LEGAL INSTRUMENTS AND PRACTICE OF ARBITRATION IN THE EU
(ANNEX)

STUDY FOR THE JURI COMMITTEE

2014
Legal Instruments and Practice of Arbitration in the EU

ANNEXES
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1. Annex A – Arbitrations involving Member States/ Switzerland, State Entities and the European Union Since 1999

This Annex lists all identified arbitrations involving Member States/Switzerland, State Entities and the European Union where a decision occurred from January 1st, 1999 up through August 2014. It must be emphasised that because of the confidentiality involved in much arbitration no list of this type can be exhaustive, and so it is unavoidable that further arbitrations will exist beyond those listed below.

1.1. States and State Entities in Arbitrations other than Investment Arbitrations, State-State Arbitrations, and WTO Arbitrations

While the remainder of this Annex will list by name arbitrations in which States or State Entities have been involved, this information is much more difficult to generate about commercial arbitrations and other arbitrations that do not fit into the categories used in Section 4.2. Such arbitrations are often undertaken confidentially, meaning that no information is publicly available on even the existence of the arbitration, or where its existence is known, on the specific parties involved.

For this reason it was decided that a list of known arbitrations of this type would provide a misleading picture of the involvement of States, Parastatal or Public Entities in arbitration. As a more useful measure, information was gathered from European arbitral institutions regarding the number of arbitrations they have administered over the past 5 years, the percentage of those arbitrations that were Investment Arbitrations or State-State Arbitrations (WTO Arbitrations not being administered by independent arbitral institutions), and the percentage that involved States, Parastatal or Public Entities. This information was requested in a broader questionnaire supplied to all the primary arbitral institutions in the European Union. The responses of those institutions that provided this data is reproduced below, with an estimate of the number of arbitrations involving States, Parastatal or Public Entities being calculated from the preceding ones.

While this data is obviously also not exhaustive, it provides the most reliable information currently available on the extent of involvement of States, Parastatal and Public Entities in arbitration in the European Union over the past 5 years.

Arbitration and Mediation Centre of Paris (CMAP)
Arbitrations commenced over past 5 years: approximately 90
Investor-State arbitrations: 0%
State-State arbitrations: 0%

Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 0%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 0% (none)

Barcelona Arbitration Court
Arbitrations commenced over past 5 years: 390
Investor-State arbitrations: 0%
State-State arbitrations: 0%

Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): Less than 5%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): Less than 5% (less than approximately 20)

Centre for Effective Dispute Resolution (CEDR)
Arbitrations commenced over past 5 years: 1,829
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 0%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 0% (none)

Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry
Arbitrations commenced over past 5 years: 1111
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 6%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 6% (approximately 67)

Court of Arbitration of Madrid
Arbitrations commenced over past 5 years: 632
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 4%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 4% (approximately 25)

Court of Arbitration of the Estonian Chamber of Commerce and Industry
Arbitrations commenced over past 5 years: 85 since 2010
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 10%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 10% (approximately 9 since 2010) (estimate of approximately 11 over past 5 years)

Court of Arbitration of the Hamburg Chamber of Commerce
Arbitrations commenced over past 5 years: 25-50
Investor-State arbitrations: No response
State-State arbitrations: No response
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 0%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 0% (none)

Danish Institute of Arbitration
Arbitrations commenced over past 5 years: 647
Investor-State arbitrations: 0.3%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 7.7%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 7.4% (approximately 48)
Annex A – Arbitrations involving Member States/Switzerland, State Entities and the EU since 1999

Department of Arbitration, Athens Chamber of Commerce and Industry
Arbitrations commenced over past 5 years: 25 completed
Arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 10% (approximately 3 completed) (possibly including Investor-State and State-State arbitrations)

DIS (German Institute of Arbitration)
Arbitrations commenced over past 5 years: 743
Arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 2% (approximately 15) (possibly including Investor-State and State-State arbitrations)

ICC International Court of Arbitration
(Data from the ICC was provided independently, and not via questionnaire)
Arbitrations commenced over past 5 years: 3,932
Arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): approximately 10.1% (approximately 399) (possibly including Investor-State and State-State arbitrations)

International Centre for Dispute Resolution (ICDR)
Arbitrations commenced over past 5 years: 4,879
Arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 0.23% (approximately 11) (possibly including Investor-State and State-State arbitrations)

Italian Association for Arbitration
Arbitrations commenced over past 5 years: 23
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 10%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 10% (approximately 2)

London Court of International Arbitration (LCIA)
Arbitrations commenced over past 5 years: 1,297
Arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 5-10% (approximately 65-130) (possibly including Investor-State and State-State arbitrations)

London Maritime Arbitrators Association
Arbitrations commenced over past 5 years: 6,200
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 0%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 0% (none)

Netherlands Arbitration Institute
Arbitrations commenced over past 5 years: 640
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 8%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 8% (approximately 51)
Permanent Arbitration Court of the Slovak Banking Association
Arbitrations commenced over past 5 years: 29,290
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 0%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 0% (none)

Spanish Court of Arbitration (CEA)
Arbitrations commenced over past 5 years: 347
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 15%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 15% (approximately 52)

Venice Chamber of Arbitration
Arbitrations commenced over past 5 years: 66
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 0%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 0% (none)

Vienna International Arbitral Centre
Arbitrations commenced over past 5 years: 329
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 10% (over past 3 years)
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 10% (over past 3 years) (estimate of approximately 33 over past 5 years)

Vilnius Court of Commercial Arbitration
Arbitrations commenced over past 5 years: 151
Investor-State arbitrations: 0%
State-State arbitrations: 0%
Arbitrations involving a State, Parastatal or Public Entity as a party (including non-EU): 2.6%
Commercial and other arbitrations involving a State, Parastatal or Public Entity as a party over past 5 years (including non-EU): 2.6% (approximately 4)
1.2. Investment Arbitrations, State-State Arbitrations, and WTO Arbitrations

1.2.1. Austria

Investment arbitration: (0)
WTO dispute settlement: (0)
State-state arbitration: (0)

1.2.2. Belgium

Investment arbitration (1)
*Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium* (ICSID Case No. ARB/12/29)

WTO dispute settlement: (3)
*United States v. Belgium, DS80* (in consultations on 2 May 1997)
*United States v. Belgium, DS127* (in consultations on 5 May 1998)
*United States v. Belgium, DS210*

State-state arbitration: (4)
Arrest Warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*), ICJ
Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (*Belgium v. Switzerland*), ICJ
Legality of Use of Force (*Serbia and Montenegro v. Belgium*), ICJ
Questions relating to the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), ICJ

1.2.3. Bulgaria

Investment arbitration: (7)
*Accession Eastern Europe Capital AB and Mezzanine Management Sweden AB v. Republic of Bulgaria* (ICSID Case No. ARB/11/3)
*EVN AG v. Republic of Bulgaria* (ICSID Case No. ARB/13/17)
*Novera AD, Novera Properties B.V. and Novera Properties N.V. v. Republic of Bulgaria* (ICSID Case No. ARB/12/16)
*Plama Consortium Ltd. (Cyprus) v. Bulgaria* (ICSID Case No. ARB/03/24)
*ST-AD GmbH v. Republic of Bulgaria*, UNCITRAL, PCA Case No. 2011-06

WTO dispute settlement: (0)
State-state arbitration: (0)

1.2.4. Croatia

Investment arbitration: (5)
*Adria Beteiligungs GmbH v. The Republic of Croatia*, UNCITRAL
*Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia* (ICSID Case No. ARB/12/39)
*MOL Nyrt. (Hungary) v. Croatia* (ICSID Case No. ARB/13/32)
*Lieven J. van Riet, Chantal C. van Riet and Christopher van Riet v. Republic of Croatia* (ICSID Case No. ARB/13/12)
*Ulemek v. Croatia*, UNCITRAL
WTO dispute settlement: (1)
Hungary v. Croatia, DS297

State-state arbitration (2)
Republic of Croatia v. the Republic of Slovenia, PCA

1.2.5. Cyprus

Investment arbitration (2)
Laiki Bank and the Bank of Cyprus v. Republic of Cyprus (in mandatory settlement discussions prior to filing of claim at ICSID)
Marfin Investment Group Holdings S.A., Alexandros Bakatselos and others v. Republic of Cyprus (ICSID Case No. ARB/13/27)

WTO dispute settlement: (0)
State-state arbitration: (0)

1.2.6. Czech Republic

Investment arbitration: (24)
Antaris Solar and Dr. Michael Göde v. Czech Republic, UNCITRAL, PCA
Binder v. Czech Republic, UNCITRAL
CME Czech Republic B.V. v. The Czech Republic, UNCITRAL
Diag Human S.E. v. The Czech Republic, ad hoc
Eastern Sugar B.V. (Netherlands) v. The Czech Republic, SCC Case No. 088/2004
ECE Projektmangement v. The Czech Republic, UNCITRAL
European Media Ventures SA v. The Czech Republic, UNCITRAL
Frontier Petroleum Services Ltd. v. The Czech Republic, UNCITRAL
InterTrade Holding GmbH v. The Czech Republic, UNCITRAL, PCA
ICW Europe Investments Limited v. Czech Republic, UNCITRAL ad hoc
Invesmart v. Czech Republic, UNCITRAL
Konsortium Oeconomismus v. Czech Republic
Ronald S. Lauder v. The Czech Republic, UNCITRAL
William Nagel v. The Czech Republic, SCC Case No. 049/2002
Georg Nepolsky v. Czech Republic, UNCITRAL
Phoenix Action Ltd v. Czech Republic (ICSID Case No. ARB/06/5)
Photovoltaik Knopf Betriebs-GmbH v. Czech Republic, UNCITRAL ad hoc
Pren Nreka v. Czech Republic, UNCITRAL
Saluka Investments B.V. v. The Czech Republic, UNCITRAL
Peter Franz Vocklinghaus v. Czech Republic
Voltaic Network GmbH v. Czech Republic, UNCITRAL ad hoc
WA Investments-Europa Nova Limited v. Czech Republic, UNCITRAL ad hoc
Mr. Jürgen Wirtgen, Mr. Stefan Wirtgen, and JSW Solar (zwei) v. Czech Republic, UNCITRAL ad hoc
Annex A – Arbitrations involving Member States/Switzerland, State Entities and the EU since 1999

WTO dispute settlement: (2)
Czech Republic v. Hungary, DS159
Hungary v. Czech Republic, DS148
Poland v. Czech Republic, DS289
State-state arbitration: (0)

1.2.7. Denmark

Investment arbitration: (0)
WTO dispute settlement: (2)
Denmark v. European Union, DS469
Complaint by Denmark in respect of the Faroe Islands
United States v. Denmark, DS83
State-State arbitration (1)¹
The Atlanto-Scandian Herring Arbitration (The Kingdom of Denmark in respect of the Faroe Islands v. The European Union), PCA Case No, 2013-30

1.2.8. Estonia

Investment arbitration: (4)
AS Tallinna Vesi v. Estonia, ICSID (filed May 13, 2014)
Alex Genin and others v. Republic of Estonia (ICSID Case No. ARB/99/2)
OKO Pankki Oyj and others v. Republic of Estonia (ICSID Case No. ARB/04/6)
Rail World Estonia LLC and others v. Republic of Estonia (ICSID Case No. ARB/06/6)

WTO dispute settlement: (0)
State-state arbitration: (0)

1.2.9. Finland

Investment arbitration: (0)
WTO dispute settlement: (0)
State-state arbitration: (0)

1.2.10. France

Investment arbitration: (2)
The Channel Tunnel Group Limited and France-Manche S.A., and the Governments of the United Kingdom and France (Eurotunnel Arbitration), PCA
Erbil Serter v. French Republic (ICSID Case No. ARB/13/22)

WTO dispute settlement: (4)
United States v. European Communities, France, Germany, Spain, United Kingdom, DS316
United States v. European Communities, France, Germany, Spain, United Kingdom, DS347
United States v. France, DS131
United States v. France, DS173 (this complaint is identical to the one addressed to the EC (WT/DS172)

¹ This is not strictly a State-State arbitration, as one party is the European Union. Beyond this technicality, however, it is most accurately classified in this section.
State-state arbitration: (7)
The "Camouco" Case (Panama v. France), Prompt Release, ITLOS, Case No. 5
Certain Criminal Proceedings in France (Republic of the Congo v. France), ICJ
Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), ICJ
The "Grand Prince" Case (Belize v. France), Prompt Release, ITLOS, Case No. 8
Legality of Use of Force (Serbia and Montenegro v. France), ICJ
The "Monte Confurco" Case (Seychelles v. France), Prompt Release, ITLOS, Case No. 6
The Kingdom of Netherlands – Republic of France 1976 Convention on Protection of the Rhine Against Pollution by Chlorides, PCA

1.2.11. Germany

Investment arbitration: (3)
A case was initiated in 2000 by an Indian investor under the Germany-India BIT pursuant to UNCITRAL Rules (information on this case is not publicly available)
Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG & Co. KG (Sweden) v. Federal Republic of Germany (ICSID Case No. ARB/09/6)
Vattenfall AB (Sweden) et al v. Germany (ICSID Case No. ARB/12/12)
WTO dispute settlement: (2)
United States v. European Communities, France, Germany, Spain, United Kingdom, DS316
United States v. European Communities, France, Germany, Spain, United Kingdom, DS347

State-state arbitration: (0)

1.2.12. Greece

Investment arbitration: (1)
Poštová banka, a.s. and ISTROKAPITAL SE v. Hellenic Republic (ICSID Case No. ARB/13/8)
WTO dispute settlement: (3)
United States v. Greece, DS125
United States v. Greece, DS129
China v. European Union, Italy, Greece, DS452

State-state arbitration: (4)
Certain Property (Liechtenstein v. Germany), ICJ
Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening) ICJ
LaGrand (Germany v. United States of America), ICJ
Legality of Use of Force (Serbia and Monténégro v. Germany), ICJ

1.2.13. Hungary

Investment arbitration: (12)
Accession Mezzanine Capital L.P. and Danubius Kereskedőház Vagyonkezelő Zrt. v. Hungary (ICSID Case No. ARB/12/3)
ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary (ICSID Case No. ARB/03/16)
AES Summit Generation Ltd. (UK subsidiary of US-based AES Corporation) v. Hungary
ICSID Case No. ARB/01/4

2 Although Greece is known to have been involved in other investment-related arbitrations, accurate statistics are unavailable due to confidentiality restrictions.
AES Summit Generation Limited and AES-Tisza Erömű Kft. (UK) v. Republic of Hungary (ICSID Case No. ARB/07/22)
Le Chèque Déjeuner and C.D Holding Internationale v. Hungary (ICSID Case No. ARB/13/35)
Dan Cake (Portugal) S.A. v. Hungary (ICSID Case No. ARB/12/9)
Edenred S.A. v. Hungary (ICSID Case No. ARB/13/21)
EDF International S.A. (France) v. Republic of Hungary, UNCITRAL ad hoc
Electrabel S.A. (Belgium) v. Republic of Hungary (ICSID Case No. ARB/07/19)
Emmis International Holding, B.V., Emmis Radio Operating, B.V., and MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft. v. Hungary (ICSID Case No. ARB/12/2)
Telenor Mobile Communications AS v. Republic of Hungary (ICSID Case No. ARB/04/15)
Vigotop Limited v. Hungary (ISCID Case No. ARB/11/22)

WTO dispute settlement: (7)
Czech Republic v. Hungary, DS159
Hungary v. Czech Republic, DS148
Hungary v. Romania, DS240
Hungary v. Slovak Republic, DS143
Hungary v. Turkey, DS256
Hungary v. Croatia, DS297
United-States v. Japan, DS76 (Acting as a third-country, together with the EC and Brazil)

State-state arbitration: (0)

1.2.14. Ireland

Investment arbitration: (0)
WTO dispute settlement: (2)
United States v. Ireland, DS82
United States v. Ireland, DS130

State-state arbitration: (0)

1.2.15. Italy

Investment arbitration: (1)
Blusun SA, Jean-Pierre Lecorcie and Michael Stein v. Italian Republic (ICSID Case No. ABR/14/3)
WTO dispute settlement: (1)
China v. European Union, Italy, Greece, DS452
State-state arbitration: (2)
Italian Republic v. Republic of Cuba, ad hoc state-state arbitration
Legality of Use of Force (Serbia and Montenegro v. Italy), ICJ

1.2.16. Latvia

Investment arbitration: (3)
Nykomb Synergetics Technology Holding AB (Sweden) v. The Republic of Latvia, SCC - Case No 118/2001
Swembalt AB, Sweden v. The Republic of Latvia, UNCITRAL
UAB E energija (Lithuania) v. Republic of Latvia (ICSID Case No. ARB/12/33)
1.2.17. Lithuania

Investment arbitration: (5)

Vladimir Antonov v. Republic of Lithuania, ICC
Luigiterzo Bosca v. Lithuania, UNCITRAL
Kalinigrad Region v. Lithuania, ICC
OAO Gazprom v. The Republic of Lithuania, UNCITRAL, PCA
Parkerings-Compagniet AS v. Republic of Lithuania (ICSID Case No. ARB/05/8)

WTO dispute settlement: (0)
State-state arbitration: (0)

1.2.18. Luxembourg

Investment arbitration: (0)
WTO dispute settlement: (0)
State-state arbitration: (0)

1.2.19. Malta

Investment arbitration: (0)
WTO dispute settlement: (0)
State-state arbitration: (0)

1.2.20. Netherlands

Investment arbitration: (0)
WTO dispute settlement: (3)

Brazil v. European Union, Netherlands, DS409
India v. European Union, Netherlands, DS408
United States v. Netherlands, DS128

State-state arbitration: (4)

Arctic Sunrise Arbitration (Netherlands v. Russia), PCA
Belgium v. The Netherlands, Arbitration regarding the Iron Rhine Railway, PCA
Legality of Use of Force (Serbia and Montenegro v. Netherlands), ICJ
The Kingdom of Netherlands – Republic of France 1976 Convention on Protection of the Rhine Against Pollution by Chlorides, PCA

1.2.21. Poland

Investment arbitration: (14)

Cargill v. Poland, UNCITRAL
Cargill, Incorporated v. Republic of Poland (ICSID Case No. ARB(AF)/04/2)
Crespo and others v. Poland, ICC
East Cement for Investment Company v. Poland, ICC
Eureko B.V. v. Republic of Poland

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Mercuria Energy Group Ltd. (Cyprus) v. Republic of Poland, SCC
David Minotte and Robert Lewis v Republic of Poland (ICSID Case No. ARB(AF)/10/1)
Nordzucker v. Poland, UNCITRAL
Saar Papier Vertriebs GmbH v. Poland, UNCITRAL
Techniques du Progres S.A.S. v. Republic of Poland, UNCITRAL
TRACO Deutsche Travertinwerke GmbH v. The Republic of Poland, UNCITRAL
Vincent J. Ryan, Schooner Capital LLC, and Atlantic Investment Partners LLC v. Republic of Poland (ICSID Case No. ARB(AF)/11/3)
Vivendi v. Republic of Poland, UNCITRAL

WTO dispute settlement: (4)
European Communities v. Canada (Acting as a third-party together with Australia, Brazil, Colombia, Cuba, India, Japan, Switzerland, Thailand, United States), DS114
Poland v. Thailand (European Communities, Japan, United States as third-parties), DS122
Poland v. Slovak Republic, DS235
Poland v. Czech Republic, DS289

State-state arbitration: (0)

1.2.22. Portugal

Investment arbitration: (0)
WTO dispute settlement: (0)
State-state arbitration: (1)
Legality of Use of Force (Serbia and Montenegro v. Portugal), ICJ

1.2.23. Romania

Investment arbitration: (9)
Hassan Awdi, Enterprise Business Consultants, Inc. and Alfa El Corporation v. Romania (ICSID Case No. ARB/10/13)
Ömer Dede and Serdar Elhüseyni v. Romania (ICSID Case No. ARB/10/22)
EDF (Services) Limited v. Romania (ICSID Case No. ARB/05/13)
Marco Gavazzi and Stefano Gavazzi v. Romania (ICSID Case No. ARB/12/25)
Noble Ventures, Inc. v. Romania (ICSID Case No. ARB/01/11)
The Rompetrol Group N.V. v. Romania (ICSID Case No. ARB/06/3)
S&T Oil Equipment & Machinery Ltd. v. Romania (ICSID Case No. ARB/07/13)
Spyridon Roussalis v. Romania (ICSID Case No. ARB/06/1)

WTO dispute settlement: (2)
Hungary v. Romania, DS240
United States v. Romania, DS198

State-state arbitration: (1)
Maritime Delimitation in the Black Sea (Romania v. Ukraine), ICJ
1.2.24. Slovak Republic

Investment arbitration: (13)
*Als Finance and Trade AG v. The Slovak Republic*, UNCITRAL
*Austrian Airlines v. The Slovak Republic*, UNCITRAL
Československa obchodní banka, a.s. v. Slovak Republic (ICSID Case No. ARB/97/4)
*EuroGas GmbH v. Slovak Republic*, UNCITRAL
*European American Investment Bank AG v. The Slovak Republic*, UNCITRAL, PCA
*HICEE B.V. v. The Slovak Republic*, UNCITRAL, PCA Case No. 2009-11
*Branimir Mensik v. Slovak Republic* (ICSID Case No. ARB/06/9)
*Jan Oostergetel and Theodora Laurentius v. The Slovak Republic*, UNCITRAL
*Slovak Gas Holding BV, GDF International SAS and E.ON Ruhrgas International GmbH v. Slovak Republic* (ICSID Case No. ARB/12/7)
*U.S. Steel Global Holdings I B.V. (The Netherlands) v. The Slovak Republic*, UNCITRAL, PCA

WTO dispute settlement: (3)
*Hungary v. Slovak Republic*, DS143
*Poland v. Slovak Republic*, DS235
*Switzerland v. Slovak Republic*, DS133

State-state arbitration: (0)

1.2.25. Slovenia

Investment arbitration: (3)
*Hrvatska Elektroprivreda d.d. (HEP) (Croatia) v. Republic of Slovenia* (ICSID Case No. ARB/05/24)
*Interbrew Central European Holding B.V. v. Republic of Slovenia* (ICSID Case No. ARB/04/17)

WTO dispute settlement: (0)

State-state arbitration: (0)

1.2.26. Spain

Investment arbitration: (10)
*Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Spain* (ICSID Case No. ARB/13/31)
*Charanne (the Netherlands) and Construction Investments (Luxembourg) v. Spain*, SCC
*CSP Equity Investment S.à.r.l. v. Spain*, SCC
*Eiser Infrastructure Limited and Energia Solar Luxembourg S.a.r.l. v. Spain* (ICSID Case No. ARB/13/36)
*Inversión y Gestión de Bienes, IGB, S.L. and IGB18 Las Rozas, S.L. v. Kingdom of Spain* (ICSID Case No. ARB/12/17)
*Isolux Infrastructure Netherlands B.V. v. Spain*, SCC
*Emilio Agustin Maffezini v. Kingdom of Spain* (ICSID Case No. ARB/97/7)
*Masdar Solar & Wind Cooperatif UA v. Spain* (ICSID Case No. ABR/14/01)
*The PV Investors v. Spain, Ad hoc UNCITRAL Arbitration*
Annex A – Arbitrations involving Member States/ Switzerland, State Entities and the EU since 1999

RREEF Infrastructure (G.P.) Limited and RREEF Pan-European RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain (ICSID Case No. ARB/13/30)
WTO dispute settlement: (3)
Argentin a v. European Union, Spain, DS443
United States v. European Communities, France, Germany, Spain, United Kingdom (third-parties: Australia, Brazil, Canada, China, Japan, Republic of Korea), DS316
United States v. European Communities, France, Germany, Spain, United Kingdom (third-parties: Australia, Brazil, Canada, China, Japan, Republic of Korea), DS347
State-state arbitration: (2)
Legality of Use of Force (Yugoslavia v. Spain), ICJ
The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain), ITLOS, Case No. 18

1.2.27. Sweden

Investment arbitration: (0)
WTO dispute settlement: (0)
State-state arbitration: (0)

1.2.28. United Kingdom

Investment arbitrations: (1)
Ashok Sancheti v. United Kingdom, UNCITRAL
WTO dispute settlement: (2)
United States v. European Communities, France, Germany, Spain, United Kingdom, DS316
United States v. European Communities, France, Germany, Spain, United Kingdom, DS347
State-state arbitration: (5)
The Channel Tunnel Group Limited and France-Manche S.A., and the Governments of the United Kingdom and France (Eurotunnel Arbitration), PCA
Ireland v. United Kingdom ("MOX Plant Case")
Ireland v. United Kingdom, proceedings pursuant to the OSPAR Convention
The Republic of Mauritius v. The United Kingdom of Great Britain and Northern Ireland
Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), ICJ

1.2.29. Switzerland

Investment arbitration: (0)
WTO dispute settlement:
Switzerland v. Slovak Republic, DS133
Switzerland v. United States (third parties: Brazil, Canada, China, Chinese Taipei, Cuba, European Communities, Japan, Republic of Korea, Mexico, New Zealand, Norway, Thailand, Turkey, Bolivarian Republic of Venezuela), DS253

Acting as third country:
China v. United States (third parties: Brazil, Canada, Chinese Taipei, Cuba, European Communities, Japan, Republic of Korea, Mexico, New Zealand, Norway, Switzerland, Thailand, Turkey, Bolivarian Republic of Venezuela), DS252
**European Communities v. Canada** (third parties: Australia, Brazil, Colombia, Cuba, India, Israel, Japan, Poland, Switzerland, Thailand United States), DS114

**European Communities v. United States** (third parties: Australia, Brazil, Canada, Japan, Switzerland), DS160

**European Communities v. United States** (third parties: Brazil, Canada, China, Chinese Taipei, Cuba, Japan, Republic of Korea, New Zealand, Norway, Switzerland, Thailand, Turkey, Bolivarian Republic of Venezuela), DS248

**Japan v. Argentina** (third parties: Australia, Canada, China, Ecuador, European Union, Guatemala, India, Israel, Japan, Republic of Korea, Norway, Saudi Arabia, Kingdom of Switzerland, Chinese Taipei, Thailand, Turkey, United States), DS445

**Japan v. United States** (third-parties: Brazil, Canada, China, Chinese Taipei, European Communities, Republic of Korea, Mexico, New Zealand, Norway, Switzerland, Thailand, Turkey, Bolivarian Republic of Venezuela), DS249

**European Union v. Argentina** (third parties: Australia; Canada; China; Ecuador; European Union; Guatemala; India; Israel; Japan; Korea, Republic of; Norway; Saudi Arabia, Kingdom of; Switzerland; Chinese Taipei; Thailand; Turkey; United States), DS438

**Republic of Korea v. United States** (third parties: Brazil, Canada, China, Chinese Taipei, European Communities, Japan, Mexico, New Zealand, Norway, Switzerland, Thailand, Turkey, Bolivarian Republic of Venezuela), DS251

**New Zealand v. United States**, (third parties: Brazil; Canada; China; Chinese Taipei; Cuba; European Communities; Japan; Korea, Republic of; Mexico; Norway; Switzerland; Thailand; Turkey; Venezuela, Bolivarian Republic of), DS258

**Norway v. United States** (third parties: Brazil; Canada; China; Chinese Taipei; Cuba; European Communities; Japan; Korea, Republic of; Mexico; New Zealand; Switzerland; Thailand; Turkey; Venezuela, Bolivarian Republic of), DS254

**United States v. Argentina** (third countries: Australia; Canada; China; Ecuador; European Union; Guatemala; India; Israel; Japan; Korea, Republic of; Norway; Saudi Arabia, Kingdom of; Switzerland; Chinese Taipei; Thailand; Turkey; United States), DS444

State-state arbitration: (2)

Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (*Belgium v. Switzerland*), ICJ

Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations (*Commonwealth of Dominica v. Switzerland*), ICJ

1.2.30. European Union (formerly European Communities)

WTO dispute settlement:

**WTO arbitration under Article 25 of the DSU:**

*ECP-EC Partnership Arbitration – “Banana Tariffs,”* WT/L/616

*Second ECP-EC Partnership Arbitration – “Banana Tariffs,”* WT/L/625

**WTO arbitration under Article 21 of the DSU:**

*EU (EC) acting as third party to original WTO proceedings:*

WT/DS414/12 (China – United States)

WT/DS384/24, WT/DS386/23 (Canada – United States)

WT/DS366/13 (Panama - Colombia)

WT/DS344/15 (Mexico – United States)

WT/DS336/16 (Republic of Korea – Japan)

WT/DS322/21 (Japan – United States)

WT/DS302/17 (Honduras – Dominican Republic)
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WT/DS285/13 (Antigua and Barbuda – United States)
WT/DS268/12 (Argentina – United States)
WT/DS264/13 (Canada – United States)
WT/DS207/13 (Argentina – Chile)
WT/DS202/17 (Republic of Korea – United States)
WT/DS184/13 (Japan – United States)

EU (EC) acting as Respondent to original WTO proceedings:
WT/DS246/14 (India – EC)
WT/DS265/33, WT/DS266/33, WT/DS283/14 (Australia – EC)
WT/DS269/13, WT/DS286/15 (Brazil – EC)

EU (EC) acting as Complainant to original WTO proceedings:
WT/DS332/16 (EC – Brazil)
WT/DS75/16, WT/DS84/14 (EC – Republic of Korea)
WT/DS87/15, WT/DS110/14 (EC – Chile)
WT/DS114/13 (EC – Canada)
WT/DS160/12 (EC – United States)
WT/DS136/11, WT/DS162/14 (EC – United States)
WT/DS155/10 (EC – Argentina)
WT/DS217/14, WT/DS234/22 (Australia; Brazil; Chile; European Communities; India; Indonesia; Japan; Korea, Republic of; Thailand – United States)

WTO Complaints launched by the EU:
Argentina, WT/DS121 - Safeguard measures on footwear
Argentina, WT/DS155 - Measures on the export of bovine hides and the import of finished leather
Argentina, WT/DS157, Definitive Anti-Dumping Measures on Imports of Drill Bits from Italy
Argentina, WT/DS189 - Definitive anti-dumping measures on imports of ceramic floor tiles from Italy
Argentina, WT/DS330 – Countervailing Duties on Olive Oil, Wheat Gluten and Peaches
Argentina, WT/DS438 – Measures Affecting the Importation of Goods
Australia, WT/DS287 - Quarantine Regime for Imports
Brazil, WT/DS 472 - Brazil Taxation
Brazil, WT/DS Measures on Import Licensing and Minimum Import Prices
Brazil, WT/DS332 - Measures affecting imports of retreaded tyres
Canada, WT/DS114 - Patent protection of pharmaceutical product
Canada, WT/DS142 - Certain measures affecting the automotive industry
Canada, WT/DS321 - Continued Suspension of Obligations in the EC-Hormones Dispute
Canada, WT/DS354 - Tax exemptions and reductions for wine and beer
Canada, WT/DS426 - Measures Relating to the Feed-in Tariff Program
Chile, WT/DS193 - Measures affecting the transit and importation of swordfish
Chile, WT/DS87 - Taxes on alcoholic beverages
China, WT/DS 372 - China – Measures Affecting Financial Information Services and Foreign Financial Information Suppliers
China, WT/DS 460 - China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes (“HP-SSST”) from the European Union
China, WT/DS339 - Measures affecting imports of automobile parts
China, WT/DS395 - China — Measures Related to the Exportation of Various Raw Materials
China, WT/DS407 - Provisional Anti-Dumping Duties on Certain Iron and Steel Fasteners from the European Union
China, WT/DS425 - Definitive anti-dumping duties on x-ray security inspection equipment from the EU - China
China, WT/DS432 - China - Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum
India, WT/DS146 - Measures affecting the automotive sector
India, WT/DS149 - Import restrictions
India, WT/DS150 - Measures affecting customs duties
India, WT/DS279 - Import restrictions maintained under the export and import policy 2002-2007
India, WT/DS304 - Anti-dumping measures on imports of certain products from the EC and/or Member States
India, WT/DS352 - India - Measures Affecting the Importation and Sale of Wines and Spirits from the European Communities
India, WT/DS380, Certain Taxes and Other Measures on Imported Wines and Spirits
Indonesia, WT/DS481, Recourse to article 22.2 of the DSU in the US — Clove cigarettes dispute
Korea, Republic Of, WT/DS273 - Measures affecting trade in commercial vessels -
Korea, Republic Of, WT/DS75 - Taxes on alcoholic beverages -
Korea, Republic Of, WT/DS98 - Definitive safeguard measures on imports of certain dairy products -
Mexico, WT/DS314 - Provisional Countervailing Measures on Olive Oil from the European Communities
Mexico, WT/DS341 - Mexico - Definitive countervailing measures measures on olive oil from the European Communities
Philippines, WT/DS396 - Philippines - taxes on distilled spirits
Russian Federation, WT/DS462 - Russian Federation- Recycling fee on motor vehicles
Russian Federation, WT/DS475, Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union
Russian Federation, WT/DS479, Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy
Thailand, WT/DS370 - Thailand - Customs valuation of certain products from the EC
United States, WT/DS108 - Tax treatment for "Foreign Sales Corporations"
United States, WT/DS136 - Anti-dumping Act of 1916
United States, WT/DS138 - Imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel products originating in the UK
United States, WT/DS152 - Sections 301-310 of the Trade Act of 1974
United States, WT/DS160 - Section 110(5) of US Copyright Act
United States, WT/DS160, Section 110(5) of US Copyright Act
United States, WT/DS165 - Import measures on certain products from the EC
United States, WT/DS165, Import Measures on Certain Products from the European Communities
United States, WT/DS166 - Definitive safeguard measures on imports of wheat gluten from EC
United States, WT/DS166, Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities
United States, WT/DS176 - Section 211 Omnibus Appropriations Act
United States, WT/DS176, Section 211 Omnibus Appropriations Act of 1998
United States, WT/DS186 - Section 337 of the Tariff Act of 1930 and amendments thereto
United States, WT/DS200 - Section 306 of the Trade Act of 1974 and amendments thereto ("carousel")
United States, WT/DS212 - Countervailing measures concerning certain products from the EC
United States, WT/DS213 - Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany
United States, WT/DS214, Definitive Safeguard Measures on Imports of Steel Wire Rod and Circular Welded Quality Line Pipe
United States, WT/DS217 - Continued dumping and subsidy offset Act of 2000
United States, WT/DS225, Anti-Dumping Duties on Seamless Pipe from Italy
United States, WT/DS248 - Definitive safeguard measures on imports of certain steel products
United States, WT/DS262 - Sunset Reviews of Anti-Dumping and Countervailing Duties on Certain Steel Products from France and Germany
United States, WT/DS294 - Laws, regulations and methodology for calculating dumping margins (‘zeroing’)
United States, WT/DS317 - Measures Affecting Trade in Large Civil Aircraft
United States, WT/DS319 - Section 776 of the Tariff Act of 1930
United States, WT/DS320 - Continued Suspension of Obligations in the EC-Hormones Dispute
United States, WT/DS350 - Continued Existence and Application of zeroing methodology
United States, WT/DS353 - Measures Affecting Trade in Large Civil Aircraft (second complaint)
United States, WT/DS424 - United States – Anti-Dumping Measures on Imports of Stainless Steel Sheet and Strip in Coils from Italy

**WTO Complaints against the EU:**

Argentina, WT/DS349 - EC - Measures affecting the tariff quota for fresh or chilled garlic
Argentina, WT/DS443 - European Union and a Member State — Certain Measures Concerning the Importation of Biodiesels
Argentina, WT/DS293 - Measures affecting the approval and marketing of biotech products (GMOs)
Argentina, WT/DS263 - Measures affecting imports of wine
Australia, WT/DS290 - Protection of trademarks and geographical indications for agricultural products and foodstuffs
Australia, WT/DS265 - Export subsidies on sugar
Brazil, WT/DS219 - Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil
Brazil, WT/DS269 - Customs classification of frozen boneless chicken cuts
Brazil, WT/DS266 - Export subsidies on sugar
Brazil, WT/DS409 - European Union and a Member State - Seizure of Generic Drugs in Transit
Canada, WT/DS135 - Measures affecting the prohibition of asbestos and asbestos products
Canada, WT/DS400 - European Communities - Measures Prohibiting the Importation and Marketing of Seal Products
Canada, WT/DS 369 - EC - Certain Measures Prohibiting the Importation and Marketing of Seal Products
Canada, WT/DS48 - Measures affecting livestock and meat (Hormones)
Canada, WT/DS292 - Measures affecting the approval and marketing of biotech products (GMOs)
China, WT/DS452 - European Union and certain Member States — Certain Measures Affecting the Renewable Energy Generation Sector
China, WT/DS397 - European Communities - Definitive Anti-Dumping Measures on certain iron or steel fasteners from China
China, WT/DS405 - European Union - Anti-Dumping Measures on Certain Footwear from China
Colombia, WT/DS 361 - EC - Regime For the Importation of Bananas
Ecuador, WT/DS27 - Import regime for bananas
Guatemala, WT/DS27 - Import regime for bananas
Honduras, WT/DS27 - Import regime for bananas
India, WT/DS246 - Conditions for the granting of tariff preferences to developing countries
India, WT/DS313 - Anti-dumping duties on certain flat rolled iron or non-alloy steel products
India, WT/DS141 - Anti-dumping duties on imports of cotton-type bed-linen from India
India, WT/DS408 - European Union and a Member State - Seizure of Generic Drugs in Transit
Japan, WT/DS376 - Tariff Treatment of Certain Information Technology Products
Korea, Republic Of, WT/DS307 - Aid for commercial vessels
Korea, Republic Of, WT/DS301 - Measures affecting trade in commercial vessels
Korea, Republic Of, WT/DS299 - Countervailing measures on dynamic random access memory chips (DRAMs)
Mexico, WT/DS27 - Import regime for bananas
Norway, WT/DS401 - European Communities — Measures Prohibiting the Importation and Marketing of Seal Products
Norway, WT/DS328 - Definitive Safeguard Measure on Salmon
Norway, WT/DS 337 - Anti-Dumping Measure on Farmed Salmon from Norway
Panama, WT/DS364 - EC - Regime for the Importation of Bananas
Peru, WT/DS231 - Trade description of sardines
Taiwan (Chinese Taipei), WT/DS377 - Tariff Treatment of Certain Information Technology Products
Thailand, WT/DS286 - Customs classification of frozen boneless chicken cuts
Thailand, WT/DS242 - Certain measures under the EC’s scheme of generalized system of preference (GSP)
Thailand, WT/DS283 - Export subsidies on sugar
United States, WT/DS375 - Tariff Treatment of Certain Information Technology Products
United States, WT/DS315 - European Communities - Selected Customs Matters
United States, WT/DS223 - Tariff-rate quota on corn gluten feed from the United States
United States, WT/DS27 - Import regime for bananas
United States, WT/DS316 - Measures Affecting Trade in Large Civil Aircraft
United States, WT/DS260 - Provisional safeguards measures on imports of certain steel products
United States, WT/DS174 - Protection of trademarks and geographical indications for agricultural products and foodstuffs
United States, WT/DS26 - Measures affecting meat and meat products (Hormones)
United States, WT/DS291 - Measures affecting the approval and marketing of biotech products (GMOs)

