commentary on the bill on Contractual Arbitration, 111th Legislative Session 1988-89, parliamentary document No 619, parliamentary item No 342, at commentary on Article 8. See also, S. Stefánsson, *Um samningsbundna gerðardóma*, Tímarit lögfræðinga, Volume 40, year 1990, No 1, pp. 38-50, at p. 46.

40 Commentary on the bill on Contractual Arbitration, 111th Legislative Session 1988-89, parliamentary document No 619, parliamentary item No 342, at commentary on Article 8.

41 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 103.

42 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 12 and Supreme Court of Iceland, Case No 433/2006 of 29 March 2007.

Article 14(1), shall also be recognised and enforced if they fulfil the requirements of the Act. Hence, foreign awards originating in states that are not Contracting States of the New York Convention may also be recognised in Iceland, provided that they satisfy the requirements of the Act.[43] The difference between the two is the presumption that awards rendered in accordance with the New York Convention already satisfy the requirements of the Act.[44]

6. Funding arrangements

The Act is silent on issues that pertain to contingent fees or alternative fee arrangements. However, Act No 77/1998 on Professional Attorneys specifically permits contingent fees and alternative fee arrangements provided that it is within the realm of reason. Furthermore, the Act does not address the issue of third-party funding nor are such arrangements common in cases brought before the domestic courts. Thus, such arrangements are presumably possible.

7. Future legislative reform

Legal practitioners, users of arbitration, and those involved with arbitration, such as the Iceland Chamber of Commerce, have in recent years been calling for a comprehensive reform of the legal framework of arbitration in Iceland. The rationale is to provide for an adequate and modern legal environment, particularly for international arbitration, *inter alia*, to make Iceland a more viable choice as a seat in international arbitration. The Minister of Justice has echoed these concerns and the necessity to undertake a comprehensive review of the legal framework of arbitration in Iceland. Therefore, it must be considered likely that a comprehensive legislative reform based primarily on the UNCITRAL Model Law is due in the near future.

43 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 101.

44 G. Gunnarsson, "Iceland", in *World Arbitration Reporter* (2nd Edition), Juris Publishing, 2010, at p. 102.