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## Commercial Arbitration in the Baltic States

Arbitration and mediation conference in Stockholm 28-30 September 2007

### Comparative analysis

		<b>LATVIA</b>	<b>LITHUANIA</b>	<b>ESTONIA</b>
<b>International conventions</b>	<i>NYC 1958</i>	<i>in force as from 13.07.1992</i>	<i>in force as from 12.06.1995</i>	<i>in force as from 28.11.1993</i>
	<i>Geneva 1961</i>	<i>in force as from 12.02.2003 (Reservation to Article 2.2.)</i>	-	-
	<i>ICSID</i>	<i>in force as from 07.09.1997</i>	<i>in force as from 05.08.1992</i>	<i>in force as from 23.07.1992</i>

		LATVIA	LITHUANIA	ESTONIA
<b>Legislation</b>		Civil Procedure Law, part D / <i>in force as from 01.03.1999/</i>	Law on Commercial Arbitration <i>/in force as from 02.04.1996/</i>	Civil Procedure Code, part XIV <i>/in force as from 1.01.2006/</i>
	<i>Non arbitrable disputes</i>	<ul style="list-style-type: none"> <li>- family law matters</li> <li>- labour law matters</li> <li>- competition law matters</li> <li>- IP rights matters</li> <li>- concerning establishment, alteration or termination of property rights with regard to real estate if the participant of dispute cannot acquire property rights</li> <li>- concerning person eviction from their living accommodation</li> <li>- concerning rights and obligations of those persons who until rendering the award's are declared insolvent</li> <li>- which may infringe upon the rights or interests protected by the law of a third person</li> <li>- if a party is a state/municipal institution or award may infringe the rights or interests of the state /municipal institution</li> </ul> <p>According to the case law arbitration agreements with</p>	<ul style="list-style-type: none"> <li>- constitutional matters</li> <li>- employment matters</li> <li>- family law matters</li> <li>- administrative law matters</li> <li>- competition matters</li> <li>- IP right matters</li> <li>- bankruptcy matters</li> <li>- consumer agreements</li> </ul> <p>If party is state/municipal enterprise, institution and organisations an advance consent shall be given by founder.</p>	<ul style="list-style-type: none"> <li>- concerning validity or cancellation of a residential lease contract</li> <li>- termination of an employment contract</li> </ul> <p>Other restriction maybe established by other laws.</p> <p>Arbitration agreement with consumer shall bear the hand – written or digital signature of consumer.</p> <p>A proprietary claim in public law may be the object of an arbitral agreement if the parties are able to enter into a contract under public law concerning the object of dispute.</p>

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	<i>Mediation</i>	-	Pre – arbitral mediation in commercial arbitration may be conducted in accordance with the UNCITRAL Conciliation Rules if the parties have not agreed otherwise.  Mediation award shall be enforced only in good will of the parties.	-

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<b>Main Arbitration Institutions</b>		Arbitration of Latvian Chamber of Commerce and Industry (1935, 1991) <a href="http://www.chamber.lv">www.chamber.lv</a>  (More than 135 arbitral institutions!!!!)	Vilnius Court of Commercial Arbitration (2003) <a href="http://www.arbitrazas.lt">www.arbitrazas.lt</a>  (there are also Vilnius International and National Commercial Arbitration (2003) – <a href="http://www.arbitration.lt">www.arbitration.lt</a> )	Arbitration of Estonia Chamber of Commerce and Industry (1992) <a href="http://www.koda.ee">www.koda.ee</a>
	<i>Structure</i>	Attached to the Chamber  Council of 3 appointed for 4 years	Founders: - Association Infobalt - Association of Lithuanian Chamber of Commerce, Industry and Crafts - ICC Lithuania - Association Linava - Lithuanian Confederation of Industrialists - Association of Lithuanian Banks - Lithuanian Lawyers Association	Attached to the Chamber  Board of 6, appointed for 1 year
	<i>Rules</i>	Arbitration Rules (2002)  Award shall be rendered within 3 months from the date when the case has been transmitted to the arbitral tribunal.  Small Claim Arbitration Rules (2002)	Approved in 2003 with resent revisions  Witnesses allowed.  Award shall be rendered within a period of 6 months after the file is transmitted to the tribunal.	Approved 1992 with resent revisions  Witnesses allowed.