**EU as third party to WTO complaints:**

Antigua And Barbuda, WT/DS285 - Measures affecting the cross-border supply of gambling and betting services
Argentina, WT/DS207 - Price band system and safeguard measures relating to certain agricultural products
Argentina, WT/DS268 - Sunset review of AD measures on oil country tubular goods
Bangladesh, WT/DS306 - Anti-dumping measure on batteries from Bangladesh
Brazil, WT/DS382 - US - Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil
Brazil, WT/DS241 - Anti-dumping duties on poultry from Brazil
Brazil, WT/DS267 - Subsidies on upland cotton
Brazil, WT/DS250 - Equalizing excise tax imposed by Florida on processed orange and grapefruit products
Brazil, WT/DS239 - Anti-dumping duties on silicon metal from Brazil
Canada, WT/DS257 - Final countervailing duty determination with respect to certain softwood lumber
Canada, WT/DS277 - Investigation of the international trade commission in softwood lumber
Canada, WT/DS391 - Korea — Measures Affecting the Importation of Bovine Meat and Meat Products from Canada
Canada, WT/DS264 - Anti-dumping - Final dumping determination on softwood lumber
Canada, WT/DS236 - Determination of countervailing duties on certain softwood lumber
Chile, WT/DS238 - Definitive safeguard measures on imports of preserved peaches
Chile, WT/DS232 - Measures affecting the import of matches
Chile, WT/DS261 - Tax treatment on certain products
China, WT/DS379 - United States - Definitive Anti-Dumping and Countervailing duties on certain products from China
China, WT/DS399 - United States — Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China
China, WT/DS422 - United States — Anti-Dumping Measures on Shrimp and Diamond Sawblades from China
China, WT/DS437 - United States — Countervailing Duty Measures on Certain Products from China
China, WT/DS449 - United States — Countervailing and Anti-dumping Measures on Certain Products from China
Colombia, WT/DS188 - Measures affecting imports from Honduras and Colombia
Costa Rica, WT/DS415 - Dominican Republic — Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric
El Salvador, WT/DS418 - Dominican Republic — Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric
Guatemala, WT/DS416 - Dominican Republic — Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric
Guatemala, WT/DS331 - Mexico - Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala
Honduras, WT/DS417 - Dominican Republic — Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric
Honduras, WT/DS201 - Measures affecting imports from Honduras and Colombia (II)
Honduras, WT/DS302 - Measures affecting the importation and internal sale of cigarettes
India, WT/DS243 - Rules of origin for textiles and apparel products
India, WT/DS206 - Anti-dumping and countervailing measures on steel plate from India
India, WT/DS345 - United States — Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties
India, WT/DS436 - United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India
Indonesia, WT/DS312 - Korea — Anti-Dumping Duties on Imports of Certain Paper from Indonesia
Indonesia, WT/DS406 - United States — Measures Affecting the Production and Sale of Clove Cigarettes
Japan, WT/DS322 - Measures Relating to Zeroing and Sunset Reviews
Japan, WT/DS162 - Anti-dumping Act of 1916
Japan, WT/DS184 - Anti-dumping measures on certain hot-rolled steel products from Japan
Japan, WT/DS412 - Canada - Certain Measures Affecting the Renewable Energy Generation Sector
Japan, WT/DS433 - China - Measures Related to the Exportation of rare Earths, Tungsten and Molybdenum
Japan, WT/DS244 - Sunset review of AD duties on corrosion-resistant carbon steel flat products  
Korea, Republic Of, WT/DS420 - United States — Anti-dumping measures on corrosion-resistant carbon steel flat products from Korea  
Korea, Republic Of, WT/DS336 - CV duty on DRAMS from Korea  
Korea, Republic Of, WT/DS296 - CV duty investigation on DRAMS  
Korea, Republic Of, WT/DS323 – Japan – Import quotas on dried laver and seasoned laver  
JAPAN  
Korea, Republic Of, WT/DS402 - US - Use of Zeroing in Anti-Dumping Measures Involving Products from Korea  
Mexico, WT/DS344 - US - Final Anti-Dumping Measures on Stainless Steel from Mexico  
Mexico, WT/DS282 - Anti-dumping measures on oil country tubular goods  
Mexico, WT/DS281 - Anti-dumping measures on cement  
Mexico, WT/DS398 - China — Measures Related to the Exportation of Various Raw Materials  
Moldova, Republic Of, WT/DS423 - Ukraine — Taxes on Distilled spirits  
New Zealand, WT/DS367 - Australia — Measures Affecting the Importation of Apples from New Zealand  
Panama, WT/DS366 - Colombia - Indicative prices and restrictions on ports of entry  
Philippines, WT/DS270 - Certain measures affecting the importation of fresh fruit and vegetables  
Philippines, WT/DS271 - Certain measures affecting the importation of fresh pineapple  
Thailand, WT/DS383 - US - Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand  
Thailand, WT/DS343 - United States - Measures Relating to Shrimp from Thailand  
Turkey, WT/DS211 - Definitive anti-dumping measures on steel rebar from Turkey  
Ukraine, WT/DS434 - Australia - Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to tobacco Products and Packaging  
Ukraine, WT/DS421 - Moldova — Measures Affecting the Importation and Internal Sale of Goods (Environmental Charge)  
United States, WT/DS295 - Definitive AD measures on beef and rice  
United States, WT/DS309 - Value-added tax on integrated circuits  
United States, WT/DS403 - Philippines — Taxes on Distilled Spirits  
United States, WT/DS431 - China - Measures Related to the Exportation of rare Earths, Tungsten and Molybdenum  
United States, WT/DS427 - China — Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States  
United States, WT/DS430 - India — Measures Concerning the Importation of Certain Agricultural Products from the United States  
United States, WT/DS440 - China — Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States  
United States, WT/DS276 - Measures relating to exports of wheat and treatment of imported grain -  
United States, WT/DS308 - Tax measures on soft drinks and other beverages  
United States, WT/DS305 - Measures affecting imports of textile and apparel products  
United States, WT/DS275 - Import licensing measures on certain agricultural products  
United States, WT/DS204 - Measures affecting telecommunication services  
United States, WT/DS245 - Measures affecting the importation of apples  
United States, WT/DS175 - Measures affecting trade and investment in the motor vehicle sector  
United States, WT/DS360 - India - Additional and Extra-Additional duties India - Additional and Extra-Additional duties on imports from the United States
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United States, WT/DS363 - Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products
United States, WT/DS362 - Measures affecting the protection and enforcement of intellectual property rights
United States, WT/DS413 - China — Certain Measures Affecting Electronic Payment Services
United States, WT/DS414 - China — Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States
Viet Nam, WT/DS404 - United States - Anti-Dumping Measures on Certain Shrimp from Viet Nam

Ordered by defendants:
Argentina, WT/DS238 - Definitive safeguard measures on imports of preserved peaches
Argentina, WT/DS241 - Anti-dumping duties on poultry from Brazil
Australia, WT/DS271 - Certain measures affecting the importation of fresh pineapple
Australia, WT/DS270 - Certain measures affecting the importation of fresh fruit and vegetables
Australia, WT/DS367 - Australia — Measures Affecting the Importation of Apples from New Zealand
Australia, WT/DS434 - Australia - Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to tobacco Products and Packaging
Canada, WT/DS412 - Canada - Certain Measures Affecting the Renewable Energy Generation Sector
Canada, WT/DS276 - Measures relating to exports of wheat and treatment of imported grain
Chile, WT/DS207 - Price band system and safeguard measures relating to certain agricultural products
China, WT/DS309 - Value-added tax on integrated circuits
China, WT/DS427 - China — Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States
China, WT/DS440 - China — Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States
China, WT/DS398 - China — Measures Related to the Exportation of Various Raw Materials
China, WT/DS413 - China — Certain Measures Affecting Electronic Payment Services
China, WT/DS414 - China — Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States
China, WT/DS433 - China - Measures Related to the Exportation of rare Earths, Tungsten and Molybdenum
China, WT/DS431 - China - Measures Related to the Exportation of rare Earths, Tungsten and Molybdenum
China, WT/DS363 - Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products
China, WT/DS362 - Measures affecting the protection and enforcement of intellectual property rights
Colombia, WT/DS366 - Colombia - Indicative prices and restrictions on ports of entry
Dominican Republic, WT/DS416 - Dominican Republic — Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric
Dominican Republic, WT/DS415 - Dominican Republic — Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric
Dominican Republic, WT/DS418 - Dominican Republic — Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric
Dominican Republic, WT/DS417 - Dominican Republic — Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric
Dominican Republic, WT/DS302 - Measures affecting the importation and internal sale of cigarettes
Egypt, WT/DS211 - Definitive anti-dumping measures on steel rebar from Turkey
Egypt, WT/DS305 - Measures affecting imports of textile and apparel products
India, WT/DS430 - India — Measures Concerning the Importation of Certain Agricultural Products from the United States
India, WT/DS360 - India - Additional and Extra-Additional duties India - Additional and Extra-Additional duties on imports from the United States
India, WT/DS175 - Measures affecting trade and investment in the motor vehicle sector
India, WT/DS306 - Anti-dumping measure on batteries from Bangladesh
Japan, WT/DS336 - CV duty on DRAMS from Korea
Japan, WT/DS323 - JAPAN – IMPORT QUOTAS ON DRIED LAVER AND SEASONED LAVER
Japan, WT/DS245 - Measures affecting the importation of apples
Korea, Republic of, WT/DS391 - Korea — Measures Affecting the Importation of Bovine Meat and Meat Products from Canada
Korea, Republic WT/DS312 - Korea — Anti-Dumping Duties on Imports of Certain Paper from Indonesia
Mexico, WT/DS331 - Mexico ò Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala
Mexico, WT/DS295 - Definitive AD measures on beef and rice.
Mexico, WT/DS308 - Tax measures on soft drinks and other beverages
Mexico, WT/DS204 - Measures affecting telecommunication services - Mexico
WT/DS232 - Measures affecting the import of matches
Moldova, Republic Of, WT/DS421 - Moldova — Measures Affecting the Importation and Internal Sale of Goods (Environmental Charge)
Nicaragua, WT/DS188 - Measures affecting imports from Honduras and Colombia
Nicaragua, WT/DS201 - Measures affecting imports from Honduras and Colombia (II)
Philippines, WT/DS403 - Philippines — Taxes on Distilled Spirits
Ukraine, WT/DS423 - Ukraine — Taxes on Distilled spirits
United States, WT/DS399 - United States — Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China
United States, WT/DS449 - United States — Countervailing and Anti-dumping Measures on Certain Products from China
United States, WT/DS404 - United States - Anti-Dumping Measures on Certain Shrimp from Viet Nam
United States, WT/DS345 - United States — Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties
United States, WT/DS343 - United States - Measures Relating to Shrimp from Thailand
United States, WT/DS322 - Measures Relating to Zeroing and Sunset Reviews
United States, WT/DS277 - Investigation of the international trade commission in softwood lumber
United States, WT/DS296 - CV duty investigation on DRAMS
United States, WT/DS282 - Anti-dumping measures on oil country tubular goods
United States, WT/DS420 - United States — Anti-dumping measures on corrosion-resistant carbon steel flat products from Korea
United States, WT/DS422 - United States — Anti-Dumping Measures on Shrimp and Diamond Sawblades from China
United States, WT/DS436 - United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India
United States, WT/DS437 - United States — Countervailing Duty Measures on Certain Products from China
United States, WT/DS406 - United States — Measures Affecting the Production and Sale of Clove Cigarettes
United States, WT/DS281 - Anti-dumping measures on cement
United States, WT/DS379 - United States - Definitive Anti-Dumping and Countervailing duties on certain products from China
United States, WT/DS244 - Sunset review of AD duties on corrosion-resistant carbon steel flat products
United States, WT/DS184 - Anti-dumping measures on certain hot-rolled steel products from Japan
United States, WT/DS162 - Anti-dumping Act of 1916
United States, WT/DS243 - Rules of origin for textiles and apparel products
United States, WT/DS206 - Anti-dumping and countervailing measures on steel plate from India
United States, WT/DS264 - Anti-dumping - Final dumping determination on softwood lumber
United States, WT/DS257 - Final countervailing duty determination with respect to certain softwood lumber
United States, WT/DS236 - Determination of countervailing duties on certain softwood lumber
United States, WT/DS267 - Subsidies on upland cotton
United States, WT/DS250 - Equalizing excise tax imposed by Florida on processed orange and grapefruit products
United States, WT/DS239 - Anti-dumping duties on silicon metal from Brazil
United States, WT/DS268 - Sunset review of AD measures on oil country tubular goods
United States, WT/DS285 - Measures affecting the cross-border supply of gambling and betting services
United States, WT/DS344 - US - Final Anti-Dumping Measures on Stainless Steel from Mexico -
United States, WT/DS402 - US - Use of Zeroing in Anti-Dumping Measures Involving Products from Korea
United States, WT/DS383 - US - Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand
United States, WT/DS382 - US - Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil
Uruguay, WT/DS261 - Tax treatment on certain products
Venezuela, WT/DS275 - Import licensing measures on certain agricultural products

State-State arbitration:
The Atlanto-Scandian Herring Arbitration (The Kingdom of Denmark in respect of the Faroe Islands v. The European Union), PCA Case No, 2013-30
Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union), Case No. 7
2. **Annex B – Key Features of National Arbitration Law in the Member States and Switzerland**

2.1. **Austria**

The principal piece of arbitration legislation in Austria is the 2006 Arbitration Law, which was amended in 2013 (with effect from 1 January 2014). The 2006 Law was meant to incorporate the major elements of the UNCITRAL Model Law. The 2013 amendment is significant for only one amendment, namely the abandonment of several tiers of appeals or other actions before the Austrian courts for matters related to ongoing arbitration proceedings in Austria with a single tier, the Austrian Supreme Court (OGH). The rationale was to render Austria an attractive forum for arbitration whose legal system is seen as guaranteeing speedy resolution without unnecessary suits before several tiers of its courts. The Supreme Court’s authority in respect of arbitration proceedings does not extend to arbitral disputes concerning consumer and labour matters, with the jurisdiction of lower courts remaining intact in such cases. It should be noted that much like its other civil law counterparts the Austrian arbitration law is incorporated into the country’s civil procedure code (CCP) and as a result all citations to this law will be from the relevant provisions in the CCP.

In addition, it should be emphasised that because arbitration culture is rather strong in Austria, the institutional rules of the country’s main arbitral institutions, but chiefly the Vienna International Arbitration Centre (VIAC), set the standard for the relevant law and are amply cited by the courts in their judgments. Moreover, the attitude of the Austrian Supreme Court has been arbitration-friendly with many of its judgments making a sustained effort to save arbitral proceedings or to incorporate prevailing scholarship or acknowledged soft law instruments in its analysis. In one case, for example, the OGH held that among differing interpretations as to the existence or not of an arbitration clause that which preserves the clause (assuming it coincides with the parties’ will) will be preferred. In yet another case the OGH was faced with a contract where the parties had inserted a choice of forum clause (therefore showing a preference for litigation) in addition to an arbitration clause. Although the arbitration clause in such a case may have been viewed as inoperable, the OGH held that the arbitration clause prevails (the choice of law clause may be used for the purposes of the arbitral process, such as requests to national courts for interim measures).

**Scope of application (international versus domestic):** there is no distinction between domestic and international arbitration, although there are obviously in the CCP specifically for international arbitrations, such as those relating to the recognition and enforcement of foreign arbitral awards.

**Scope of application (commercial versus other):** there is equally no distinction between commercial and other non-commercial disputes, albeit labour and consumer disputes are subject to other rules. However, the Arbitration Law is not applicable to

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3 In case 20b112/12b, the OGH in its judgment of 17 June 2013 used the IBA’s Guidelines on Conflicts of Interest in International Arbitration in order to determine whether the particular conflict was so severe as to outweigh the legal certainty that would have come if it had decided to annul the award.

4 Limited Liability Co v Limited Liability Co, case no 60b168, judgment (9 September 2013).

5 Claimant v Three Companies, OGH judgment (24 April 2013).
institutions subject to the Austrian Associations and Societies Act (Vereinsgesetz) for the conciliation of disputes arising out of the circumstances of the association.\(^6\)

**Agreement in writing:** This must be in writing (including faxes, telex and email by implication) but does not encompass oral agreements.\(^7\)

**Scope of application (ratione loci):** The relevant rules in the CCP apply only if the seat is in Austria,\(^8\) or where the seat has yet to be determined if one of the parties has its seat, domicile or ordinary residence in Austria.\(^9\)

**Arbitrability:** The general rule is that pecuniary claims can be the subject of an arbitration agreement.\(^10\) Non-pecuniary claims are equally arbitrable as long as the subject matter of the dispute is amenable to settlement.\(^11\) Several pecuniary claims are, nonetheless, not susceptible to arbitration. This includes claims in matters of family law as well as all claims based on contracts that are even only partly subject to the Austrian Landlord and Tenant Act (Mietrechtsgesetz) or to the Austrian Non-profit Housing Act (Wohnungsgemeinnützigkeitsgesetz), including all disputes regarding the conclusion, existence, termination and legal characterization of such contracts and all claims resulting from or in connection with the ownership of apartments may not be made subject to arbitral proceedings.\(^12\)

Austrian company law has traditionally excluded company-related disputes from arbitration, such as Article 10 of the county’s Limited Liability (Companies) Law which excluded compensation claims against company directors of limited liability companies or claims for the reimbursement of invested capital.\(^13\) Such exclusions are no longer valid as the Austrian Supreme Court has gone on to deal with a large number of cases concerning arbitration clauses and suits in the context of limited liability companies and has consistently held that such clauses are valid. In one particular case, the Supreme Court went as far as claim that the arbitration clause inserted in the company’s articles of association was operable even though the company in question had been dissolved.\(^14\)

**Consumer disputes:** Article 617(1) CCP stipulates that consumer disputes are arbitrable but an agreement to this effect can only be drawn up once the dispute between business and consumer arises. In addition, the arbitration agreement, whatever contractual form this takes, must be distinct from any other terms between the parties (which must therefore be inserted in a distinct agreement).\(^15\) This means that consumer disputes can only be the subject of arbitration by means of a *compromis*. The same is also applicable in respect of labour disputes mutatis mutandis.\(^16\) Even so, the Supreme Court has held that arbitration clauses in consumer contracts do not violate Austrian public policy so long as they were individually negotiated.\(^17\) In the case at hand the defendants did not claim that the clause was not individually negotiated, but it is clear that this judgment constitutes a clear deviation from the express dictates of Article 617(1) and (2) of the CCP.

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\(^6\) Art 577(4) CCP.

\(^7\) Art 583 CCP.

\(^8\) Art 577(1) CCP.

\(^9\) Art 577(3) CCP.

\(^10\) Art 582(1) CCP.

\(^11\) Id.

\(^12\) Art 582(2) CCP.

\(^13\) Karollus-Bruner (2013), at 85.

\(^14\) Claimant v Defendant, OGH judgment (8 May 2013).

\(^15\) Art 617(2) CCP.

\(^16\) Art 618 CCP.

\(^17\)LAS (Denmark) v Jürgen H, Judith Elizabeth H and Others, case no 30b144/09m, judgment (22 July 2009).
Third parties to arbitration agreements: Despite its liberal attitude to arbitration, the OGH has consistently held that awards do not produce legal effects for third parties. The position of a third (contractual) party is no different to that of a minor or the creditors of an estate in inheritance proceedings. According to the continuous jurisprudence, the latter do not enjoy the status of a party, the ability to appeal decisions and thereby the right to be heard in the relevant proceedings. The OGH stated that the opposing opinion outlined in legal literature could not be followed.\textsuperscript{18} The situation is, of course, different where third parties benefited from the relevant agreement or in any other way participated in its execution despite never signing it.\textsuperscript{19}

Public policy: The articulation of public policy by Austrian courts in the field of arbitration concerns the conformity of the measures, agreements and other acts of the parties or of the tribunal with Austrian substantive and procedural law. Thus, arbitrations seated in Austria or those seeking to enforce awards in Austria will not be confronted with vague or socially-bound notions of public policy. For example, this will arise where one of the parties was denied the right to be heard, or was otherwise arbitrarily excluded from arbitral proceedings in violation of the European Convention of Human Rights.\textsuperscript{20} Equally, it has been held by the OGH that the failure by one arbitrator to append his signature to the award as well as the failure of all arbitrators to deliberate in person before rendering the award was not offensive to Austrian public policy.\textsuperscript{21} Moreover, in the LAS (Denmark) case cited above the Austrian Supreme Court justified its argument that pre-dispute arbitration clauses are valid (as long as they are individually negotiated) despite an expressly antithetical provision of the CCP on the ground that they do not violate public policy.

Arbitrators’ qualifications: Neither the arbitration law or other laws impose any distinct qualifications, although the various arbitral institutions may demand specific expertise. When appointed by the court it is expected that relevant expertise will be taken into consideration.\textsuperscript{22} Exceptionally, Art 63(5) of the Act on Professional Rights and Duties of Judicial Officers states that judicial officers during their tenure may not be appointed as arbitrators, which is certainly not the norm in international practice.

Tribunal acting as amiable compositeur: This is indeed possible in accordance with Article 603(3) of the CCP.

Arbitrator liability: This is contractual in nature. Article 594(4) of the CCP provides that an arbitrator who does not (at all) or does not timely fulfil his obligation resulting from the acceptance of his appointment, shall be liable to the parties for all damages caused by his culpable refusal or delay.

Legal representation during proceedings: Article 594(3) of the CCP provides that the parties may be represented or counselled by persons of their choice. This right cannot be excluded or limited.

Costs and fees: Article 609(1) provides that the arbitral tribunal shall in its exercise of discretion take into consideration the circumstances of each case, in particular the outcome of the proceedings. The obligation to reimburse may include any and all reasonable costs

\textsuperscript{18} Shareholder v Limited Liability Co, case no 60b42/12p, OGH judgment (19 April 2012).
\textsuperscript{19} GmbH v S Aktiengesellschaft, case no 70b266/08f, judgment (30 March 2009).
\textsuperscript{20} See Joint Stock Company v Limited Partnership, case no 15 Cg 115/10v, Vienna Commercial Court judgment (4 November 2011) where the claim was ultimately dismissed.
\textsuperscript{21} Joint Stock Company v Limited Liability Company, case no 3Ob154/10h, OGH judgment (13 April 2011).
\textsuperscript{22} Art 587(8) CCP.
appropriate for bringing the action or defence. The decision on costs may be made in the form of a separate award.\textsuperscript{23}

The Supreme Court has held that a claim for reimbursement for the payment of the defaulting party's share cannot be brought before the state courts but has to be decided by the arbitral tribunal.\textsuperscript{24} The Supreme Court has recognized an arbitral award ordering the payment of a cost deposit given effect by a tribunal seated in Switzerland granting one party a right of recourse after it had paid the other party's portion of the deposit on costs. The Supreme Court found that the decision conform with Austrian public policy and indeed held that it was "thoroughly reasonable" for an arbitral tribunal to issue an award redressing a party's default of its obligation to pay its share of deposit.\textsuperscript{25}

\textbf{Award forms:} Besides final awards, the tribunal may issue partial and other awards,\textsuperscript{26} such as in relation to costs. There is also the possibility of additional awards.\textsuperscript{27} In accordance with Article 612 of the CCP where the applicant has a legal interest, he or she can apply for a declaration of the existence or non-existence of an arbitral award.

\textbf{Interim and conservatory measures:} The parties may validly request, before or during arbitral proceedings, interim or protective measures from the courts without such a request affecting their rights or obligations under the arbitration clause.\textsuperscript{28} The general power of the tribunal to order interim and conservatory measures is derived from Article 593(1) CCP. In accordance with paragraph 3 of this provision where the measure provides for a measure of protection unknown to Austrian law, the court can upon request and hearing of the opponent, execute such measure of protection under Austrian law that comes closest to the measure of the arbitral tribunal. In this case, the court can also upon request amend the measure of the arbitral tribunal in order to safeguard the realization of its purpose. The court may, under Article 593(4) of the CCP, refuse to enforce or execute an interim or conservatory measure if:

1. the place of arbitration is in this state and the measure suffers from a defect which would constitute a reason for setting aside an arbitral award of this state under Articles 611 paragraph (2), 617 paragraph (6) and (7) or 618 of this Law;
2. the place of arbitration is not in this state and the measure suffers from a defect which would constitute cause for refusal of recognition or enforcement of a foreign arbitral award;
3. the enforcement of the measure would be incompatible with a court measure of this state which was either applied for or made earlier, or would be incompatible with a foreign court measure which was made earlier and which is to be recognized;
4. the measure provides for a measure of protection unknown to Austrian law and no appropriate measure of protection as provided by Austrian law was applied for.

\textsuperscript{23} Art 609(4) CCP.
\textsuperscript{24} OGH, case no 6 Ob 143/00y, judgment (28 June 2000).
\textsuperscript{26} Art 592(1) CCP in respect of awards on the tribunal’s jurisdiction; see also Art 605(2) CCP in respect of a record of settlement which takes the form of an award.
\textsuperscript{27} Art 610 CCP.
\textsuperscript{28} Art 585 CCP.
Court assistance in taking evidence: In accordance with Article 599(1) of the CCP the arbitral tribunal is authorized to decide upon the admissibility of the taking of evidence, to conduct such taking of evidence and freely evaluate the results of such evidence. Exceptionally, under Article 602 of the CCP, the tribunal or a party following the tribunal’s approval may request from the court the conduct of judicial acts for which the arbitral tribunal has no authorization. The judicial assistance may also consist of the court requesting a foreign court or authority to conduct such acts. Article 37(2) to (5) and Articles 38, 39 and 40 of the Austrian Judicature Act (Jurisdiktionssnorm) shall apply accordingly, provided that the arbitral tribunal and the parties to the arbitral proceedings shall have the right to appeal in accordance with Article 40 of the Austrian Judicature Act (Jurisdiktionssnorm). The arbitral tribunal or an arbitrator mandated by the arbitral tribunal and the parties may participate in the taking of evidence by the court and may put questions.

Setting aside of awards: An award may be set aside under Article 611(2) of the CCP if:

1. there is no valid award or the parties are under some incapacity;
2. lack of proper notice or inability to present one’s case (due process violations);
3. there is an excess in powers or the award deals with matters not submitted to the tribunal;
4. there is inappropriate composition of the tribunal;
5. the arbitral procedure was not carried out in accordance with the fundamental provisions of the Austrian legal system (public order)
6. the requirements have been met according to which a judgment by a court can be appealed by an action for revision under Article 530(1) CCP;
7. the dispute in question is not arbitrable;
8. the award (as opposed to the process) is in conflict with Austrian public order. Points (7) and (8) are examined by the court ex officio.

Res judicata: The Austrian Supreme Court has held that an arbitral award is not legally binding and enforceable as long as the agreed arbitration procedure provided for a possibility to appeal the award.

2.2. Belgium

The current Belgian Arbitration Law was enacted on 24 June 2013 and has been in force since 1 September 2013. It replaces a previous law initially introduced in 1972, as subsequently amended in 1985 and 1998. Whereas the previous law was partially based on the UNCITRAL Model Law the current 2013 law is wholly predicated on the UNCITRAL Model Law, the purpose being to clarify certain ambiguities in the previous law (particularly those relating to arbitrability, the form of the submission agreement and the role of the local courts) and to render Belgium a key nation for settling disputes through arbitration.

From the point of view of drafting and form, just like most continental legal systems, the new arbitration law is incorporated in the country’s code of civil procedure, the Judicial Code (JC), as Part VI. Although the new law substitutes the old one this does not mean that the previous practice, jurisprudence and academic writings in Belgium no longer apply. Rather, it is assumed that where the new law does not specifically depart from its
predecessor any case law based on the latter continues to be in force. The following constitute distinct characteristics of the new legal regime:

**Scope of Application:** The Law makes no distinction between domestic and international arbitrations. This is not stated explicitly but it was one of the key aims of the new statute and hence it is implicit therein. Even so, a nationality-based procedure has been inserted in the Law. Specifically, where none of the parties is Belgian or a Belgian resident they can agree to waive annulment/set aside proceedings before the courts, whereas if at least one of the parties is Belgian or a Belgian resident such a waiver is not possible.

The section on delocalisation will demonstrate that although the key requirement for the application of the Belgian Law is the seat of the arbitration, its courts are competent to assist the tribunal and the parties even where the arbitration is not seated in Belgium.

**Arbitrability:** Belgium excludes certain types of disputes from being resolved by arbitration, most notably regarding the termination of exclusive distributorship agreements of indefinite duration where the governing law is not that of Belgium, but also certain intellectual property disputes and labour disputes (particularly employment contracts). Employment contracts can only be submitted to arbitration by agreement after the dispute has arisen. The new Law established a double criterion of objective arbitrability, namely that: a) “any claim involving an economic interest can be the subject of arbitration”, as well as b) “claims not involving an economic interest with regard to which a settlement can be made”. The judgment by the Court of Cassation that questions of arbitrability are settled in accordance with the law of the lex fori continues to apply as good law.

**Annulment or setting aside of awards:** Besides the reasons offered by the UNCITRAL Model Law, the new Belgian Law offers three additional grounds for setting aside awards. These are: a) absence of reasoning (essentially lack of justification); b) the tribunal has...
exceeded its powers and; c) the award was obtained by fraud (this ground can be raised ex officio by the court seized of an annulment request, like the grounds based on a breach of public policy or inarbitrability). It should be stressed that much like the rationale underlying the UNCITRAL Model Law the Belgian Law makes it clear that the courts should not annul/set aside awards lightly but should remand these to the arbitral tribunals for further remedy in order to salvage them. This means that Belgian courts will not set aside awards by reason of mere technicalities or where circumstances allow an award to be remedied by further remedial actions by the tribunal or the parties themselves. Where, however, the tribunal has violated due process rights the award may be set aside even if the violation has not had an impact on the award. However, under the new Law a breach of due process can now only be invoked if it was not known and therefore could not have been raised during the arbitration process, and annulment will only occur if it cannot be proven that the irregularity had no impact on the award (burden of proof rests on the defendant in the annulment proceedings). Annulment proceedings can only be brought before the court of first instance, the decisions of which can only be appealed to the Supreme Court on points of law.

**The role of national courts:** One of the key aims of the new Law was to give weight to party autonomy and thus restrict the parties’ access to intentional delays and multiple tiers of court proceedings at the annulment and enforcement stages. One of the features of the previous regime was the ability to make applications at various court levels before reaching all the way to the Supreme Court of Cassation. The new Law has eliminated this process. In respect of most matters that may be referred to the courts (appointment and challenge of arbitrators, time limits of award and taking of evidence) these are handled exclusively by the President of the Court of First Instance who shall adopt a decision in summary proceedings. All other matters are handled by the Court of First Instance (as opposed to merely its President). There is no possibility of appeal against the decisions of the court. However, recourse to the Supreme Court on points of law remains available.

**Delocalised Arbitration:** Despite the fact that Belgian law applies to arbitrations seated in Belgium, the country’s courts (essentially the first instance court) enjoy jurisdiction in respect of certain suits and actions linked to arbitrations seated abroad, namely: with constitutes a valid ground for setting the award aside. Importantly, however, these judgments were issued prior to the entry into force of the new Law, which removed as a distinct ground of annulment the existence of a “contradiction in the reasoning of the award”. It remains to be seen whether a contradiction in the reasoning of an award will be treated by courts as constituting a “lack of reasoning”, and hence still provide a ground for annulment under the new Law.

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38 This is not only where it has bypassed its powers under the submission agreement. In A v B, case No 2010/RG/927, judgment (28 April 2010), the Liege Court of Appeal held that failure to honour the time-limit set out in the submission agreement is considered as the tribunal having exceeded its powers. See also M.P. v M.S., M.L., case No C.08.0028.F, Court of Cassation judgment (5 March 2009), where the Court set aside an award because the tribunal had failed to honour the time limit set, even though the parties did not raise an objection on this point before the award was issued.
39 Art 1717(3)(b) JC.
40 Art 1715(7) JC.
41 Art 1680(5) JC. However, the party against which enforcement is sought may raise an appeal by way of third party opposition against the order of exequatur issued by the court of first instance. See International Hotels Worldwide Inc v Etat Belge and Banca Monte Paschi Belgio, case No C 12.0405.F/1, Court of Cassation judgment (4 October 2013).
respect to the validity of arbitration agreements;\textsuperscript{47} adoption of provisional or conservatory measures;\textsuperscript{48} taking of evidence;\textsuperscript{49} recognition and enforcement of provisional or conservatory measures ordered by a tribunal (seated abroad).\textsuperscript{50} This delocalised feature of the law, although not unique to Belgium, allows the parties to use the Belgian legal system and its courts in order to undertake certain actions and enforce orders of the tribunal, albeit in practice its utility is limited to actions within Belgium (i.e. the courts and authorities of the seat would probably not accept to enforce an order from the Belgian courts in respect of arbitral proceedings taking place there).

**Provisional and Conservatory Measures**: The Belgian Law follows Article 17 of the UNCITRAL Model Law as regards the power of the tribunal to order provisional and conservatory measures, save that Belgian law excludes the possibility of obtaining unilateral measures (essentially ex parte preliminary orders). Belgian law also expressly prevents the arbitrators from making attachment orders.\textsuperscript{51} Measures adopted by the tribunal may take the form of orders or awards.\textsuperscript{52}

**Other powers of arbitral tribunals**: These are no different to those stipulated under the UNCITRAL Model Law. A notable addition is the power granted to arbitrators to decide claims concerning the verification of writings and the alleged forgery of documents.\textsuperscript{53}

**Institutional vs. ad hoc arbitration and which institutions are preferred**: Institutional arbitration is far more prevalent than ad hoc arbitration. Counsel make use of local chapters of international institutions such as the ICC but Belgian institutions are also popular.

**Backgrounds of arbitrators**: there is no requirement that arbitrators be lawyers or judges or that they have any particular qualification.

**Costs and fees**: these are born by the parties and there is no single formula for calculating these.

**Legal representation during an arbitration**: there is no requirement that this should be a registered member of the bar.

2.3. **Bulgaria**

Arbitration in Bulgaria is regulated through a multitude of instruments, although the principal piece of legislation is the 1988 (as subsequently amended, with the latest coming into force in 2008) Law on International Commercial Arbitration (LICA) which covers both domestic and international arbitration. Equally, the Private International Law Code settles certain issues relating to international arbitration, whereas the pertinent articles of the Civil Procedure Code (CCP) deals with the practicalities of form and jurisdiction of Bulgarian courts with respect to writs of execution, as well as recognition and enforcement of arbitral

\textsuperscript{47} Art 167(8) JC
\textsuperscript{48} Art 1682 JC
\textsuperscript{49} Art 1698 JC
\textsuperscript{50} Art 1708 JC.
\textsuperscript{51} See Verbist (2013), at 601-02.
\textsuperscript{52} The judgment by the Antwerp Court of Appeal in BVBA Bouwonderneming Segreto Venaruzzo v PF, RD and EM (30 May 2011) whereby a contractual provision that provides for the appointment of an expert to decide on the quality of the works done and to calculate the final amount owed by one party to another, does not lead to an arbitral award but to a binding third party decision, continues to stand as good law.
\textsuperscript{53} Art 1700(5) JC. See also Verbist (2013), at 603.
awards. The LICA is based on the UNCITRAL Model Law but contains several variations which will be examined in the course of this chapter. Since the transformation of the Bulgarian political and financial system from state-run to market-oriented the country’s Supreme Court of Cassation has adopted a significant amount of judgments concerning domestic and international arbitration, the effect of which has been to render the country arbitration-friendly and in tune with consistent international practice in the field of arbitration.

**Scope of application (international versus domestic):** Article 1(1) of LICA provides that an arbitration is regarded international if the domicile or the seat of at least one of the parties is not in Bulgaria. If the domicile or the seat of all parties is in Bulgaria the arbitration is considered domestic even if any or all of the parties are subject to full or partial foreign shareholder ownership or control.

**Seat of arbitration:** Although Article 19(2) of LICA suggests that arbitration between Bulgarian parties must always be conducted in Bulgaria, the Supreme Court of Cassation has ruled that awards granted to Bulgarian parties in foreign jurisdictions must be enforced in Bulgaria.54 The rationale behind this judgment is to ensure respect of the NY Convention in the event of a clash with Bulgarian law. In fact, the Supreme Court in this case held that the Bulgarian restriction with respect to the seat (if the parties are Bulgarians) is not of a public policy nature (otherwise it would conflict with the NY Convention). Rather, it emphasised that if there was any invalidity of the arbitration clause this could only arise under Article V(1)(a) of the NY Convention in conjunction with the compatibility of the agreement under the law governing the arbitration clause (English law in the case at hand).55

**Scope of application (commercial versus other):** Article 1(1) LICA applies to international arbitration of commercial disputes and to domestic arbitration of commercial or non-commercial disputes. Under Article 286 of the Law on Commerce, a commercial transaction is defined as any transaction entered into by a merchant that is related to the business activity it carries out. All commercial companies are regarded as merchants. Regardless of the capacity of the persons participating in them, the following transactions are also regarded as commercial: purchase of goods or other chattels with the purpose of reselling them in their original, processed or finished form; sale of goods manufactured by the seller; purchase of securities with the purpose of reselling them; commercial agency and brokerage; commission, forwarding and transportation transactions; insurance transactions; banking and foreign-exchange transactions; bills of exchange, promissory notes and cheques; warehousing transactions; licensing transactions; compliance supervision of goods; transactions with intellectual property; hotel operation, tourist, advertising, information, entertainment, impresario and other services; purchase, construction or furnishing of real property for the purpose of sale; and leasing transactions (Art. 1 of the Law on Commerce).56 In domestic arbitration the parties cannot exclude the application of LICA to the procedural and substantive aspects of their dispute.57

**Range of disputes:** Article 7(1) of LICA, much like its UNCITRAL Model Law counterpart, subjects disputes arising from all legal relationships (subject to the limitations of

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55 See Ganev (2010), at 17.
56 Alexiev (2010), at 2.
57 Para 3, LICA transitional and final provisions.
arbitrability), irrespective of the type of the type of agreement in which they are contained, thus allowing for trust, tort, unjust enrichment and other relationships.58

Agreement in writing: Article 7(2) of LICA dictates that arbitration agreements must be in writing, thus excluding oral agreements. Moreover, in the absence of a written agreement, such will be deemed to exist also when the respondent in writing or by a statement, recorded in the minutes of the arbitration hearing, accepts the dispute to be heard by an Arbitral Tribunal or when the respondent participates in arbitration proceedings without challenging the jurisdiction of the arbitral tribunal.59

A merchant is deemed tacitly to have accepted an offer by another party with which the merchant is in a long-term relationship, if the offer is not rejected immediately (Law on Commerce, Article 292(1)). However, such a tacit acceptance is not deemed to encompass the arbitration clause included in the offer, as the written form is not complied with.60

Arbitrability: The basic rule is laid down in Article 19(1) of the CPC, according to which all pecuniary disputes are arbitrable unless the subject matter of the dispute concerns ownership rights or possession of immovable property,61 alimony or rights under an employment relationship. This also includes disputes arising from family relationships.62 Expert commentators further suggest that disputes under management agreements between companies and their directors are arbitrable. However, the following types of disputes are not arbitrable: a) disputes involving non-pecuniary rights; b) administrative and other public law disputes; c) disputes involving non-transferrable personal rights (such as security and privacy); d) civil law disputes that may be initiated by a prosecutor or those requiring the participation of a prosecutor and; e) disputes concerning the validity of decisions made by corporate bodies.63

Under Articles 637 and 638 of the Law on Commerce no new court or arbitral proceedings on pecuniary civil or commercial cases against the debtor, other than claims by third parties, owners of property in the insolvency estate – for defense of their rights, and employment disputes, are admissible after the opening of the insolvency proceedings. Under Article 638 of the Law on Commerce, all execution proceedings against the debtor are stayed after the commencement of the insolvency proceeding. Such proceedings would include the execution of an enforceable arbitral award, if it is not complied with voluntarily.64

Moreover, disputes falling outside Brussels I (EC Regulation 44/2001) are not arbitrable, including disputes over industrial property rights where a patent or other registration has been issued in Bulgaria, as well as disputes affecting the legal status of entities registered in Bulgaria.65

Applicable law: Although it is not clear from the wording of Article 38(1) of LICA, it is suggested by a commentator that the parties may designate as their governing law only the law of a particular legal system (hence this would exclude Islamic law or African

58 Case no 1726/2001, Supreme Cassation Court Judgment no 112 (5 February 2002).
59 Art 7(3) LICA.
60 Alexiev, at 8.
61 The Supreme Court of Cassation, decision no 560 (18 November 2008), civil case 437/2007 ruled that an agreement to de-mortgage a property in the context of a sale of goods agreement was an issue within the sole jurisdiction of the courts and thus rendered the dispute as a whole non-arbitrable.
62 Ganev (2010), at 19.
64 Alexiev (2010), at 11-12.
65 Ganev (2010), at 18-19.
customary law, for example).\textsuperscript{66} There is no case law on this point and the construction given by Alexiev is a matter for further analysis, particularly since this meaning is not derived from the existing translation and in any event paragraph 3 of Article 38 provides that the court (where the parties have not designated a governing law) may apply trade usages.

In domestic arbitration cases, the arbitrators have to apply Bulgarian law to the dispute, unless the legal relationship in dispute contains an international element that according to the PILC leads to the application of a foreign law.\textsuperscript{67}

**Public policy:** This is largely confined to compliance with the law and maintenance of the rule of law and in the arbitral process it concerns due process rights and the parties’ equality of treatment.\textsuperscript{68}

**Multi-party disputes and joinders:** There is no relevant provision in the LICA, but this possibility exists under the BCCI Rules, specifically Articles 14(5) and (6), provided that the parties’ consent is expressly provided.\textsuperscript{69}

**Court intervention:** This section will examine only those laws and practices that deviate from the UNCITRAL Model Law.

A ruling of the court rejecting the objection that an arbitration agreement exists is subject to appeal before a second instance court, whose ruling on the issue is not subject to further appeal before the Supreme Court of Cassation.\textsuperscript{70} In contrast to Article 16(3) of the Model Law, a ruling by a tribunal regarding whether it possesses jurisdiction in a particular case may not be subject to review by the courts unless it is issued with the final award (or a partial final award) and the court is seized with a claim for the setting aside of the award.\textsuperscript{71}

Arbitral awards rendered in Bulgaria do not need leave for enforcement. With its delivery to one of the parties the award enters in force and becomes binding and directly enforceable in the same way as a Bulgarian court judgment that has entered into force\textsuperscript{72} If the award is not complied with voluntarily, the interested party may then commence the enforcement procedure under the CCP by an enforcement agent based on the writ of execution.\textsuperscript{73} It is not possible to appeal arbitral awards rendered in Bulgaria to the courts; recourse is possible only through set aside proceedings. This process can only be brought before the Supreme Cassation Court.

