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Belarus





Belarus

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A. Legislation and rules

A.1 Legislation

International arbitration in Belarus continues to be governed by the Law on the International Arbitration Court² (the “International Arbitration Law”), which was enacted on 9 July 1999.

This law is based on the UNCITRAL Model Law and, since its enactment, no significant amendments have been made.

In addition, the Economic Procedural Code, adopted on 15 December 1998, contains provisions relating to challenging and enforcing local and foreign arbitral awards.

Belarus is a party to a number of international and regional treaties that relate to arbitration proceedings, including the New York Convention, the European Convention 1961 and several CIS treaties.

Over the past year, the Belarusian government took further steps to develop ADR.

In particular, under the amendments to the Law On Advocacy and Advocacy Activity in the Republic of Belarus adopted in July 2017, it was clarified that local advocates are allowed to act as arbitrators in international and domestic arbitrations as well as mediators.

A.2 Institutions, rules and infrastructure

After the adoption of the Law On Domestic Arbitration Courts³ in July 2011 and the relevant sub-laws regulating the procedure of the

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² The Law of the Republic of Belarus on the International Arbitration Court No. 279-Z dated 9 July 1999 (as amended).

establishment and registration of arbitration institutions, the number of arbitration institutions registered in Belarus significantly increased. There are currently more than 30 arbitration institutions, the oldest and most popular of which is the International Arbitration Court at the Belarusian Chamber of Commerce and Industry (the “IAC”), which was established in 1994.

The IAC handles all types of commercial disputes between local and foreign companies, except disputes that are non-arbitrable under Belarusian law (eg, disputes relating to rights over immovable property located in Belarus, privatization contracts, IP rights, etc.). The IAC also reviews commercial disputes between local companies.

B. Cases

Belarusian court decisions are not usually publicly disclosed. However, Belarusian courts usually take an arbitration-friendly approach, though they have relatively limited experience in dealing with arbitration-related cases, which may lead to controversial court practice.

B.1 Lack of notice should be proven by the respondent

The Economic Court of the Minsk Region granted an application for the recognition and enforcement of an arbitral award issued by the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry regardless of statements made by the respondent that it was not properly notified about the arbitration proceedings.

In particular, the court rejected the respondent’s arguments based on the certificate provided by the arbitration court that the respondent was notified about all the stages of the arbitration proceedings and refused to take an active role in the collection of evidence disproving the proper notification.

³ The Law of the Republic of Belarus On Domestic Arbitration Courts N 301-Z dated 18 July 2011.



It should be noted that this decision was mentioned in a summary of court practice prepared by the Supreme Court of the Republic of Belarus as an example of the proper application of the New York Convention provisions by local courts.

B.2 Belarusian law does not allow setting aside decisions of a local arbitral tribunal on its jurisdiction

The Supreme Court of the Republic of Belarus confirmed the decision of lower courts on the refusal to commence court proceedings on setting aside the decision of the arbitral tribunal on its jurisdiction.

The Supreme Court stated that Belarusian law does allow parties to seek setting aside in this context, only as regards final arbitral awards issued on merits of the dispute.

C. Funding in international arbitration

Neither Belarusian law nor local court practice address the issue of the third-party funding in international arbitration. At the same time, in the absence of relevant regulations, it could be argued that Belarusian law does not prohibit the use of arbitration funding.

Therefore, taking into account the international trend of using third-party funding for the settlement of commercial disputes in arbitration and/or litigation, we are expecting this issue to be raised in the near future due to the increasing of number of cases settled in arbitration.