DELOS
dispute resolution

LITHUANIA

DELOS GUIDE TO ARBITRATION PLACES (GAP)

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VERSION: 28 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

Lithuania has one the most progressive arbitration laws in the region. The law is based on the UNCITRAL Model Law, including the 2006 amendments, and is consistent with pro-arbitration case law on the recognition and enforcement of arbitral awards and set-aside of awards. Lithuanian courts refuse to recognise awards and set aside awards only in very exceptional cases and tend to follow best international practices related to the interpretation and application of the New York Convention and the UNCITRAL Model Law. The latest amendments to the Lithuanian Law on Commercial Arbitration ("Arbitration Law") came into force in July 2017 and help demonstrate that Lithuania constantly aims to improve its arbitration-related legislation. For example, the Arbitration Law now provides that documents produced in arbitration-related proceedings before the State courts shall remain confidential (the law provides that arbitration is confidential). In addition, the Arbitration Law provides a 90-day limitation for the Court of Appeal of Lithuania to hear a set-aside application (ruling of the Court of Appeal is, however, subject to further appeal before the Supreme Court of the Republic of Lithuania). In addition to its progressive arbitration law, Lithuania and its capital city, Vilnius, have an easy access to by a number of international airlines connecting it to major European airport hubs, offering a number of other advantages for a seat of arbitration: free access from all EU and EFTA countries (Lithuania is a Schengen country), a number of business class hotels offering modern hearing facilities, high safety level (Lithuania ranks 16 in the global Doing Business ranking of the World Bank in 2018) and multi-lingual (English, Russian, French, Polish, German, etc.) arbitration practitioners with vast experience in both international investment and commercial arbitration. Expertise of Lithuanian practitioners is represented by the fact that not only leading Lithuanian professionals in this field are included in the lists of recommended arbitrators by major arbitration institutions (including ICSID) and are often appointed by the parties and global arbitral institutions (including ICC) as arbitrators and / or experts in international proceedings (even having no relation to Lithuania at all), Lithuania has its own representatives in major arbitration institutions (including ICC Court and PCA Court).

Key places of arbitration in the jurisdiction	Vilnius.
Civil law / Common law environment?	Civil law.
Confidentiality of arbitrations?	Confidential by law, but advisable to agree separately.
Requirement to retain (local) counsel?	No.
Ability to present party employee witness testimony?	Yes.
Ability to hold meetings and/or hearings outside of the seat?	Yes.
Availability of interest as a remedy?	Yes.
Ability to claim for reasonable costs incurred for the arbitration?	Yes.
Restrictions regarding contingency fee arrangements and/or third-party funding?	According to very limited regulations, conditional fee arrangements are permitted. There is no regulation regarding third-party funding.

Party to the New York Convention?	Yes.
Other key points to note	ϕ
WJP Civil Justice score (2017-2018)	ϕ

ARBITRATION PRACTITIONER SUMMARY

Lithuania became a member of the New York Convention in 1995 and adopted the Arbitration Law in 1996. While the Arbitration Law is based on the UNCITRAL Model Law, the Arbitration Law makes no distinction between international and national arbitration. Changes to the UNCITRAL Model Law in 2006 and best international practices were incorporated into the Arbitration Law in 2012. In addition to modern legislation which allows, for instance, *ex parte* pre-arbitration interim measures and recognition of interim measure rulings, Lithuanian courts follow a strong pro-arbitration tradition and accept all universal arbitration doctrines, including the competence-competence principle, the separability doctrine, and the local courts' prohibition to review an award on its merits in set-aside or recognition proceedings. Lithuanian practitioners are keen to follow the highest international legal standards and the arbitration-related rules and guidelines issued by International Bar Association are being followed by the agreement of the parties and arbitrators as a result.