As regards the enforcement of foreign awards, the court may be expected to apply, besides the grounds set out in the New York Convention, the grounds provided in Article 120(1) of the PILC, ex officio to check compliance with the provisions of Article 117 of the PILC.\textsuperscript{74} However, others have expressed the view that the courts will not look at the PILC at all.\textsuperscript{75}

At the enforcement stage the courts will not examine the substance of the dispute or

\textsuperscript{66} Alexiev (2010), at 35.  
\textsuperscript{67} Alexiev (2010), at 35.  
\textsuperscript{68} Case no 1832/2003, Supreme Court of Cassation judgment no 630 (28 July 2004).  
\textsuperscript{69} Art 33 BCCI Rules.  
\textsuperscript{70} Case no 249/2008, Supreme Cassation Court judgment no 224 (7 October 2008).  
\textsuperscript{71} Alexiev (2010), at 34.  
\textsuperscript{72} Art 41(3) LICA and Art 404(1) CCP.  
\textsuperscript{73} Arts 426-434 CCP.  
\textsuperscript{74} Case no 62/2007, Sofia City Court judgment (16 February 2008).  
\textsuperscript{75} Ganev (2010), at 71.
whether there has been an error in the law, but only the award’s compliance with relevant treaty requirements.\textsuperscript{76}

**Tribunal acting as amiable compositeur:** Although no mention of this made in the LICA it is suggested by commentators that the tribunal may not be requested to decide a dispute ex aequo et bono.\textsuperscript{77}

**Interim and conservatory measures:** While the parties may seek interim measures from the tribunal under Article 21 of LICA, this function is principally entrusted to local courts in accordance with Article 9 of LICA. If the parties, by agreement, request interim measures from the tribunal a writ is required from the courts for the purpose of execution. Such a writ is obviously at the sole discretion of the courts and hence the tribunal’s order may be rejected.\textsuperscript{78} No interim measures may be imposed against the state or other state instrumentalities.

**Arbitrator qualifications:** No particular qualifications are mandated in respect of international arbitrations,\textsuperscript{79} although judges may not assume the role of arbitrator.\textsuperscript{80} With regard to domestic arbitrations the general rule is that only Bulgarian nationals may be appointed as arbitrators,\textsuperscript{81} but given Bulgaria’s EU membership and the fact that the status of arbitration is considered contractual this position seems to offend the non-discrimination principle in EU law. Under Article 7(4) of the Statute of the BCCI Court, the following persons may not serve as arbitrators: members of Parliament, ministers, deputy ministers, heads of governmental agencies, members of the Constitutional Court or other persons barred by law from being arbitrators.

**Legal representation in arbitral proceedings:** There are no particular requirements for the representation of a party in arbitral proceedings. Any person competent under the law may do so.

**Liability of arbitrators:** No reference to liability is made in the LICA but it is suggested that under the Bulgarian law of obligations an arbitrators is liable to the parties if he or she intentionally fails or is otherwise negligent in the performance of the duties entrusted upon him or her.\textsuperscript{82}

**Institutional versus ad hoc arbitration:** The vast majority of arbitrations in Bulgaria are institutional and many cases involving Bulgarians or Bulgarian interests are resolved abroad in other international arbitral institutions. By far the most important and influential institution in Bulgaria is the Bulgarian Chamber of Commerce and Industry (BCCI), whose rules and resolutions of its Court influence relevant arbitral proceedings before local courts.

**Tribunal powers:** This section will only examine those powers that are different from those envisaged in the UNCITRAL Model Law. Under Article 36(1) of LICA the tribunal may appoint one or more experts at its own initiative. In this connection, the tribunal may order the parties to submit to the experts all necessary information, including the goods or objects under contention/consideration.

\textsuperscript{76} Art 121(1) PILC; case no 183/2004, Supreme Cassation Court judgment no 717 (27 July 2005).
\textsuperscript{77} Alexiev (2010), at 35.
\textsuperscript{78} The relevant procedure is described in Arts 389-403 CCP.
\textsuperscript{79} Art 11 LICA.
\textsuperscript{80} Art 195(1)(5) Law on the Judiciary. This was recently clarified by the Supreme Cassation Court in its judgment no 111 (30 August 2011), case no 696/2010.
\textsuperscript{81} Para 3(1) LICA transitional and final provisions.
\textsuperscript{82} Alexiev (2010), at 20.
**Types of awards:** Other than final awards, additional awards and awards on costs, all other matters resolved by the tribunal are concluded in the form of orders or rulings (which are not enforceable) not awards. It is suggested that the parties may by consent request the tribunal to issue partial awards in respect of particular matters, each being enforceable in respect of the issues it determines.

**Confidentiality:** Although there is no specific rule in the LICA this is generally considered to be the case (as regards the proceedings and the award) and this attitude is reflected in Article 24(5) of the BCCI Rules. This, of course, is antithetical to the general rule regarding openness of judicial proceedings and their public nature.

**Fees and costs:** Although the LICA does not have a specific provision on allocation of costs, the “loser pays” rule is generally applied, unless agreed otherwise by the parties. In *ad hoc* arbitrations, the arbitrators usually fix their fees themselves, unless otherwise agreed between the parties. In institutional arbitrations, the fees of the arbitrators are included in the institutional fees, which on their part are fixed in a scale reflecting the amount in dispute, and separate financial arrangements between the parties and the arbitrators are not accepted. The practice of Bulgarian arbitral institutions is not to disclose the actual amount of the arbitrators’ fees. The fees of arbitrators for arbitrations taking place in Bulgaria are generally subject to value added tax (VAT) at the rate of twenty percent and the arbitrators have to issue invoices for their fees.

It is customary to reimburse the winning party a proportion of its reasonable costs for legal assistance. This proportion reflects the percentage of the amount in dispute for which the party is successful. The tribunal may decide to what extent it accepts the party’s costs for legal assistance as reasonable in view of factors such as the amount in dispute, the complexity of the case and the number of lawyers representing the party. The BCCI Rules provide that the prevailing party shall recover administrative fees, arbitrators’ fees, attorneys’ fees, and other expenses related to the proceedings, if they are reasonable and supported by sufficient proof. Otherwise, the party will be awarded only the minimal attorneys’ fees set by the Bulgarian Bar Council.

**Setting aside of award:** This process is governed by Article 47 of LICA and requests can only be submitted to the Supreme Cassation Court. The grounds in Article 47 of LICA are similar to those found in Article 34 of the Model. The Supreme Cassation Court has held these grounds to be exhaustive and the requesting party shares the burden of proof. A review as to the merits or with respect to errors in the application or interpretation of the law is not possible. The Supreme Cassation Court has offered some interesting interpretations regarding the grounds for setting aside. Among these one should note its claim that an arbitration clause which gives one of the parties a (unilateral) entitlement to opt for litigation or arbitration is invalid as such a choice can only be made by the law not by contract. Equally, the violation of due process rights encompasses a number of possibilities. In one case the Court set aside an award where the tribunal considered evidence not collected in the proceedings and equally failed to analyse evidence submitted.

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83 Art 44 LICA.
84 Alexiev (2010), at 30; see also Art 37(2) BCCI Rules.
85 Art 11 CCP.
86 Alexiev (2010), at 39.
87 Alexiev (2010), id.
88 Case no 1010/2002, Supreme Cassation Court judgment no 185 (15 June 2004).
89 Case no 67/2009, Supreme Court of Cassation judgment no 46 (22 April 2009).
90 Case no 193/2010, Supreme Court of Cassation judgment no 71 (2 September 2011).
by the parties. The parties are not permitted to waive their right to the set aside procedure.

2.4. Croatia

The key legislative text for the regulation of arbitration in Croatia is the 2001 Law on Arbitration which has been drafted on the basis of the UNCITRAL Model Law. Although it came into force prior to the 2006 version of the Model Law, commentators and current practice suggest that the general attitude would be to accept the 2006 version. The 2001 Arbitration Law, in fact, is so similar to the Model Law that only very slight variations can be found. As a result, our analysis will largely concentrate on these minor divergences. It should also be stressed that Croatian law (including the Arbitration Law) view the bulk of arbitral procedure through the lens of permissive rules and hence even when the parties have failed to agree on a particular procedure (e.g. in the field of evidence and its treatment) there are few specific fallback provisions. In the case of evidence, for example, rules on disclosure and treatment of evidentiary material is wide and hence the arbitrators may agree to admit all evidence if they deem it to have probative or other value.

Scope of application (international versus domestic): The Arbitration Law is applicable to both international and domestic arbitrations. However, in accordance with Article 2(1) the designation of a dispute as either international or domestic is based on the parties’ seat. Hence in accordance with point (7) of Article 2(1) a “dispute with an international element” means a dispute in which at least one party is a natural person with domicile or habitual residence abroad, or a legal person established under foreign law. The implication of this distinction is that in respect of disputes which do not have an international element the parties are not allowed to designate as their seat a country other than Croatia. The rationale underlying this restriction is to prevent the parties from avoiding Croatian set aside rules whose application is mandatory and not subject to waivers.

Scope of application (commercial versus non-commercial): Article 3(1) makes no distinction between commercial and non-commercial disputes and following the Model Law a dispute may be subjected to arbitration whether it is contractually-based or other.

Consumer disputes: Given the permissive nature of Article 3(1) consumer disputes may be subjected to arbitration as long as the submission to arbitration has been individually negotiated. This is specifically stated in Article 6(6). Exceptionally reference to consumer arbitration may be incorporated in a contract dealing with other issues so long as it was notarised.

Ad hoc versus institutional arbitration: Institutional arbitration constitutes the norm in Croatia, albeit there is evidence of ad hoc arbitration.

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91 Case no 64/2011, Supreme Court of Cassation judgment no 200 (9 December 2011).
92 However, there are sometimes noticeable trends in practice, even though they are not required by law. For example, particularly in domestic arbitrations, it is common for arbitrators to invite, or even actively encourage, the parties to agree to apply the rules of the Code of Civil Procedure.
93 See.
94 Art 3(1) and (2) Arbitration Law.
95 At least one commentator has argued that this restriction is inconsistent with EU law: Babic (2011).
96 Art 6(6) Arbitration Law.
**Agreement in writing:** In accordance with Article 6(2) of the Arbitration Law, the arbitration agreement must be in writing, thus excluding oral agreements. Nonetheless, Article 6(3) broadens the scope of what is acceptable by deeming an agreement in writing to exist (although it is not) if:

1. it is contained in one party’s written offer, or if a third party transmitted to both parties such an offer, provided that against such offer no objection was timely raised, and such failure to object, according to usages in transactions, may be considered to constitute acceptance of the offer,

2. after an orally concluded arbitration agreement, a party communicates to the other a written communication, referring to the arbitration agreement concluded earlier orally, and the other party fails to object timely, and such failure, according to usages in transactions, may be considered to constitute acceptance of the offer.

Moreover, in accordance with paragraph 4 of Article 6, the reference in a contract to a document containing an arbitration clause (general terms of a contract, text of other agreement or similar) constitutes an arbitration agreement provided that the reference is such as to make that clause part of the contract. Furthermore, under paragraph 5 an arbitration agreement may also be concluded by the issuance of a bill of lading, if the bill of lading contains an express reference to an arbitration clause in a charter party.

**Arbitrability:** The general rule is stated in Article 3(1), which is that in respect of matters of which the parties can freely dispose they can seek arbitral resolution. As a result, there are very few disputes that the parties cannot submit to arbitration. Commentators suggest that this includes disputes over intellectual property rights, bankruptcy and anti-trust, although no pertinent case law exists. A basic arbitrability rule, as already stated in another context, is that disputes between Croatian nationals (or entities seated there) cannot designate the seat of their arbitration abroad. Whereas a bankruptcy case with a transnational element may be submitted to arbitration outside Croatia, in cases where the parties have their seat in Croatia, the arbitration is valid only if undertaken there. It should be noted, however, that a recent Supreme Court case suggests that the Court may in the future restrict arbitrability. In Revr 500/08-2, Supreme Court decision of 21 January 2009, the court held that parties may not freely dispose of the right to termination of an employment contract. The reasoning adopted by the Court suggests that when a matter is regulated by mandatory norms, the parties may not be free to dispose of related rights. Applied in the context of arbitration agreements, this reasoning would entail that parties are also not free to arbitrate disputes relating to such matters. This raises serious doubts about the limits of arbitrability under Croatian law.

**State entities:** Unlike other post-socialist nations, Article 7(2) of the Arbitration Law expressly stipulates that all state entities may validly submit disputes to arbitration.

**Multi-party arbitrations and joinders:** There is no specific rule in the Arbitration Law, but it is generally suggested that there is no bar to multi-party proceedings or joinders provided that the parties so consent.

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97 Uzelac (2009), at 15-16.
98 Uzelac (2009), at 14.
**Arbitrators’ qualifications:** There are no restrictions for eligibility as arbitrator,\(^99\) save for the requirement under Article 10(2) of the Arbitration Law that serving judges may only be appointed as chair of a tribunal or as sole arbitrator.

**Liability of arbitrators:** There is no specific provision, but it is generally assumed that their appointment is based on a quasi-employment contract and therefore they are liable for failure (intentional or negligent) to carry out the duties entrusted upon them. Nonetheless, it is equally suggested that because the function of making an award is judicial in nature they carry no civil or other liability for the award itself.\(^100\)

**Legal representation during proceedings:** There are no restrictions as to who may represent parties to arbitral proceedings. However, under Article 36(1)(b) of the Arbitration Law lack of proper representation may lead to the award being set aside. Although this is by no means a requirement, Article 47 of the Law on Attorneys provides that foreign attorneys may represent clients in arbitral proceedings in Croatia.

**Court intervention:** If a challenge against an arbitrator (which is addressed by the arbitrators at first instance) does not meet the expectation of one of the parties, they may turn to the appointing authority. If they have not designated one, the matter will be forwarded to the President of the High Commercial Court or the President of the county court in Zagreb in respect of non-commercial disputes.\(^101\) If the request is unsuccessful the unhappy party may once again challenge the arbitrator’s bias or other lack of independence at the setting aside stage.

The tribunal does not have the power to compel the attendance of witnesses. Article 45(1) of the Arbitration Law provides that the arbitral tribunal, or a party with the approval of the arbitral tribunal, may request legal assistance from a competent court in taking evidence that the arbitral tribunal itself could not take.

The parties may request the court to issue interim measures independently of the arbitral proceedings.\(^102\)

In accordance with Article 15(3) of the Arbitration Law the tribunal’s preliminary ruling on jurisdiction may be reviewed by a court. Notably, although the text of Article 15(3) only permits review of positive rulings on jurisdiction, the Constitutional Court has in the past allowed suits against negative jurisdictional decisions of arbitral tribunals, although the Court’s practice is inconsistent in this respect.\(^103\)

In accordance with Article 49(5) of the Arbitration Law the parties may appeal to the Supreme Court any judgments rejecting recognition and enforcement of foreign awards.

**Confidentiality:** Although under Article 23(5) arbitral proceedings must remain confidential, such confidentiality is in contrast to the public nature of judicial proceedings. This means that where the parties seek the intervention of the courts (e.g. in respect of set aside proceedings, request for interim measures etc) the proceedings and the judgment will be public, save in exceptional circumstances under Article 307 of the Croatian CCP in order to safeguard business secrets and only where the court deems that the publicity of the

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\(^{99}\) Art 10(1) Arbitration Law.

\(^{100}\) Uzelac (2009), at 23.

\(^{101}\) Art 43(3) Arbitration Law.

\(^{102}\) Art 44 Arbitration Law; equally Art 43(6) of the Law on Enforcement.

\(^{103}\) See, e.g. Decision No. U-III/669/2003, a summary of which is available at 12 Croatian Arbitration Yearbook 281 (2005).
proceedings is likely to prejudice the interests of justice. However, published judgments will anonymise the identities of the parties.

**Tribunal powers:** These are generally based on those offered under the Model Law. Moreover, Article 18(2) of the Arbitration Law provides arbitrators with freedom to evaluate evidence, particularly as regards admissibility, relevance and due weight. Exceptionally, following standard Croatian practice, witnesses will not be compelled to take an oath.\(^\text{104}\) The arbitral tribunal can also request witnesses “to answer questions in writing within a certain period of time”.\(^\text{105}\)

**Tribunal acting as amiable compositeur:** Under Article 27 of the Arbitration Law the tribunal may act as amiable compositeur if the parties so wish.

**Interim and conservatory measures:** Article 16(1) of the Arbitration Law provides that arbitrators are authorized, unless otherwise agreed by the parties, to “order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute”. Article 16 does not specify what measures are available and so this is left to the discretion of the court and the tribunal. Although these may be ordered by the tribunal, the latter has no authority to enforce its order and so the requesting party must apply to the courts in case the tribunal’s order is not complied.

**Set aside proceedings:** The grounds for setting aside under Article 36 of the Arbitration Law are broadly the same as those found in the UNCITRAL Model Law, with the addition of a provision allowing set aside where the award does not provide reasons for the decision, or has not been signed in accordance with the law.

**Types of awards:** Under Article 30(1) of the Arbitration Law, unless the parties have agreed otherwise the tribunal may issue, in addition to final awards, also partial and interim awards. If the parties agree to settle their dispute before the tribunal concludes the proceedings or before it issues a final award, the tribunal may record the settlement in the form of an award which has the same force as any other award on the merits.\(^\text{106}\) The tribunal may only refuse to record the settlement in an award if it considers that the settlement violates Croatian public policy.\(^\text{107}\) There is no prescribed method of registering awards and no registration is even required, albeit the courts may accept registration of awards as well as notaries.\(^\text{108}\)

**Costs and fees:** Article 35(1) of the Arbitration Law allows the arbitrators to freely determine how costs are to be allocated among the parties. The arbitral tribunal shall decide on the costs of the proceedings according to its free evaluation, taking into account all circumstances of the case, especially the outcome of the dispute.\(^\text{109}\) The fees of arbitrators are usually predetermined by the appropriate institutional regulations. Article 9 of the Rules on Costs of Arbitration and Conciliation of the PAC-CCC determine how this is to be assessed. The fees mostly depend on the amount in dispute; however, other elements, such as the complexity of the case, may also play a role.\(^\text{110}\)

\(^{104}\) Art 25(3) Arbitration Law.
\(^{105}\) Art 25(2) Arbitration Law.
\(^{106}\) Art 29(1) and (3) Arbitration Law.
\(^{107}\) Art 29(2).
\(^{108}\) See Art 43(1) Arbitration Law.
\(^{109}\) Art 35(2) Arbitration Law.
\(^{110}\) Uzelac (2009), at 41.
2.5. Cyprus

Arbitration in Cyprus is governed by two different laws. The first one is the Arbitration Law, Cap.4, which applies to the resolution by arbitration of commercial differences between Cypriot nationals. Cap. 4 came into force on the 6th January, 1944 and with minor amendments is applicable to the present day. Section 30 of the said law, provided that the Governor of Cyprus (Cyprus was then a colony of United Kingdom) with the advice and assistance of the Chief Justice may make Rules of Court for regulating the practice and procedure in respect of proceedings of any kind under the said law. Pending the publication of such rules, it was provided by the same section that the Civil Procedure Rules as may be amended from time to time shall apply. Such rules were not published to the present day either by the Governors of Cyprus or the Council of Ministers after Independence.

During the eighties it was felt by the commercial and industrial world of Cyprus that, due to its Arbitration Law, Cyprus could not be offered as a basis for carrying out any arbitration proceedings and as a result in 1987, the International Commercial Arbitration Law of 1987 (Law No 101/1987) as subsequently amended with slight variations, was enacted into law. The said Law is essentially a verbatim reproduction of the UNCITRAL Model Law with only slight variations, which will be examined further below.\(^{111}\)

There is an absence of any commentary on the arbitration law and practice of Cyprus, principally because of its verbatim reliance on the Model Law and secondly because its courts have not had the opportunity to discuss arbitration-related cases. Despite the fact that Cyprus had, prior to joining the EU, maintained a thriving off-shore economy, it does not seem from the available data that it has enjoyed also a thriving arbitration industry, although perhaps this is only a matter of time and changing attitudes. It should be stated from the outset that the Cypriot courts and the country’s legal system are infused with a mixture of common law as well as continental civil law, the latter in part because of the island nation’s Greek heritage and the fact that most of its legal professionals have studied law in Greece or are otherwise exposed to the Greek legal system. In the only case cited in which the Cypriot Supreme Court has examined an arbitration seated in Cyprus (concerning whether proceedings should be stayed on account of on-going litigation elsewhere under the lis pendens principle), the Court examined the issues at hand (particularly that of public policy) from the perspective of English law as well as Greek civil law and practice.\(^{112}\) The attitude of the courts is pro-arbitration\(^{113}\) and this follows the international outlook of the Arbitration Law.

**Agreement in writing:** In accordance with sections 7 and 20 of the Arbitration Law agreements can only be in writing (including faxes, telex etc.), but oral agreements are not accepted.

**Scope of application (international vs. domestic):** The Arbitration Law differentiates between domestic and international arbitration and applies only with respect to commercial arbitration.\(^{114}\) According to section 2(2), arbitration is international if:

\(^{111}\) For an excellent overview of Cypriot international arbitration law and practice, see Athanasiou, Berryman and Born (2011).

\(^{112}\) Attorney-General of the Republic of Kenya v Bank fur Arbeit und Wirtschaft AG, case No 10071, judgment on jurisdiction (28 April 1999).

\(^{113}\) See, for example, Leliana Tourist Services v Andreas Karpasitis and Sons, (1991) 1 CLR 75 regarding reluctance to stay arbitral proceedings as well as Yiola A Skaliotou v Christoforos Pelekanos (1976) 1 CLR 251, similarly dismissing a stay request.

\(^{114}\) A distinct legal regime applies with respect to domestic arbitrations (the so-called chapter 4 of the Consolidated Laws of Cyprus) but given that Cyprus is a hub for foreign companies with multiple funders and shareholders (and foreign control) the domestic statute could apply to them because of their Cypriot incorporation. Chapter 4 is similar to and in fact is modelled after the 1950 English Arbitration Act.
a) parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or 
b) one of the following places is situated outside the State in which the parties have their places of business:
   (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
   (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or 
c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

**Scope of application (commercial arbitration):** In accordance with section 2(4) an arbitration is commercial if it relates to commercial relationships, whether contractual or other. Given that Cyprus remains a thriving trusts jurisdiction it is natural that non-contractual relationships, such as those arising from trusts, corporate articles etc. suffice to validate the arbitration clause.

**Arbitrability:** The Arbitration Law does not state which disputes are not arbitrable, referring instead to the possibility that other laws may exclude certain disputes from being subjected by the parties to arbitration. This is a matter for further investigation as there exists no available commentary. Nonetheless, section 2(5) of the Arbitration Law provides a good indication of the range of disputes that are arbitrable through the definition of “relationships of a commercial nature”, which includes “but is not limited to”: “any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.”

**Public policy:** Historically, Cypriot courts have been very reluctant to apply a public policy exception in order to deny recognition and enforcement of foreign awards. We have already examined *Attorney-General of the Republic of Kenya v Bank fur Arbeit und Wirtschaft AG*, where a stay request on public policy grounds was rejected. There, the Cypriot Supreme Court provided a rather broad definition encompassing “the fundamental principles which a society, at a given time, recognises as governing transactions, as well as other manifestations of the life of its members, on which the established legal order is based.” In fact, the Cypriot Supreme Court has gone as far as claim that allegations (even if proven) of corruption against an award do not constitute sufficient public policy grounds for non-enforcement as the policy underlying the recognition and enforcement of awards outweighs the policy against other illicit conduct, such as bribery.115 This outcome seems to be somewhat outdated as it will hardly be consistent with the English references to which the Supreme Court referred and seems to be inconsistent with the (narrow) principle of international public policy.

It is taken for granted that awards which provide informal recognition in one way or another to the Turkish Republic of Northern Cyprus (TRNC) or which hamper the property

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or other rights of Cypriots by the law and practice of the TRNC regime will fall under the Cyprus public policy rubric. Arguably any such awards or contracts with a similar rationale will also fail by reason of the fact that the disputes in issue are not arbitrable (e.g. property rights of refugees).

**Arbitrators’ qualifications:** There are no particular requirements (other than independence and impartiality) in order to be eligible for appointment as arbitrator.

**Representation of parties during proceedings:** There is no requirement that the parties’ representatives during arbitral proceedings be lawyers. It has also been confirmed by the Cypriot Supreme Court.

**Institutional vs ad hoc arbitration:** Anecdotal reports suggest that ad hoc arbitration is the norm in Cyprus, although there is clear no data to support this claim.

**Kompetenz-kompetenz power:** This doctrine is explicitly recognised by the Arbitration Law.

**Liability of arbitrators:** The matter has not been specifically dealt with by the courts or the pertinent legislation. Arbitral rules in Cyprus contain a waiver of liability in respect of the institution and its arbitrators, which however makes the case that liability may arise where the act or omission is intentional or the result of serious negligence. This suggests that arbitration is viewed as having a largely contractual character. In one case, following conclusion of the hearing the arbitrators discussed the case with one of the parties and were quoted as saying that the case was “a waste of time”. It was held that such behaviour constituted impermissible misconduct which destroyed the trust that litigants such have towards an arbitrator.

**Interim and conservatory measures:** This follows the relevant provisions in the UNCITRAL Model Law. Article 24 of the CEDRAC Rules allows the tribunal, following a request by the parties, to adopt interim measures. These must be honoured by the parties, failing which a request may be made to the courts. Paragraph 9 of Article 24 of the CEDRAC Rules suggests that the parties may request interim measures from the courts and not through the tribunal if they so wish. In order for a court to agree to interim relief the requesting party must satisfy that: there is a serious issue at stake; the applicant would otherwise be likely entitled to the relief and; unless the relief is adopted there is a serious risk of injustice. Cypriot courts, particularly the country’s Supreme Court, have shown themselves willing to assist the parties in relief applications not only with respect to assets or evidence in Cyprus but also worldwide with the issuance of mareva injunctions. There are no relevant provisions with respect to conservatory measures.

**Multi-party arbitration:** Although there is no reference to this in the Arbitration Law it is generally assumed that it is permitted as it is found in the rules of all arbitral institutions, such as Article 9(1) of the CEDRAC.

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116 See Art 5 CEDRAC Rules.
118 s 16, Arbitration Law.
119 Art 44(1) CEDRAC Rules.
120 In Stavrou v Tylli, (2007) 1B CLR 1172 it was held that the courts may remove an arbitrator where he or she is found to be partial, which it defined as “any form of behaviour which tends to compromise and destroy the confidence that parties must have in their arbitrators, that the latter would render a just award”.
121 Bank of Cyprus Ltd v Dynacon Ltd and Another (1990) 1B AAD 717.
122 Law on Courts No 14/1960, section 32.
123 See Seamark Consultancy Services Ltd v Joseph Lasala and Others (2007) 1A AAD 162.
Form of awards: Given the silence of the Arbitration Law the practice of arbitral institutions suggest that other than final awards, tribunals can issue partial or interim awards.124

Tribunal as amiable compositeur: This is indeed permissible as it is foreseen in the Law/UNCITRAL Model Law, as well as general practice in Cyprus.125

Costs and fees: There does not seem to be any particular formula under the law and in practice costs and fees are determined by the pertinent rules of arbitral institutions without reference to fees and costs applicable to civil suits.

2.6. Czech Republic

The Czech Republic had a long history of arbitration prior to World War II and this was reinvigorated following its return to a market economy in 1990. The country’s legislature adopted a new arbitration statute in 1994126 but retained its 1963 code of civil procedure (CCP) 127 unlike many other former socialist nations. The CCP applies alongside the 1994 arbitration law but does not supersede it. There are several peculiarities inherent in the 1994 law, specifically that it is largely predicated on the 1985 UNCITRAL Model Law 128 but does not reflect the changes introduced to the Model Law in 2006. Moreover, since the Czech Republic is now part of the EU it has incorporated all the acquis into its legal system, most notably for the purposes of this country study the restrictions to consumer arbitration clauses.

It should be stressed that the arbitration statute is less specific in its articulation of the regulation of arbitration than the Model Law and as a result the CCP is a necessary tool for judges and arbitrators. Secondly, the rationale underlying the arbitration statute is towards the least amount of interference by the local authorities and the courts in arbitral proceedings. It was specifically intended that party autonomy would fill any gaps as well as the institutional law of arbitral institutions. Unlike other arbitration statutes, for example, the Czech counterpart’s provisions on interim and conservatory measures are rather thin, although these provisions are mandatory, and cannot be varied through agreement of the parties. Thirdly, the arbitration statute does stipulate several provisions as being mandatory in nature, particularly on arbitrability, that the arbitration agreement be in writing, due process guarantees, the procedures and guarantees relating to the appointment of arbitrators, the conditions for setting aside and enforcement of awards, the possibility of establishing arbitral institutions only by law and a few others. 129

Scope of application: The 1994 law applies to both domestic and international arbitrations, the latter being understood as arbitral proceedings with an international element as long as the seat is in the Czech Republic. 130

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124 Art 33(1) CEDRAC Rules
125 Art 29(2) CEDRAC Rules.
127 Act No 99/1963 Coll.
129 See generally, Maisner & Olik (2010).
130 There is, however, no definition of the term in the 1994 Arbitration Act.
Form of agreement: Section 3 of the 1994 arbitration law suggests that the arbitration clause or submission agreement be in writing, including also telegraph, telex, or other electronic means of communication that allows the content of the communication to be recorded and the parties identified. E-mails meet this requirement only if guaranteed electronic signatures are used, otherwise the arbitration clause will be null and void. However, section 3 seems to exclude implicit references to arbitration (unlike Article 7(3) of the UNCITRAL Model Law), which are otherwise recognised in most jurisdictions. It also excludes oral agreements to submit a future dispute to arbitration. Importantly, the Supreme Court has also held that an arbitration agreement must always reflect the agreement of the parties, and thus, for example, a public announcement (i.e. not directed to particular persons) containing an arbitration clause will be null and void.

Arbitrability: Section 2(1) of the arbitration law stipulates that parties may submit all property disputes to arbitration, with the exception of disputes relating to the enforcement of decisions, incidental disputes, inheritance disputes, disputes arising out of proceedings relating to the Czech Commercial Registry, and some others. Some of these require clarification. The term “property” dispute encompasses all contractual obligations as well as the determination as to the existence of an obligation, provided that the requested determination affects the property rights of one of the parties. Disputes relating to the enforcement of decisions embraces all disputes arising out of the execution of court decisions. Incidental disputes, on the other hand, encompass a variety of disputes that arise in insolvency proceedings in accordance with the 2006 Czech Insolvency Act. Unlike other nations whose laws prohibit all public entities and instrumentalities from entering into arbitration clauses with private parties, there is no such restriction in the Czech Republic.

Consumer disputes: The Czech legislator has taken on board the concerns of the ECJ regarding protection of a consumer in arbitrations. As a result a new paragraph 3 has been added to section 3 of the 1994 Act whereby for a pre-dispute arbitration agreement with a consumer to be valid it has to be concluded separately from the main contract, and not as a part of the conditions that govern the main agreement. Section 3(5) of the Act imposes an obligation to provide certain truthful, exact and full information in the arbitration clause (e.g., information on the arbitrator, the method of initiating the arbitration, the form of the arbitration proceedings, the remuneration of the arbitrator and the other expected expenses that may arise for the consumer during arbitration proceedings, the place of the arbitration proceedings, the method of delivery of the arbitral award to the consumer and the fact that the final arbitral award is enforceable). Only at the permanent courts of arbitration can this information be provided with reference to the organizational guidelines and regulations of permanent courts. Since April 2012 arbitrators are obliged to adhere to consume protection rules in the course of dispute arbitration under section 25 (paragraph 3) to the 1994 Act.

Public Policy: In accordance with section 121 of the Act No. 91/2012 Coll., on Private International Law, foreign awards will be refused recognition and enforcement if they are in conflict with Czech public policy. However, neither the Act, nor the CCP (or any other commentators) specify what constitutes such public policy.

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131 Sec. 3 (1) of the Arbitration Act ‘94
132 This is in accordance with Act No 227/2000 Coll., on Electronic Signatures.
133 Decision of the Supreme Court of the Czech Republic No. 23 Cdo 3895/2011 dated 17 December 2013.
134 Act No 182/2006 Coll.
135 Section 121 of the Act No. 91/2012 Coll., on Private International Law
**Separability**: The doctrine of separability is provided for in Art. 576 of the new 2014 Civil Code. 136 It has also been explicitly confirmed by the Czech Supreme Court. 137

**Institutional vs. ad hoc arbitration**: Institutional arbitration is predominant and this is facilitated by the fact that arbitral institutions can only operate if they are established pursuant to a particular law and their rules, as already explained, are meant to elaborate where the arbitration law and the CCP are silent.

**Arbitrators’ qualifications**: There are no formal qualifications other than the fact that the arbitrators possess legal capacity under their personal law (if foreign) or Czech law. 138 New requirements have been added specifically for arbitrators involved in consumer disputes. These must be registered in a special register of the Ministry of Justice. In practice, Czech arbitral institutions demand other requirements, particularly that they possess legal expertise.

**Initiation of arbitral proceedings**: Section 14 introduces an aberration that is not at all supported in the theory and practice of international arbitration or comparative civil procedure law. More specifically, it provides that proceedings are deemed to have commenced when the statement of claim is received by the arbitrator (in ad hoc proceedings) or the arbitral institution, as opposed to the usual rule whereby proceedings are initiated when the statement of claim (or suit in litigation) is served to the respondent. 139 However, while this is unusual internationally, this approach copies that used before Czech courts.

**Form of proceedings**: The parties are free to choose how proceedings are conducted and in practice this will be determined by their chosen institutional rules. In the exceptional case where the parties have not expressly decided on the form of proceedings, section 19(3) of the Arbitration Act dictates that these are solely oral. 140

**Multi-party disputes and third parties to proceedings**: The Arbitration Act and the CCP do not prohibit or expressly regulate multi-party disputes or the participation of third parties in arbitral proceedings to which they are not signatories (as to the clause). It is generally assumed, therefore, that such instances fall under the law’s non-mandatory provisions and that the parties are free to agree as they see fit. In practice, the gap is filled by institutional rules.

**Liability of arbitrators**: Czech practice suggests that the relationship between the parties and arbitrators is contractual, albeit the matter is not at all regulated under the Arbitration Act or the CCP. The Czech Constitutional Court has held that arbitrators do not enjoy the status of judges and hence any violations attributable to arbitral tribunals and arbitrators are not attributable to the state. 141 It is accepted by commentators that the contractual nature of arbitration does not release arbitrators from civil liability arising from negligence or intentional breaches of their duties to the parties. In practice, arbitral awards are adopted in the name of arbitral institutions (not the arbitrators’ names) and hence any liability will probably be assumed by said institutions. In this light, institutions such as ACEC have proceeded to adopt limitation of liability rules. 142

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136 Art. 576 of the Act No. 89/2012 Coll., the Civil Code
137 Decision of the Supreme Court of the Czech Republic No. 23 Cdo 2628/2010 dated 22 January 2013
138 Section 118 of the Act No. 91/2012 Coll., on Private International Law
139 See Art 21 UNCITRAL Model Law.
140 See Art 24 UNCITRAL Model Law
141 Czech Constitutional Court, File No IV. US 174/02, judgment (15 July 2002).
142 See Maisner and Olik (2010), at 21-22.
Legal representation during an arbitration: There are no restrictions as to who can assume this role, although in practice it is unlikely that the parties will hire anyone other than a lawyer. The only requirement is that the person possesses full legal capacity but authorisation must be proven by a power of attorney. Given the lack of restrictions as to nationality, this means that a lawyer registered in a foreign jurisdiction may represent a party in Czech arbitral proceedings. 143

Interim and conservatory measures: Section 22 of the 1994 Act stipulates that interim measures may be adopted by local courts upon request by any of the parties where there is a threat to the viability of the award. This is in contrast to the UNCITRAL Model Law (and general practice) whereby the arbitral tribunal (alone or in concert with national courts) may decide matters pertinent to interim measures. What this means is that if the parties were to bypass the local courts by requesting the tribunal to adopt interim measures these will later be declared null and void and an excess of arbitral powers because the power of the courts in this instance is mandatory. Section 76 of the CCP provide a list of indicative interim measures, including the safekeeping of funds or sensitive items by the courts or the prohibition to dispose of certain items or rights.

There is no provision for conservatory measures in the 1994 Act other than section 22. As a result, by virtue of Article 30 of the Act the CCP will apply mutatis mutandis.

Appeals: The Arbitration Act does not allow appeals against arbitral awards (other than those relevant to set aside grounds). However, where the court has appointed an arbitrator any of the parties may have recourse to an appeal against the judgment of the court.

Arbitrators as amiable compositeurs: Although no such distinction is drawn in the 1994 Act, commentators suggest that it does not allow arbitrators to act as amiable compositeurs. 144

Form and content of award: Unlike Article 31 of the UNCITRAL Model Law the Arbitration Act does not require indication as to the date or place or issue. Moreover, it does not require all the signatures of the arbitrators as long as the award was signed by the majority of the arbitrators. 145

Types of awards: The Arbitration Act recognises the existence of a full award under section 23(a) of the Arbitration Act. Subparagraph (b) of the same section stipulates that any other act by which the tribunal terminates proceedings – other than through a final award – as would be the case where the parties consent to withdraw without settlement shall be recorded in a “resolution”, which is similar to “orders” recognised in the UNCITRAL Model Law terminology. The CCP, on the other hand, recognises partial and interlocutory awards as do the institutional rules of arbitral institutions in the country, such as ACEC. It is safe to assume therefore that were a tribunal to issue an award in respect of an interlocutory issue (but not one involving interim measures) it would not be acting ultra vires.

Additional awards are also recognised in practice, although there is no mention to such awards in the Act or the CCP.

143 Maisner and Olik (2010), at 27.
144 Maisner and Olik (2010), at 3.
145 Art 25(1) Arbitration Act.
Annex B - Key Features of National Arbitration Law in the Member States and Switzerland

**Costs:** There is no uniform practice in the allocation of costs by the arbitrators. 146

**Annulment/setting aside procedures:** The parties cannot waive their right to petition the courts to set aside awards. In accordance with Article 31 of the Arbitration Act an award rendered in the Czech Republic may be set aside by the courts where:

(a) it was rendered in a matter in which no arbitration agreement can be validly concluded;

(b) the arbitration agreement is invalid for other reasons, or was cancelled, or does not apply to the subject matter;

(c) any of the participating arbitrators was not entitled to decide the dispute, based either on the arbitration agreement or otherwise, or that the arbitrator lacked the capacity to be an arbitrator;

(d) the arbitral award was not decided by a majority of the arbitrators;

(e) a party was not provided with the opportunity to heard or present its case;

(f) the arbitral award requires a party to proceed with performance that was not requested by the claimant or performance that is impossible or unlawful under domestic law;

(g) a single arbitrator or a permanent arbitration court decided on the dispute arising out of a consumer contract in breach of consumer protection laws or in apparent breach of good morals or public policy.

(h) an arbitration agreement regarding the disputes arising out of a consumer contract does not contain specific information on arbitrators, form of initiating and conduct of proceedings, remuneration and expected costs, the way of delivery of the award and on enforceability of the award, or such information is on purpose or largely incomplete, inaccurate or untrue, or

(i) it is established that reasons for the resumption of civil proceedings have been given. 147

**Other remedies against awards:** In accordance with section 35 of the Arbitration Act even if a request to set aside an award has not been filed, the same party may submit a request to stay enforcement of the award. 148 The four grounds for this remedy are: the award was affected by an error; lack of legal representation in the course of arbitral proceedings; the person acting as legal representative was not approved by the party he or she purported to represent; and certain specific reasons restricted to consumer disputes.

2.7. Denmark

The key legislative instrument in Denmark is the 2005 Arbitration Act which is based almost entirely on the UNCITRAL Model Law (without the latter’s 2006 amendments). 149 Prior to this, the Arbitration Act of 1972 150 was rather liberal in its application and one of its

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146 Maisner and Olik (2010), at 40.
147 The grounds set out in (g) are stipulated in Art 228 of the CCP and relate to:
(1) a discovery of new circumstances, decisions or evidence that could not have been used in the previous proceedings due to no fault on the part of the respective party [...] and
(2) the possibility of producing evidence that could not be produced in the original proceedings [...].
148 Subject to the conditions laid down in section 268 of the CCP.
149 Act no 553 of 24 June 2005.
rationales was to avoid court-interference as much as possible. This attitude largely explains why arbitration is prevalent for the resolution of the majority of business disputes in the country. By way of illustration, almost all construction disputes are subject to arbitration pursuant to the general terms of contract used in almost all larger construction contracts, all of which refer to the Building and Construction Arbitration Court.\footnote{See Spiermann (2009), at 3. It should be noted, however, that proceedings before the Arbitration Court are modelled closely on the Administration of Justice Act, and so do not closely resemble those in traditional arbitration.} Although the 1972 Act is different in several respects from its 2005 counterpart, because the underlying rationales and liberal attitudes of both instruments are identical the case law relating to the older law continues to be valid and respected.\footnote{Id, at 2.}

**Scope of application (international versus domestic):** The Act, according to Article 1(1) applies to all types of arbitration, whether domestic or international taking place on the territory of Denmark (except for the Faroe Islands and Greenland, which are still subject to the 1972 Act). However, according to the preparatory works, if the parties agree that the place of arbitration is Denmark even though the proceedings have no connection to Denmark, the proceedings would not fall within the scope of the Arbitration Act.\footnote{Id, at 2. No doubt, this caveat is meant to signal that Danish law and the country’s court will not validate or provide assistance to proceedings (including a subsequent award) if the arbitration has not taken place in Denmark. Implicitly, and given that Denmark advertises itself as a forum for arbitration, foreign parties may arbitrate a dispute in Denmark even if unrelated to this country.}

**Scope of application (commercial versus non-commercial):** The Act applies (implicitly, in the absence of relevant mention) to all types of disputes, whether commercial or otherwise. It does not, however, apply to labour\footnote{Art 1(5) Arbitration Act, which originally excluded only collective labour disputes, was amended pursuant to Act no 106 of 26 February 2008 and now reads as follows: “This Act shall not apply to disputes which are to be resolved by an industrial arbitral tribunal under s. 21, see s. 33(1), of the Labour Court and Industrial Arbitral Tribunals Act. This Act shall not apply to disputes submitted to arbitral tribunals established by statute for the resolution of disputes in relation to particular matters”.} and consumer disputes.\footnote{Art 7(2) Arbitration Act.}

**Ad hoc versus institutional arbitration:** Commentators suggest that *ad hoc* arbitration is very popular, but this is also the case with institutional arbitration.\footnote{Spiermann (2009), at 3.}

**Arbitrability:** The Danish position follows that in the UNCITRAL Model Law, allowing the submission to arbitration of any “legal relationships in respect of which the parties have an unrestricted right of disposition.”\footnote{Art 6 Arbitration Act.} This naturally includes intellectual property disputes as well as anti-trust as long as the particular subject matter relates to the parties’ inter-se relations.