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	<i>Arbitrators</i>	No list	List of 81 arbitrators	No list
	<i>Costs</i>	<p>- no registration fee</p> <p>- if the claim is up to 7'138 EUR, arbitrator's fee is 357 EUR and administrative expenses are 357 EUR if the claim is up to 17'845</p> <p>- if the claim is over 3'569'087 EUR – arbitrator's fee is 8'566 EUR and administrative expenses are 6'031,71. VAT 18 % is not included.</p>	<p>- registration fee 273 EUR (non-refundable)</p> <p>arbitration fee when one arbitrator is appointed:</p> <p>- claim up to 2'833 EUR- 682,62 EUR + 4,13% of the sum in dispute</p> <p>- above 2'892'457 EUR - 18'431 EUR+ 0,0236% of the sum in dispute exceeding 2'892'457 EUR</p> <p>when 3 arbitrators are appointed, arbitration fee is increased by 40%. VAT included.</p>	<p>- registration fee 77 EUR</p> <p>Arbitration fee shall be determined by the Board pursuant the fee table and in light of the complexity of the case, number of arbitrators.</p> <p>- claim up to 6'381 EUR– 15- 30% from the claim amount</p> <p>- above 6'381'498 EUR- 0,01-0,06% but arbitrators fee total 25'462,18 – 80'088 EUR.</p> <p>Arbitrators fee is 75% (30% in case of 1 arbitrator) of the arbitration fee actually remitted.</p>
	<i>Mediation</i>	Mediation Rules (2006)	Rules of Mediation and Conciliation (2004)	-
	<i>Cases 2006</i>	45 (small claim cases included)	20	~ 35
<b><i>Enforcement and Recognition of Foreign Awards</i></b>		- pursuant to Law and NYC	- pursuant to Law and NYC	- pursuant to Law and NYC - competence of Harju County Court.
<b><i>Remarkable case law</i></b>		<i>Constitutional Court case No.2004-10-01:</i> The Constitutional Court notes that in accordance with the practice of ECHR the lack	<i>Szolmar v. UAB Ukmede (3 K-7-999/2003):</i> In this case parties executed agreement with arbitration clause, which has not been signed and sealed	Supreme Court case of February 2007 The Supreme Court confirms that an arbitral agreement may be disregarded if neither party has relied on the agreement in due course. According to

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		<p>of independence and impartiality can be observed not only in cases, when it has been established, but also in cases when doubt about the existence of independence and impartiality is well-grounded (<i>see: Delcourt v. Belgium [1970] ECHR 1, Para.31; Piersack v. Belgium [1982] ECHR 6, para.30</i>). The structure of the arbitral court, previous relations of the arbitrators with the parties as well as other factors may serve as the reason for such doubt. Making reference to the above on the harmony of interpretation Latvian and international human rights norms, the Constitutional Court holds that such an approach can be used when applying the notions of impartiality and independence, included in the Civil Procedure Law.</p>	<p>by the parties. Will to settle by arbitration may be proven by other facts and information, from which existence of arbitration agreement may be demonstrated. Performance of the agreement in this case was deemed sufficient to prove that both parties agreed to the arbitration clause. (<i>cited-R.Beržanskiene, 2007</i>)</p>	<p>the Estonian Code of Civil Procedure, one criterion for admissibility of an action is whether the parties have agreed to refer the dispute to arbitration, except in the case where the action itself contests the validity of the arbitral agreement. The Supreme Court points out that all objections to the admissibility of an action or appeal should be submitted concurrently in response to the action or appeal; or, if no response is given, at the first hearing or when the first substantive petition is submitted to the court. In case the parties' behaviour demonstrates that they do not wish to rely on the arbitral agreement, the matter will be settled in the court (<i>cited - Tark&amp;Co</i>).</p>