Date of arbitration law?	1996.
UNCITRAL Model Law? If so, any key changes thereto?	Yes. No distinction between international and national arbitration.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	While there are no specialised courts, if available, judges with relevant or specialised experience are appointed to arbitration-related matters in the Lithuanian Court of Appeal, which has jurisdiction to adjudicate set-aside and recognition applications.
Availability of *ex parte* pre-arbitration interim measures?	Yes.
Courts' attitude towards the competence-competence principle?	Accepted.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	No.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Very pro-arbitration.
Other key points to note?	ϕ

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

Yes, the Arbitration Law was based on the UNICTRAL Model Law. The new version of the Arbitration Law was adopted in 2012 and sought to reflect changes of the UNICTRAL Model Law on commercial arbitration and incorporate recent developments in the arbitration practice in Lithuania.

1.1.1 If yes, what key modifications if any have been made to it?

In contrast to the UNCITRAL Model Law, the Arbitration Law makes no distinction between international and national arbitration proceedings. This means accordingly that unified regulations apply irrespective of where the place of arbitration is.

1.2 When was the arbitration law last revised?

Latest amendments to the Arbitration Law came into force in July 2017. Among the changes brought by the amendments, the Arbitration Law now (i) provides that party material introduced in the arbitration related proceedings before State courts (i.e. set-aside or recognition proceedings) shall remain confidential and (ii) sets time limits for bringing set-aside and enforcement proceedings. Pursuant to the amendments, the Court of Appeal of Lithuania now has up to 90 days to hear a set-aside application. A party now has 5 years (calculated from the moment when the award comes into effect) to start enforcement proceedings in Lithuania. Recent case law suggests that this time limit in the case of foreign arbitral awards has to be calculated from the day when the application for recognition and enforcement was granted by the Lithuanian court (see, for instance, Supreme Court ruling of 15 June 2017 in the civil proceedings No 3K-3-267-611/2017), however, this highly debatable issue is expected to be reviewed in the nearest future.

2. The arbitration agreement

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

The Lithuanian Supreme Court has ruled that where there is no agreement between the parties on the law applicable to the arbitration agreement, usually the state courts shall decide upon the validity of the arbitration agreement by applying the law of the place of arbitration (Supreme Court ruling of 22 November 2013 in civil proceedings No 3k-3-593/2013). The court noted there are two exceptions to this rule: first, the parties' capacity to enter into the arbitration agreement is governed by the conflict of law rules provided by private international law and, second, state courts shall decide the issue of arbitrability by applying the law of the place of the state court.

Notably, conflict of law rules provided in the Civil Code of the Republic of Lithuania foresees that an arbitration agreement is subject to the law applicable to the principal contract and only in case of invalidity of the principal contract, the agreement shall be subject to the law of the place where the arbitration agreement was concluded; if the place cannot be determined, the arbitration agreement shall be subject to the law of the seat of arbitration (Article 1.37 (7) of the Lithuanian Civil Code).

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

Yes, the doctrine of separability is provided for under Article 19(1) of the Arbitration Law and is accepted by state courts (Supreme Court ruling of 18 May 2017 in the civil proceedings No e3K-3-238-686/2017).

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

Article 10 of the Arbitration Law provides that the parties may agree to solve their dispute by including an arbitration clause in the contract or by concluding a separate arbitration agreement. An arbitration clause or arbitration agreement may be concluded for a particular dispute that already exists or for future disputes.

An arbitration agreement must be made in writing, and is considered to be made in writing if (1) it is executed as a document signed by both parties; (2) it is concluded by exchange of letters, including by means of electronic devices if the authenticity and the completeness of the transferred information can be assured; (3) it is concluded by using electronic devices provided that the authenticity and the completeness of the transferred information is assured and the information stored in such devices is thereafter accessible; (4) it is concluded by exchanging a statement of claim and a statement of defence where the existence of an arbitration agreement is alleged by one party and not denied by the other; or (5) there is other written evidence confirming that the parties have concluded or recognized the conclusion of an arbitration agreement.

The Arbitration Law also provides that a reference in a contract concluded by the parties to a document containing an arbitration clause constitutes an arbitration agreement if that document meets the requirements applicable to arbitration agreements, as set out above.

The Arbitration Law does not specify the content of the arbitration agreement beyond the requirements described above.

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?