Commentators suggest, unlike some other jurisdictions, that arbitration applies in cases of bankruptcy, particularly the application of arbitration clauses concluded by the debtor prior to his or her insolvency, unless the award will have an impact on the rights of third parties. Equally, the administrator is free to use his discretion to enter into (but essentially activate) contracts of the debtor with an arbitration clause.\footnote{Spiermann (2009), at 9.}
**Consumer disputes**: Article 7(2) of the Arbitration Act states that an arbitration clause in a consumer contract in respect of a dispute that has not yet arisen is not binding on the consumer. Therefore, only submission agreements are valid for the purpose of arbitration. However, unlike other arbitration laws in Europe, Article 7(2) does not require that the submission agreement be individually negotiated or that it should not include any other provisions.

**Public policy**: Public policy is referred to in the Arbitration Act in two places, namely as regards set aside proceedings\(^ {159}\) and enforcement of foreign awards.\(^ {160}\) The concept is not defined but in general terms it is assumed that it encompasses conformity with the Danish legal system and the rule of law (although some commentators suggest that it also includes international public policy).\(^ {161}\)

**Agreement in writing**: There is no strict requirement in Danish law for an arbitration agreement to be in writing, thus deviating from the UNCITRAL Model Law in this respect. Oral agreements (although rare in practice) are accepted as long as there is some evidence of the parties’ intention.\(^ {162}\)

**Arbitration clause (void)**: The Supreme Court held that an arbitration clause was void by reason of the fact that the arbitral institution it referred to did not exist (the Copenhagen Maritime Arbitrators’ Association).\(^ {163}\) As a result, the dispute was referred to the Danish courts under Danish law, rather than the parties’ chosen governing and procedural law.

**Multi-party arbitration**: These are generally permitted (as there is no mention in the Arbitration Act) unless the parties decide otherwise.\(^ {164}\) A Danish court has held that the rule of lis pendens applies to arbitral proceedings, in the sense that once a dispute has been submitted to an arbitral tribunal the exact same dispute cannot be submitted to another tribunal.\(^ {165}\)

**Stay of proceedings**: In accordance with Article 357(1) of the Administration of Justice Act any objections as to the validity of the arbitration agreement must be submitted in the first submission.

**Arbitrators’ qualifications**: There are no required qualifications for arbitrators. However, according to Article 16 of the Rules of Arbitration Procedure of the Danish Institute of Arbitration, the presiding arbitrator must have a law degree and unless the parties agree otherwise this requirement may be imposed on the party-appointed arbitrators. Equally, the Building and Construction Arbitration Court usually appoints an arbitral tribunal consisting of a Danish titular judge (as chairman) and two technical experts.\(^ {166}\)

**Arbitrator independence**: It is acceptable in Danish practice for party-appointed arbitrators to seek the advice of the appointing party as regards the umpire, with both the

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\(^{159}\) Art 37 Arbitration Act.

\(^{160}\) Art 39, Arbitration Act.

\(^{161}\) Spiermann (2009), at 30.

\(^{162}\) Spiermann (2009), at 8. In one case, the Court of Arbitration for Building and Construction decided a claim despite the absence of an arbitration agreement which the parties referred to it for resolution. Prefab Building Plant v Concrete Plant, Award, VBA case no VG2006.C-8965 (3 July 2006).

\(^{163}\) Dregg EHF v Jensen Shipping A/S, Danish Supreme Court, judgment (12 June 2012).

\(^{164}\) Danish Maritime and Commercial Court, judgment (2005) *Ugeskrift for Retsvaesen* 2560.


\(^{166}\) Spiermann (2009), at 12.
parties and the party-appointed arbitrators being privy to this process. Moreover, the jurisprudence of the Danish Supreme Court clearly shows that whereas a person may be appointed as arbitrator in several cases by the same party, this is not so where the same person has acted as counsel in one or more cases as such an eventuality raises a real conflict of interest. Moreover, where a practitioner has taken a position with regard to an issue (legal or factual) in the abstract, he or she is not considered as having lost his or her impartiality or independence. In the case at hand, the practitioner had consulted one of the parties during negotiations and his position had not been considered by the party.

**Liability of arbitrators:** There is no provision in the Arbitration Act on this matter, as is the case with the vast majority of arbitration statutes in Europe. It is, however, suggested that arbitrators’ bear liability for intentional or negligent behaviour in the performance of his or her duties, whether as a result of contract or tort. The rules of tort in Denmark are not statute-based but court-driven and therefore unless a precedent is established the only reliance is on academic and practitioner opinions. It is also suggested that the limitation of liability clauses in the rules of Danish arbitral institutions is of limited value (based on the above considerations).

**Legal representation during proceedings:** No requirements or restrictions are placed by Danish law, other than the need for a power of attorney so as to ensure that the representative is duly empowered to represent the party in question.

**Court assistance/intervention:** In accordance with Article 27(1) of the Arbitration Act the tribunal may request the court to administer the taking of evidence (especially since the tribunal’s rulings to this effect are not enforceable and in light of the fact that it is not a criminal offence for witnesses testifying before a tribunal to provide false information). Although subject to the parties’ agreement the pertinent rules of evidence are to be interpreted and applied liberally by the tribunal, in a recent case the absence of specific rules or guidance in respect of evidentiary matters led one of the parties to petition the courts for a preliminary ruling prior to the commencement of arbitral proceedings. Although such a petition seems to violate the authority of the arbitration agreement, the Supreme Court ultimately ruled that in the absence of any guidance in the pertinent rules of the designated institution (the Danish Institute of Arbitration) or indeed in the Arbitration Act, the request to the courts was valid and did not constitute a violation of the arbitration clause. The Danish Institute has since appended new provisions (appendix 2 to its revised 2013 Rules).

Importantly, under paragraph 2 of Article 27 a tribunal seated in Denmark may request the local courts to request the ECJ to provide a preliminary ruling on a question of European law if this is necessary for determining the case at hand. This is a significant provision and had it not been for the fact that the ECJ does not consider arbitral tribunals as “courts” competent to request preliminary rulings the Danish Arbitration Act would have allowed tribunals to make the request directly without any court intervention.

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167 Spiermann (2009), at 12.
168 Danish Supreme Court, judgment (1997) Ugeskrift for Retsvaesen 172.
170 Spiermann (2009), at 15.
171 Vestas Wind Systems A/S v ABB A/S, Danish Supreme Court judgment (13 January 2012).
Interim measures: The tribunal may order interim measures under Article 17 of the Arbitration Act. The provision is cursory and does not even provide for a range of indicative measures available to the tribunal. It is suggested that the range of measures available to the courts are also available to tribunals, but the key issue here, of course, is that the tribunal’s rulings are not enforceable, so serious measures such as asset freezing, would need court intervention in cases of non-compliant parties under Article 9 of the Arbitration Act. However, under Danish tort law if a party suffers harm from the non-compliance of interim orders made by the tribunal compensation may be sought by the aggrieved party.

Tribunal acting as amiable compositeur: This is indeed possible if the parties so agree under Article 28(3) of the Arbitration Act.

Setting aside proceedings: The grounds listed in Article 37(2)(1) are the same as those set out for non-recognition and enforcement of foreign arbitral awards, which are themselves based (almost verbatim) on the UNCITRAL Model Law and the New York Convention.

Kompetenz-kompetenz: Article 2(2) of the Arbitration Act renders the tribunal’s kompetenz-kompetenz power dispositive and hence the parties may by mutual agreement refer the matter for determination to the courts or a third entity (another tribunal or institutional court).

Confidentiality: Although this matter is not regulated in the Arbitration Act it is generally assumed that unless otherwise stipulated the parties are under no general duty of confidentiality as to the proceedings and the award. Commentators differ regarding whether a duty of confidentiality exists for arbitrators. In addition, when the parties or the tribunal seek assistance from the courts, proceedings therein are held in public although exceptionally the court, following a request by the parties, may determine that in order to protect trade or other secrets no access to the public will be possible in accordance with the Administration of Justice Act.

Award types: The Arbitration Act does not limit the tribunal solely to final awards but allows it, if the parties so agree, to other types of awards, to awards on the merits, awards "on the evidence before it", awards on agreed terms (at the discretion of the tribunal) and additional awards. Commentators note the tradition in Denmark whereby arbitrators ask the parties whether instead of a final award they would rather have a simplified ruling, often confined to legal reasoning and conclusion (tilkendegivelse). This is not, however, an award and the benefits include less drafting for arbitrators and hence it reduces their fees, which may serve as an attraction for some parties. It has been criticised by the Danish Supreme Court.

Appeals against merits of awards: Although this ground is not generally recognised under general principles of international commercial arbitration and indeed Danish law, the

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174 Art 16(3) Arbitration Act.
175 Art 25(3) Arbitration Act.
176 Art 30 Arbitration Act.
177 Art 33(3) Arbitration Act.
178 Spiermann (2009), at 21.
179 Danish Supreme Court, judgment (1994) Ugeskrift for Retsvæsen 458.
Danish High Court has held that if the parties so agree they can appeal an award to the courts regarding the merits.\textsuperscript{180}

**Enforcement of foreign awards:** Article 39 of the Arbitration sets out the same grounds as the New York Convention and the UNCITRAL Model Law. The decisions of Danish courts regarding enforcement may be appealed before to the High Court (and exceptionally also the Supreme Court) in accordance with the Administration of Justice Act.

**Costs and fees:** Danish arbitral institutions typically estimate their fees (including those of the arbitrators) on the basis of a schedule available on their websites, which is dependent on the amount in dispute. Danish tax authorities exempt arbitrators’ fees from the payment of VAT despite the contractual nature of their appointment for which they are expected to render a service in return for payment. The determination as to the costs of the proceedings is made by the tribunal, which has authority to demand that a party pays part or all of the costs of the other party in accordance with Article 35, but this will be enforceable only when rendered as an award, not as an order.\textsuperscript{181}

### 2.8. England

Arbitration in England is regulated by the 1996 Arbitration Act (AA) which constitutes a consolidation and modernisation of the previous Act and subsequent case law on arbitration, of which England has an exceptionally rich tradition. Although the 1996 Act is not a direct adoption of the UNCITRAL Model Law, it is naturally compatible with it and as section 1 aptly stipulates, it is premised on three fundamental principles, namely fair resolution of disputes, limited court intervention and extensive party autonomy, save for reasons necessitated by public interest. These principles have influenced the Scottish Arbitration Act of 2010 and have been applied verbatim. It should be noted that arbitration developments in England, particularly judgments by the Supreme Court (previously the House of Lords) and by other senior courts, are regarded with much respect abroad, not only in common law but also civil law jurisdictions and are cited widely in support of the arguments of parties and the courts. Moreover, despite the extensive practice of contract law in England the Arbitration Act must necessarily develop along the lines of international arbitration practice, which may be contrary to principles of contract law developed under the common law, such as those relating to the validity of oral agreements as regards arbitration. Article 81 AA makes the point that any part of the common law which is in conflict with the AA is inapplicable, thereby rendering the AA lex specialis.

**Scope of application (international versus domestic):** In accordance with section 2(1) of the AA the Act applies where the arbitration is seated in England and Wales or Northern Ireland (henceforth England for convenience). As a result, the AA does not apply to Scotland or British dependencies such as the Channel Islands, which possess their own arbitration legislation. The remainder of section 2 makes it clear that certain parts of the AA will apply to arbitrations seated abroad, particularly as regards enforcement, taking of evidence and interim measures. Overall, therefore, it is evident that the AA does not distinguish in any meaningful way between domestic and international arbitrations (save for foreign arbitral awards). Given the importance of the arbitration’s seat, section 3 clarifies that the concept of seat relates to the juridical seat as determined by the parties and their agreement, not necessarily where the proceedings (in whole or in part) take place; although the parties may be treading a fine line if they conduct all of the proceedings abroad. Under section 53 AA, unless otherwise agreed by the parties, where

\textsuperscript{180} Danish High Court, judgment (2002) *Ugeskrift for Rettsvæsen* 681.

\textsuperscript{181} Unknown parties, High Court of Eastern Denmark, judgment (7 June 2012).
the seat of the arbitration is in England and Wales or Northern Ireland, any award in the proceedings shall be treated as made there, regardless of where it was signed, despatched or delivered to any of the parties.

**Scope of application (commercial versus other):** Subject to arbitrability restrictions, the AA makes no distinction between commercial or other disputes. In fact, the AA makes no reference whatsoever to the types of disputes covered under it, particularly section 6(1). It is assumed therefore that there are no restrictions.

**Agreement in writing:** Section 5 of the AA takes an especially broad view of an agreement in writing, encompassing any relevant agreement the terms of which can be some form of written evidence, or where in the course of proceedings one of the parties fails to raise an objection as to the existence of a written agreement. Under the common law oral agreements to arbitrate have long been recognised, but this position is probably inconsistent with the Model Law and international practice and its application would create more problems than those destined to resolve. As a result, section 81(b) of the AA stipulates that oral agreements under the common law are incompatible with the AA.

**Stay of arbitral proceedings:** This is only possible in accordance with section 9(3) AA if the arbitration agreement is null and void, inoperative or incapable of being performed.

**Arbitrability:** Arbitrability was not defined, even in broad terms, in the AA. Its ambit is certainly very broad and encompasses all matters affecting the civil (private) interests of the parties.

**Consumer arbitration:** In accordance with sections 89-91 AA consumer disputes are arbitrable as long as the parties respect the 1994 Unfair Terms in Consumer Contracts Regulations and the amount sought is beyond a threshold as specified by law. Presumably, therefore, pre-dispute clauses will be considered unfair and an agreement subsequent to the dispute must be individually negotiated.

**Ad hoc versus institutional arbitration:** Both have long been recognised and practiced in English law. It seems fair to say that institutional arbitration is preferred among parties choosing London as their seat.

**Court assistance and intervention:** Subject to the fundamental principle of limited court intervention the role of the courts is to assist the parties and the arbitration. Under section 12 the courts may extend the deadlines for rendering awards as set by the parties (or as laid down in institutional rules) where it is reasonable based on current exigencies or where the recalcitrant conduct of one of the parties necessitates such an intervention by the courts. Appeals against a decision of the court at first instance are allowed, but only after a leave of court in accordance with paragraph 6 of section 12 AA.

Equally, under section 18 AA the parties may apply to the court in order to appoint arbitrators where they themselves are unable to do so. The court’s decision is appealable where permission for appeal is granted.

In accordance with section 24 AA the parties may apply to the courts in order to challenge an arbitrator either because of a lack of independence or because he or she is not mentally or physically capable of discharging his duties or because his performance is injurious to

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182 Exceptionally, section 48(5)(b) AA stipulates that tribunals have no power to order the specific performance of a contract relating to land.
the parties. The court may hear the arbitrator in question before giving its decision on the matter. As in all other instances where court assistance is sought, the parties may appeal the decision provided that leave is granted by the court. The tribunal’s decision as to its jurisdiction may be challenged before the courts under section 32 AA.

The courts may be approached either by the parties or the tribunal in order to enforce any orders (such as interim measures) made by the tribunal. The court will refuse to enforce if it is satisfied that the party in question has not first exhausted all available recourse available to the tribunal.183

Unless otherwise agreed by the parties, the court may on the application of a party (upon notice to the other parties) determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties.184

The court may extend the time period indicated by the parties for rendering an award if satisfied that a substantial injustice would otherwise be done, under section 50 AA.

Multi-party arbitration and joinder: Several parties may join the proceedings if they claim rights or duties under the terms of the agreement between the original parties or where third parties invoke rights or duties in similar terms.185 Concurrent proceedings are possible where the original parties so agree and under the terms agreed by them. The tribunal has no power to consolidate proceedings.186

Group of companies doctrine: English courts have confirmed that this doctrine does not form part of English law.187

Statute of limitations: Section 13 makes it clear that applicable statutes of limitations under English law apply to arbitral proceedings in the same way as they do in respect of court proceedings.

Number of arbitrators: Section 15(2) implicitly confirms that the parties may choose an even number of arbitrators, although this is unusual in practice.

Liability of arbitrators: That some liability does exist is evident from the wording of section 25(1)(b) and 3(a) of the AA which refer to the possible liability of arbitrators in cases of unjustifiable resignation from their office. Liability for unjustified resignation is however a very specific form of liability under the AA. The general rule is found in section 29(1) AA which stipulates that an arbitrator “is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith”.188 Hence, apart from unjustified resignation cases, it is evident that negligence that does not amount to bad faith will not be enough to give rise to liability.

183 Section 42 AA.
184 Section 45(1) AA.
185 See Oxford Shipping Co Ltd v NYK (The Eastern Saga), [1984] 2 Lloyd’s Reports 373, confirming the general rule under English law that third parties are generally excluded from arbitral proceedings.
186 Section 35 AA.
188 The same principle applies with respect to arbitral institutions, in accordance with section 74 AA.
Chairman and umpire: Given that the parties may appoint an even number of arbitrators they may not wish for the existence of an arbitrator with the casting vote. If they do, this person will be the chairman which the parties appoint themselves or through the party-appointed arbitrators. The chairman possesses the decisive vote where the other arbitrators are split. Umpires, on the other hand, are not chairmen and do not as a rule take part in proceedings. They only have a role to play where one or more arbitrators are challenged and removed from the proceedings. There is no provision for the function of chairman in the UNCITRAL Model Law.

Arbitrators’ qualifications: No particular qualifications are required of arbitrators in order to qualify for office. There are no exceptions for judges and hence judges may be appointed as arbitrators. When the courts are approached to appoint arbitrators they may at that stage have due regards to any qualifications demanded by the parties.

Legal representation during arbitral proceedings: There are no restrictions as to who may represent the parties in arbitral proceedings. Foreign lawyers need not be registered to practice in England.

Tribunal powers: Tribunals have authority to decide relevant issues to the proceedings, so here we shall concern ourselves with indicative powers. First and foremost, in accordance with section 30 AA tribunals possess kompetenz-kompetenz powers. The tribunal’s decision may be challenged under section 32 AA.

In accordance with section 42(3) AA the court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the tribunal’s order.

The tribunal may withhold an award in the eventuality of non-payment in accordance with section 56 AA.

Interim measures: The tribunal “may give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control”. This is equivalent to interim orders under the UNCITRAL Model Law, but the power conferred upon the tribunal is certainly far smaller (direction as opposed to an order or an award). However, under section 39 AA the tribunal, if the parties so agree, shall have the power to grant interim or similar measures in the form of provisional (or interlocutory) awards. This power is therefore extensive and the provision in question does not envisage recourse against such award to the courts.

Types of awards: The tribunal may make final awards as well as partial awards under section 47 AA but as we have already seen it may grant an award on preliminary (interlocutory) issues related to the arbitral process. Other types of final awards are envisaged, such as additional awards. The parties may request the tribunal to offer any

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189 Section 20 AA.
190 Section 21.
191 Section 93 AA.
192 Section 19 AA.
193 Section 36 AA.
194 Section 38 AA.
195 Section 38(6) AA.
196 Section 57 AA.
remedies they wish (e.g. an order to do or refrain from doing something or an order for specific performance).197

**Enforcement of awards (rendered in England):** Much like the Swiss Private International Law Act, the AA makes a distinction between the binding nature of awards between the parties per se, while at the same time providing for a procedure of enforcement of awards by the courts, in accordance with section 66 AA. This procedure therefore is not mandatory and requires the leave of the court. **Costs and fees:** Sections 59-65 of the AA discuss costs and fees but there is no indication therein as to a specific rule that should guide the costs and arbitrators as to the allocation of both costs and fees. The general rule is that this is a matter to be decided by the parties, which includes reference to the arbitral institution’s rules of procedure.

**Challenging awards rendered in England:** Under section 67 AA any of the parties may apply to the courts in order to challenge an award on the basis of the tribunal’s substantive jurisdiction. Under section 68 AA awards can be challenged in respect of a serious irregularity. Paragraph 2 of section 68 contains a list of grounds giving rise to a serious irregularity, which in very large part are similar to those provided in the UNCITRAL Model Law in respect of set aside proceedings. They consist of:

   a) failure by the tribunal to comply with section 33 (general duty of tribunal);
   b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction under section 67);
   c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
   d) failure by the tribunal to deal with all the issues that were put to it;
   e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;
   f) uncertainty or ambiguity as to the effect of the award;
   g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy;
   h) failure to comply with the requirements as to the form of the award; or
   i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award

In respect of both challenges, the court may vary the award, remit the award back to the tribunal for rectification or declare the award null and void. The third type of challenge consists of an appeal on a point of law, under section 69 aa, which requires the consent of both parties and provide that the court provides appropriate leave. The law in question must be the law of England and Wales for a court in England and Wales, or the law of Northern Ireland for a court in Northern Ireland. Leave may be granted where (in accordance with section 69(3) AA) the court is satisfied:

   (a) that the determination of the question will substantially affect the rights of one or more of the parties;
   (b) that the question is one which the tribunal was asked to determine;
   (c) that, on the basis of the findings of fact in the award—
   (d) the decision of the tribunal on the question is obviously wrong, or

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197 Section 48 AA. The only restriction relates to a performance order relating to land under section 48(5)(b).
(e) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt, and

(f) that despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

2.9. Estonia

Arbitration in Estonia is regulated by sections 712 to 757 of the country’s Code of Civil Procedure (CCP), which came into effect in 2006 and is based on the 1985 version of the UNCITRAL Model Law. Commentators suggest that the differences between the Estonian CCP and the Model Law are almost identical to those found in the German Arbitration Law. It should be noted that, with respect to arbitration, the Estonian CCP replaced the Act of the Republic of Estonia on the Court of Arbitration of the Estonian Chamber of Commerce and Industry. Thus the previous regime only regulated arbitration in respect of this particular institution in the exclusion of any other, or ad hoc arbitration. Perhaps as a result, the difference in the setting up of arbitral institutions under its neighbour Latvia is striking (by comparison, until recently in Latvia it was possible for anyone to set up an arbitral institution and the situation was much abused). It should be stated that Estonian courts are in some respects liberal in their interpretation of arbitration, having, e.g., held that in their interpretation of the NY Convention they take the practice of other nations into consideration for guidance.198

Scope of application (international versus domestic): The CCP covers all arbitral proceedings whose seat is in Estonia and does not distinguish between these regardless if one is purely domestic and another has international elements. Naturally, awards rendered outside Estonia are treated as foreign awards and subject to the NY Convention regime for recognition and enforcement.

Scope of application (commercial versus other): Just like the German Arbitration Law, the Estonian CCP makes it clear that it applies to relationships of a proprietary (financial) nature, which must be given broad construction. An arbitration agreement involving a non-proprietary claim is valid if the claim is capable of settlement. An administrative proprietary claim can be submitted to arbitration if, according to the Administrative Procedure Act, an administrative contract can be executed on the object of the claim.

Arbitrability: The general rule is that parties have the right to submit to arbitration any dispute which they are entitled to dispose of, as long as this is of a proprietary nature. According to the CCP the following disputes are not amenable to arbitration: non-proprietary claims (unless the object of the dispute is capable of settlement by the parties); disputes over the validity or cancellation of the residential lease contracts concerning a dwelling in Estonia and vacating the dwelling located in Estonia; disputes over the termination of employment contracts.

Consumer arbitration: Consumer arbitration is allowed, provided that the agreement is recorded in a document bearing the handwritten or digital signature of the consumer.

Public policy: Pursuant to section 751(2) of the CCP, the court shall annul the award based on the request of a party or at the court's initiative if the court establishes that the decision of the arbitral tribunal is contrary to Estonian public order or good morals.199

198 Case no 2-05-23561, Court of Appeals judgment (9 March 2007).
199 Case no 3-4-1-1-08, Supreme Court order (5 February 2008).
Supreme Court has also held in its affirmation of the doctrine of separability that an arbitration agreement that violates or at least ignores the public policy would be null and void.\footnote{Case no 3-2-1-34-04, Supreme Court judgment (15 April 2004).}

Awards may be annulled when they violate “good morals”. The Court of Appeals has interpreted the term “against good morals” as being concerned with rights and morals, including activities that are generally condemned.\footnote{Case no 2-07-14594, Court of Appeals judgment (29 June 2007).}

**Ad hoc versus institutional arbitration:** As has already been stated, *ad hoc* arbitration was not regulated until 2006 but at the same time it was not forbidden. However, since the coming into force of the CCP in 2006, *ad hoc* arbitrations appear to be more common, although there is no clear evidence on this point.

**Agreement in writing:** The CCP, following the Model Law, requires agreements to be in writing (Article 719(1)), stressing the need for a written record. The arbitration agreement can be executed as a separate agreement or as a separable clause in a contract (Article 717(2)).\footnote{This provision was subjected to minor amendments on 1 January 2013.} The Supreme Court has stressed that the arbitration agreement must be clear as to the parties’ intentions.\footnote{Case no 3-2-1-38-02, Supreme Court order (28 March 2002).} Estonian courts have shown themselves to be rather flexible, with the Court of Appeals taking the view that an agreement between the parties need not be printed and signed. An agreement is valid even through an exchange of sending letters and faxes, assuming there is both offer and consideration.\footnote{Case no 2-05-23561, Court of Appeals judgment (9 March 2007).}

**Arbitration agreement:** The Estonian Supreme Court, whose judgments although persuasive are only binding on the parties to the dispute before it, has held that where there exists an arbitration agreement but neither party raises its existence in limine litis during court proceedings, it is presumed by their conduct that they have waived their right to rely on the arbitration agreement.\footnote{Case no 3-2-1-9-07, Supreme Court order (14 February 2007).} In another judgment it held that in its interpretation of a suretyship agreement the behaviour of the parties is relevant in assessing whether they have tacitly waived their right to arbitration. In the case at hand, the surety providers did submit to the city court an application for terminating the proceedings due to arbitration agreement but did not appeal on the same ground. On this basis the Supreme Court held that they had waived their right to arbitration.\footnote{Case no 3-2-1-38-02, Supreme Court order (28 March 2002).} The Supreme Court has equally held that if the claimant disputes the validity of the arbitration agreement and the statement of claim is taken into proceedings, then it would be efficient to resolve the dispute over the validity of the arbitration agreement by interim award.\footnote{Case no 3-2-1-130-07, Supreme Court order (16 January 2008).}

The Supreme Court and lower courts have stressed the autonomy of the arbitration clause and the resulting doctrine of separability.\footnote{Case no 3-2-1-34-04, Supreme Court judgment (15 April 2004); Case no 3-2-1-130-07, Supreme Court order (16 January 2008).}

The failure of the parties to indicate their preferred arbitral institution does not serve to invalidate the arbitration agreement.\footnote{Case no 2-06-39773, Court of Appeals order (28 May 2007). Even so, commentators stress another case by the same court where the same failure of the parties was found by the court to have invalidated their arbitration agreement. See case no 2-05-984, Appeals Court judgment (6 March 2009).}
Third parties: The Supreme Court has indicated that an arbitration agreement does not bind third parties.\textsuperscript{210} Of course, where there has been a transfer of claim to a person that was not an original party to the agreement, it is assumed that the effects of the arbitration clause were also transferred to said person.\textsuperscript{211}

Multi-party arbitration: The CCP does not regulate multi-party arbitration but given the prevalence of party autonomy it would not be out of place to argue that if the parties so wish and are able to agree on joint arbitrators then multi-party arbitration raises no difficult legal issues. By way of analogy, in assessing whether an arbitration clause extended to third parties (the result was negative) the Supreme Court held that the law does not oblige the claimant to file the claim against persons jointly and severally liable to the same court.\textsuperscript{212}

Human rights and constitutionality: In one case the Estonian Supreme Court held that there is nothing in the CCP or other laws on the basis of which the tribunal may dismiss a particular law and declare it to be in conflict with the constitution. The tribunal therefore is deemed as not having the power of judicial review. Moreover, provided that the arbitration agreement is valid and that the tribunal is competent to resolve the dispute, the parties have waived, in a way allowed in a private law relationship, their right to resolve their dispute in court, and by this, at least partly the right to the protection of constitutional rights that can be exercised only in court (the review of constitutionality of applicable norms).\textsuperscript{213} However, the Supreme Court also noted that the tribunal could disregard a particular norm on other grounds (e.g. good faith), and that the constitutionality review could be carried out in the annulment phase.

Interim measures: Under the CCP the parties may request for interim measures prior to the constitution of the arbitral tribunal and during the course of arbitral proceedings. The tribunal’s ruling in relation to interim orders is not automatically enforceable but requires an enforcement judgment from the courts, following a request by the parties. Available interim measures are extensive and include the seizure of the defendant's property, insertion of a notation in the property register and others (however excluding measures restricting personal freedom). The tribunal (and the court) may request security for applying interim measures. Institutional arbitration courts (i.e. the board) may forward the interim measures request to the court even prior to constituting the arbitral tribunal.

Types of awards: The CCP does not distinguish between awards and other forms of relief (this might also be just a question of language, as in practice both orders/rulings and awards are issued, depending on the nature of the respective decision). Commentators suggest that the law allows for partial as well as most forms of interim awards, although as we have already seen the tribunal does not have the power to order enforceable interim measures.

Arbitrators’ qualifications: Any person with sound legal capacity may be appointed as arbitrator by the parties. With respect to attorneys, only sworn advocates have the capacity to act as arbitrators in accordance with the Estonian Bar Association Act (excluding attorneys with lower qualification). Judges are not permitted to act as arbitrators appointed by the parties (but they can be appointed e.g. by the institutions).

\textsuperscript{210} Case no 3-2-1-90-07, Supreme Court order (2 November 2007).
\textsuperscript{211} Case no 2-06-39773, Court of Appeals order (28 May 2007).
\textsuperscript{212} Case no 3-2-1-90-07, Supreme Court order (2 November 2007).
\textsuperscript{213} Case no 3-4-1-1-08, Supreme Court order (5 February 2008).
Liability of arbitrators: The CCP and general Estonian law makes no reference to such liability and there are no cases providing any guidance. Hence, it is unclear what the law is in this respect.

Legal representation during arbitral proceedings: There are no restrictions as to who may represent the parties during arbitral proceedings. There are no restrictions on foreign lawyers representing clients in Estonia.

Tribunal deciding ex aequo et bono: The CCP allows the parties to request the tribunal to decide the case on the basis of fairness and equity (only upon clear party agreement on this and still applying the imperative provisions of the otherwise applicable law).

Set aside proceedings: Arbitral awards rendered in Estonia may be annulled (equivalent to set aside proceedings) under grounds that are identical to those found in the UNCITRAL Model Law.

Res judicata: An award rendered in Estonia enters into force on the day it is issued and has res judicata effect from there on (Article 746). However, an ad hoc award issued in Estonia is recognised and enforceable only when so declared by the courts (Article 753). Awards made through arbitral institutions are automatically recognised and enforceable.

Enforcement of foreign awards: Estonian law follows the NY Convention verbatim, so no particular analysis is required. However, it should be stressed that the Supreme Court has confirmed that Estonian courts shall not review the material correctness of a foreign award.\(^\text{214}\) The Supreme Court has also stressed that the Brussels Regulation (44/2001/EC) is not applicable to enforcement of foreign arbitral awards.\(^\text{215}\)

Costs and fees: Commentators suggest that the costs of the winning party are generally fully compensated at the expense of the losing party.

2.10. Finland

In 1992 a new Arbitration Act was adopted in Finland,\(^\text{216}\) which replaced an act that had been in place since 1925. The 1992 is not predicated on the UNCITRAL Model Law, but the two are deemed by commentators to be substantially compatible. Although Finland has a long tradition of arbitration and the country has a thriving economy, it is not a host to international arbitrations in the same manner as New York, London or Paris. Rather, the vast majority of arbitrations contain a Finnish element. The list of available cases, particularly those resolved by the country’s Supreme Court are few and the most significant judgment involving arbitration resolved the legal nature of arbitrators’ liability.

Scope of application (international versus domestic): Article 1 of the Arbitration Act (AA) clarifies from the outset that it applies to both domestic and international arbitrations. Whereas Articles 2-50 apply solely to domestic arbitrations, the remainder (Articles 51-55) applies to international arbitrations. The distinction between the two is the seat of the arbitration, whereby if this is Finland then by implication the arbitration is considered domestic.

\(^\text{214}\) Case no 3-2-1-118-03, Supreme Court order (1 December 2003).
\(^\text{215}\) Case no 3-2-1-100-10, Supreme Court order (15 November 2010).
\(^\text{216}\) Act No 967/1992.
**Scope of application (commercial versus non-commercial):** Article 2 of the AA specifies that its application extends to any civil or commercial dispute as long as this is susceptible to settlement by the parties.

**Consumer disputes:** There is no reference to consumer disputes in the AA. According to section 12:1d of the Consumer Protection Act (38/1978), pre-dispute arbitration clauses in consumer contracts are invalid and not susceptible to arbitral resolution, however, a post-dispute agreement to submit the dispute to arbitration is possible.

**Arbitrability:** Article 2 simply states that all civil and commercial disputes that can be settled by agreement are arbitrable. The scope of arbitrability is thus broad and would only seem to exclude disputes of public law or family law nature and hence encompasses the entire range of intellectual property rights where the subject matter of the dispute concerns the parties’ inter se relations. The same principle applies with respect to anti-trust disputes.217

In respect of bankruptcy, if the debtor has concluded an arbitration agreement before the bankruptcy, the agreement binds both the administrator and the other party to the proceedings and each can insist that any dispute to which the agreement applies be referred to arbitration. If the administrator wants to have a transaction made by the debtor declared null and void or rescinded since the transaction violates the creditors' rights, the administrator will not be bound by an arbitration agreement which the debtor has concluded before the bankruptcy with the other party to the transaction.218

**Public policy:** This concept is not defined in the AA, save in order to denote that a violation of public policy renders an award null and void.219 Equally, the tribunal is empowered to reject an award on agreed terms (arising out of a settlement) if the tribunal deems that it violates public policy under Article 33 AA. It is suggested that the concept coincides with the law and legal system of Finland.

**Institutional versus ad hoc arbitration:** There is not much information in the public domain about ad hoc arbitration, but commentators believe that while it is widely used it is less common than institutional arbitration.

**Agreement in writing:** This corresponds strictly to Article 7(2) of the UNCITRAL Model Law.220 As a result, oral agreements submitting a dispute to arbitration are excluded. Nonetheless, the AA, in Article 3, extends the scope of an agreement in writing to: “arbitration clauses in wills, deeds of gift, bills of lading or similar documents, in the bylaws of an association, of a foundation, of a limited liability company or of another company or corporate entity and by which the parties or the person against whom a claim is made are bound”.

**Multi-party arbitration and joinder:** There is no mention of this eventuality in the AA but there are no known restrictions under Finnish law that prevent the parties from conducting multi-party arbitration joining relevant proceedings if they so desire. This possibility arises in Articles 10-13 of the FCC Rules.221

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217 Möller (2008), at 5.
218 Möller (2008), at 5.
219 Art 40(2)(2).
220 Art 3 AA.
221 Arbitration Rules of the Finland Chamber of Commerce 2013 Rules (in force as of 1 June 2013), hereinafter "FCC Rules".
Third parties: The Supreme Court found that an arbitration agreement was binding against an entity that was not a party to the original contract on the basis that said entity predicated a subsequent claim on the insurance agreement containing the arbitration clause. The Supreme Court, therefore, follows the trend whereby third parties are not bound by an arbitration clause without their consent, save for situations where they have tacitly assumed rights or duties under a contract to which they are not parties.

Powers of arbitral tribunals: It is suggested that arbitral tribunals possess the implicit power under Finnish law to fill gaps in the course of interpreting a contract, as well as adapt contracts to fundamentally altered circumstances, despite not having been authorised by the parties to do so. Obviously, there is a fine line between exercising such implicit powers and excess of authority. In one case, the tribunal had adjusted the parties’ contractual provision in accordance with Article 36 of the Finnish Contracts Act and as a result the aggrieved party claimed that the tribunal had exceeded its vested powers and hence requested that the award be set aside. The Supreme Court accepted the arbitral tribunal’s view that a contractual provision may be adjusted by reference to section 36 of the Finnish Contracts Act even if adjustment has not been invoked (for instance where a claim is based on a contractual provision allegedly being void). The Supreme Court also noted that the arbitral tribunal is not tied to the legal views presented by the parties in the proceedings.

Tribunal acting as amiable compositeur: The parties may validly request the tribunal to resolve the dispute on the basis of equitable principles in accordance with Article 31(3) of the AA.

Kompetenz-Kompetenz power: There is no provision in the AA as regards the tribunal’s power to determine its own jurisdiction (at least in the sense of a binding power). The tribunal may as a matter of fact examine whether it possesses jurisdiction so that it can continue to the merits but this is not a definitive determination and cannot be recorded in an order or an award. If the parties dispute the tribunal’s jurisdiction they may approach the courts with a relevant petition. What this means, however, is that recalcitrant parties may use the local courts with a view to protracting and delaying arbitral proceedings.

Arbitrators’ qualifications: In accordance with Article 8(1) of the AA there are no restrictions as to the qualifications of arbitrators, including restrictions as to legal expertise. Moreover, under paragraph 2 of Article 8 there is equally no requirement of nationality and hence any person can be appointed to act as arbitrator in an arbitration seated in Finland. Unlike some nations, judges may be appointed as arbitrators.

Liability of arbitrators: Just like all arbitration statutes modelled under or influenced by the UNCITRAL Model Law the AA equally does not contain a provision on the liability of arbitrators. Although the issue was moot for some time and academic opinion shifted back and forth towards both liability in tort and under contract, a landmark judgment by the Finnish Supreme Court in 2005 changed the landscape and gave potential arbitrators in

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222 A v Assuranceforeningen Gard, Supreme Court decision (KKO) 2007:39.
223 Möller (2008), at 6.
224 Werfen Austria GmbH v Polar Electro Europe BV, Zug Branch, Supreme Court decision (KKO) 2008:77.
225 Möller (2008), at 17. See e.g. following recent Finnish Appeal Court decisions where the issue of the arbitral tribunals jurisdiction has been discussed: Rovaniemi Appeal Court decision 15.3.2012 (S11/905), Vaasa Appeal Court decision 2.2.2012 (S 11/476), Helsinki Appeal Court 17.8.2011 (S10/2248), Turku Appeal Court 13.4.2011 (S10/1847) and Turku Appeal Court 13.4.2011 (S10/1847). Furthermore, Article 32 of the FCC Rules contain express provisions on “Pleas as to the jurisdiction of the arbitral tribunal.”
In the case at hand, in the course of construction arbitration one of the parties realised that the arbitrator appointed by the other party had been its legal counsel. As a result, proceedings against this person (X) commenced before the civil courts for damages related to his failure to make a full disclosure and the question which arose was whether the liability of the arbitrator to the parties was contractual, tort or both. The case ultimately reached the Supreme Court which held that the liability of an arbitrator was predicated solely by his contractual obligations to the parties, thus requiring a causal link between the alleged act or omission (failure to disclose) and the harm caused (in this case the other party’s legal and other expenses). No liability can arise under tort, namely the 1974 Finnish Tort Liability Act and in event even the contractual character of arbitrator liability is deemed to be exceptional.  

Legal representation during proceedings: There are no restrictions as regards qualifications and nationality for the representation of a party during arbitral proceedings. This means that the presence of a lawyer is not necessary but a power of attorney as proof of the party’s consent to be represented is essential.

Court intervention or assistance: In general, the powers of arbitral tribunals to undertake certain tasks that would ordinarily require binding powers are limited. By way of illustration, although Article 27(1) of the AA empowers tribunals to call witnesses and administer all aspects of the proceedings, its rulings to witnesses are not binding and it “may not impose any penalty, nor use other means of constraint, nor shall it administer oaths or equivalent affirmations.”

Equally, under Article 29(1) of the AA if the tribunal (or the parties) requires expert advice in a particular case an application to the courts is required where it is necessary to examine a witness or expert in court under oath.

In accordance with Article 43 of the AA final or partial awards require writ (or exequatur) from the local courts for their enforcement. The party against whom it is sought may be given an opportunity to be heard, although this does not amount to an appeal on the facts or merits of the dispute.

Appeals to the courts in respect of awards are not envisaged in Finnish law. Commentators, however, suggest that appeals are exceptionally possible in respect of arbitrations mandated by law (not by reason of party autonomy), as is the case with arbitrations falling under the Act on Limited Liability Companies.

Interim measures: Tribunals may order interim measures but Article 5(2) of the AA clarifies that a court or another authority has a parallel entitlement to do so as well. The FCC Rules contain an express provision (Article 36) on interim measures of protection where it is clearly stated that the tribunal at the requests of a party may grant any interim protection measures it deems appropriate.

Award types: With the exception of provisional awards there are no limitations in the AA as regards the legal form of a tribunal determination. Thus, full, partial, additional or

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227 Ruola Family v X, Supreme Court decision (KKO) 2005:14.
228 Art 27(2) AA.
229 Art 43(3) AA.
230 Möller (2008), at 23.
231 Art 39(1) AA.
other awards are possible, so long as the tribunal possesses the power to dispense with a particular issue definitively and in a binding manner (e.g. this does not apply to interim measures).

**Null and void awards:** In accordance with Article 36(1) awards must be in writing and signed by all arbitrators. Article 40(1) of the AA enumerates those instances where awards are considered null and void. Besides dealing with disputes not susceptible to arbitration or those against public policy, the provision also lists those awards that are so obscure or incomplete that it does not appear in it how the dispute was decided or those that are not in writing or otherwise signed by the arbitrators. Exceptionally, paragraph 2 of Article 40 states that:

“the absence of the signature of one or more arbitrators shall not make the award null and void if it has been signed by a majority of all members of the arbitral tribunal provided that they have stated on the award the reason why an arbitrator who has participated in the arbitration has not signed the arbitral award.”

**Reasoned award:** There is no requirement in the AA that arbitral awards must be reasoned or in any other way justified, unless of course the parties so demand. Although this eventuality poses no problems for awards enforced in Finland and most nations, the situation may arise where the lack of reasoning may be perceived as an offence to public policy where the award is to be recognised and enforced abroad.

**Setting aside awards:** The grounds for setting aside awards under Article 41 of the AA are fewer than those enumerated in the UNCITRAL Model Law and limitations apply in addition. The applicable grounds for setting aside are:

a) the arbitral tribunal has exceeded its authority;

b) an arbitrator has not been properly appointed;

c) an arbitrator could have been challenged under section 10, but a challenge properly made by a party has not been accepted before the arbitral award was made, or if a party has become aware of the ground for the challenge so late that he has not been able to challenge the arbitrator before the arbitral award was made; or

d) the arbitral tribunal has not given a party a sufficient opportunity to present his case.

Even so, parties are prevented from requesting a court to set aside an award under points 1-3 if they have taken part in the proceedings and failed to state their objections thereto.

**Costs and fees:** In accordance with Article 46(1) of the AA unless otherwise agreed or provided, the parties shall be jointly and severally liable to pay compensation to the arbitrators for their work and expenses. Under section 2 of Article 46 the compensation to the arbitrators shall be reasonable in amount, taking into account the time spent, the complexity of the subject-matter and the other relevant circumstances. It is argued by commentators that as a rule the costs of the arbitration are finally awarded against the losing party. The arbitral tribunal is, however, free to apportion the costs among the parties if it deems it justified (e.g., each party prevails in part on the merits).

As a rule the losing party shall be ordered to pay the total amount of the costs of the arbitration, including the costs for legal representation and legal assistance.

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232 Möller (2008), at 19.
233 Art 49 AA.
2.11. France

Arbitration in France is regulated by Book IV of the country’s Code of Civil Procedure (CCP), as recently amended.\(^\text{234}\) The Book divides arbitration in two parts. Articles 1442 to 1503 deal with domestic arbitration, whereas Articles 1504 to 1527 deal with international arbitration. Articles 2059 to 2061 of the French Civil Code equally concern domestic arbitration. The 2011 reform has extended to domestic arbitration some rules which were previously only applicable to international arbitration, thus harmonising the two regimes from many points of view. The regulation of arbitration in the CCP predates the UNCITRAL Model Law and its current manifestation is considered far more liberal than the arbitration treaties to which France is a party. Hence, French courts cite the CCP rather than those instruments. The French courts have a long and elaborate jurisprudence relating to international arbitration and case law – contrary to what is generally perceived about civil law nations – substitutes the gaps or ambiguities in the written law.

**Scope of application:** The CCP distinguishes between domestic and international arbitration. An international arbitration is defined under Article 1504 CCP where international trade interests are at stake. Although this is not a clear definition, it is taken to mean that the arbitration is commercially linked to more than one country. Although the different nationalities of the parties or the law chosen may be relevant in distinguishing between domestic and international arbitration, neither of these is determinative in and of themselves.\(^\text{235}\) Equally, the intention of the parties as to the international nature of the arbitration is of no relevance.\(^\text{236}\) The concept of “international trade” need not involve more than one nation. The economy of a single nation suffices to render the arbitration international so long as it is not that of France.\(^\text{237}\) It should be stated that within the scope of international arbitration the CCP encompasses both arbitral proceedings (with an international element) seated in France as well as foreign awards (rendered abroad) for which recognition and enforcement is sought in France.

Notably, while the jurisdiction of French courts regarding arbitration is overwhelmingly restricted to arbitrations seated in France, since 2011 French law has expressly endorsed the rule adopted in the NIOC case\(^\text{238}\), in accordance with which French courts have universal jurisdiction (i.e. relating to arbitrations seated anywhere in the world) to resolve problems arising from a party’s refusal to appoint an arbitrator, where this refusal risks a denial of justice.

**Scope of application (commercial versus other):** It is clear from Article 1504 CCP that only commercial (or trade)-related arbitration is covered under the relevant part of the CCP. This should be construed broadly,\(^\text{239}\) however, and does include consumer activities with a transnational nature, such as the sale of stocks and other financial instruments, which may otherwise fall under consumer relations. This flexibility is in line with available case law, whereby an arbitration clause involving international trade disputes and providing

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236 Chefaro case, Court of Cassation judgment (13 March 2007).
237 Asecna case, Court of Cassation judgment (17 October 2000).
238 Cass. Civ. 1, 1 February 2005, NIOC, Rev. arb. 2005.695, note H. Muir-Wat, where the NIOC company faced the Israel state refusing to appoint an arbitrator, and thus blocking the proceedings. The French judge benefits from an international competence notwithstanding whether the case has connection with France or not.
239 See also Art 2061 of the Civil Code, which refers to “professional activities”.

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simply for “arbitration Paris” was found to be operable as making reference to an arbitration seated in Paris.\textsuperscript{240}

**Ad hoc versus institutional arbitration:** Both institutional and *ad hoc* arbitration are recognised and reportedly common in France.

**Arbitrability:** The general rule on arbitrability is stated in Article 2059 of the Civil Code, which states that all persons may agree to arbitration in relation to rights which they are free to dispose of. Article 2060 of the Civil Code goes on to exclude all matters of civil status and capacity. There is no equivalent provision on arbitrability specifically related to international arbitration. The Court of Cassation has made it clear that the restrictions on arbitrability in the Civil Code do not apply to international arbitration and hence the scope of arbitrability is especially broad.\textsuperscript{241} French law treats international awards as not related to any particular legal order and hence the validity of an award is determined in accordance with the law of the country where recognition or enforcement is sought (i.e. French law).\textsuperscript{242}

**Public policy:** In accordance with Article 1514 of the CCP an award will not be recognised or enforced in France if it is in conflict with international public policy. It should be noted that domestic French public policy (which applies to domestic arbitration) is significantly broader as compared to international public policy. As a result, violation of domestic public policy does not necessarily entail a violation of international public policy.\textsuperscript{243} In general, French international public policy is defined as the body of rules and values which the French legal order regards as fundamental in situations of an international character.\textsuperscript{244} French case law distinguishes between substantive and procedural international public policy, as grounds for setting awards aside. A substantive public policy violation arises where the act or omission in question is actual, blatant and concrete.\textsuperscript{245} In respect of procedural public policy claims, the claimant must demonstrate that the breach actually caused it harm.\textsuperscript{246}

**Agreement in writing:** Article 1507 CCP states that an international arbitration agreement shall not be subject to any requirements as to its form. This means that the parties are free to choose any form provided that the agreement is recorded or is otherwise implicit. Such a confirmation may be found in a telex or an invoice signed by one of the parties.\textsuperscript{247} Although there has not been any case law on oral agreements, French courts generally assume a “common intent to arbitrate” where one of the parties has by its silence accepted arbitration, particularly where there is a history of consistent and repeated practice by the parties of arbitration in successive contracts, even if the disputed contract in question contains no arbitration clause.\textsuperscript{248} Where a party initiates or participates in arbitration proceedings, or does not object to the existence of an arbitration agreement during those proceedings, it is estopped from later doing so.\textsuperscript{249}

As for domestic arbitration, the arbitration agreement must be in writing in order to be valid (Article 1442 CCP). In case of a submission agreement (i.e. an agreement concluded

\textsuperscript{240} Limak case, Paris Court of Appeals judgment (23 October 2008).
\textsuperscript{241} Vivendi case, Court of Cassation judgment (28 January 2003).
\textsuperscript{242} Putrabali case, Court of Cassation judgment (29 June 2007).
\textsuperscript{243} Intrafor case, Paris Court of Appeals judgment (12 March 1985).
\textsuperscript{244} LTDC case, Paris Court of Appeals judgment (27 October 1994).
\textsuperscript{245} Verhoeft case, Court of Cassation judgment (21 March 2000); SNF case, Paris Court of Appeals judgment (23 March 2006).
\textsuperscript{246} Nu Swift case, Paris Court of Appeals judgment (21 January 1997).
\textsuperscript{247} Comptoir Commercial Bldéen case, Paris Court of Appeals judgment (13 September 2007).
\textsuperscript{248} Van Dijk case, Paris Court of Appeals judgment (18 March 1983).
\textsuperscript{249} Golshani case, Court of Cassation judgment (6 July 2005).
Annex B - Key Features of National Arbitration Law in the Member States and Switzerland

After the dispute has arisen between the parties, the parties must also specifically indicate the dispute they wish to submit to arbitration.

**Arbitration agreement (scope of issues):** French courts have taken the view that the drafting of the clause determines which disputes are encompassed under it – contrary to some arbitration statutes that assume all types of disputes, unless the parties specifically narrow the terms of the clause. As a result, it has been held that only broadly worded clauses will be deemed as covering both contractual and tort claims (arising from the contract).²⁵⁰

**Negative effect of competence-competence:** Since 2011 French law has also included an explicit assertion of the negative aspect of competence-competence. Under this rule French courts are actually precluded from deciding on the validity of an arbitration agreement²⁵¹ unless the arbitral tribunal has not been yet seized²⁵² and the arbitration agreement is manifestly null and void.²⁵³ However, this point must be raised by the respondent in the court proceedings prior to taking any action on the merits, and courts have no obligation to automatically decline jurisdiction absent such an objection. This rule only applies, however, in the business context, and not with respect to parties such as customers, employees and policyholders.

**Choice of law:** Article 1511 of the CCP follows the obvious rule whereby the tribunal decides the dispute in accordance with the substantive law designated by the parties, failing which in accordance with the law which the tribunal considers appropriate. However, paragraph 2 of Article 1511 goes on to add that in either case the tribunal “shall take into account trade usages”. It is not entirely clear if this is an obligation on the tribunal, but if so, it is certainly a limitation on the parties’ autonomy, as they might well desire to exclude trade usages in a particular dispute. The concept of “rules of law” in Article 1511 is broader than national law and includes usages and practices. The Court of Cassation has held that an award decided on the basis of “rules of international commerce determined by practice recognised in national court case law” was compatible with “rules of law”.²⁵⁴ This is also evidence of the flexibility of French courts where the parties intention to submit to arbitration is manifest.

**Tribunal deciding as amiable compositeur:** Article 1512 of the CCP states that if the parties so wish the tribunal may be asked to decide a dispute as amiable compositeur. In French law, the concepts of ex aequo et bono and amiable compositeur are legally synonymous. French courts have set the boundaries somewhat. For one thing, they have made it clear that when deciding on the basis of equity, tribunals are bound to observe the parties’ due process rights and international public policy more generally.²⁵⁵ In the seminal Minhal case, the Paris Court of Appeals held that where the tribunal is asked to decide on the basis of equitable considerations it is presumed that the parties have waived the effects and benefits of legal rules as well as the right to expect a strict application of the law. It is evident that when a tribunal decides a dispute on the basis of equity it may have to moderate the effects of the parties’ contractual arrangements. Nonetheless, it may not go as far as to create a new set of contractual relationships that were not originally intended

²⁵⁰ Sucres et Denrées case, Paris Court of Appeals judgment (19 May 2005).
²⁵² An arbitral Tribunal is considered to be seized under French Arbitration Law when it is constituted and the arbitrators have accepted their mission (Article 1456 al.1 CCP), unless agreed otherwise by the parties (Article 1461 CCP).
²⁵⁴ Compania Valencia de Cementos Portland, Court of Cassation judgment (22 October 1991).
²⁵⁵ Minhal case, Paris Court of Appeals judgment (28 November 1996).
by the parties.\textsuperscript{256} If the tribunal were to render an award that includes no evident considerations of fairness and instead involves a strict application of the contract on the basis of formal law may be reason to refuse enforcement.\textsuperscript{257} Where the parties have complicated things and asked the tribunal to decide the dispute upon a mixture of equity and rules of law, the dominant view (on the basis of case law) is for the tribunal to first identify the chosen law and then compare it to the equitable solution, ultimately deciding the outcome (if a conflict between the law and equity exists) in accordance with its own sense of fairness.\textsuperscript{258}

**Liability of arbitrators:** The CCP makes no reference to the liability of arbitrators for acts or omissions related to the proceedings and which produce harm to the parties. The Paris Court of Appeals has held, nonetheless, that arbitrators may be liable for any harm caused in respect of their failure to make a full disclosure about circumstances which may jeopardise their independence and impartiality.\textsuperscript{259} In addition, due to the contractual dimension of an arbitrator’s role, liability can also be engaged in cases of fraud, duress or grave mistake.

**Independence of arbitrators:** The CCP is generally very much consistent with the relevant provisions of the UNCITRAL Model Law. However, some of the pertinent case law of the French courts is interesting. In particular, the Paris Commercial Tribunal has held that the repetitive appointment of an arbitrator by the same party in similar disputes may give rise to doubts as to his independence and impartiality.\textsuperscript{260} The duty of arbitrators to disclose starts from the moment of their appointment until the close of arbitral proceedings.\textsuperscript{261} Challenge to the independence or impartiality of an arbitrator may be brought at any time, including after the award has been rendered. The provisions on independence and impartiality apply equally to domestic and international arbitration.

**Arbitrators’ qualifications:** There are no restrictions as to the person or qualification of arbitrators under French law in respect of international arbitrations.

**Legal representation during arbitral proceedings:** There are no limitations as to who can represent parties in arbitral proceedings.

**Interim measures:** In accordance with Article 1468(1), which applies both to domestic and international arbitration, the tribunal may order upon the parties any conservatory or provisional measures that it deems appropriate, set conditions for such measures and, if necessary, attach penalties to such order. However, only courts may order conservatory attachments and judicial security.

**Tribunal powers:** Among the interesting provisions of the CCP, the following should be mentioned:

In accordance with Article 1470(1) of the CCP, “unless otherwise stipulated, the arbitral tribunal shall have the power to rule on a request for verification of handwriting or claim of forgery in accordance with Articles 287 through 294 and Article 299.”

\textsuperscript{256} Taurus Films case, Paris Court of Appeals judgment (4 November 1997).
\textsuperscript{257} Bachelier case, Paris Court of Appeals judgment (3 July 2007).
\textsuperscript{258} Vanoverbeke case, Paris Court of Appeals judgment (15 January 2004).
\textsuperscript{259} L’Oréal case, Paris Court of Appeals judgment (9 April 1992).
\textsuperscript{260} Chomat case, Paris Commercial Tribunal judgment (6 July 2004).
\textsuperscript{261} J&P Avax case, Paris Court of Appeals judgment (12 February 2009).
Under Article 1467 of the CCP, the arbitral tribunal has the power to issue an injunction to a party to disclose evidence that it holds.

Under Article 1469 of the CCP, tribunal has the power to resort to a French judge to order third parties to produce evidence where necessary to the outcome of the dispute, provided the third party resides in France.

**Types of awards:** French law recognises as awards final, partial and interim awards. This includes arbitral decisions on provisional measures that settle all or part of the parties’ dispute. However, decisions on interlocutory issues other than the ones set out above, such as those relating to the tribunal’s finding of jurisdiction and generally all those that do not terminate the procedure are not afforded the status of awards. Overall, the determination as to whether a particular ruling is or is not an award is made by the courts and does not depend on the classification made by the tribunal.

In addition, a new rule has been incorporated into the CCP vesting the chair of an arbitral tribunal with the power to adopt a decision on his/her own where no majority amongst the members of the tribunal can be reached. If this is done it must be specifically mentioned in the award (Art. 1513(3)CCP).

**Enforcement of international awards:** We have already made it clear that French law recognises two types of international awards, namely those that have an international element but rendered in France and those decided abroad but the parties seek to enforce this (foreign) award in France. Both of these awards must be recognised and enforced in France in accordance with Article 1514 of the CCP. Article 1516 of the CCP goes on to say that “an arbitral award may only be enforced by virtue of an enforcement order (exequatur) issued by the Tribunal de grande instance of the place where the award was made or by the Tribunal de grande instance of Paris if the award was made abroad.” Paragraph 2 of Article 1516 makes it clear that exequatur proceedings shall not be adversarial, whereas paragraph 3 stipulates that the relevant application may be submitted by the “most diligent party”, which is typically one of the parties; albeit, French courts have construed this to also encompass individual arbitrators themselves.

In accordance with Article 1523(1) of the CCP an order of the court by which it denies recognition and enforcement of international awards rendered in France are subject to appeal. However, in accordance with Article 1524 CCP, no recourse may be had against an order granting enforcement of an award.

In conducting enforcement proceedings, the courts will not allow arguments as to the tribunal’s reasoning, even if this seems erroneous or inconsistent.

In addition, since 2011 annulment or appeal against enforcement judgments do not have a suspensive effect on execution of the award. However, a party can obtain summary judgment to suspend execution of the enforced award, provided such execution is at high risk of infringing fundamental rights of the applicant.

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262 Otor case, Paris Court of Appeals judgment (7 October 2004).
263 Crédirente case, Paris Court of Appeals judgment (29 November 2007).
264 Brasoil case, Paris Court of Appeals judgment (1 July 1999).
265 Republique de Guinée case, Paris First Instance Court Judgment (29 November 1989).
266 France Animation case, Paris Court of Appeals judgment (18 January 2007); IAIGC case, Court of Cassation judgment (14 June 2000).
**Setting awards aside:** Under Article 1522 (1) CCP, parties to an international arbitration may waive at any time their right to annulment proceedings. Nonetheless, even if such a waiver is given, parties retain their right to challenge any enforcement order issued by a national court on the grounds listed under Article 1520 CCP.

International awards rendered in France can only be challenged by set aside proceedings, in accordance with Article 1518 CCP. The grounds for setting aside, under Article 1520 CCP, are:

1. the arbitral tribunal wrongly upheld or declined jurisdiction; or
2. the arbitral tribunal was not properly constituted; or
3. the arbitral tribunal ruled without complying with the mandate conferred upon it; or
4. due process was violated; or
5. recognition or enforcement of the award is contrary to international public policy.

It should, once more, be pointed out that under French law awards set aside at the seat of the arbitration may still be recognised and enforced in France. This outcome is based on the rationale that the validity of an international award must be assessed by the rules of the country where recognition and enforcement is sought. As a result, the suspension of a foreign award by the courts of the seat does not bind French courts when assessing the recognition and enforcement of said award.

In domestic arbitration, under Article 1489 CCP, parties can provide that the award is subject to appeal: in this case, the State court can review the merits of the arbitral decision. On the contrary, in the absence of an explicit agreement in this regard, the award can only be challenged by set aside proceedings, on the same grounds as an international award.

### 2.12. Germany

Arbitration in Germany is regulated by the 1998 Arbitration Law which was adopted in order to bring German law in line with international developments and render Germany an attractive forum for resolving arbitral disputes. The Law is therefore modelled under the UNCITRAL Model Law. As is the case with the vast majority of civil law nations, the Arbitration Law was incorporated into the country’s code of civil procedure (ZPO) and in particular in the Tenth Book of the ZPO. Where there are gaps in the application and interpretation of the Arbitration Law one must have recourse to other parts of the ZPO and the Civil Code in order to derive general principles of general application, as is the case, for example, with the liability of arbitrators which is not mentioned in the ZPO.

**Scope of application (international versus domestic):** Section 1025(1) ZPO does not distinguish between purely domestic arbitration (i.e. between German nationals or German domiciled companies) and international arbitration. Rather, the Arbitration Act applies to all arbitral proceedings whose seat is in Germany. Section 1025(3) goes on to state that if the place of arbitration has not yet been determined, the German courts are competent to perform the court functions specified in sections 1034, 1035, 1037 and 1038 if the respondent or the claimant has his place of business or habitual residence in Germany.

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267 Hilmarton case, Court of Cassation Judgment (23 March 1994).
268 Polish Ocean Lines case, Court of Cassation Judgment (10 March 1993).
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Scope of application (commercial versus other): The ZPO does not limit arbitration to commercial relationships but extends itself to all relationships that involve an economic interest, in accordance with section 1030(1). Moreover, section 1029(1) allows parties to submit disputes to arbitration that arise from a contractual or other relationship, thus including trusts and testamentary relationships.

Arbitrability: As we have already discussed in the previous section, section 1030(1) ZPO stipulates that any claim involving an economic interest may be submitted to arbitration. However, even claims not involving an economic interest may be subjected to arbitration, as long as the parties “are entitled to conclude a settlement on the issue in dispute”. The parties do not possess such freedom as regards family disputes, but there are no issues as regards arbitration clauses arising in wills and testaments, provided that the heir agrees to be bound by the arbitration clause. Section 1066 ZPO introduces a rule in this respect which has no equivalent in the Model Law. It goes on to say that the Arbitration Law “applies mutatis mutandis to arbitral tribunals established lawfully by disposition on death or other dispositions not based on agreement”. This non-agreement based arbitration, or testamentary arbitration has been held to be admissible.269

Private law claims arising from restrictive trade practices and anti-trust,270 as well as claims against resolutions of shareholders in respect of limited liability companies are arbitrable.271 Section 1030(2) ZPO further identifies disputes over the existence of a lease of residential accommodation within Germany as non-arbitrable.

As far as employment disputes are concerned, those between employers and trade unions are arbitrable in accordance with sections 101-110 of the German Labour Court Law. On the other hand, individual labour disputes are not arbitrable.272

Consumer arbitration: Section 1031(5) ZPO regulates consumer arbitration, which is generally permissible and encompassed under the Arbitration Law provisions of the ZPO. This provision requires that the agreement be concluded in a separate document, signed by the consumer (including electronically), and containing no additional agreements not relating to the arbitral proceedings. This latter restriction does not apply to a notarized document.273 Failure to observe this statutory requirement invalidates the agreement and the consumer is no longer obligated to submit to arbitral proceedings, even if the party challenging the agreement is not the consumer.274 The BGH has taken the view that the reference to arbitration in standard terms contained in a contract between a domestic consumer and a foreign stock broker violates the express dictates of section 1031(5) ZPO.275

Institutional versus ad hoc arbitration: Both forms of arbitration are allowed and provided for in German law and practice. However, it seems that institutional arbitration is by far the most prevalent form.

269 OLG Hamm (8 October 1990).
270 Löcher (2009), at 369.
271 BGH judgment (6 April 2009), II ZR 255/08.
272 See Löcher (2009), at 386.
273 Under s 13 of the German Civil Code (BGB) a consumer is defined as “a natural person who is concluding a legal transaction (Rechtsgeschäft) for a purpose which can be regarded as outside his trade or self-employed profession”.
274 D v C, case no II ZR 16/11, BGH judgment (19 May 2011).
275 Domestic consumer v Foreign broker, BGH judgment (25 January 2011).
Agreement in writing: Section 1031 ZPO makes it clear that an arbitration agreement must be made in writing and the provision generally follows the mould of the UNCITRAL Model Law, including as regards bills of lading and incorporation by reference. Hard copy agreements as well as electronic means of communication are acceptable as long as there is a record of the agreement. Significantly, subsection 2 of section 1031 ZPO provides that an agreement in writing is deemed to exist if in accordance with “common usage” the arbitration clause is considered to be part of that document. Hence, oral agreements are excluded from the ambit of the ZPO.

Arbitration agreement: Both the ZPO and the German courts have shown a profound inclination to salvage arbitration where possible and not be held back by technicalities if the parties’ intention was to submit future disputes to arbitration. OLG Berlin has held that in case the arbitration institution designated in an arbitration agreement does not exist, the arbitration agreement has to be interpreted using established principles of contract interpretation, such as the history of the negotiations and the intent of the parties, to determine the competent arbitration institution. The designation of a non-existing arbitration institution does not, per se, impact the validity of the arbitration agreement.276

Court assistance and intervention: The aim of the Arbitration Law is to assist the parties as much as possible and refrain from judicial intervention. In this light the following instances of assistance may be highlighted

Under section 1032(2) ZPO, prior to the constitution of the arbitral tribunal, an application may be made to the court to determine whether or not arbitration is admissible. Under section 1032 ZPO the courts are obliged to reject an action as inadmissible where such action relates to a matter that is the subject of an arbitration agreement and where the respondent raises an objection to the jurisdiction of the local courts prior to the hearing on the merits.

Equally, under section 1033 ZPO, the parties may request the court to order interim measures even before the constitution of the tribunal, without being deemed as violating the arbitration agreement.

Under section 1034(2) ZPO, if the arbitration agreement grants preponderant rights to one party with regard to the composition of the arbitral tribunal which place the other party at a disadvantage, that other party may request the court to appoint the arbitrator or arbitrators in deviation from the nomination made, or from the agreed nomination procedure. This is a clear reference to the right to fair trial and party equality.

Under section 1035 ZPO the parties may approach the court in order to appoint one or more arbitrators in case the parties are unable to agree on such appointment.

Under section 1037(3) ZPO the parties may challenge an arbitrator before a court if he has not been removed following the exhaustion of all other (institutional) remedies at their disposal.

Equally, under section 1038(1) ZPO, where the arbitrator is physically unable to act the parties may approach the courts in order to have him or her removed and replaced.

276 OLG Berlin, judgment (3 September 2012); equally held by the BGH (Federal Supreme Court of Justice) in F v G, case no III ZB 70/10, judgment (14 July 2011).
Under section 1040(3) ZPO, although the tribunal possesses the power to render a
determination on its jurisdiction, if one of the parties disagrees with the tribunal’s ruling, he
or she may request the courts for a final decision on the matter.

Under section 1050 ZPO, the arbitral tribunal or a party with the approval of the arbitral
tribunal may request from a court assistance in taking evidence or performance of other
judicial acts which the arbitral tribunal is not empowered to carry out. The arbitrators are
entitled to participate and ask questions.

**Tribunal powers:** Subject to the parties’ agreement and the powers of assistance granted
to the courts, tribunals have the powers provided in the UNCITRAL Model Law. This section
will illustrate some of these.

Under section 1040(1), tribunals possess full kompetenz-kompetenz to examine their
jurisdiction by examining the validity or existence of the arbitration clause. In accordance
with paragraph 3 of section 1040 the tribunal’s decision may be recorded in a preliminary
ruling, but it is equally open to the tribunal to decide the jurisdictional issue in its final
award on the merits, particularly where it considers that the objection to jurisdiction is a
mere tactical device to delay the proceedings. Under section 1042(4) ZPO the tribunal,
unless the parties agree otherwise, is free to assess and admit evidence.

In accordance with section 1046(2) ZPO, unless otherwise agreed by the parties, either
party may amend or supplement his claim or defence during the course of the arbitral
proceedings, unless the arbitral tribunal considers it inappropriate to allow such
amendment having regard to the delay in making it without sufficient justification.

**Tribunal deciding ex aequo et bono and as amiable compositeur:** This is specifically
permitted, subject to the parties’express agreement, under section 1051(3) ZPO.

**Interim measures:** These are permitted and as we have already seen the parties may
seek interim measures from the courts even prior to the constitution of the arbitral tribunal.
Once the tribunal has been constituted, any of the parties may request such measures,
which the tribunal is competent to order. This order is binding upon the parties but the
order itself is not automatically enforceable and in accordance with section 1041(2) ZPO
any of the parties may request the courts to render the tribunal’s order enforceable. The
OLG Frankfurt has held that interim relief is in exceptional circumstances possible even
when an award has been rendered (assuming that the challenging party is lawfully pursuing
set-aside proceedings), but the claim for relief cannot be tantamount to suspending the
application of the terms of the award.277

**Time limits:** The ZPO does not impose a duty on the courts, unlike some other nations, to
invalidate or terminate the arbitral process if the tribunal has exceeded the time-limit for
rendering an award (if a limit has been agreed by the parties). The OLG Koblenz has held
that this is not a valid ground for non-enforcement of a foreign award, especially if the
challenging party failed to object when the time-limit had expired.278

**Multi-party arbitration and joinders:** There is no relevant provision in the ZPO and
commentators generally suggest that if the parties are able to agree on joint arbitrators
and the proceedings are fair without any undue advantage to anyone of the parties, there

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277 OLG Frankfurt, case SchH 6/13, judgment (13 June 2013).
278 OLG Koblenz, judgment (27 November 2012).
is no reason why the courts (and the tribunal) should prohibit multi-party arbitrations. In fact, this form of arbitration exists in the ICC and DIS institutional rules without any reported problems.279 In practice, the BGH has held that standard form arbitration clauses (in the case at hand an agency agreement with a stock broker) conferring the right to initiate or participate in arbitration to third parties must be interpreted restrictively.280

**Legal representation during arbitral proceedings:** There are no limitations or restrictions in the ZPO as to who may represent the parties in arbitral proceedings. As is the case in all jurisdictions, any applications to the courts can only be submitted or defended by registered lawyers.

**Arbitrators’ qualifications:** The ZPO does not place any limitations or restrictions as to who may be appointed to undertake the functions of an arbitrator.

Although not strictly a qualification, under section 1036 ZPO (and section 16.3 DIS Rules), members of the tribunal are required to be impartial and independent and disclose any newly-arising or apparent circumstance giving rise to evident partiality.

**Liability of arbitrators:** The Arbitration Law does not mention anything about the possible liability of arbitrators. Commentators suggest that the legal position of arbitrators is that of someone under contract and that their liability is the same (mutatis mutandis) as that of judges. As a result, they incur criminal liability for intentionally erroneous awards, as well as for negligence under the general law of obligations for any failure to disclose acts that would undermine their independence, if by doing so they cause harm to the parties.

**Notarised documents:** We have already seen that a consumer agreement submitting a dispute to arbitration may be concluded through a notarised document. The assistance of notaries is significant in German law. Under section 1053(4) ZPO, an award on agreed terms may, upon agreement between the parties, also be declared enforceable by a notary whose notarial office is in the district of the court competent for the declaration of enforceability according to section 1062 subs. 1, no. 2.

**Types of awards:** We have already seen that orders or rulings of tribunals on preliminary or interlocutory matters are to be dealt with in the form of preliminary orders, rather than awards. The form of award is reserved for final awards on the merits, decisions on costs (which may be rendered through a separate award),281 or additional awards.282 It is assumed that the tribunal may render partial awards with respect to discrete claims of the parties. With respect to awards on agreed terms, the OLG Munich has held that an arbitral award on agreed terms need not identify the parties as would a state court judgment caption or specifically indicate that the settlement constitutes a decision of the tribunal; the identity of the parties must, however, be ascertainable without doubt if a declaration of enforceability is to be issued pursuant to sections 1062(1) and 1064 ZPO.

**Setting awards aside:** The grounds for setting awards aside are laid down in section 1059(2) ZPO and they are similar to those listed in the relevant provision of the UNCITRAL Model Law.

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279 Lörcher (2009), at 377.
280 Case no XI ZR 168/08, judgment (8 February 2011).
281 Section 1057 ZPO.
282 Section 1058 ZPO.
Complaint on a point of law: This is a distinctive remedy and is regulated in accordance with section 1065(1) ZPO, as follows:

A complaint on a point of law to the Federal Court of Justice (Bundesgerichtshof) is available against the decisions mentioned under section 1062 (1)(2) and (4) [i.e. appointment of arbitrator; admissibility of arbitration agreement and; setting aside or decision on enforceability] if an appeal on points of law would have been available against them, had they been delivered as a final judgment. No recourse against other decisions in the proceedings specified in section 1062(1) may be made.

In accordance with paragraph 2 of section 1065 ZPO, the Court may only examine whether the order is based on a violation of a treaty or of another statute.

2.13. Greece

Greece uses a dual system of regulating arbitration. On the one hand, the 1999 Law on International Commercial Arbitration (LICA),\(^{283}\) which is based on the UNCITRAL Model Law (minus the 2006 amendments), applies to international arbitrations seated in Greece, whereas on the other hand Articles 867-903 of the Code of Civil Procedure (CCP) regulated all aspects of domestic arbitration. In equal measure, the CCP supplements the LICA in several respects, namely in that Articles 918-919 discuss the modalities related to the enforcement of awards (although the same issue is covered in LICA as regards the substantive requirements for the enforcement of foreign award), as well as by providing a more comprehensive commentary in cases where the LICA is silent.\(^{284}\) Hence, the courts may have recourse to relevant provisions (mutatis mutandis) if no solution is offered by the LICA. Moreover, it should be stressed that another relevant source is the Introductory Law to the CCP as well as several discrete laws dealing principally with investor-related matters and under which a unique statute-based, mandatory form of arbitration is imposed, as is the case with matters falling under the aegis of the regulatory authority for energy or in respect of public private partnerships (PPPs). The Greek courts have been heavily engaged with questions pertinent to arbitration and as a result a very rich jurisprudence on arbitration has emerged.

Scope of application (international versus domestic): The LICA and specialised laws, particularly where one of the parties is a foreign national or legal person, applies in respect of international arbitration, whereas Articles 867-903 of the CCP apply to cases of domestic arbitration. An arbitration is international under Article 1(2)(a) and (b) of LICA where the place of business of the parties is in different states at the time of their agreement, or where one of the following places is situated outside the state in which the parties have their places of business:

1. the place of arbitration, when this is determined by the arbitration agreements, or if its determination arises from the arbitration agreement;
2. any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected, or
3. the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

\(^{283}\) Law 2735/1999.

\(^{284}\) Although exceptionally Arts 882(2) and 882A(1) of the CCP refer to international arbitration.
Exceptionally, where a party has multiple places of business, the appropriate one for the purposes of arbitration will be considered that which is more closely connected to the arbitration agreement. If the party has no place of business, this will be its habitual residence and in the case of legal persons the place where they maintain an office.\textsuperscript{285}

**Scope of application (commercial versus non-commercial):** Disputes are not limited to commercial ones and need not only be contractual in nature. This applies to both domestic and international arbitration, save of course for the range of disputes that are not amenable to arbitration.

The parties may submit to arbitration all disputes, whether contractual or not, thus including tort\textsuperscript{286} and unjust enrichment\textsuperscript{287} as well as any relationships arising from negotiations. Such broad arbitration clauses are permissible assuming the construction as to whether they fall within the arbitration clause is determined with clarity.

**Institutional and/or mandatory arbitration:** Exceptionally, several investor and infrastructure-related laws provide for institutional and/or mandatory arbitration. Specifically, Article 37 of Law 4001/2011 provides for an amicable dispute-resolution and arbitral procedure, if agreed by the parties, administered by the Regulatory Authority of Energy (hereinafter “RAE”); Article 31 of Law 3943/2011 on combating tax evasion, which sets up a body of tax arbitrator for the resolution of pertinent tax disputes; Article 31 of Law 3389/2005 on Public Private Partnerships (“PPPs”) relating to agreements on the interpretation and application of PPPs; and Article 12 of Law 2687/1953 on the Investment and Protection of Foreign Capital.

**Arbitrability:** The general rule is that any dispute which the parties are free to dispose may be submitted to arbitration. This excludes disputes of a family nature, as well as labour disputes that are not of a purely commercial nature.\textsuperscript{288} Disputes involving bankruptcy and enforcement proceedings are equally excluded from arbitration.\textsuperscript{289} Antitrust disputes, according to the prevailing view, may be subject to arbitration, taken into account the promotion of private enforcement of antitrust rules at a European level. Disputes concerning harm to one’s personality are also excluded from arbitral proceedings.\textsuperscript{290} The arbitration of tax is possible under the terms of Law 3943/2011 on combating tax evasion as well as under international investment agreements.\textsuperscript{291}

**Agreement in writing:** Article 7(4) of LICA specifically admits oral agreements and also assumes the existence of an agreement where the parties have not claimed otherwise in limine litis. However, Articles 7(3)-(5) of LICA, while encompassing all modern means of communicating an arbitration agreement, seem to exclude email exchanges, although it is suggested by commentators that a formal law is in the pipeline to amend this state of affairs.\textsuperscript{292}

According to the Areios Pagos, the Supreme Court of Greece, in addition to the arbitration agreement, equally the instrument authorising the agent to act for the principal must be in

\begin{itemize}
\item Art 1(3) LICA.
\item Areios Pagos judgment 2004/2007.
\item Athens Appeals Court 1213/2006, 5522/2002, Athens Multi-Member First Instance Court 2953/2010.
\item Art 867 CCP excludes arbitration in respect of labour disputes in domestic arbitration, whereas Art 1(4) LICA does not if they have a commercial nature.
\item Vassardanis (2012), at 19-20.
\item Areios Pagos judgment 2004/2007.
\item Supreme Special Court judgment 24/1993
\item Vassardanis (2012), at 15.
\end{itemize}
writing;\textsuperscript{293} although this rule does not (exceptionally) apply to a company’s board of directors acting on behalf of the company.

According to Art. 168 (1) of the Greek Code of Private Maritime Law, the bill of lading (which may include an arbitration clause) is signed by the master of the vessel, and according to Art. 3 (3) of the Hague-Visby rules, the bill is signed by either the carrier or the master of the vessel or the agent of the carrier. So the arbitration clause binds the holder of the bill of lading, even though the latter does not bear his or her signature. Thus, an exemption from the rule of agreement in writing (Art. 869 of the CCP) is established, which is justified by the character of the bill of lading as a negotiable instrument. The Areios Pagos has issued a judgment (883/1994) declaring void a clause of a bill of lading excluding the jurisdiction of Greek courts, because it did not bear the shipper’s signature. However, following the EC Regulation No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Article 23 (1)), it is now argued\textsuperscript{294} by modern doctrine that the bill of lading (and its clauses) does not bind only the carrier, but also the shipper, the consignee and all the following holders of the bill, as this solution corresponds to the international practice known by the parties.

In accordance with Article 7(6) of LICA, an arbitration agreement is assumed to exist where a bill of lading refers to a carriage of goods contract that contains an arbitration clause. It is not necessary for an arbitration clause included in the general conditions of a contract to specifically refer to the general conditions as this is the ordinary assumption based on the parties’ agreement.\textsuperscript{295}

\textbf{Third parties}: The general rule is of course that agreements are only binding upon signatories. Some notable exceptions do exist however. In the case of partnership agreements referring to arbitration, the agreement does not bind only the original parties but also those who subsequently become partners.\textsuperscript{296} As mentioned before, a bill of lading with an arbitration clause binds all the parties as well.

Although neither LICA nor the courts have validated or specifically rejected the group of companies’ doctrine, there has been at least one judgment which held that an arbitration agreement entered into by a company binds the company’s shareholders.\textsuperscript{297} But one should not take this too far in the absence of any firm evidence, particularly new case law.

\textbf{Public policy}: Public policy under Greek law is much more fluid than in many other European jurisdictions. Article 33 of the Greek Civil Code defines public policy as anything that is contrary to good morals or, in general, to the public order. Hence, public order may be viewed differently from one period in time to another and its assessment is based on the judges’ common sense and other personal experience. It is thought by commentators that Article 33 refers to international public order.\textsuperscript{298} This is because the provision on the setting aside of arbitral awards lists as a ground a violation of a rule of international public policy, referring to Article 33. However, there have been other judgments which seem to exclude the “good morals” dimension of public policy, limiting it only to all mandatory rules enacted in the general interest.\textsuperscript{299}

\textsuperscript{293} Areios Pagos judgment 88/1977.
\textsuperscript{294} Kiantou-Pampouki (2007), at p. 595 et seq. (603).
\textsuperscript{295} Athens Court of Appeal 7195/2007.
\textsuperscript{296} Areios Pagos judgment 842/2008.
\textsuperscript{297} Athens Appeals Court 6815/1994.
\textsuperscript{298} Vassardanis (2012), at 48.
\textsuperscript{299} Athens Appeals Court judgment 8445/2005
The requirements under Article 49 of the Introductory Law to the CCP regarding the formalities for state entities to enter into arbitration agreements are of a domestic public policy nature and do not limit the competence of the state in entering into international agreements.\[300\]

The Areios Pagos has determined that excessive (disproportionate) arbitral costs are an affront to public policy.\[301\]

**State entities:** Article 49 of the Introductory Law to the CCP provides that the state (and its instrumentalities) may enter into written arbitration agreements following approval by the pertinent ministers. These limitations are not relevant as concerns agreements with non-Greek actors in accordance with investment-related legislation.\[302\]

**Ad hoc versus institutional arbitration:** Institutional arbitration and *ad hoc* arbitration are both acceptable under Greek law. Article 902 restricts the setting up of arbitral institutions to chambers of commerce, stock exchanges and other professional unions of a public law nature under the form of a ministerial decree.