In general, only signatories are considered to be bound by arbitration agreements. However, recent case law demonstrates that Lithuanian courts recognize exceptions to this rule. The Lithuanian Supreme Court has stated in its ruling dated 2 April 2014 (civil proceeding No. 3K-3-171/2014) that there are certain exceptional cases where a person's behavior allows the court to conclude that the latter has consented to arbitration: first, succession of rights and obligations under a contract containing arbitration clause; second, a person's subsequent behaviour evidencing his agreement to arbitrate; third, conclusion of a contract through a representative who acted within the limits of his authorisation; and fourth, when a company is bound by an arbitration agreement, other closely related companies may be considered as having consented to arbitration as well. Additionally, the Supreme Court has also noted that when considering whether non-signatories can be bound by arbitration, the true intentions and factual circumstances evidencing consent or reasonable expectations of the parties must be analysed.

2.5 Are there restrictions to arbitrability? In the affirmative:

As a general rule, all disputes of a commercial nature may be submitted to arbitration. Article 12 of the Law provides a complete list of nonarbitrable disputes (please see below for particular categories).

Initiating bankruptcy proceedings against a party to the arbitration agreement shall have no impact on the arbitration proceedings, the validity of the arbitration agreement, the possibility to resolve the dispute in arbitration or the competence of the arbitration tribunal to resolve the dispute. However, the Arbitration Law explicitly provides that the party under bankruptcy proceedings cannot conclude a new arbitration agreement (Article 49 of the Arbitration Law).

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law etc.)?

Disputes arising from constitutional, family, or administrative matters, as well as disputes connected with the registration of patents, trademarks and service marks, cannot be submitted to arbitration. Disputes arising out of employment or consumer contracts may be submitted to arbitration only if the arbitration agreement is concluded after the dispute arises. Case law of the Lithuanian Supreme Court suggests as

well that disputes concerning the price of the contract which has been concluded by way of public procurement are not arbitrable (Supreme Court ruling of 17 October 2011 in the civil proceedings No 3K-7-304/2011).

2.5.2 Do these restrictions relate to specific persons (i.e. State entities, consumers etc.)?

Disputes involving state or municipal enterprises, institutions or organisations, except the Bank of Lithuania, may not be submitted to arbitration without the consent of the founder of such entity. The Government of the Republic of Lithuania or its authorised public authority may, under the general procedure, conclude an arbitration agreement concerning disputes arising from commercial or economic contracts to which the Government or its authorized public authority is a party.

3. Intervention of domestic courts

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

Article 11(3) of the Arbitration Law provides that the state court must stay litigation in favour of arbitration in case the court decides it is impossible to proceed with the examination of the court's case until the end of arbitration proceedings. In practice, when analysing requests to stay proceedings the state courts tend to evaluate whether there is potential to cause prejudice, i.e. whether the facts being analysed in arbitration shall have prejudice in the state court proceedings. However, the case law is limited and final conclusions as regards approach adopted by the courts cannot be drawn.

3.1.1 If the place of the arbitration is inside of the jurisdiction?

The Arbitration Law makes no distinction in this regard.

3.1.2 If the place of the arbitration is outside of the jurisdiction?

The Arbitration Law makes no distinction in this regard.

3.2 How do courts treat injunctions by arbitrators enjoining parties to stay litigation proceedings?

Anti-suit injunctions issued by the tribunals were the central issue in a widely discussed *Gazprom v Lithuania* case. Requested to decide application to recognise the SCC arbitral award ordering Lithuania to withdraw state court proceedings, the Supreme Court resorted to ECJ which issued a judgment in the case No C-536/13 stating that the enforcement by the court of a State of arbitral awards that prevent a party from taking the case to a court in that Member State falls outside the scope of EU Brussels Regulation 44/2001 and has to be decided pursuant to the New York Convention. The Supreme Court, following ECJ findings, recognised the award in question accordingly and noted that in essence the arbitral award ordering to refrain from State court proceedings does not amount to anti-suit injunction in a strict sense and has to be regarded as an order to comply with an applicable arbitration agreement (ruling of 23 October 2015 in the civil proceedings No 3K-7-458-701/2015).

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

Lithuanian state courts are entitled to apply interim measures in support of foreign arbitration proceedings.