**Multi-party arbitration and joinders:** This is not mentioned in LICA or the CCP but is generally unproblematic as long as it is predicated on the parties’ consent and provided that in each case the principle of equality is respected, which includes the right of each party to appoint its chosen arbitrator.

**Powers of tribunals:** If the parties’ agreement may be so interpreted, arbitrators are free to determine additional or incidental requests that are directly related to and which are dependent on the subject-matter of the dispute.\[303\]

Arbitrators are allowed to adapt contracts to fundamentally changed circumstances.\[304\]

**Tribunals acting ex aequo et bono:** This is indeed possible and if the parties have asked the tribunal (without any further stipulations) to decide whether there has been consideration under the contract there is an assumption that it will assess this on the basis of equity.\[305\]

**Disclosure:** In domestic arbitration it is suggested by commentators that there is no duty of disclosure.\[306\] In contrast, in accordance with Article 12 of LICA there is an express duty of disclosure in the course of international arbitration.

**Court assistance and intervention:** The general idea is that arbitral tribunals do not possess authority to take action requiring any kind of enforcement and hence all relevant procedures are undertaken by the courts as a matter of assistance to the tribunal. Under Article 8(1) the parties may apply to the court to determine the validity of the arbitration agreement with a view to finding out if jurisdiction exists in the first place.

\[300\] Areios Pagos judgment 565/1965.
\[301\] Areios Pagos judgment 1829/2006.
\[304\] Art 288 and 388 of the Greek Civil Code.
\[305\] Athens Appeals Court judgment 4966/1975.
\[306\] Vassardanis (2012), at 28.
Under Article 887(2) of the CCP although the tribunal may rule on its own jurisdiction (kompetenz-kompetenz) the parties may mutually decide that the best forum for assessing this matter is the courts. Hence, it seems that arbitral tribunals seated in Greece do not possess kompetenz-kompetenz power as a matter of inherent right.

Under Article 11(4) of LICA if the period for the appointment of arbitrators elapses the parties may approach the courts and request the court to make the appointment. If the parties decide to petition the courts to disqualify an arbitrator the judgment rendered by the court is not subject to further appeal.307

Under Article 27 of LICA, given that the tribunal does not possess the authority to compel witnesses to testify or take evidence in any other manner, the parties and the tribunal may request the court’s assistance in this regard.

Interim and conservatory measures: In accordance with Article 889 CCP the arbitral tribunal in domestic arbitrations does not have the power to order or modify interim measures. These have to be requested from the courts. In the context of international arbitration, although the tribunal possesses the authority to order both interim308 and conservatory measures,309 it does not have the power to enforce these itself and in order to do so the parties or the tribunal must make a request to the courts.310

Arbitrators’ qualifications: Article 11(1) of LICA confirms the position that there are no restrictions to anyone assuming the function of arbitrator and no discrimination is made between Greek and other nationals. Judges are allowed to serve as arbitrators.311

Party autonomy and appointment of arbitrators: The parties are not only free to appoint the arbitrators of their choice, but they can also choose to appoint any number, even or odd.312 An award rendered by a single arbitrator, although the parties had originally agreed to two arbitrators but one of the parties failed to appoint its arbitrator is considered a valid award under Greek law.313

Liability of arbitrators: Just like all arbitration statutes predicated on the UNCITRAL Model Law, the LICA is silent as to the liability of arbitrators. However, Article 881 of the CCP is applicable mutatis mutandis. It provides that arbitrators are liable for fraud or gross negligence as well as for abandoning their office without authorisation from the parties. This liability is not contractual but of a tort nature because it requires evidence of harm to the parties. Under Article 237 of the Greek Penal Code they are also criminally liable if found to have accepted a bribe or in any other way implicated in a corrupt conduct related to the proceedings.

Legal representation in arbitral proceedings: There are equally no restrictions under Greek law as regards the representation of the parties. The parties may represent themselves or appoint any other person of their choice, whether a lawyer or otherwise.

307 Art 13(3) LICA.
308 Art 17 LICA.
309 Art 9 LICA.
310 Art 17(2) LICA.
311 See 871A of the CCP in this regard.
312 Vassardanis (2012), at 28.
**Award types:** It is suggested by commentators that tribunals can only render final awards and that all other rulings related to interim issues (such as those dealing with jurisdiction) will not be enforced as awards.\(^{314}\) There is no provision in the LICA or the CCP on additional awards.

**Setting awards aside:** The grounds set out in Article 34(2) of LICA are identical to those in the UNCITRAL Model Law, save for the fact that in respect of public policy, it is not Greek public policy that is at stake but “international public policy”. A violation of public policy suffices to set an award aside.

A violation of the parties’ right to equal treatment by the tribunal is sufficient reason to set the award aside.\(^{315}\)

The Areios Pagos has held that an award may be set aside if the arbitrator failed to hold oral hearings.\(^{316}\) Obviously, if the parties had agreed that no oral hearings should take place then the tribunal would be exceeding its power if it were to conduct an oral hearing. A mistaken assessment of the evidence by the arbitrators is not a valid ground for setting an award aside.\(^{317}\)

**Appeals against awards:** Unless otherwise agreed by the parties, no appeals against awards are possible\(^{318}\) (save for setting aside proceedings).

**Fees and costs:** In both domestic and international arbitration, the losing party must in principle pay the fees and costs of the arbitrators. However, the arbitral tribunal may decide on a different allocation of the costs and fees between the parties, including the parties' legal costs, having regard to the circumstances of the case and especially the outcome of the arbitration.\(^{319}\)

### 2.14. Hungary

Arbitration in Hungary is governed by the 1994 Arbitration Act,\(^{320}\) which has been modelled on the UNCITRAL Model Law, with only slight variations and divergences. The 1979 Decree on Private International Law\(^{321}\) has very limited application to international arbitrations, namely with respect to applicable law in situations where the parties have not made a choice and are unable to agree on one once arbitral proceedings have begun. Specialised laws apply in certain cases (these will be considered in other sections) as well as the country’s Code of Civil Procedure (CCP) is used to supplement the Arbitration Act. Traditionally, especially before Hungary’s communist transformation, there was a strong culture of arbitration, which has once again been revived. Although the courts are receptive to the use of arbitration and their role and function within this process, some of the older generation judges, or those not fully exposed to international arbitral culture, remain somewhat apprehensive.

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315 Areios Pagos judgment 511/2007
317 Areios Pagos judgment 1273/2003
318 Art 35(1) LICA and Art 895 CCP.
319 Art 32(4) LICA.
320 Act No LXXI of 1994 on Arbitration.
321 Decree No 13 of 1979 on Private International Law.
Scope of application (international versus domestic): Although the Arbitration Act is modelled on the Model Law, which by its terms only applies to international arbitrations, Article 1 of the Act specifies that its application extends to all arbitral proceedings seated in Hungary. Articles 1 to 45 apply to domestic arbitrations and Articles 46 onwards to international arbitrations. The wording of Article 1 is, however, confusing because international arbitrations may be seated in Hungary and it is only when one reaches Article 46 (chapter VI) that one realises that international arbitrations are subject to a different regime. However, the law specifically applicable to international arbitrations is not detailed and it is assumed that where this is silent on a particular issue the rules applicable to domestic arbitrations will apply mutatis mutandis.

In accordance with Article 47(1) and (2) of the Arbitration Act an arbitration is considered international if: a) the parties to an arbitration agreement have their seat, or failing a seat, their places of business in different states, or: b) one of the following places is situated outside the state in which the parties have their seat (place of business), namely the place of arbitration as determined in the arbitration agreement or any place where a substantial part of the obligations originating from the legal relationship of the parties is to be performed, or with which the subject-matter of the dispute is most closely connected. Moreover, if a party has more than one place of business, the place of business which has the closest relationship to the arbitration agreement will be considered. Alternatively, if the party has no place of business, its habitual residence will be considered as its place of business.

Scope of application (commercial versus non-commercial): Article 3(1)(a) stipulates that arbitration may take place “if at least one of the parties is a person dealing professionally with an economic activity and the legal disputes is in connection with this activity”. This clearly excludes non-commercial activities, but given that the relationship between the disputing parties need not only be of a contractual character, the scope of what constitutes a commercial activity is especially broad.

Consumer disputes: As a result of the above construction of Article 3(1)(a) of the Arbitration Act it seems prima facie plausible to assume that B2B and B2C consumer disputes may be submitted to arbitration. Hungarian law has set up arbitration boards but these do not administer arbitral proceedings in the manner familiar to arbitration or that regulated under the Arbitration Act. Rather, they are set up by chambers of commerce and are meant to reconcile the parties. It is a prerequisite that the consumer has made an effort to settle the dispute with the business amicably, even if through an exchange of emails. Access to the arbitral panels does not require a contract or other agreement containing an arbitration clause.

Institutional versus ad hoc arbitration: Both forms of arbitration are allowed in Hungary and Article 2(1) of the Arbitration Act stipulates that arbitral institutions can only be set up by chambers of commerce, whether jointly or individually. As a result, until recently there were only two institutions, namely the Hungarian Chamber of Commerce and Industry (HCCI) and the Hungarian Chamber of Agriculture. The latter, however, cannot not undertake cases concerning international arbitration and in accordance with Article 46(3) of the Arbitration Act only the HCCI can host international arbitral proceedings.

Exceptionally, Hungarian law distinguishes between general cases and some specialised cases of arbitration. Hence, it has set up the Court of Arbitration of the Stock Exchange and the Commodity Exchange under Law No. XXXIX of 1994 on the Commodities Exchange and Transactions of the Commodities Exchange and Law No. CXI of 1996 on the Offering of
Securities and Investment Services and on the Stock Exchange. The purpose is to administer specialised arbitration with respect to any transaction related to stocks and commodities. There are now other arbitral institutions, other than the HCCI, that can administer specialised arbitrations in the fields of sports and energy disputes.

Arbitrability: The general rule is found in Article 3(1)(b), which provides that a dispute is arbitrable if the parties can dispose of the subject matter of the proceedings. There are certain areas that are not arbitrable and these will be discussed in this section. Given that only commercial-related disputes are arbitrable, this naturally excludes all family, criminal law and labour disputes. This exclusion is also codified in chapters XV to XXIII of the CCP. In accordance with Article 202(3) of the 1996 Act on the Offering of Securities all relevant disputes are arbitrable, namely securities and investment services; exchange transactions; broker appointments; disputes over the charter or fundamental rules of exchange and; disputes over the statutes, rules and practices of a clearing house.

The civil law dimensions of disputes relating to intellectual property rights and anti-trust may lawfully be submitted to arbitration by the parties. This is not the case with bankruptcy-related disputes, which may only be handled by the courts.

Public Policy: Public policy is not in practice applied in Hungary in order to frustrate foreign awards. Although not strictly defined, it would seem that it is confined to conformity with Hungarian law and does not encompass abstract constructions such as public morality. However, if the award violates public policy (in the sense described above) the courts may set the award aside or otherwise refuse to enforce and execute a foreign award. It should be emphasised that the Supreme Court has held in one particular case that an award is contrary to Hungarian public policy if it is found to endanger the fundamental socio-economic and political institutions of the country.

Agreement in writing: This does not differ from the UNCITRAL Model Law and Article 5(3) of the Arbitration Act implicitly stipulates that oral agreements do not qualify as agreements in writing because they are not capable of offering a permanent record of the parties’ intention. However, reference to a document containing an arbitration clause in a contract concluded in writing will qualify as arbitration agreement with the proviso that the reference forms part of the contract. Equally, it shall also be regarded as an arbitration agreement concluded in writing, if one of the parties states in his statement of claim, and the other party does not deny in his defence, that an arbitration agreement was in fact concluded between them.

State entities: Nothing in Hungarian law or the Arbitration Act excludes state entities from entering into arbitration clauses. However, problems could arise if a private party pursues arbitration against a Hungarian state entity in Hungary as the latter may claim immunity. It is therefore recommended that relevant arbitration clauses stipulate a seat other than Hungary.

322 Art 62 of the Exchange Commodities Act.
323 Szasz & Horvath (2000).
324 Szasz & Horvath (2000).
325 Art 55(2)(b).
326 Art 59(b).
Multi-party arbitration: There are no pertinent rules for multi-party arbitrations or joinders under the Arbitration Act, but unless a joinder affects the parties’ right to equality or is against their will, it will be considered null and void.

Legal representation during arbitral proceedings: There are no requirements similar to the qualifications for arbitrators in respect of the parties’ representation. This may be undertaken by anyone, including non-Hungarian admitted lawyers. However, it is implicitly assumed that a power of attorney is required in every case.

Tribunal Powers: Arbitrators are not allowed to fill gaps in the contract, unless the parties otherwise consent. However, they do possess the power to adapt a contract to fundamentally changed circumstances if the situation arises.330

Tribunal acting ex aequo et bono: This is indeed possible if specifically requested by the parties in accordance with Article 49(3) of the Arbitration Act.

Arbitrators’ qualifications: Although there are no general restrictions as to who may become an arbitrator, Article 12 lays down several limitations which are not generally encountered in other arbitration statutes in Europe. More specifically, the following persons are not eligible for appointment as arbitrators:

(a) those who have been barred from public affairs by a non-appealable court judgment
(b) those who have been placed under curatorship by the court [and to which decision no further appeal is possible];
(c) those who have been sentenced to imprisonment to be executed [with no further appeal being possible], until they are dispensed from the disadvantages attached to a criminal record.

Moreover, in accordance with Article 6(2)(d) of Act No LXVII of 1997 on the Status of Judges provides that Hungarian state court judges may not act as arbitrators. Finally, the rules of the HCCI (otherwise known as the Budapest rules) stipulate that arbitrators must possess the requisite expertise related to each particular case and therefore this adds a further layer of limitation.331

Liability of arbitrators: There are no provisions regarding the liability of arbitrators in the Arbitration Act or in other parts of Hungarian legislation. It is suggested by commentators that the general rules of liability apply to arbitrators, namely Article 339 of the Hungarian Civil Code which is predicated on the continental civil law tradition of tort liability, whereby a person is liable to another where his unlawful conduct produces harm.332 If this is the only source of liability it follows that contractual liability is not recognised for arbitrators, but of course this tells us nothing as to whether the same rule applies where one of the parties claims that the award harms his interests. Logic dictates that this is not the case, hence, liability arises where the conduct in question is wilful or the result of gross negligence. Contractual liability, in addition to liability from tort, may arise in the opinion of this author under the terms of Article 11 to the Arbitration Act which binds arbitrators to full secrecy as to the proceedings.

Court assistance and intervention: The general rule under Article 7 of the Arbitration Act is that the courts will not intervene in arbitral proceedings, unless this is warranted by

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331 Szasz & Horvath (2000), at 10-11.
the parties and the request or petition is allowed under the law. There is no equivalent provision in Articles 45ff relating to international arbitrations.

Under Article 20 of the Arbitration Act, although challenges against arbitrators are to be first determined by the tribunal, failing a satisfactory outcome, the aggrieved party may petition the local courts which must render a final judgment on the issue at hand.

In accordance with Article 37(3) of the Arbitration Act, given that the tribunal has no coercive powers to compel witness to appear or to order the production of evidence (or indeed to compel experts), requests of this nature may be undertaken through the local courts.

Under Article 54 of the Arbitration Act no appeal may be lodged to the courts in relation to the award (i.e. as to the merits or the correct application of the law).

Interim and conservatory measures: Arbitral tribunals may order interim measures of protection in order to safeguard assets or evidence in accordance with Article 37(1) and (2) of the Arbitration Act. Given that tribunals do not possess coercive powers and where the costs are likely to be disproportionately high, Article 37(3) provides that all action relevant to interim measures may be undertaken by the courts following a request from the tribunal. Tribunals do not possess the power to order conservatory attachments, although commentators suggest that the power to grant interim measures under Article 37 encompasses the power to order pre-award attachments.333

Setting awards aside: The grounds set out in Article 55 of the Arbitration Act with regard to setting aside of awards rendered in Hungary are the same as those listed in the UNCITRAL Model Law. However, it should be pointed out that the Hungarian Act does not provide for the possibility that the court remit the award to the tribunal in order to eliminate (or remedy), if at all possible the grounds for setting aside.334 In accordance with Articles 13(1)-(2) of the Arbitration Act the number must always be odd. If the parties go ahead with proceedings where the number of arbitrators is even, such an award may validly be set aside by the courts in accordance with Article 55 of the Arbitration Act.

Award types: There are no restrictions in the Arbitration Act as to the form of a ruling made by tribunals. Hence, an award need not only concern the final award on the merits of the dispute, but all interim rulings on interlocutory matters may also take the form of awards and produce appropriate res judicata. This includes additional awards under Article 43 of the Arbitration Act.

Costs and fees: The Arbitration Act does not state how the fees and costs are to be calculated with Article 41(1) simply stating that the final award must address costs and fees. It is assumed that a particular practice exists in Hungarian legal culture and that in any event the matter is to be resolved in accordance with the HCCI (Budapest) rules or any other rules chosen by the parties. Commentators suggest that usually, the losing party has to pay the total amount of the arbitrators’ fees and the costs of the arbitration, including the reasonable expenses of legal representation. Article 6 of the Regulation on the Arbitration Fees, Costs and Expenses of the Parties of the Budapest Rules allows, however, for the tribunal to apportion the costs between the parties, if it deems it justified.335

334 Art 34(4) UNCITRAL Model Law.
335 Szasz & Horvath (2000), at 22.
2.15. Ireland

Ireland’s current arbitration legislation came into existence in 2010 through the country’s Arbitration Act. Not only is it based on the 2006 version of the UNCITRAL Model Law but the Model Law itself becomes an integral part of Irish law. In accordance with section 6 of the Act, the Model Law has the force of law in Ireland and under section 8(1) and (2) when applying the Act and the Model Law, Irish courts should base their interpretation on the travaux préparatoires of the Model Law. This is exceptional even by European standards and certainly demonstrates Ireland’s conviction as to the universal nature of the principles enshrined in the Model Law. Despite the fact that the Model Law has been adopted virtually unchanged, several alterations and additions have been inserted in the Arbitration Act. It should also be noted that the attitude of Irish courts to arbitration is equally liberal and international in outlook. In Barnmore Demolition and Civil Engineering Ltd v Alandale Logistics Ltd and Others, the High Court, in determining the appropriate standard of review as to the existence of an arbitration agreement made use of well-known international academic literature.

Scope of application (international versus domestic): Articles 2(1) and 6 of the Act make clear that the Act encompasses both international and domestic arbitrations. The Act does not, however, define when an arbitration is domestic and when it is international. Given that the Model Law has the force of law any definition therein will be authoritative, albeit the distinction seems moot if the legislature has not distinguished between the two in terms of legal effects. As a result, it seems fair to argue that all arbitrations seated in Ireland, whether domestic or international, shall be treated in the same manner and under the same rules in the Act.

Scope of application (commercial versus non-commercial): The Act does not mention whether its application extends to both commercial and non-commercial activities. It must be assumed that because the Act follows the Model Law and since the latter encompasses only commercial relationships, this is also the case with the Irish Act.

Consumer disputes: Article 31(1) of the Arbitration Act follows the relevant ECJ rulings and specifies that arbitration clauses in contracts are void and that a submission agreement is valid only if entered into after a dispute arose and provided that it has been individually negotiated. There is an additional requirement that the monetary value of the dispute must exceed €5,000 in order to be considered for arbitration. In order to avoid any ambiguities, Article 2(1) of the Arbitration Act clarifies that “consumer means a natural person, whether in the state or not, who is acting for purposes outside the person’s trade, business or profession”. There is an additional clarification in Article 31(2) which stipulates that the term “consumer” shall not include “an amateur sportsperson who, in his or her capacity as such, is a party to an arbitration agreement that contains a term concerning the requirement to submit to arbitration”.

With respect to fees and costs, Article 21(6) of the Arbitration Act further stipulates that:

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336 Act No 1 (2010). Importantly, however, while the 2010 Act overwhelmingly governs arbitration in Ireland, it does not have retroactive effect, and so there remain cases covered by the 1954-1998 Acts.
337 Barnmore Demolition and Civil Engineering Ltd v Alandale Logistics Ltd and Others, case no 2010/5910P, judgment (11 November 2010).
338 However, the court ultimately made no decision on this point.
339 Although at Article 2(1)(b) the Act does define a domestic arbitration as any arbitration that is not an international commercial arbitration;
“Without prejudice to the generality of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000, an arbitration agreement—

(a) to which one of the parties to the agreement is a consumer, and

(b) a term of which provides that each party shall bear his or her own costs, shall be deemed to be an unfair term for the purposes of those Regulations.”

**Institutional versus ad hoc arbitration:** Traditionally, where arbitration was used in Ireland the parties preferred *ad hoc* arbitration. With the exception of construction disputes, when an institution is used the preference continues to be for foreign arbitration institutions, particularly the ICC.

**Agreement in writing:** Article 2 of the Arbitration Act provides that what constitutes an agreement in writing shall be determined on the basis of option I of Article 7 of the UNCITRAL Model Law. As a result, the existence of an agreement in writing under Irish law is deemed to be considerably wide, encompassing agreements recorded in any form, whether oral, by conduct, incorporation in standard conditions or other (e.g. tacit approval of other party’s submission). Naturally, it also encompasses electronic forms of communication as long as there is a record of these.

**Arbitrability:** The Arbitration Act does not make reference to the usual disclaimer whereby any dispute that is susceptible to settlement by the parties may be submitted to arbitration. Rather, it offers no general rule whatsoever but simply states the available exceptions to arbitrability. Article 30(1)(a) of the Arbitration Act specifically excludes labour disputes relating to the terms or conditions of employment or the remuneration of employees whether in the private or public sector. Subparagraph (b) equally excludes disputes under Article 70 of the country’s 1946 Industrial Relations Act. The wording of Article 20 of the Arbitration Act strongly suggests that although disputes relating to the demand of specific performance by one of the parties are arbitrable, this is no so in respect of requests for performance in respect of contracts for the sale of land. However, it is not clear whether all other issues (if any) emanating from a contract for the sale of land are arbitrable as Article 20 only refers to requests for performance. We have already discussed the limited arbitrability of consumer disputes so we will avoid referring to this in the present section.

Article 27(1) of the Arbitration Act provides significant latitude to the trustee or assignee of a bankrupt estate in honouring pre-existing arbitration clauses. Paragraph 2 further provides that where:

(a) a person who has been adjudicated bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement, and

(b) any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, and

then, any other party to the agreement or the assignee or, with the consent of the committee of inspection, the trustee in bankruptcy, may apply to the court having jurisdiction in the bankruptcy proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement and that court may, if it is

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340 In *Kastrup Trae-Aluvinduet A/S (Denmark) v Aluwood Concepts Ltd (Ireland)*, case no 129 MCA, High Court judgment (13 November 2009), it was held that an arbitration agreement had been validly incorporated into the contract between the parties by reference to standard conditions and that it was irrelevant that the other party did not have a copy of the conditions to which the contract referred (citing *Credit Suisse Financial Products v Societe General d’ Enterprises*, [1997] ILPT 165 (CA)).
of the opinion that having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

**Public policy:** Public policy is relevant to the enforcement of foreign awards as well as in respect of set aside proceedings for awards rendered in Ireland. The Arbitration Act makes no reference to public policy and as a result it is suggested that this is to be very narrowly construed. In *Brostrom Tankers AB v Factorias Vulcano SA* the High Court confirmed this narrow construction of public policy, noting that its application would be justified if it involved “some element of illegality, or that the enforcement of the award would be clearly injurious to the public good, or possibly that enforcement would be wholly offensive to the ordinary responsible and fully informed member of the public”.

341 This statement demonstrates that Irish courts are willing to rely on rules of international public policy. In the same judgment, however, the High Court also held that an award will be refused on grounds of public policy if it is found to violate “the most basic notions of morality and justice”. This is not a narrow construction of public policy as it is dependent on abstract determinations by the courts and is reminiscent of the Greek definition.

**Multi-party arbitration and joinders:** Article 16 of the Arbitration Act allows a tribunal to join one or more cases into consolidated proceedings, but only if the parties so agree.

**Arbitrators’ qualifications:** There are no requirements in the Arbitration Act and hence there are no formal restrictions. Commentators suggest, however, that in Ireland arbitrators are overwhelmingly professional people, often lawyers, whether or not they have specific qualifications relating to arbitration.

**Default number of arbitrators:** Exceptionally, in accordance with Article 13 of the Arbitration Act the default number of arbitrators in case the parties are in disagreement is one.

**Liability of Arbitrators:** Unlike many European statutes (or applicable civil law legislation) Article 22 of the Arbitration Act introduces absolute immunity for arbitrators and their appointing arbitral institutions, codifying with respect to arbitrators preceding caselaw.

342 The same level of absolute immunity applies to all employees, advisors and agents of arbitrators in accordance with paragraph 2 of Article 22. This may prove a significant incentive for international arbitrations to be held in Ireland.

**Legal representation in proceedings:** There are no restrictions as to who can represent a party during arbitral proceedings. As a result, this may be undertaken by non-lawyers, although in practice it is unlikely that anyone other than a lawyer, whether barrister or solicitor, will represent the parties.

**Court assistance and intervention:** In *Barnmore Demolition and Civil Engineering Ltd v Alandale Logistics Ltd and Others* the High Court pondered about the standard of review required in assessing the existence of an arbitration agreement, namely whether there should be a prima facie review or a fuller judicial consideration. The High Court looked at various authorities but ultimately did not state which was applicable because under the facts of the case there was clearly no arbitration agreement. Commentators suggest that

341 *Brostrom Tankers AB v Factorias Vulcano SA*, High Court judgment (19 May 2004).
342 *Patrick Redahan v Minister for Education and Science*, High Court judgement (2005).
the court’s reasoning suggests that in future cases it is more likely to apply a full judicial review. No appeals to the High Court are permitted when the latter, in the absence of any agreement between the parties, appoints arbitrators.

Where a challenge against an arbitrator has taken place and the arbitrator does not remove himself from office the parties may, in accordance with Article 14 of the UNCITRAL Model Law, request the High Court to do so. The Arbitration Act is silent on this matter and so reference may be had to the relevant provisions in the UNCITRAL Model Law.

**Powers of tribunals:** In accordance with Article 14 of the Arbitration Act, and contrary to the laws of other European nations, tribunals seated in Ireland may administer oaths and swear witnesses and experts in relation to the arbitral proceedings. This means, of course, that where a witness is found to have intentionally provided false information he or she may suffer some form of liability (tort, or criminal) as a result. There have, however, been no reported cases of this being done in at least the past 50 years.

Interestingly, under Article 15 of the Act, a foreign tribunal can request assistance in the taking of evidence situated in Ireland. This is not a reference to a floating arbitration but rather concerns arbitrations seated abroad where crucial evidence and witnesses are in Ireland. The unique nature of this provision is that a foreign tribunal may petition the High Court directly without an intervention by the courts of the lex arbitri.

**Tribunals acting as amiable compositeurs:** There is no specific provision in the Act dealing with whether tribunals may act as amiable compositeurs or ex aequo et bono. As a result, Article 28(3) of the UNCITRAL Model Law is applicable.

**Interim and conservatory measures:** There is no reference to interim measures in the Arbitration Act and as a result Article 17 of UNCITRAL Model Law is directly applicable. The parties may request the tribunal as well as the local courts, in this case the High Court. As regards conservatory measures, it is generally accepted that the tribunal does not possess power to make orders of restraint to a party with respect to that party’s assets.

**Confidentiality:** There is no reference in the Arbitration Act to confidentiality and hence any relevant provisions of the Model Law are directly applicable. In general terms, the confidentiality of the proceedings will often have been agreed beforehand by contract and hence the parties will be under an obligation to respect this. However, just like all other legal systems, where the parties or the tribunal request assistance or intervention by the courts such proceedings will be public unless under exceptional circumstances the court orders some degree of confidentiality because of other overriding interests. It should also be noted, however, that while English law and caselaw are not binding in Ireland they are often followed by Irish courts. This tradition increases the likelihood that Irish courts will ultimately imply a duty of confidentiality in arbitration, as has been done by English courts.

**Types of awards:** There is no reference in the Arbitration Act to what form orders of the tribunal may take. Again, this issue may be resolved in accordance with the relevant provision of the UNCITRAL Model Law and given that no restrictions are put forward it is fair to say that the tribunal may present interim orders as awards. In fact, Article 23 of the Arbitration Act makes it clear that tribunals may make partial orders in the guise of awards.

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This means that they are subject to enforcement (and res judicata) in the same manner as final awards and that equally they may become the subject of set aside proceedings.

**Setting awards aside:** This is not stipulated in the Arbitration Act and hence the grounds for setting awards aside are those listed in Article 34(2) of the UNCTRAL Model Law. As has already been stated in respect of public policy, all the grounds listed in the Model Law are to be construed narrowly. In a case concerning claims of excess authority by the tribunal it was held by the High Court that this ground should not be used in order to second-guess the decision of the arbitrator.345

**Fees and costs:** The general rule seems to be that enshrined in Article 21(2) of the Arbitration Act, according to which, unless the parties have otherwise specified, “an agreement of the parties to arbitrate subject to the rules of an arbitral institution shall be deemed to be an agreement to abide by the rules of that institution as to the costs of the arbitration.”

In the case of domestic arbitrations, “the arbitral tribunal shall, on the request of any of the parties to the proceedings made not later than 21 working days after the determination by the tribunal in relation to costs, make an order for the taxation of costs of the arbitration by a Taxing Master of the High Court, or as the case may be, the County Registrar; and the Taxing Master, or as the case may be, the County Registrar, shall in relation to any such taxation, have (with any necessary modifications) all the functions for the time being conferred on him or her under any enactment or in any rules of court in relation to the taxation of costs to be paid by one party to another in proceedings before a court.” The taxing master therefore has the duty of assessing the quantum of legal costs. This process is not relevant in the context of international arbitrations as the assessment is made by the parties or the tribunal.

**2.16. Italy**

The most recent arbitration legislation in Italy was adopted in 2006 by Legislative Decree No 40 (Arbitration Law), which was preceded by Law no 80/2005 by which the Parliament delegated to the government the responsibility for amending existing arbitration law. The Arbitration Law does not exist as a discrete legislative instrument but was incorporated in the Italian Code of Civil Procedure (CCP) and more specifically it amended, where relevant, the CCP’s existing provisions in Book Four thereto, Articles 806ff. The Arbitration Law was not based on the UNCTRAL Model Law, although naturally it is not too far removed from it and the requirements regarding the enforcement of foreign awards are modelled, almost verbatim, on the New York Convention. It should be added that in addition to the CCP, a recent Italian statute, namely Legislative Decree 5/2003, introduced a lex specialis arbitration regime in respect of unlisted companies that have designated arbitration their preferred mode of intra-se dispute resolution. Given that the CCP leaves some issues open, particularly arbitrability, it is likely that other statutory provisions may in fact be claimed by the parties, and upheld by the courts, as being relevant to arbitral proceedings which at the time of writing are not obvious.

**Scope of application (international versus domestic):** Prior to the current amendments, the CCP distinguished between domestic and international arbitrations. The existing version of the CCP, following the 2006 amendments, eliminates this distinction altogether and instead distinguishes between *rituale* and *irrituale* proceedings. This is

345 Sam Snowdy, Tom Snowdy, Fergal Browne and Paul Browne v David Mavroudis, case no 54 MCA, High Court judgment (19 June 2013).
unique to Italian law and what it essentially boils down to is that *rituale* proceedings constitute the classic form of arbitration whereby proceedings are subjected to the procedural rules of the CCP, whereas in *irrituale* proceedings the parties choose their own procedural rules (free arbitration) but the award made is not enforceable but has the force of a binding contract. As a result, the largest part of the CCP does not apply to *irrituale* proceedings in accordance with Article 808ter of the CCP. The Supreme Court of Cassation has confirmed that *irrituale* awards have the effect of a binding contract. Hence if a party subject to an irrituale award fails to comply the other party may commence an action for breach of contract.

**Scope of application (commercial versus non-commercial):** The CCP does not distinguish between commercial and other types of non-commercial disputes as such. Rather, Article 808bis stipulates that arbitration may extend to disputes not encompassed in a contractual relationship, thus leaving open the possibility of trusts, torts etc. This type of extra-contractual arbitration is a novel development to Italian arbitration law.

**Arbitrability:** Article 806(1) of the CCP supports the classical rule whereby a dispute is arbitrable if the parties are free to dispose of its subject matter. In accordance with paragraph (2) of this provision, in conjunction with Article 409 of the CCP, individual labour disputes may not be submitted to arbitration whereas collective labour disputes can be submitted, provided this is stipulated in the parties’ collective labour contract or agreement.

Although not specifically stipulated in the CCP, Italian courts have long permitted the submission to arbitration of the private elements of anti-trust disputes.

**Consumer arbitration:** The situation is far from clear despite the introduction of a new Consumer Code in 2005 through Legislative Decree 206/2005. Commentators suggest that although the new Code allows arbitration *rituale* in respect of consumer disputes – without the limitations usually imposed by other European nations as regards the conscionable character of pre-dispute arbitration clauses or the requirement of individually negotiated submission agreements – consumers are free to submit the dispute anew to the courts for final resolution. This solution, however, is not without problems because it is contrary to the general rule in the CCP whereby arbitral awards produce res judicata in accordance with Article 824bis of the CCP.

**Corporate arbitration:** Under the terms of the 2003 Corporate Arbitration Law arbitration clauses incorporated in a non-listed company’s articles of incorporation or its by-laws (which represents the rule in Italy) bind all members of the company. Similar clauses in the by-laws of listed companies are regulated by the relevant provisions of the 2006 Arbitration Law as incorporated in the CCP. Disputes arising out of non-listed companies’ by-laws must be filed at the Registry of Enterprises and be available to all members. The law allows third-party intervention in the arbitral proceedings, either voluntarily or following a party’s request or an order by the tribunal, but only as regards the company’s members.

**Agreement in writing:** Article 807 of the CCP generally follows the UNCITRAL Model Law in this regard and although it excludes emails they may in fact be encompassed by this

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346 Case no 527/2000, Cassation Court judgment (13 August 2000).
348 Art 140(6) of the Consumer Code.
349 See Patania (2004), at 489-90.
350 See Anglani & Liguori (2007), at 49.
provision if emails are viewed as tantamount to “tele-transmission”. It is strongly suggested by practitioners that there is little doubt that, in general, emails fall within the scope of “tele-transmission”. The uncertainty, if any, arises from the fact that the law speaks of “telematic messages in compliance with current regulations”. To oversimplify the problem under Italian law is rather one of proving the sender’s identity (riferibilità). This is why it is normally suggested that arbitration agreements sent through certified email accounts (PEC) should be held valid while those sent through non-certified accounts may or may not.

The absence of oral agreements to arbitrate is however presumed given the absence of relevant references. It is suggested by practitioners that oral agreements are excluded altogether by the fact that Article 807 does not employ permissive language in that respect. It says that the arbitration agreement “must be in writing”, otherwise it is null and void.

**Arbitration agreement**: A unique feature of the CCP is the introduction of a presumption whereby if there is doubt as to the boundaries of the arbitration agreement, the tribunal or court interpreting it must do so in the broadest manner possible as “extending to all disputes arising from the contract or from the relationship to which the agreement refers”\(^{351}\). This provision eliminates the need for carefully drafted model clauses the objective of which is to make it absolutely certain that the agreement to arbitrate extends to all disputes arising from the parties’ relationship.

**Setting aside of irrituale awards**: The CCP distinguishes between the applicable recourse mechanisms available against *rituale* and *irrituale* awards. Irrituale awards are subject to set aside proceedings (but with all the particularities associated with such contractual awards), whereas *rituale* awards to challenges related to nullity, revocation and third party opposition in accordance with Article 827. *Irrituale* awards may be set aside by the competent court under Article 808(2)ter:

1. if the arbitration agreement is invalid or the arbitrators have decided questions exceeding its limits and the relevant objection has been raised during the arbitral proceedings;
2. if the arbitrators have not been appointed in the form and manner contemplated by the arbitration agreement;
3. if the award has been rendered by a person who could not be appointed as arbitrator according to Article 812;
4. if the arbitrators have not applied the rules prescribed by the parties as a condition for the validity of the award;
5. if the principle of due process (principio del contraddittorio) has not been respected in the arbitral proceedings.

**Court intervention and assistance**: In accordance with Article 810(2) of the CCP if the parties are ultimately unable to appoint one or more arbitrators they can petition the president of the tribunal in whose district the arbitration has its seat to make the appointment.

Where the parties do not agree with the fee demanded by the arbitrator the amount of the expenses and of the fee shall be determined, upon the arbitrators’ petition and after

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351 Art 808-quater CCP.
hearing the parties, by an order of the president of the court in accordance with Article 814(2) of the CCP. This order, in accordance with paragraph 3 of Article 814 is enforceable against the parties but is subject to recourse under Article 830(4) CCP on grounds of nullity.

In accordance with Article 816ter(3) of the CCP should a witness refuse to appear before the arbitrators the latter, if they deem it necessary in the light of the circumstances, may petition the president of the tribunal of the seat of the arbitration to order his or her appearance before them.

Under Article 819-ter of the CCP the courts must stay proceedings where the parties have entered into a submission to arbitration. Paragraph 3 states that pending the arbitral proceedings, no requests may be submitted to the judicial authorities regarding the invalidity or lack of efficacy of the arbitration agreement.

Under Article 830(2) of the CCP if the award is annulled on the grounds indicated in Article 829 paragraphs 1, numbers (5), (6), (7) (8), (9), (11) or (12), 3, 4 or 5, the court of appeal shall decide the merits of the dispute, unless the parties have otherwise provided in the arbitration agreement or in a subsequent agreement.

**Arbitrators’ qualifications:** Although Italian law does not impose any qualitative restrictions for the appointment of a person as arbitrator, Article 812 explicitly states that a person may not be appointed to serve as arbitrator if he or she has no legal capacity to act, whether fully or partially. This does not only include persons that are minors or who lack the mental faculties to enter into contractual or other legal relationships, but may also encompass persons that are prohibited by reason of a sanction imposed against them from undertaking a particular office. There are no restrictions imposed upon judges as regards their appointment as arbitrators in accordance with Law no 276/1997, provided that there are no conflicts of interest in a broad sense.

**Liability of Arbitrators:** It should be noted from the outset that in accordance with Article 813(2) of the CCP, arbitrators are not considered public officials or persons entrusted with a public service. The latter part of this characterisation is not without problems, given that the CCP recognises that awards produce the same legal effects as judgments rendered by the courts. Hence, it is not at all clear in what way arbitrators are not discharging an otherwise public service. This issue aside, Article 813ter(1) of the CCP recognises that an arbitrator can be liable for damages to the parties if he or she:

1. has fraudulently (dolo) or with gross negligence (colpa grave) omitted or delayed acts that he or she was bound to carry out and has been removed for this reason, or has renounced the office without a justified reason;

2. has fraudulently or with gross negligence omitted or prevented the rendering of the award within the time limit fixed according to Articles 820 and 826.

In addition, arbitrators are also liable for (general) fraud and gross negligence in accordance with Article 2(2) and (3) of Law no 117/1998. Clearly, liability is based on tort (not contract) and is based on individual action or omission, thus relieving those co-arbitrators that are not at fault.\(^{352}\) In case an arbitrator is found liable he shall not be entitled to remuneration or expenses and will be liable for damages to the parties.

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\(^{352}\) Art 813(7)-ter CCP.
Challenges against arbitrators: Whereas the majority of European arbitration statutes provide general grounds of challenge against arbitrators, Article 815(1) of the CCP lists a number of very precise grounds. Hence, an arbitrator may be challenged:

1. if he or she does not have the qualifications expressly agreed by the parties;
2. if he or she or an entity, association or company of which he or she is a director has an interest in the case;
3. if he or she or his or her spouse is a relative up to the fourth degree or a cohabitant or a habitual table-companion of a party, one of its legal representatives or counsel;
4. if he or she or his or her spouse has a pending suit against or a serious enmity to one of the parties, one of its legal representatives or counsel;
5. if he or she is linked to one of the parties, to a company controlled by that party, to its controlling entity or to a company subject to common control by a subordinate labour relationship or by a continuous consulting relationship or by a relationship for the performance of remunerated activity or by other relationships of a patrimonial or associative nature which might affect his or her independence; furthermore, if he or she is a guardian or a curator of one of the parties;
6. if he or she has given advice, assistance or acted as legal counsel to one of the parties in a prior phase of the same case or has testified as a witness.

Legal representation during proceedings: Given that inrituale arbitration is subject to the parties’ agreement, unless the chosen rules otherwise demand, the parties can appoint anyone to represent them. The situation as regards rituale arbitrations is somewhat ambiguous. Article 816bis(1) of the CCP provides that “the parties may take part in the proceedings through counsel. Failing an express limitation, the power of attorney granted to counsel shall extend to any procedural activities, including the waiver of the proceedings and the determination and extension of the time limit for rendering the award”. It is not clear whether the parties simply “may” or “must” appoint legal counsel in rituale arbitration, although one is inclined towards a negative view as this would conflict the long-standing prevalence of party autonomy in commercial arbitration and would be out of tune with the spirit of the arbitration provisions in the CCP. However, several practitioners argued that they are not entirely sure whether this would apply to international arbitration proceedings in Italy.

Transfer of action from State courts to arbitration: Law Decree n. 132 of 12 September 2014 has introduced a new mechanism for actions pending before a State court. The parties can agree to transfer the dispute to arbitration; in this case, the State court forwards the file of the proceedings to the local bar association. Only members of the latter with at least three years of membership can be appointed as arbitrators. If parties cannot agree on the appointment, the arbitrators are selected by the president of the bar association.

The statement of claim, originally filed before the State court, is converted into a request for arbitration, and its substantive and procedural effects (e.g. the effects on limitation periods) are preserved.

This reform aims at promoting arbitration as a mechanism of alternative dispute resolution, thus reducing the backlog of Italian courts. However, the reform illogically limits the choice of arbitrators. Since only the members of the local bar association can be arbitrators,
Parties cannot, in this particular type of arbitration, appoint different kinds of professionals, even if their dispute requires technical expertise which lawyers may not possess. In addition to that, this mechanism excludes foreign arbitrators, and lawyers from different areas of the Country.

**Tribunal powers**: Article 816bis(3) of the CCP provides that “all issues arising in the course of the proceedings shall be decided by the arbitrators with an order which is not subject to deposit and may be revoked, unless they elect to decide by an interim award”. Under Article 816ter(6) of the CCP the arbitrators may request the public administration (*pubblica amministrazione*) to provide written information related to activities and documents of the administration in question that they deem necessary to acquire to the proceedings.

Arbitral tribunals’ kompetenz-kompetenz power is guaranteed under Article 817(1) of the CCP.

Furthermore, pursuant to Article 817(3) the party that during the arbitration proceedings fails to raise the objection that the other parties’ pleadings exceed the limits of the arbitration agreement, may not, on this ground, challenge the award.

**Interim and conservatory measures**: The general rule is contained under Article 818 of the CCP whereby tribunals do not possess either power.

**Tribunals acting ex aequo et bono**: This is possible if the parties so wish in accordance with Article 822 of the CCP.

**Multi-party arbitrations**: Article 816-quater of the CCP is one of the few provisions in arbitral statutes regulating multi-party arbitration. Paragraph 1 clearly states that, should more than two parties be bound by the same arbitration agreement, each party may request that all or some of them be summoned in the same arbitral proceedings and may by common agreement appoint an equal amount of arbitrators. If the parties fail to reach a common agreement as to the joinder of their cases there will be as many arbitration as there are individual defendants (paragraph 2). Where, however, a joinder of the cases is necessitated by law and the parties do not reach mutual agreement on a joinder the arbitration cannot proceed (paragraph 3). The inherent complexity of multi-party arbitration is best addressed through administered/institutional arbitration. The rules of most institutions would overcome such difficulties with specific provisions that are perfectly valid and enforceable in Italy.

**Third party intervention**: In accordance with Article 816-quinquies the voluntary intervention or the joining of a third party in the arbitration is admissible only with the agreement of the third party and the parties and with the arbitrators' consent.

**Set-off claims**: Another exceptional feature of the CCP is its regulation of set-off defences that are outside the arbitration agreement. Article 817-bis provides that the arbitrators shall be competent to decide on the objection of set-off, within the limits of the value of the main claim, even if the counterclaimed amount does not fall within the scope of the arbitration agreement.

**Requirements for awards**: In accordance with Article 823 of the CCP awards must contain:
1. the name of the arbitrators;
2. the indication of the seat of the arbitration;
3. the indication of the parties;
4. the indication of the arbitration agreement and of the claims of the parties as set out in the final pleadings (conclusioni);
5. a brief statement of the reasons;
6. the decision of the issues (dispositivo);
7. the signature of the arbitrators. The signature of a majority of the arbitrators shall suffice, provided that mention is made that it was deliberated with the participation of all the arbitrators and that the other arbitrators were either unwilling or unable to sign.
8. the date of the signatures.

**Res judicata:** *Rituale* awards produce res judicata upon deposit with the registry of the tribunal of the district in which the arbitration has its seat in accordance with Article 825(1) of the CCP. The court, after ascertaining that the award meets all formal requirements, shall declare the same enforceable by decree.

**Recourse against *rituale* awards:** These may be challenged on grounds of nullity, revocation or third party opposition, in accordance with Article 827 CCP [this is the equivalent of set aside proceedings]. Grounds for nullity under Article 828 are:

1. if the arbitration agreement is invalid, without prejudice to the provision of Article 817, paragraph 3 [to be read: paragraph 2];
2. if the arbitrators have not been appointed in the form and manner laid down in Chapters II and VI of this Title, provided that this ground for nullity has been raised in the arbitral proceedings;
3. if the award has been rendered by a person who could not be appointed as arbitrator according to Article 812;
4. if the award exceeds the limits of the arbitration agreement, without prejudice to the provision of Article 817, paragraph 4 [to be read: paragraph 3], or has decided the merits of the dispute in all other cases in which the merits could not be decided;
5. if the award does not comply with the requirements of Article 823, numbers (5), (6) and (7);
6. if the award has been rendered after the expiry of the prescribed time limit, subject to the provision of Article 821;
7. if during the proceedings the formalities prescribed by the parties under express sanction of nullity have not been observed and the nullity has not been cured;
8. if the award is contrary to a previous award which is no longer subject to recourse or to a previous judgment having the force of res judicata between the parties, provided such award or such judgment has been submitted in the proceedings;
9. if the principle of contradictory proceedings (principio del contraddittorio) has not been respected in the arbitration proceedings;
10. if the award terminates the proceedings without deciding the merits of the dispute.
and the merits of the dispute had to be decided by the arbitrators;

11. if the award contains contradictory provisions;

12. if the award has not decided some of the issues and objections raised by the parties in conformity with the arbitration agreement.

2.17. Latvia

Through the adoption of Part D of the 1999 Civil Procedure Law the Latvian Parliament introduced, or better amended, arbitration (and its regulation) in the country’s legal system. A subsequent amendment to these provisions in 2005 rendered the regulation of arbitral proceedings as Part of the Civil Procedure Law (CPL). The initial rationale behind the incorporation of relevant proceedings in the CPL was to adapt the UNCITRAL Model Law into the Latvian legal system. However, its adaptation is unique to transitional legal systems in the sense that Latvia had only recently emerged from a non-capitalist economy without any experience of party autonomy, freedom of contract or arbitration. As a result, although the idea of a liberal and modern arbitration law seemed attractive the Latvian legal system was ill-prepared for the pitfalls that were associated with an under-developed civil procedure. For whatever reasons – largely to do with the privatisation of civil justice and in order to limit court interference in arbitral proceedings – the 1999 arbitration law intentionally left out certain significant elements of the UNCITRAL Model Law, especially (for the purposes of our analysis of Latvia) the absence of set aside proceedings against arbitral awards rendered in Latvia as well as the degree of court assistance to arbitral proceedings. As this may at first sight seem like a rather liberal rule that limits court interference and protracting tactics it nonetheless does little to allay fears of violations relating to due process, the fairness of proceedings and conformity to the law. As will be demonstrated in the course of this country analysis there does exist a remedy following an application of the winning party to the Latvian courts to issue a writ of execution of the award; certain claims may be made at that stage, but this raises several questions. Chief among these is that although the award is res judicata under Latvian law it may still be subject to challenges and claims by the losing party and this state of affairs creates a legally awkward position. Secondly, if enforcement of the award is sought abroad the losing party may use that opportunity to challenge the Latvian awards on several grounds that should have ordinarily been dealt under Latvian law and by Latvian courts. The courts of the enforcement country will have to undertake this process anew and may have to decide relevant matters not only on the basis of the lex fori but also Latvian law.

One of the most significant problems associated with the practice of arbitration in Latvia is the large number (more than 200) of arbitral institutions operating in the country. This is because of Article 486 of the CPL which essentially allows the establishment of arbitral institutions by any legal entity, despite the fact that these be set up as non-profit organisations. Although the underlying rationale was that trade organisations and chambers of commerce would take up the mantle of establishing arbitral institutions, instead these have been set up by law firms, private corporations and other business enterprises with a view to resolving disputes with their contracting counterparts through their own institutions. This gives rise to significant conflicts of interest issues where proceedings are directed and controlled throughout by one of the parties to the dispute. This situation is further compounded by the absence of set aside proceedings against awards and hence it is possible to produce one’s “own” award under conditions that are conducive to bribery,
money laundering and other illicit dealings and yet claim res judicata. The few commentaries on this state of affairs are alarming and stipulate that the government has appointed a group of experts to amend relevant parts of the law. At the time of writing, a new Latvian arbitration law is in the process of being adopted. However, as the legislative process is not yet complete, this summary will focus on Latvia’s current arbitration law.

Several commentators have argued that despite the flourishing of arbitration (with all the problems identified above), the Latvian Supreme Court has generally exhibited hostile tendencies towards arbitration. A key example is a judgment by which it declared the inapplicability of the separability doctrine despite the fact that the relevant provisions in the CPL are based on the UNCITRAL Model Law which is a pioneer of separability. As a result of this stance in July 2009 at the General Meeting between the Civil Matters Department and the Civil Matters Court Chamber of the Supreme Court, a common interpretation of Article 493(2) of the CPL was eventually agreed upon, providing for the survival of the arbitration clause in the event of the termination of the main agreement. Other examples include its attention to formalities regarding the rendering of awards in accordance with Article 530 of the CPL. In one case the Supreme Court refused to enforce an award because it did not mention the tribunal’s composition even though it was signed by all arbitrators.

**Scope of arbitration (international versus domestic):** Article 1(2) of the draft Arbitration Act applies only to arbitrations seated in Latvia.

**Arbitrability:** According to Article 487(1) of the CPL “all disputes relating to civil matters may be referred to an arbitration court” save:

1. where at least one party is a State or local government institution or where the arbitral award may affect the rights of State or local government institutions;
2. where the dispute relates to changes in the registration of civil status deeds;
3. where the dispute relates to the rights and duties of persons under guardianship or trusteeship or to their interests protected by law;
4. where the dispute relates to the establishment, alteration or termination of property rights in immoveable property, if the rights of one of the parties to the dispute are limited by law with respect to the ownership, possession or use of immoveable property;
5. where the dispute relates to the eviction of a person from living quarters;
6. for disputes between employees and employers if the dispute has arisen when entering into, amending, terminating or implementing an employment contract, as well as when applying or translating provisions of regulatory enactments, a collective labour contract or working procedures (individual labour rights dispute);
7. where the dispute relates to the rights and duties of persons with respect to whom insolvency or bankruptcy proceedings have been initiated before the arbitral award has been rendered.

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355 Case SPC-4, judgment (9 January 2008).
356 Decision of the General Meeting between the Civil Case Department and Civil Case Court Chamber of the Supreme Court as of 2 July 2009 “On validity of the arbitration agreement, when the creditor unilaterally withdraws from an agreement which contains an arbitration agreement”.
357 Case No SPC-48, Latvian Supreme Court Judgment (13 August 2008).
The grounds for non-arbitrability in Article 5 of the draft Law remain identical. In addition to these, the Latvian Supreme Court has ruled that consumer disputes are not arbitrable unless the particular terms are individually negotiated between consumer and business. This has resulted in a huge decrease of consumer disputes being submitted to arbitration. Equally, in accordance with Article 487(2) of the CPL any dispute falling under so-called special adjudication proceedings is not deemed arbitrable. The list of special adjudication proceedings is set out in Article 251 of the CPL, among which one may note adoptions, the capacity to act as trustee etc.

Agreement in writing: Article 492 of the CPL requires that an agreement for submission to arbitration be in writing, without, however, specifying whether this includes oral agreements or is otherwise implicit from the very purpose of the parties’ relationship. In practice, the requirements in Article 492 encompass email and other electronic correspondence and no challenge to form has arisen. Nonetheless, the current version of Article 492 is not consistent with international practice or the more recent amendments to the UNCITRAL Model Law.

Annulment of awards/setting aside: As has already been mentioned there is no provision in the CPL by which arbitral awards may be set aside for any of the reasons set out in the UNCITRAL Model Law. As a result, once awards are rendered they are considered res judicata. This means that the parties may make use of such awards in their legal relationships and it is assumed that the losing party will accept to abide by the award, especially given the absence of any other procedure for officiating awards. The only challenge against awards (in a way similar to annulment proceedings) is that arising from the moment the losing party fails to accept the terms of the award and the winning party must then apply to the courts in order to issue a writ for its execution. This procedure is set out in Articles 533 of the CPL.

Unlike other legal systems which make no distinction between institutional and ad hoc arbitration, Latvian law does not afford the guarantees of Article 533 CPL to ad hoc awards, but only to institutional awards. As a result, the winning party risks having a useless (and un-enforceable) award if he or she opts for ad hoc arbitration, whose survival and operability pretty much rests on good faith.

According to Article 536 of the CPL, the judge shall refuse to issue a writ of execution, if:

1. the particular dispute may be resolved only by a court;
2. the arbitration agreement has been entered into by a person that lacks the capacity to act;
3. the arbitration agreement has been set aside or declared null and void in accordance with the applicable law;
4. a party has not been notified of the arbitral proceedings in the appropriate manner, or due to other reasons has been unable to submit his or her explanations, and this significantly has or could have affected the arbitral proceedings;
5. the party has not been notified of the appointment of an arbitrator in the appropriate manner, and this significantly has or could have affected the arbitral proceedings;
6. the arbitral tribunal has not been established or the arbitral proceedings have not taken place in accordance with the provisions of the arbitration agreement or of Part D of this Law; or
7. the arbitral award has been made regarding a dispute that was not provided for in the arbitration agreement or it does not comply with the provisions of the arbitration agreement, or it decides matters that fall outside the scope of the arbitration agreement. In such a case, the writ of execution may be issued for that part of the arbitral award, which complies with the arbitration agreement provided that it can be separated from the issues which fall outside the scope of the arbitration agreement.

Exceptionally, in accordance with Articles 483 and 484 of the CPL if serious material or procedural errors are found in a case that has been reviewed only by a court of first instance and has not been appealed under the procedure provided under the CPL for reasons independent from the parties, or if the rights of state or municipal institutions that have not been parties to the case are breached, these officials may file a protest to the Supreme Court. Such a protest is done ex officio as per Article 483 and the relevant grounds are set forth in Article 484.

Liability of arbitrators: The CPL does not contain any special provisions on arbitrator liability and it is assumed that general civil liability rules apply (hence, arbitrators do not possess the same status as judges in respect of immunity). Some guidance may be given by a judgment of the Supreme Court where it held in passing that arbitrators are liable for rendering un-enforceable awards.

Witnesses: Article 521(1) of the CPL provides that in arbitration proceedings the permitted means of proof are party statements, written evidence, material evidence and expert opinions. Because witnesses are not listed it has long been assumed by reason of judicial practice that witnesses are excluded from this process. This is a rather unique anomaly which in practice is remedied by presenting witnesses as party representatives who are otherwise allowed to appear in proceedings and provide testimony.

Provisional and conservatory measures: The CPL does not contain a specific provision that deals with interim or other measures. Given the non-interference of the courts in arbitral proceedings it is natural that if any such measures exist at all they are to be granted by the tribunal first and foremost and only in limited circumstances by the courts following an application by one of the parties. The parties cannot apply to the courts but exceptionally under Article 496 of the CPL the courts may issue an order securing the parties’ claims by means of an emergency judgment which must be rendered before the tribunal has been set up. This situation is unfortunate and the result of poor drafting because it means that not only are the parties unable to petition the courts but that even if the tribunal orders such measures and the party against which these were issued refuses to obey the claimant cannot petition the Latvian courts to enforce them by writ or other means! Interim relief orders issued by tribunals do not have the authority of awards and should not be rendered as such.

Types of awards: Unlike other legal systems which recognise various types of awards other than final ones, Latvian law recognises only final and supplementary awards, although in accordance with Article 529 of the CPL if the parties were to reach a settlement in the midst of ongoing arbitral proceedings this is to be recorded in a “decision” which although not an award has the same legal effects as an award (Art 529(3) CPL). The latter are meant to make corrections or additions to a final award which has omissions or other mistakes.

Institutional vs. ad hoc arbitration and which institutions are preferred: Counsel usually prefer Latvian institutions and ad hoc arbitration is very rare in practice.
Background of arbitrators: As already discussed there are no particular qualifications specified by law. Under Article 498 CPL any person may be appointed as arbitrator, as long as that person is at least 18 years old, has a good reputation, possesses a solid legal education, has at least three years professional experience and has no criminal record for crimes requiring intent.

Costs and fees: These are borne by the parties as specified in the institutional rules.

Legal representation during arbitration: There is no requirement that representatives of the parties be lawyers or Latvian nationals.

2.18. Lithuania

In 2012 the Lithuanian Parliament promulgated the Law on Commercial Arbitration, which effectively replaced the country’s 1996 Law. The new Law is based on the UNCITRAL Model Law and the courts are obliged to take this into consideration when interpreting the Arbitration Law, albeit the Model Law does not supersede the Law as is otherwise the case with Malta and Ireland. The new Law introduced an extensive section on interim measures and the Lithuanian Supreme Court has shown an acute awareness of relevant issues by adopting a number of important judgments on seminal issues of the arbitration process. By way of illustration, it has held that the express intention of the parties to submit a dispute to arbitration should be reflected in the arbitration agreement and is an integral aspect of the latter. The Arbitration Law (the Law) is complemented by relevant parts of the Code of Civil Procedure but these deal exclusively with the formalities of enforcement of foreign arbitral awards and need not concern us much here. Overall, experts suggest that although arbitration is viewed favourably relatively few disputes are submitted to arbitration annually and hence there is much scope for improvement in terms of persuading the business community to consider arbitration as an alternative dispute mechanism.

Scope of application (international versus domestic): The Law does not distinguish between domestic and international arbitration and in fact applies without distinction to all arbitrations taking place on the territory of Lithuania, in accordance with Article 2(1) of the Law. Naturally, other provisions deal with the recognition and enforcement of foreign arbitral awards.

Scope of application (commercial versus non-commercial): The Law – and given its name – applies only with respect to commercial disputes, but these are to be broadly interpreted. Article 3(11) provides a definition of commercial disputes as encompassing “any controversy between the parties over issues of fact and/or law arising out of contractual or non-contractual legal relationships, including, but not limited to, supply of goods or provision of services, distribution, commercial agency, factoring, lease, contracting, consulting, engineering services, licencing, investing, financing, banking activity, insurance, concession, creation and carrying out of joint ventures and any other industrial or business cooperation, compensation for damage caused through violation of rules of the competition law, agreements concluded based on public procurement, transportation of goods or passengers by air, sea and land.” This is modelled on footnote 2 to the 2006 UNCITRAL Model Law but is by no means identical.

358 Case no 3K-7-999 Lithuanian Supreme Court judgment (25 November 2003) and case no 3K-3-542 Lithuanian Supreme Court judgment (29 October 2004).
Annex B - Key Features of National Arbitration Law in the Member States and Switzerland

**Arbitrability:** Article 12 sets out the general rule that all disputes are arbitrable, save for several specific exceptions (hence there are no surprises in specialised laws or regulations)\(^\text{360}\). As a result, the parties may not resort to arbitration in order to resolve disputes which should be heard under administrative proceedings or hear cases, the examination of which falls within the competence of the Constitutional Court. Disputes arising from family legal relationships and disputes regarding registration of patents, trademarks and design may not be referred to arbitration (although private inter-se disputes on IP issues are arbitrable). Disputes arising from employment contracts shall not be arbitrable except if the arbitration agreement was concluded after the dispute arose. Significantly, the Lithuanian Supreme Court recently held that disputes arising from sports contracts (in the case at hand, a claim for remuneration of a professional basketball player) are arbitrable as an exception to the general rule.\(^\text{361}\)

Equally, disputes to which a state or municipal enterprise or an institution or organisation, except for the Bank of Lithuania, is a party, may not be referred to arbitration, unless the prior consent of the founder of such enterprise, institution or organisation regarding the arbitration agreement has been obtained.\(^\text{362}\) This seems to be in conflict with the rule set out in Article 3(5) of the Law whereby there are no impediments to arbitration agreements being entered into by state entities. Moreover, paragraph 4 of Article 12 states that the Government or its authorised state institution may conclude an arbitration agreement in respect of disputes relating to commercial contracts concluded by the Government or its authorised state institution under the general procedure. This constitutes poor drafting which may give rise to serious ambiguity in the future and needs to be addressed by the country’s legislature.

**Bankruptcy:** In accordance with Article 49(7) of the Arbitration Law, the commencement of bankruptcy proceedings against a party to arbitration does not have the effect of invalidating the arbitration agreement or in any other way diminishing the jurisdiction of the tribunal.

**Institutional versus ad hoc arbitration:** Both types of arbitration exist in Lithuania and although there are no statistics it seems that of the relatively few arbitrations undertaken each year the preference is for institutional arbitration. By far the most important arbitral institution and the one that undertakes the bulk in Lithuania is the Vilnius Court of Commercial Arbitration (VCCI).

**Consumer arbitration:** Article 12(2) of the Law makes it clear that arbitration clauses in consumer contracts are void and that in order for consumer arbitration to take place the relevant submission agreement must be entered into after the dispute arises. Although the Law makes no further qualifications, it is assumed that an individual negotiation takes place and that no other clauses are inserted in the parties’ agreement.

**Public policy:** Public policy is relevant in relation to the enforcement of foreign awards and as a ground for setting aside awards rendered in Lithuania. The concept itself is not elucidated in the Arbitration Law or elsewhere for that matter but it is largely agreed that

\(^{360}\) Even so, the Lithuanian Supreme Court in case no 3K-7-304/2011, judgment (17 October 2011) held that disputes related to public procurement are regulated by the Public Procurement Law and are not susceptible to arbitration. This judgment is clearly contrary to the dictates of Art 12 of the Arbitration Law and generates concern as to the future role of the Supreme Court in sensitive areas of international commerce and arbitration.

\(^{361}\) Case No 3K-3-65/2011, Lithuanian Supreme Court judgment (21 February 2011).

\(^{362}\) Art 12(3) of the Arbitration Law.
the applicable standard would take international public policy into consideration. At a very basic level, the violation of Lithuanian constitutional principles, such as due process rights or party equality would suffice given that these are also recognised at international level, whether as human rights norms or as general principles of judicial proceedings. It has been held, for example, that the imposition of excessive interest in an award amounts to usury and therefore contravenes public policy.

It is worth mentioning that in the case *Apatit Fertilizers S.A. v. AB Lifosa*, the Supreme Court of Lithuania emphasized that the principle of public policy has to be understood as the fundamental interests of the State and individuals. Moreover, the court emphasized that in such cases, public policy has to be given an international and not a domestic dimension.

**State entities:** In accordance with Article 3(5) of the Arbitration Law there are no impediments to arbitration clauses signed by state entities, subject to arbitrability requirements laid out in Article 12(3) of the Arbitration Law which are discussed in this chapter’s arbitrability section. This freedom is also stipulated in Article 12(4) of the Law.

**Means of interpretation:** Article 4 of the Arbitration Law introduces some novel means of interpretation. For one thing, the UNCITRAL Model Law, with past and future updates, is a subsidiary means of construction. Moreover, in accordance with paragraph 6 the Law shall be interpreted by reference to the “principles of justice, reasonableness, good faith and other general principles of law.” Although this raises some concerns as regards indeterminacy and renders judicial determinations uncertain, the effects of this provision are mitigated by the dictates of paragraph 7 which stipulates that the “Law shall be interpreted to ensure the maximum compliance of the arbitration procedure taking place according to this Law with the arbitration principles.”

**Agreement in writing:** Article 10(2) of the Arbitration Law generally follows the relevant provision in the UNCITRAL Model Law and construes an arbitration agreement as being in writing very broadly; however, it excludes oral agreements.

**Multi-party arbitration and joinders:** Article 37 of the Arbitration Law specifies that arbitral cases may be joined following agreement by the parties.

Article 14(5) of the Arbitration Law refers to multi-party arbitration, the rationale being to assist parties as much as possible to choose arbitrators and thus not to frustrate the arbitration clause. It goes on to say that where two or more claimants are involved in arbitration, when submitting their claim they shall present a written agreement regarding joint appointment of an arbitrator. If they fail to present a written agreement regarding the joint appointment of an arbitrator, the co-claimants shall present such agreement within 20 days following the day of submitting the claim. Should the co-claimants fail to appoint an arbitrator within this term, the chairman of the permanent arbitral institution shall appoint an arbitrator within 20 days following the expiration of the above term. Such decisions are final and not subject to appeal.

363 *Apatit Fertilizers SA v AB Lifosa*, case No. 3K-3-145, Lithuanian Supreme Court judgment (21 January 2002).
364 Case No 3K-3-161/2008, Lithuanian Supreme Court judgment (12 March 2008); Lithuanian Supreme Court, case No. 3K-3-443/2008, judgment (30 September 2008).
365 Case No 3K-3-612/2004, Lithuanian Supreme Court judgment (17 November 2004).
366 Art 14(8) of the Arbitration Law.
Court assistance and intervention: The Court of Appeals is responsible for all actions regarding the enforcement of foreign awards and the setting aside of awards rendered in Lithuania. In respect of all other matters for which the assistance of the courts is sought, the Vilnius District Court shall have jurisdiction.\textsuperscript{367}

Under Article 16(3) of the Arbitration Law, the decision of the Vilnius District Court as to the challenge against an arbitration shall be final and not subject to further appeal.

In accordance with Article 25(5) of the Arbitration Law should a party apply to the Vilnius District Court to issue and enforcement order in respect of an interim measure ordered by the arbitral tribunal and the District court refuses to do so, its decision is subject to appeal to the Court of Appeals.

Interim measures: Article 20(1) grants power to the tribunal to order interim measures with a view to ensuring the fulfilment of the parties’ aims and preserving relevant evidence. Such measures include (but are not limited) to the following:

- prohibiting a party from participating in certain transactions or performing certain actions;
- obliging a party to protect property relating to the arbitral proceedings, providing a deposit, bank or insurance guarantee;
- obliging the party to preserve evidence that may be relevant to the arbitral proceedings.

The ruling of the arbitral tribunal on interim measures shall be subject to enforcement and gives rise to res judicata. However, should the ruling of the arbitral tribunal on interim measures not be complied with, the Vilnius District Court shall, upon the party’s request and according to the procedure established in the Code of Civil Procedure issue an enforcement order.\textsuperscript{368} It is notable that any of the parties may apply to the Vilnius district court for interim measures even before the commencement of arbitral proceedings in order to secure crucial evidence.\textsuperscript{369}

The above-mentioned interim measures must first be notified to the parties, but in accordance with Article 21(1) one of the parties may apply to the tribunal to impose interim measures in the form of a preliminary order without notice to the other party so as to prevent such party from taking any actions that are likely to impede the application of interim measures. Such a preliminary order is binding upon the parties but is not capable of enforcement by the courts.\textsuperscript{370}

Arbitrators’ qualifications: There are no limitations as to who may be appointed as arbitrator, although serving judges may only be appointed if they undertake such role pro bono.\textsuperscript{371}

Liability of arbitrators: There is no mention to such liability in the Arbitration Law or the local case law. It is suggested by commentators, however, that arbitrators are liable for gross negligence and intentional behaviour that gave rise to harm.\textsuperscript{372}

\textsuperscript{367} Art 9 of the Arbitration Law.
\textsuperscript{368} Art 25(1) and (2) of the Arbitration Law.
\textsuperscript{369} Art 27(1) of the Arbitration Law.
\textsuperscript{370} Art 21(7) of the Arbitration Law.
\textsuperscript{371} Pavan & Cerniauske (2012), at 7-8
\textsuperscript{372} Pavan & Cerniauske (2012), at 9.
Legal representation during arbitral proceedings: There are no restrictions in the Arbitration Law as to who may represent the parties. Equally, there are no limitations as to whether a lawyer needs to be admitted for practice in Lithuania. As a result, all foreign lawyers are eligible to represent clients in arbitral proceedings taking place in Lithuania.

Powers of Tribunals: Tribunals possess exclusive power to rule on their own jurisdiction. Its ruling may be recorded in the form of a partial or final award in accordance with Article 19(3) of the Arbitration Law.

In accordance with Article 33(7) of the Arbitration Law the arbitral tribunal shall have the right to establish the admissibility, sufficiency and relevance of any evidence to the case.

Tribunal acting ex aequo et bono: Article 39(3) allows the parties to request the tribunal to decide their case on the basis of equity or as amiable compositeur.

Types of awards: In accordance with Article 42(1) of the Arbitration Law arbitral tribunals may render final awards on the merits, partial awards as well as additional awards. In all other cases they may offer orders on procedural matters.

Recognition of foreign awards (procedure): Upon recognition by the Lithuanian Court of Appeals, a foreign arbitral award has the same status as a national judgment and is enforced in the manner prescribed by the Code of Civil Procedure, in accordance with Article 51(4) of the Arbitration Law.

Lithuanian judicial practice suggests that courts may suspend proceedings on the recognition and enforcement of foreign arbitral awards, applying general rules of the CCP. This is typically the case where there is an ongoing criminal, civil or other administrative case the resolution of which crucial to the outcome of arbitral proceedings.

Costs and fees: Article 48(3) simply sets out the basic rule whereby unless the parties have agreed otherwise, in view of the circumstances of the case and the conduct of the parties the arbitral tribunal shall allocate the arbitration costs between the parties in its arbitral award.

Under Article 7(4) of the Rules of VCCA and unless the parties agree otherwise, the losing party compensates the costs of the other party. If the claim is partially successful, the parties share the arbitration fees in proportion to their successful and unsuccessful claims. If the dispute is settled, parties shall share the arbitration fees in proportion to the accepted and rejected claims, unless the amicable agreement between the parties provides otherwise.

Setting awards aside: The grounds for setting awards aside under Article 50 of the Arbitration Law are identical to those in the UNCITRAL Model Law. Arbitrability and public policy are to be examined ex officio by the Court of Appeals.

373 Art 19(1) of the Arbitration Law.
374 Case No 3K-7-55216, AS "Parekss Banka" v UAB "Parex lizingas" Judgment (16 December 2004).
375 Pavan & Cerniauske (2012), at 31-32.
2.19. Luxembourg

The New Code of Civil Procedure of 1998 (NCCP) is the principal body of legislation that regulates arbitration in Luxembourg, particularly Articles 1224-1251 thereto. Although this replaces the Grand Ducal Decree of 1981 on arbitration, it does not change the landscape of arbitration in the country given that the case law of the courts (some of which dates back to the nineteenth century) remains pretty much effective. Moreover, the NCCP is not modelled on the UNCITRAL Model Law given the desire for continuity. The NCCP is broader in scope as it encompasses relationships other than commercial and significantly its regulation of arbitration is based on regulation of judicial proceedings376 and hence some of its features may seem odd to arbitration lawyers. It is for this reason that where both the parties and the arbitration-related provisions of the NCCP are silent on a particular matter, the arbitrators and the courts mutatis mutandis should have recourse to the provisions pertinent to judicial procedures.

Institutional versus ad hoc arbitration: Both ad hoc and institutional arbitration are well known. Both foreign and local legal counsel are reportedly inclined towards the most prominent international institutions. The most significant arbitral institution in the country is the Arbitration Centre of the Luxembourg Chamber of Commerce.

Agreement in writing: Not only must the agreement be in writing but Article 1226 NCCP provides three alternative (written) forms for the submission agreement, namely: as minutes before the arbitrators; in the form of a notarised document, or; as a private agreement, which may be in electronic form or by tele-transmission and which evidences the common will of the parties to submit their dispute to arbitration. Moreover, the very appearance of the parties before the tribunal without making any objections limine litis constitutes a valid submission agreement.377 Submission agreements further require, in accordance with Article 1227 NCCP, the names of arbitrators as well as the particular subject matter of the dispute. These requirements do not apply to arbitration clauses included in general agreements.

Arbitration clause (particularly time limits set therein): From the case law of Luxembourg one gets the sense that strict conformity with civil procedure rules is more important than salvaging otherwise salvageable arbitral proceedings. By way of illustration, if the parties have set a deadline for the delivery for particular proceedings to take place but the arbitrators require further time without however one party agreeing to the extension required, the arbitration clause is dissolved.378 Equally, if the parties have set a deadline for the delivery of an award and this is not delivered in time the obligation of the parties to arbitrate expires.379 Luxembourg courts insist that time limits are intrinsic to an arbitration clause, and so can only be altered by an alteration of the clause itself. Hence, it is within the contractual remit of each party to refuse any extension.380 Once again, as in the case of the doctrine of separability, this is a strict contractual construction of the arbitration clause and not one which is consistent with the aims of objectives of effective dispute resolution and current standards in international arbitration.

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376 There is no requirement that tribunals seated in Luxembourg follow the relevant rules in the NCCP (if the parties so wish), but the general principles of civil procedure must at all times be respected by the arbitrators. See Court of Appeal Judgment (22 July 1904), Pas Lux no 6, at 517.
377 Luxembourg District Court judgment (3 January 1996), Bull Laurent 1996, IV at 282, 285, 289. Some commentators suggest that in the case at hand the respondent did not realise until late in the proceedings that the agreement was invalid, The case law cited in this chapter has been reproduced from Harles (2011).
379 District Court judgment, no 11376 (15 January 2009).
380 Court of Appeal Judgment (5 July 2006), Pas Lux no 33, at 263.
**Waiver of arbitration:** An implicit waiver is assumed where the parties fail to object to the arbitration proceedings limine litis.\(^{381}\)

**Separability:** There is no specific provision in the NCCP regarding the separable character of the arbitration clause, albeit case law does indeed recognise its relative autonomy and the fact that it may be subjected to a governing law that is different from the main contract.\(^{382}\) However, Luxembourg case law tends to take the view that as an integral part of the contract, where the main contract is void, so too will be the arbitration clause.\(^{383}\) Although this is a logical deduction premised on a contract law construction of the arbitration clause, it is sharply inconsistent with the dominant international approach.

**Arbitrability:** The general rule is offered by Article 1224 NCCP which provides that all rights at the free disposal of parties may be submitted to arbitration. Moreover, although very much settled under most arbitration laws, where arbitral tribunals seated in Luxembourg are forced to deal with issues of public policy it does not mean that the underlying dispute is not arbitrable.\(^{384}\) Article 1225 sets out certain exceptions, namely rights arising from conjugal or marital relationships (including divorce), as well as from personal capacity. Other laws provide several other situations of non-arbitrability, among which one should note labour disputes.

The Benelux Convention dictates that IP-related matters are to be exclusively decided by the courts but it is unlikely that this has any practical significance as parties routinely submit such matters to arbitration.

**Consumer arbitration:** Article 2(13) of the Law of 25 August 1983 on the legal protection of consumers prohibits arbitration clauses in consumer contracts that limit the consumer’s access to judicial remedies. Hence, only submission agreements concluded in the manner prescribed by Article 1226 NCCP are permissible in respect of consumer disputes. A particular category of consumer disputes that are regulated as lex specialis in Luxembourg concerns disputes arising from insurance contracts. Article 46 of the Law of 27 July 1997 on insurance contracts prohibits arbitration clauses thereto and just like consumer contracts it only allows for submission agreements under Article 1226 NCCP.

**Public policy:** Luxembourg courts have demonstrated a consistent inclination towards accepting international public policy as a ground for refusing to enforce and recognise foreign awards in accordance with Article 1251(2) NCCP. This is applied under strict grounds and is severely curtailed where the award gives rise to rights that already existed abroad.\(^{385}\) The incompatibility between being both arbitrator and party is a principle of natural law and public policy.\(^{386}\)

**Group of companies doctrine:** This is not recognised in Luxembourg law and no case in which it has been claimed has ever come before the courts.

**Multi-party arbitration and joinders:** There is no reference to multi-party arbitration in the NCCP and it is difficult to conclude that because it forms part of judicial practice it

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\(^{381}\) District Court judgment no 1115/2007 (24 April 2007).
\(^{382}\) Court of Appeal judgment (26 July 2005), Pas Lux no 33, at 117.
\(^{383}\) Court of Appeal judgment (12 March 2003), Pas Lux no 32, at 399.
\(^{384}\) Court of Appeal judgment (9 February 2000), Pas Lux no 31, at 301.
\(^{385}\) Court of Appeal judgment (28 January 1999), Pas Lux no 31, at 95.
\(^{386}\) District Court judgment (10 February 1960), Pas Lux no 18, at 101.
should also apply mutatis mutandis to arbitral proceedings for the very simple reason that in judicial proceedings joinders do not constitute an element of party autonomy; rather, the decision rests with the courts.

**Tribunals acting ex aequo et bono:** This is indeed possible if the parties have so consented, in accordance with Article 1240 NCCP.

**Tribunal powers:** In general terms and subject to other observations in this chapter, the tribunal’s coercive powers under Luxembourg arbitration law are limited and relevant requests must be addressed to the courts if the parties wish a binding and enforceable ruling in relation to their interlocutory requests.

Tribunals possess kompetenz-kompetenz powers but their ruling on such issues is subject to a challenge of ultra vires in accordance with Article 1244(4) NCCP.

According to Article 1236 NCCP the tribunal cannot conclusively examine whether a document is forged or false, but it can check handwriting.

**Interim measures:** Unlike the UNCITRAL Model Law the power of tribunal to issue interim measures is extremely limited. Although under Article 1242 NCCP such a power is implicitly recognised, in practice it is unlikely to foster any confidence in the parties to seek pertinent interim remedies from the tribunal for the simple fact that they still have to resort to the district court (or the judge of summary proceedings) if the tribunal’s order is not complied with. Astonishingly, the Court of Appeals has held that if the arbitration clause stipulated that all disputes arising from the contract are to be resolved by arbitration, then the parties may not order interim measures from the courts as this is beyond what the parties agreed.\(^{387}\) Again, one must be extremely cautious when drafting arbitration clauses with Luxembourg as the seat of the arbitration because arbitral proceedings may be frustrated by simple technicalities of this nature which are not available in other jurisdictions, particularly those that have adopted the UNCITRAL Model Law.

**Arbitrators’ qualifications:** There are no specific requirements for appointment as arbitrator and judges may also be appointed.

**Legal representation in arbitral proceedings:** There are no restrictions as regards who is eligible to represent the parties during arbitral proceedings. Foreign lawyers may also represent clients in arbitral proceedings seated in Luxembourg, although they will require a power of attorney.

**Number of arbitrators:** The parties are free to choose their preferred number of arbitrators and there is no restriction as to whether the number is even or odd.\(^{388}\) The default number is three, in accordance with Article 1227 NCCP.

**Challenge of arbitrators:** According to Article 521 NCCP the procedure for challenging arbitrators is that relating to judges. The courts have held the obvious, namely that a company director cannot be appointed as arbitrator in a case where his company is one of the parties.\(^{389}\) In accordance with Article 521 NCCP only the challenging party has the right to take part in challenge proceedings before the courts. This is rather odd, given that it is

\(^{388}\) Harles (2011), at 8
\(^{389}\) District court judgment (31 July 1959), Pas Lux no 19, at 97.
clearly in the interests of the non-challenging party to take part in proceedings where an arbitrator of his choice is being challenged.

**Liability of arbitrators:** No reference to liability is made in the NCCP. However, and while no relevant case law exists, given that the relationship between the parties and arbitrators is considered contractual in nature, it is presumed that Articles 1134 of the Luxembourg Civil Code will come into operation, whereby the liability of an arbitrator would arise where there is a breach of contract, a prejudice (or harm) and a causal link between the two. Articles 250 and 252 of the Criminal Code provides for the arbitrator’s criminal liability where the latter is found to have been engaged in corrupt practices in relation to the arbitral proceedings under consideration. Equally, arbitrators may face criminal liability where they fail to observe their duty of confidentiality, in accordance with Article 458 of the Luxembourg Criminal Code.

**Court assistance and intervention:** Where the parties are unable to appoint an arbitrator, upon request by a party, the president of the district court shall make this appointment, against which there is no possibility of appeal. If the party against whom an award is rendered refuses to comply with it, the winning party may seek enforcement through a request to the president of the district court, in accordance with Article 1241 NCCP.

The parties are not permitted to opt for appeal to the courts concerning a review of the merits (or the law) of the award rendered.

**Types of awards:** Although arbitral tribunals may issue also interim awards, in addition to final awards, the latter require an order of enforcement by the district court. This comes as no surprise given the limited powers conferred upon tribunals. It is assumed, however, that partial awards have the same attributes as final awards that resolve all matters submitted to the tribunal.

**Form of awards:** Awards must be signed by all arbitrators in accordance with Article 1237 NCCP. If one of them refuses to sign the others must mention said refusal so as to avoid having the awards annulled in later proceedings. In accordance with Article 1244(8) awards must be in writing and reasoned.

**Registration of award:** There is no general obligation to register awards rendered in Luxembourg, save if the parties wish to proceed with enforcement under the terms of Article 1241 NCCP. In this case the award must be filed at the district court (clerk’s office) by one of the parties or the tribunal. Such filing is only for the purpose of declaring an award enforceable in Luxembourg.