In particular, Article 2(1) of the Arbitration Law provides that provisions of the Arbitration Law related to application of interim measures by state court are applicable irrespective of the place of arbitration.

Moreover, Article 147(3) of the Code of Civil Proceedings provides that the courts may apply interim measures even before initiation of the arbitration proceedings outside Lithuania. In case interim measures are requested and applied before initiation of arbitration in foreign jurisdiction, the party is given 30 days

from the date of ruling to submit evidence regarding initiation of arbitration proceedings. If evidence is not submitted, interim measures applied in support of foreign arbitration proceedings cannot be further applied.

Other interference is not allowed and the State courts are obliged to refrain from examining disputes subject to an arbitration agreement. The only exception is provided for in Article 11(2) of the Arbitration Law – provided there are no arbitration proceedings pending, the party is entitled to resort to a State court asking to declare an arbitration agreement null and void (after commencement of arbitration proceedings the issue of invalidity of an arbitration can be decided only by an arbitral tribunal).

4. The conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

Yes.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

A person requested to sit as arbitrator must reveal any circumstances likely to give rise to justifiable doubts as to his impartiality or independence and this obligation continues throughout the arbitral proceedings (Art. 15(1) of the Arbitration Law). However, failure to disclose *per se* does not serve as a ground for a successful challenge (ruling of the Court of Appeal dated 29 September 2014 in the civil proceedings No 2T-84/2014).

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

If a party fails to appoint an arbitrator, the Vilnius District Court of the Republic of Lithuania shall make the appointment. If the arbitrators appointed by the parties fail to agree on the appointment of the chairperson of the arbitral tribunal, the Vilnius District Court shall appoint the chairperson of the ad hoc arbitral tribunal according to Article 14 of the Arbitration Law.

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Yes, Article 27 of the Arbitration Law provides explicitly that state courts may request Vilnius District Court to apply interim measures or to order the preservation of evidence before or after the date of commencement of arbitration or before the constitution of the arbitral tribunal.

4.4.1 If so, are they willing to consider *ex parte* requests?

Yes - it is fairly common.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

The parties are free to agree on the conduct of the arbitration. In the absence of such agreement, the arbitrators may conduct the arbitration proceedings in the manner they consider appropriate. The tribunal's discretion is only limited by general principles requiring fair treatment and equal procedural rights (Article 28(1) of the Arbitration Law), autonomy, economy and cooperation (Article 8 of the Arbitration Law).

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The Arbitration Law provides that one of the arbitration's fundamental principle is confidentiality. However, as the law does not specify the content of this principle, it is recommended to agree on the scope of confidentiality if it is important for the contracting parties.

4.5.2 Does it regulate the length of arbitration proceedings?

No.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

No.

4.5.4 Does it allow for arbitrators to issue interim measures?

Unless agreed otherwise by the parties, the arbitral tribunal may, at the request of a party and upon informing other parties, grant the following interim measures: (1) a prohibition against concluding agreements or taking certain actions; (2) an obligation of a party to preserve assets related to the arbitration, or to furnish a monetary deposit or bank or insurance guarantee; or (3) an obligation to preserve evidence that might matter to the arbitration. The party may ask the tribunal to issue preliminary ruling on interim measures *ex parte*.

The decision of the tribunal is binding on the parties. If the decision is not observed by a party, the Vilnius District Court shall issue an enforcement order upon the request of the other party.

4.5.4.1 In the affirmative, under what conditions?

The tribunal may apply interim measures aimed at ensuring that a party's request or relief will be enforced or that the evidence of the case will be preserved.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

The parties may agree on rules applicable to evidence. In the absence of such agreement, the tribunal decides on what the applicable rules will be. In practice, the IBA Rules on the Taking of Evidence in International Commercial Arbitration are often followed.

This is the case particularly as the Arbitration Law does not provide any requirements on expert witnesses / reports / testimony and contains only very general rules on evidence: the tribunal can request production of evidence and draw adverse inferences in the case of non-production; the tribunal can refuse to accept evidence provided too late if this would delay the proceedings; and the tribunal has discretion to decide upon the admissibility, relevance and sufficiency of evidence.

4.5.5.1 For example, are there any restrictions to the presentation of testimony by a party employee?

No.

4.5.6 Does it make it mandatory to hold a hearing?

No, however, the tribunal has to hold an oral hearing if at least one of the parties requests it.

4.5.7 Does it prescribe principles governing the awarding of interest?

No. In practice, this issue is dealt with in accordance with the law applicable to the subject matter of the dispute.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

Unless otherwise agreed upon by the parties, the arbitral tribunal shall allocate the arbitration costs between the parties, taking into consideration the circumstances of the case and the conduct of the parties. Thus, arbitrators have wide discretion in the allocation of costs.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

The Arbitration Law contains no provisions on this issue.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

The Arbitration Law contains no provisions on this issue.

5. The award

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

Yes.

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

The Arbitration Law contains no provisions on this issue.

5.2.1 If yes, under what conditions?

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

None.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

No.

5.4.1 If yes, what are the grounds for appeal?

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?

Lithuania is party to the New York Convention. Therefore, an arbitral award rendered in any State that is a party to the New York Convention can be recognized and enforced in Lithuania according to the provisions of the New York Convention and the Arbitration Law, which incorporates the New York Convention into Lithuanian Law by reference. The grounds for refusal of recognition and enforcement of the arbitral award are not provided in the domestic law of Lithuania. Instead, the grounds established in Article V of the New York Convention shall apply as per reference to the Convention provided in Article 51 of the Arbitration Law.

Applications concerning recognition of foreign arbitral awards are examined by the Court of Appeal of Lithuania through written proceedings. The length of the proceedings should not exceed 90 days. The original or certified copies of an award and arbitration agreement must be attached to the application, along with a Lithuanian translation (certified by interpreter). The ruling of the court shall come into effect from the moment it is made. Once the ruling takes effect, the foreign arbitral award shall be subject to enforcement according to the procedure established in the Code of Civil Procedure. The arbitral award cannot be enforced until the Court of Appeal issues the ruling.

A judgment of the Court of Appeal of Lithuania granting or denying recognition and enforcement of a foreign arbitral award may be appealed to the Supreme Court of Lithuania within one month as the Court of Appeal' decision is handed down. The Supreme Court of Lithuania shall be entitled to suspend the enforcement of a judgment or ruling while the case is heard.

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

No.

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

Case law on the recognition and enforcement of foreign awards set aside at the seat of arbitration is still developing.

5.8 Are foreign awards readily enforceable in practice?

Yes, Lithuanian courts follow a strong pro-arbitration tradition regarding the recognition and enforcement of arbitral awards.

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

As regards fee arrangements, regulations and case law are very limited. However, the Law on the Bar of the Republic of Lithuania expressly states that conditional fees allowing an attorney to get an upscale premium are permitted in civil proceedings provided that it does not contradict the principles governing the practice of attorneys. The Law on the Bar provides, in addition, that an agreement on fees has to correspond to the complexity of the case, qualification and experience of the attorney, financial status of the client and other related circumstances. The Lithuanian Supreme Court has ruled in respect of these provisions that attorneys' fees in all cases have to pass the test of reasonableness. These provisions of the Law on the Bar, as well as the Code of Ethics of Lithuanian Attorneys, have to be interpreted in the light of the Code of Conduct for Lawyers in the European Union, which explicitly restricts lawyers from entering into *pactum de quota litis*, which, under the said Code, is an agreement between an attorney and his client entered into prior to the final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result. Thus, contingency fees, allowing the attorney to get a share of the judgment if the client wins and nothing if the client loses, should be considered as forbidden in Lithuania.

As regards third-party funding, it is not prohibited by law but there is no practice yet. Recent case law of the Supreme Court of Lithuania may indicate that the third-party funding is available in Lithuania, as the court has confirmed expressly that the legal costs covered by a non-participating party are recoverable from the losing party.

6.1.1 If so, what is the practical and/or legal impact of such restrictions?

See above.

7. Is there likely to be any significant reform of the arbitration law in the near future?

Taking into account that the Arbitration Law was amended in 2012, no significant reform is likely to take place in the near future.