**Costs and fees:** This issue is not regulated in the NCCP and no general practice exists in Luxembourg law. It is equally impractical to transplant judicial practice to arbitral proceedings because in the latter the parties are only rarely compensated for their costs. Arbitrators possess authority to apportion costs among the parties according to their discretion based on all relevant circumstances and this is usually the case unless the parties have otherwise specified in their agreement. It is suggested by local practitioners that reference to the UNCITRAL Rules for determination of the costs of arbitrators is very common.

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390 Court of Appeal judgment no 32153 (13 June 2007).
391 Court of Appeal judgment (12 November 2003), Pas Lux no 32, at 605.
Setting awards aside: The grounds for setting awards aside under Article 1244 NCCP are more than those listed in the UNCITRAL Model Law, namely:

1. The award is contrary to public policy. The notion of public policy is defined on an ad hoc basis by the courts.
2. The dispute could not be referred to arbitration. This provision only refers to the subject matter of the dispute and not to the capacity of the parties.
3. The arbitration agreement was not valid.
4. The arbitral tribunal exceeded its jurisdiction or powers. This provision applies when an award contains decisions on matters beyond the scope of arbitration (i.e. ultra petita) or when the arbitral tribunal decided the dispute ex aequo et bono in the absence of authorization by the parties.
5. The arbitral tribunal omitted to decide on one of the issues submitted to arbitration (i.e. infra petita), if the omitted issue cannot be separated from the topics addressed in the award.
6. The arbitral tribunal was irregularly constituted.
7. There has been a violation of the defendant's rights. However, if Art. 1230 NCCP applies (see Chapter IV.2.a above), ignorance of the procedure laid down for the ordinary courts is not a violation of the defendant's rights.
8. The award lacks reasons, unless the parties have expressly exempted the arbitrators from providing reasons.
9. The award is self-contradictory.
10. The award has been obtained by fraud.
11. The award is based on evidence that has been declared forged by an irrevocable court decision, or that has been recognized to be forged.
12. If after the rendition of the award a document or a piece of evidence has been discovered that would have had a decisive influence on the award. The document or the evidence must have been deliberately concealed by a party.

Enforcement of foreign awards: Luxembourg has ratified the New York Convention and hence its practice on recognition and enforcement is informed by this instrument. Although in a 1999 judgment the Court of Appeal was willing to recognise and enforce foreign awards that were annulled or set aside in the country rendered, the same court in a 2003 judgment rejected its previous judgment. There is currently litigation on this very matter before the Court of Appeal, which it is hoped will clarify the situation.

2.20. Malta

In 1996 the Maltese President signed Act II of 1996, (the Maltese Arbitration Act) which has since been subjected to several amendments. The Law is modelled around the UNCITRAL Model Law and in fact, Part V which deals with international arbitration seated in Malta, stipulates that the Model Law is an integral part of the Maltese Act and the country's legal system. Accordingly, for interpretation purposes, one of the main sources are the

392 Court of Appeal judgment (28 January 1999), Pas Lux no 31, at 95.
393 Court of Appeal judgment (28 January 1999), Pas Lux no 31, at 95.
travaux préparatoires of the Model Law itself. Such an incorporation is only similar to that undertaken by Ireland in respect of its 2010 Arbitration Act. There were three reasons in the mind of Maltese legislator in drafting the Act, namely: a) consolidation and rationalisation of existing arbitration regulation, much of which was outdated;\(^\text{394}\) b) rendering Malta a key player in the international arbitration system, particularly with a view to becoming a seat of international arbitrations and c) the setting up of the Malta Arbitration Centre, which is meant to serve as an official arbitral institution, advise the government on arbitration developments and suggest improvements as well as undertake some of the functions of the court registries in the facilitation and assistance of arbitrations seated in Malta. The Arbitration Act repeals the provisions regulating arbitration under the Code of Organisation and Civil Procedure. It should be noted that Maltese legislation, particularly that related to arbitration is significantly influenced by both common law and civil law and many seminal judgments have made extensive reference to English precedent.\(^\text{395}\) It should also be noted that Schedule Four of the Arbitration Act introduces a range of mandatory arbitrations.

**Scope of application (international versus domestic):** The distinction made in the Maltese Act is rather unique, in that part V of the Act is dedicated to international arbitration, which contains some provisions but largely relies on the UNCITRAL Model Law and in fact incorporates the latter into the Act and the Maltese legal system in accordance with Article 55 of the Arbitration Act. Part IV of the Act (Articles 14-54) encompass domestic arbitration, but this is also to a large degree predicated on the Model Law, but it does not have the force of law as regards domestic arbitrations. A domestic arbitration, in accordance with Article 14 of the Arbitration Act must not fall under the definition of international arbitration as determined by Article 1(3) of the UNCITRAL Model Law.

**Scope of application (commercial versus non-commercial):** There is no restriction to commercial disputes in respect of domestic arbitrations. In addition, it is specifically stipulated in an article introduced in 2004, that disputes arising from wills and trusts, among others, may be submitted to arbitration, in accordance with Article 15A of the Act. This is natural given that Malta is one of the leading jurisdictions in the field of trusts.\(^\text{396}\) Article 15A specifically provides that:

1. It shall be lawful for a testator to insert an arbitration clause in a will. In such event such clause shall be binding on all persons claiming under such will in relation to all disputes relating to the interpretation of such will, including any claim that such will is not valid.
2. It shall be lawful for a settlor of a trust to insert an arbitration clause in a deed of trust and such clause shall be binding on all trustees, protectors and any beneficiaries under the trust in relation to matters arising under or in relation to the trust.

Similarly, there are no express limitations in part V as regards international arbitration. However, given that the Act embraces the Model Law, it is assumed that the latter’s Article 1(1) must be applied, the 2006 version of which provides a broad definition of what

\(^{394}\) In *Fenech v Firman*, the Maltese Court of Appeals judgment (23 June 1992) held that arbitration clauses incorporated by general reference were invalid. This situation has now been amended in the 1996 Act.

\(^{395}\) See, for example, *Cassar Pullicino v Micallef Stafrace*, Maltese Commercial Court judgment (13 March 1991) where the local court relied on the English rationale for staying of judicial proceedings in favour of arbitration.

\(^{396}\) See Art 6B(c)(ii) of the 1989 Maltese Trusts and Trustees Act (cap 331, as lastly amended in 2011) (This Act was last amended in 2014, by Act XI of 2014), which expressly grants to the trustee the power to enter into arbitration agreements in order to resolve issues relating to the trust’s assets.
constitutes a commercial dispute. It is suggested that this broad definition is supported by the spirit of the Act which aims to foster arbitration in the country.

**Arbitrability:** Traditionally, domestic arbitrations were rather extensive, dealing with issues of personal law and personal injury that would otherwise fall outside the ambit of arbitration in other jurisdictions. The general rule is that stated in Article 15(5) of the Act which allows parties to submit any dispute to arbitration, subject to a specific list of exceptions enumerated in paragraph 6 of Article 15, namely: disputes, concerning questions of personal civil status including those relating to personal separation and annulment of marriage, although questions relating to the division of property between spouses may be referred to arbitration subject to the approval by the competent court of the arbitration agreement and of the arbitrator to be appointed.

Article 10(3) of the Act further states that domestic arbitration panels may be appointed on matters related to commerce, insurance, traffic collisions, building construction, the maritime sector and such other fields as the Centre may deem expedient from time to time. Clearly, therefore, these matters are equally arbitrable.

**Public policy:** Foreign awards will not be enforced and international awards rendered in Malta will be set aside if they are in conflict with public policy. This encompasses fraud or corruption, or “a breach of the rules of natural justice occurred in connection with the making of the award”, in accordance with Article 58 of the Arbitration Act. This reference to natural justice as a ground for public policy is similar to the Greek conception of the same issue and contains some degree of indeterminacy.

**Agreement in writing:** The Act generally follows Article 7 of the UNCITRAL Model Law but goes even further by stipulating in Article 2 that the requirement of a written agreement is complied with where the arbitration agreement is contained in a document transmitted from one party to the other party or by a third party to both parties, and if no objection was raised thereto within thirty days of the receipt of the document. Equally, a reference in a written contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the reference is such as to make that clause part of the contract. Moreover, an arbitration agreement is also concluded by the issuance of a bill of lading, if the latter contains an express reference to an arbitration clause in a charter party. It is assumed that oral agreements are excluded. The same requirements apply with respect to international arbitrations given that they too are based on the Model Law.

**Construction of arbitration agreement:** Article 15(2) attaches a broad dimension to the construction of arbitration agreements, thus eliminating relevant controversies as to scope. It posits that “a dispute shall include any controversy or claim arising out of or relating to the agreement, or the breach, termination or invalidity thereof or failure to comply therewith.”

**Institutional versus ad hoc arbitration:** Both are well known in Malta and although the Malta Arbitration Centre (MAC) enjoys the privilege of being established in the same instrument as the country’s Arbitration Act and designated as the official arbitration institution, the parties are free to choose other forms of institutional arbitration. However, the MAC is the only arbitral institution operating with its seat in Malta.

**Key powers of the MAC:** Given the unique role of MAC some of its key powers deserve mention. The functions of the MAC are set out in Article 10 of the Arbitration Act. In
In accordance with Article 9(1) of the Arbitration Act, MAC’s registrar has the power to administer oaths.

In accordance with Article 26(1) of the Arbitration Act if one party challenges the arbitrator and he does not withdraw the decision on the challenge will be made by the chairman of the board of governors of MAC and this decision will be final and binding.

Under Article 36(3) of the Arbitration Act, where the evidence of any person is required, the registrar may issue writs of subpoena to compel the attendance of a witness to give evidence or produce documents before a domestic arbitral tribunal.

The chairman of the board of MAC is the authority responsible under Article 6 of the Model Law in respect of the functions listed in Articles 11(3), 11(4), 13(3) and 14 of the Model Law.

In accordance with Article 82 of the Act, in the event of a final award which determines rights to immovable property, the registrar shall, upon registration, transmit a certified copy of the award to the Director of the Public Registry and to the Land Registrar and the provisions of articles 239 and 270 of the Code of Organization and Civil Procedure [Cap. 12] shall, mutatis mutandis, apply to such awards.

**Arbitrators’ qualifications:** Although no general prerequisites are imposed as to the selection of arbitrators, Article 10(3) of the Arbitration Act suggests that in the establishment of arbitral panels by the MAC “the panels shall be composed of persons who in the opinion of the Centre are qualified to carry out the duties and functions of arbitrators in a particular field of expertise.”

**Liability of arbitrators:** Article 20(5) of the Arbitration Act makes it clear that an arbitrator shall be liable in respect of anything wilfully done or omitted to be done by him as arbitrator where his action or omission is attributable to malice or fraud on his part. It is equally expressly stated that no liability arises in respect of acts or omissions done by way of negligence (the relevant provision does not specify whether this extends to both gross and simple negligence, but this is indeed presumed). This type of liability applies equally to international arbitrations seated in Malta in accordance with Article 66 of the Act.

**Legal Representation in arbitral proceedings:** In accordance with Article 18(1) of the Arbitration Act the parties may be represented or assisted with a person of their choice. Paragraph 2 makes it clear that foreign lawyers do not require special permission in order to represent clients in arbitral proceedings in Malta, whether in respect of domestic or international arbitration.

**Multi-party arbitration:** Unlike many arbitration statutes whereby if all the parties to multi-party proceedings are unable to agree on the person of the arbitrators the dispute is either broken down into multiple arbitrations or submitted to the courts, the Maltese Arbitration Act takes a slightly different approach. Article 21A(1) states that:

Where there are multiple parties, whether as claimant or as respondent, the multiple claimants, jointly, and the multiple respondents, jointly, shall make a proposal to the other party for an arbitrator to be appointed or shall appoint an arbitrator, as the case may be. Paragraph 3 then goes on to add that:

In the absence of such joint nomination, where the dispute is to be referred to three arbitrators and where all parties are unable to agree to a method for the constitution of the
arbitral tribunal, the chairman may on the request of either of the parties appoint each member of the arbitral tribunal and shall designate one of them to act as presiding arbitrator.

**Mandatory arbitration:** Part A of the Fourth Schedule to the Arbitration Act stipulates that the following disputes are subject to mandatory arbitration: condominium, traffic-related, as well as electricity and water-related disputes and paying agency disputes. Although the Arbitration Act has not yet been amended to reflect this change, mandatory arbitration has also been introduced for any dispute in connection with building construction (to the exclusion of claims for personal injuries).

In accordance with Article 15(11A) all parties to a mandatory arbitration shall, unless they have expressly agreed otherwise in writing, have a right of appeal from the arbitral award both on points of law and on points of fact to the Court of Appeal as constituted in terms of Article 41(6) of the Code of Organization and Civil Procedure.

The MAC has been the delegated the power to issue rules of procedure relevant to mandatory arbitrations under Article 15(12) of the Arbitration Act. Contrary to the general confidentiality and private nature of ordinary arbitrations (both domestic and international), the proceedings and award in mandatory arbitrations shall be public in accordance with Article 15(15) of the Arbitration Act.

**Set-off claims:** Perhaps inspired by a similar provision in the Italian Arbitration Act of 2006, Article 30(3) and (4) of the Arbitration Act permits the lodging of claims and counterclaims which have the aim of setting-off other claims of the respondent against the plaintiff. Again, this is a novel, yet important provision, because set-off claims would not (strictly speaking in narrowly-construed arbitration clauses) ordinarily fall within the scope of the parties’ submission to arbitration.

**Tribunal powers:** In accordance with Article 32(1) of the Arbitration Act, tribunals have full kompetenz-kompetenz powers not only in relation to their jurisdiction but also in respect of objections to the validity or existence of the arbitration clause and its separability from the agreement in which it is contained.

In accordance with Article 45(4) of the Act, unless otherwise agreed to by the parties or otherwise provided for in or under this Act, the arbitral tribunal may conduct the arbitration in such manner it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

**Court assistance and intervention:** With respect to the subpoena of evidence witnesses and the issuance of letters rogatory, Article 36(5) and (6) stipulates that:

(5) Upon the filing of an application the court which, had there not been an arbitration agreement, would otherwise have had jurisdiction shall notify the writ or otherwise act on the application in the same manner as if such application or such writ had been issued or approved by the Civil Court, First Hall.

(6) Where any person who has been regularly subpoenaed to appear before an arbitral tribunal in accordance with this article fails to appear before the said tribunal without

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reasonable excuse, the tribunal may make a report thereon to the registrar who shall by application bring the report to the attention of the Civil Court.

The Maltese Court of Appeal is the authority responsible under Article 6 of the Model Law in respect of the functions listed in Articles 16(3), 34(2) and 35(1) of the Model Law. In accordance with Article 70C(1) of the Arbitration Act, a party to mandatory arbitration proceeding shall have a right of appeal to the Court of Appeal both on points of fact and on points of law arising out of a final award made in the proceedings.

**Interim and conservatory measures:** Article 38(1) makes room for interim measures, noting that unless otherwise agreed by the parties, any party may request the court to issue any of the precautionary acts listed in Article 830(1) of the Code of Organization and Civil Procedure. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the tribunal may consider necessary in respect of the subject matter in dispute. The arbitral tribunal may require any party to provide adequate security in connection with such measures. The court may on the application of any party order the enforcement of any measure referred to in subarticle (6) and shall have all ancillary powers to amend or revoke such orders after hearing the parties and the arbitral tribunal as it deems necessary.

**Types of awards:** Article 44(1) of the Arbitration Act allows the tribunal to issue several awards during the lifetime of the arbitral proceedings, whether regarding the claim in whole or partially or in respect of interim or interlocutory matters. The Act further envisages other awards, such additional (Article 49). According to Article 44(10) interlocutory awards are not subject to registration, no recourse may be taken against them and they are binding on the parties to the proceedings immediately on their notification to the parties who shall carry them on without delay.

**Tribunal acting ex aequo et bono:** Tribunals may act as amiable compositeurs and ex aequo et bono in accordance with Article 45(2) of the Arbitration Act.

**Costs and fees:** The tribunal may determine costs and fees in accordance with applicable rules under Article 51(1). In accordance with Article 52(1) the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion such costs between the parties if it determines that apportionment is reasonable, taking into account the particular circumstances of the case. The tribunal shall determine all costs related to legal representation on the basis of relevant circumstances and may apportion such costs between the parties if it determines that apportionment is reasonable.

**Set aside and other recourse against international awards rendered in Malta:** The parties to international arbitral proceedings in Malta do not only have access to set aside proceedings but several other options as provided in Article 69A(2) and (3) of the Arbitration Act, as follows:

(b) appealing on a point of law, except in the case of mandatory arbitrations, or;

(c) appealing both on points of fact and on points of law.

(3) Recourse against an arbitral award delivered under Part V may be made to the Court of Appeal by an appeal on a point of law only if the parties to the arbitration agreement have

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399 Art 38(7), id.
400 Art 52(2) Arbitration Act.
expressly agreed that such right of appeal is available to the parties in addition to the rights of recourse as contemplated in article 34 of the Model Law.

**Appeal on point of law:** Under Article 70A(1) of the Arbitration Act, a party to arbitral proceedings may appeal to the Court of Appeal on a point of law arising out of a final award made in the proceedings, unless the parties have expressly excluded such a right to appeal in the arbitration agreement or otherwise in writing; or notwithstanding anything stated in the arbitration agreement, the parties have expressly agreed that no reasons are to be given in the award.

2.21. Netherlands

On 1 December 1986, Dutch arbitration law, as contained in the Code of Civil Procedure (CCP) of 1838, was replaced by an entirely new arbitration act, the Netherlands Arbitration Act (NAA). The Act is set forth in the new Book 4 of the CCP, consisting of Articles 1020 to 1076 CCP. The drafters took into consideration relevant international developments, including the UNCITRAL Model Law and a large part of pertinent case law. Although the reader will see a significant amount of similarities with the Model Law, there is clearly a very Dutch perspective.

**Scope of application (international versus domestic):** In accordance with Article 1073(1) NAA the Act encompasses all arbitrations seated in the Netherlands, irrespective of whether or not they have international elements. In case the parties have not designated the place of arbitration, this is presumed to be the Netherlands if at least one of the parties is domiciled there.

**Scope of application (commercial versus other):** Article 1020 NAA does not limit the scope of the parties’ agreement. Paragraph 4 of this provision even goes on to say that the parties may also agree to submit the following matters to arbitration: (a) the determination only of the quality or condition of goods; (b) the determination only of the quantum of damages or a monetary debt; (c) the filling of gaps in, or modification of, the legal relationship between the parties.

**Ad hoc versus institutional arbitration:** Both types of arbitration are recognised under Dutch law, although in practice it seems that institutional arbitration is the more popular of the two.

**Arbitrability:** The basic rule is found in Article 1020(3) NAA, according to which the parties may only submit to arbitration disputes they can freely dispose of. Anti-competition cases are arbitrable if there are assurances that the foreign tribunal will apply EC competition law.

**Public policy:** Where an award or the manner it was made is manifestly contrary to public policy and good morals the court may refuse to enforce domestic awards under Article 1063(1) NAA. The same is true in respect of awards on agreed terms and is also a

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401 In 2015 a new arbitration law will come into effect in the Netherlands. This law is addressed at the end of the discussion of the current Arbitration Act.
402 Art 1073(2) NAA.
404 Art 1069(2)(a) NAA.
Although public policy is to be interpreted strictly, the Supreme Court held that there is no room for restrictive application of Article 1065(1)(e) if there is a request for setting aside based on the alleged failure to apply due process.

**Agreement in writing:** The arbitration agreement must be in writing as per Article 1021 NAA. Given that the NAA was adopted prior to the advent of email and other more recent electronic forms of communication it does not mention these, albeit with the passing of relevant legislation these are deemed to be part of the NAA. In general, any form suffices as long as there is a record of it, including agreements by incorporation. According to Article 1020(5) NAA the articles of association of a company or other legal person constitutes an agreement in writing.

**Interim measures:** Despite the existence of an arbitration clause the parties may seek interim measures from the courts, in accordance with Article 1022(2) NAA. The Dutch Supreme Court ruled that when parties have validly agreed upon arbitration the only jurisdictional basis for obtaining provisional or protective measures from a court is Article 24 of the Brussels Convention.

**Dual dispute resolution clauses:** Where an Arbitration/jurisdiction agreement provides for choice of either arbitration or court jurisdiction the court first reviews the validity of the choice of forum provision, which, based on a rule of Dutch private international law, is invalid. Thereafter, the court reviews if the alternative reference to arbitration (China in the case at hand) is valid. The Hague Appeals Court rejected the view that also arbitration clauses in cargo cases are to be reviewed on the basis of the rules applying to court selection clauses, which prescribe the place that can be selected (country of the domicile of the carrier).

**Arbitrators’ qualifications:** Under Article 1023 NAA there are no restrictions as to who may be appointed by the parties as arbitrator.

**Legal representation during arbitral proceedings:** In accordance with Article 1038 NAA there are no limitations as to who may represent the parties during arbitral proceedings.

**Court assistance and intervention:** In case the parties fail to agree on the appointment of arbitrators they can seek relief from the district court, in accordance with Article 1026 NAA. Equally, if the appointment of arbitrators is not made within the timeframe set out by the parties, the district court may ultimately undertake the appointment under Article 1027 NAA.

The district court may modify an arbitration agreement envisaging undue privileges afforded to one party over the other in the appointment of arbitrators, under Article 1028 NAA.

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405 Art 1065(1)(e) NAA.
406 International Military Services Limited v Ministry of Defence and Support for Armed Forces of the Islamic Republic of Iran & others, Supreme Court [Hoge Raad] case no C07/202HR, judgment (24 April 2009).
409 Under the draft law currently contemplated by the Dutch parliament, there is a three-month period to file a complaint about the privileged arbitrator to the courts, failing which the right is forfeited.
Annex B - Key Features of National Arbitration Law in the Member States and Switzerland

Under Article 1031(2) NAA, the President of the District Court, may, having regard to all circumstances (and after hearing the parties and arbitrators), terminate the mandate of the arbitral tribunal if, despite repeated reminders, the arbitral tribunal carries out its mandate in an unacceptably slow manner.

In accordance with Article 1035(2) NAA, if the challenged arbitrator does not withdraw within two weeks after the day of receipt of the notification, the President of the District Court shall, at the request of either party, decide on the merits of the challenge.

In accordance with Article 1041(2) NAA, if a witness does not appear voluntarily or, having appeared, refuses to give evidence, the arbitral tribunal may allow a party who so requests, within a period of time determined by the arbitral tribunal, to petition the President of the District Court to appoint a judge-commissary before whom the examination of the witness shall take place. The examination shall take place in the same manner as in ordinary court proceedings. The Clerk of the District Court shall give the arbitrators an opportunity of attending the examination of witnesses.

In accordance with Article 1063(1) NAA, enforcement of an arbitral award may be refused by the President of the District Court only if the award or the manner in which it was made is manifestly contrary to public policy or good morals, or if enforcement is ordered notwithstanding the lodging of an appeal in violation of Article 1055, or if a penalty for non-compliance is imposed in violation of Article 1056.

**Tribunal deciding ex aequo et bono:** In accordance with Article 1054(3) NAA the parties may agree that the tribunal can decide the case as amiable compositeur.

**Tribunal powers:** In accordance with Article 1039 NAA, the arbitral tribunal may, at the request of either party, allow a party to produce witnesses or experts. The arbitral tribunal shall have the power to designate one of its members to examine witnesses or experts. The arbitral tribunal shall have the power to order the production of documents.

In accordance with Article 1039(5) NAA, unless the parties have agreed otherwise, the arbitral tribunal shall have discretion in the rules of evidence to be applied.

In respect of witness examination, if the arbitral tribunal deems it necessary, it shall examine the witnesses on oath or affirmation, in accordance with Article 1041(1) NAA.

In accordance with Article 1041(4) NAA, the arbitral tribunal may suspend the proceedings until the day on which it has received the record of the examination of the witnesses examined by the district court.

In accordance with Article 1043 NAA, at any stage of the proceedings the arbitral tribunal may order the parties to appear in person for the purpose of providing information or attempting to arrive at a settlement.

In accordance with Article 1052(1) NAA the tribunal enjoys full kompetenz-kompetenz authority.

In accordance with Article 1056 NAA The arbitral tribunal has the power to impose a penalty for non-compliance in cases where the court has such power.
Human rights issues: In situations where the arbitration agreement confers undue privileges on one party in relation to the appointment of arbitrators, the other party may request the district court to rectify this, in accordance with Article 1028 NAA.

Multi-party arbitration and joinders: Despite the fact that the NAA is a relatively old piece of legislation, it is unique in that it has an exhaustive provision on multi-party arbitration. Article 1045 NAA stipulates that at the written request of a third party who has an interest in the outcome of the arbitral proceedings, the arbitral tribunal may permit such party to join the proceedings, or to intervene therein. The arbitral tribunal shall send without delay a copy of the request to the parties. In equal manner, a party who claims to be indemnified by a third party may serve a notice of joinder on such a party. A copy of the notice shall be sent without delay to the arbitral tribunal and the other party. The joinder, intervention or joinder for the claim of indemnity may only be permitted by the arbitral tribunal, having heard the parties, if the third party accedes by agreement in writing between him and the parties to the arbitration agreement. On the grant of a request for joinder, intervention, or joinder for the claim of indemnity, the third party becomes a party to the arbitral proceedings.

Under the terms of the draft law Article 1045 is replaced by a new provision, which is explained at the close of this chapter.

Consolidation of arbitral proceedings: Article 1046 NAA stipulates that if arbitral proceedings have been commenced before an arbitral tribunal in the Netherlands concerning a subject matter which is connected with the subject matter of arbitral proceedings commenced before another arbitral tribunal in the Netherlands, any of the parties may, unless the parties have agreed otherwise, request the President of the District Court in Amsterdam to order a consolidation of the proceedings. The President may wholly or partially grant or refuse the request, after he has given all parties and the arbitrators an opportunity to be heard. His decision shall be communicated in writing to all parties and the arbitral tribunals involved. If the President orders consolidation in full, the parties shall in consultation with each other appoint one arbitrator or an uneven number of arbitrators and determine the procedural rules which shall apply to the consolidated proceedings. If, within the period of time prescribed by the President, the parties have not reached agreement on the above, the President shall, at the request of any of the parties, appoint the arbitrator or arbitrators and, if necessary, determine the procedural rules which shall apply to the consolidated proceedings. The President shall determine the remuneration for the work already carried out by the arbitrators whose mandate is terminated by reason of the full consolidation. If the President orders partial consolidation, he shall decide which disputes shall be consolidated. The President shall, if the parties fail to agree within the period of time prescribed by him, at the request of any of the parties, appoint the arbitrator or arbitrators and determine which rules shall apply to the consolidated proceedings. In this event the arbitral tribunals before which arbitrations have already been commenced shall suspend those arbitrations. The award of the arbitral tribunal appointed for the consolidated arbitration shall be communicated in writing to the other arbitral tribunals involved. Upon receipt of this award, these arbitral tribunals shall continue the arbitrations commenced before them and decide in accordance with the award rendered in the consolidated proceedings.

Appeals to second arbitral tribunal: The parties may validly agree to submit appeals against the award to a second arbitral tribunal, in accordance with Article 1050 NAA.
**Summary arbitral proceedings:** In accordance with Article 1051 NAA the parties may agree to request that the tribunal decide the dispute by means of summary proceedings, provided that they are compatible with the parties’ due process rights. The award has the same effect as other awards rendered in ordinary proceedings.

**Types of awards:** In accordance with Article 1049 NAA the tribunal may issue final, partial and interim awards, unlike other jurisdictions whereby interim awards are not available. Only final and partial awards have the effect of res judicata, in accordance with Article 1059(1) NAA. An additional award under Article 1061 NAA is equally a final award.

**Deposit of award:** In accordance with Article 1058(1)(b) NAA, the arbitral tribunal must without delay, once it renders the award, deposit the original of the final or partial final award with the Registry of the District Court within whose district the place of arbitration is located. The deposit of awards is a compulsory requirement. The mandate of the tribunal ends with its deposit of the award at the registry.

**Enforcement of (domestic) awards:** In accordance with Article 1062(1) NAA, enforcement in the Netherlands of a final or partial final arbitral award which is not open to appeal to a second arbitral tribunal, or which is declared provisionally enforceable, or a final or partial award rendered on arbitral appeal, can take place only after the President of the District Court with whose Registry the original of the award shall be deposited has, in pursuance of a request of one of the parties, granted leave for enforcement. Leave for enforcement shall be recorded on the original of the arbitral award or, if no deposit of the arbitral award has taken place, shall be laid down in a decision. It should be noted that Article 1062 CCP is replaced by a new provision under the same number (see below). In accordance with Article 1063(1) NAA, enforcement of an arbitral award may be refused by the President of the District Court only if the award or the manner in which it was made is manifestly contrary to public policy or good morals, or if enforcement is ordered notwithstanding the lodging of an appeal in violation of Article 1055, or if a penalty for non-compliance is imposed in violation of Article 1056.

**Setting awards aside:** In accordance with Article 1065 NAA, setting aside of the award can take place only on one or more of the following grounds:

(a) absence of a valid arbitration agreement;
(b) the arbitral tribunal was constituted in violation of the rules applicable thereto;
(c) the arbitral tribunal has not complied with its mandate;
(d) the award is not signed or does not contain reasons in accordance with the provisions of article 1057;
(e) the award, or the manner in which it was made, violates public policy or good morals.

The ground mentioned in paragraph (a) above shall not constitute a ground for setting aside in the case mentioned in Article 1052(2).

The ground mentioned in paragraph (b) above shall not constitute a ground for setting aside in the cases mentioned in Article 1052(3).

The ground mentioned in paragraph (c) above shall not constitute a ground for setting aside if the party who invokes this ground has participated in the arbitral proceedings without invoking such ground, although it was known to him that the arbitral tribunal did not comply with its mandate.
If the arbitral tribunal has awarded in excess of, or differently from, what was claimed, the arbitral award shall be partially set aside to the extent that the part of the award which is in excess of or different from the claim can be separated from the remaining part of the award.

If and to the extent that the arbitral tribunal has failed to decide one or more matters submitted to it, the application for setting aside on the ground mentioned in paragraph (1)(c) above shall be admissible only if an additional award mentioned in Article 1061(1) is made, or the request for an additional award mentioned in Article 1061(1) has wholly or partially been rejected.

Revocation of awards: Besides setting aside, Dutch law recognises an additional challenge against arbitral awards, namely that of revocation, in accordance with Article 1068 NAA. Revocation of the award can take place only on one or more of the following grounds:

(a) the award is wholly or partially based on fraud which is discovered after the award is made and which is committed during the arbitral proceedings by or with the knowledge of the other party;
(b) the award is wholly or partially based on documents which, after the award is made, are discovered to have been forged;
(c) after the award is made, a party obtains documents which would have had an influence on the decision of the arbitral tribunal and which were withheld as a result of the acts of the other party.

Recognition of foreign awards: The grounds are almost identical to those set out in the NY Convention. In a recent case, the Amsterdam Appeals Court recognised and enforced a Russian arbitral award that had been set aside in Russia.410

Notes on the new Arbitration Law
Article I adds a new paragraph to Article 167 of the CC whereby a legal entity established under public law cannot rely on the law to escape submission of a dispute to arbitration if it has agreed to arbitration.

According to the proposed additions to Article 1022 CCP an arbitration agreement does not prevent either party from seeking interim and other measures from the courts, namely measures of protection, preliminary examination of witnesses and expert reports, preliminary site visits, viewing and inspection of certain important documents. The courts shall decline jurisdiction if one of the parties asserts that there is no agreement to arbitrate.

See footnote 8 for improvement to Article 1028 CCP regarding the removal of privileged arbitrators.

In accordance with an improved Article 1036 CCP the tribunal shall guard (even on its own initiative) against unreasonable delay in the proceedings, but certainly when a motion is brought by one of the parties.

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410 Appellant v OJSC Novolipetsky Metallurgichesky Kombinat, Amsterdam Appeals Court judgment (18 September 2012).
Under a new Article 1041a CCP if a witness refuses to appear the tribunal may, upon request by any of the parties, seek an order of appearance through the courts and the arbitrators may be present at the court hearing and ask questions to the witness.

Under a new Article 1043a CCP if the respondent defaults from the proceedings without relying on a well-founded reason, the tribunal may render an award forthwith. This is a somewhat significant departure from international practice whereby the tribunal typically hears the claimant and then renders an award.

Under a new Article 1043b CCP the parties may request interim measures of protection from the court. There is no mention that this provision replaces in any way Article 1022(2) CCP. The new provision is closer to the UNCITRAL Model Law paradigm of interim measures.

The existing Article 1045 CCP on multi-party arbitration and third parties is replaced by a new provision. This author does not see a significant difference between the two provisions, save perhaps for the stipulation in a new Article 1045a CCP whereby a third party may join existing arbitral proceedings at the request of one of the parties if there is an agreement in writing between the two parties, the rationale of which is to ultimately seek indemnification.

Under a new Article 1061 the parties may by common agreement bring an appeal against the tribunal’s award to another arbitral tribunal. However, under a new Article 1061(i), unless the law or the nature of the case dictates otherwise, the tribunal of first instance may enforce an award notwithstanding an arbitral appeal.

In terms of domestic enforcement Article 1062 is replaced by a new provision. More specifically, the enforcement in the Netherlands of an arbitral award may take place only after the judge of the court of the district in which the place of arbitration is situated, and at the request of either party, has been granted leave. The leave shall be recorded on the original of the judgment or, if no deposit has occurred, in a decision.

The term “public order or morals” is replaced throughout by “public policy”.

Under Article 1072b CCP an agreement in writing is satisfied through any means of electronic communication.

Under Article 1074a CCP an agreement stipulating that arbitration should take place outside the Netherlands, does not prevent a party from seeking protection through Dutch courts.

2.22. Poland

The Polish arbitration law is contained in part 5 of the country’s code of civil procedure (CCP). Chapter 5 entered into force on 17 October 2005 and has since been amended twice (but only slightly) in 2008 and 2010. The relevant articles are 1154-1216 of the CCP. Part 5 is based on the UNCITRAL Model Law, principally the 1985 version, but several aspects of the 2006 version are also present. The underlying rationale of the Polish law-maker is to render arbitration a popular mean of dispute resolution in the country and thus many issues, even those traditionally left to the courts, are now arbitrable. There is equally an emphasis on limiting the intrusion of the courts in arbitral proceedings. However, commentators suggest that despite these developments there has not been a significant increase in the number of cases submitted to arbitration. Besides the CCP, the 2011 Private
International Law Act contains two articles (39 and 40) that pertain to arbitration, namely the law relevant to the arbitration clause or agreement.

**Scope of application (international versus domestic):** Article 1154 CCP does not distinguish between international and domestic arbitration. Instead, it stipulates that the CCP applies to arbitral proceedings taking place on the territory of Poland. This, therefore, encompasses all relevant arbitrations irrespective of the subject matter of the dispute or the nationality of the parties. Part 5 of the CCP may also apply to arbitrations seated outside Poland but there is no obligation to this effect and there exists no available case law to provide further guidance. Given the importance of the seat of arbitration, Article 1155(2) provides a presumption where this is in doubt, namely that the place of the proceedings was situated on the territory of the Republic of Poland if the decision closing the proceedings in the case has been made in Poland.

**Arbitrability:** The general rule on arbitrability stems not from the arbitration law (part 5) of the CCP but Article 1 CCP, whereby the scope of regulation is limited to civil cases, namely those involving relationships in the field of civil law. Therefore, unlike the vast majority of nations, all civil law relationships, including those arising from family or inheritance relationships are encompassed within the ambit of arbitrability. Article 1157 CCP confirms this but specifically excludes disputes arising from alimony. Social security disputes are also excluded from arbitration under the terms of Article 477 CCP.

The Supreme Court has held that disputes wherein the parties seek a declaratory award as the absence of a legal relationship arising from the invalidity of a contract is arbitrable. Corporate disputes arising from the statute of the corporation are arbitrable, as is implicit from Article 1163 of the CCP. However, the Supreme Court has held that corporate disputes arising from a challenge to resolutions of the corporation are not arbitrable. In general, however, the Supreme Court held that corporate disputes are arbitrable if they are capable of serving as the subject of a judicial settlement.

Anti-trust disputes are equally arbitrable, not least because under Polish law unfair competition disputes are viewed as disputes in tort and Article 1157 CCP does not exclude tort disputes. The Polish Supreme Court held that the clause providing for arbitration of “all disputes concerning the interpretation and implementation of the terms of the agreement” to cover tort claims resulting from unfair competition.

Articles 142 and 147 of the Bankruptcy and Reorganisation Law provides that once a person or entity is declared bankrupt all the arbitration clauses to which it was a party expire by force of law on the day of the declaration.

Finally, labour disputes are arbitrable under Article 1164 CCP if the arbitration agreement was entered into following the dispute.

**Consumer arbitration:** Part 5 of the CCP does not mention whether consumer disputes may be submitted to arbitration. However, given our aforementioned observation as regards the scope of Article 1 CCP it is evident that consumer disputes, as civil disputes, are subject to arbitration. However, some restrictions do apply, but in other parts of Polish law, namely Articles 3851(1) and 3853, item 23 of the Civil Code, which require that

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411 Wisniewski (2012), at 16.
412 Wisniewski (2012), at 17.
413 Case no III CZ/10, Supreme Court ruling (23 September 2010).
414 Wisniewski (2012), at 18. See case no III CZ/09, Supreme Court ruling (7 May 2009)
415 Case No I CSK 311/08, Supreme Court ruling (5 February 2009).
consumer arbitration clauses be individually negotiated, otherwise they are presumed unfair.

**Institutional versus ad hoc arbitration:** Both types are allowed and well-known in Poland, but in recent years the trend is towards institutional arbitration.

**Public policy:** Under Article 1206(1)(6) CCP an award may be set aside where it is in conflict with Polish public policy (as opposed to international public policy in other nations). In one case, the Supreme Court held that the failure of an arbitrator to disclose his social relationship with one of the parties to the proceedings was an affront to Polish public policy and hence set the award aside.\(^{416}\)

**Agreement in writing:** Article 1162(1) CCP requires that agreements be in writing. Article 1162 is based on the UNCITRAL Model Law and thus includes agreements by incorporation and any exchange between the parties that provides a clear record of their intention to submit a dispute to arbitration. Under Article 1163 CCP reference to arbitration in a corporation’s statute suffices as an agreement in writing, save for the arbitrability restrictions identified above. A reference to arbitration in the statutes of cooperatives or associations is equally a valid arbitration agreement under paragraph 2 of Article 1163 CCP. In this case an arbitration agreement incorporated in a company’s articles of association or statute are binding on all shareholders and thus also on those who did not sign the articles of association or statute but merely took up shares in the company. These regulations also apply accordingly to the statute of a co-operative or association.

It should be noted that the CCP does not contain a provision in line with Article 7.5 of UNCITRAL Model law that an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

**Agents and principals:** Under Article 1167, unless otherwise stated by the principal, the agent is presumed to possess authority to bind the principal through the adoption of arbitration agreements.\(^{417}\)

**Arbitration agreement:** Article 1168(1) CCP stipulates that: “If a person appointed in an arbitration agreement as an arbitrator or as a chairman of an arbitral tribunal refuses to perform this function, or if the performance of this function by that person turns out to be impossible for other reasons, the arbitration agreement loses its force unless the parties have agreed otherwise.” Moreover, failing a different agreement of the parties, an arbitration agreement loses its force if the arbitral tribunal indicated in that agreement has not accepted the case for resolution, or if the resolution of the case within that tribunal turned out to be impossible for other reasons.\(^{418}\) This is a harsh outcome because the impossibility of performance by the arbitrators should not eliminate the parties’ expressed desire to settle their dispute through arbitration, unless their intention was to settle their disputes only with the specific arbitrators and no others.

**Multi-party arbitration and joinder:** There is no reference to multi-party arbitration in part 5 of the CCP. Commentators suggest that this is indeed possible on the basis of general Polish law applicable to third parties, namely where the third party acquires the

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\(^{416}\) Case No I CSK 535/09, Supreme Court ruling (9 September 2010).

\(^{417}\) Even so, the Polish Supreme Court, case no III CZ/02 ruling (8 March 2002) held that in respect of arbitration clauses the agent’s power of attorney must specifically mention his authority to enter into an arbitration agreement. This decision has been severely criticised and perhaps may no longer apply under Polish law.

\(^{418}\) Art 1168(2) CCP.
status of a party to the contract, whether by means of succession, assignment, cession of rights or obligations or if he or she derives any direct benefit from the contract and has not repudiated such benefit.\textsuperscript{419} It is not clear, however, whether the consent of the other parties and/or the arbitrator would also be required. It is clearly suggested by commentators that the group of companies doctrine, although not tested by case law, would be inapplicable in the Polish legal system.\textsuperscript{420}

Overall, parties to a multi-party relationship may agree to bring disputes arising from their relationship before an arbitral tribunal. General rules of enforcement of such arbitration agreements apply. Particular attention should be paid to Article 1169 § 3 CCP, according to which provisions granting one of the parties more rights in the procedure of appointment of the tribunal are ineffective. Arbitrators can decide upon joiner or consolidation pursuant to Article 1184, which allows them to determine the conduct of the procedure.

\textbf{Choice of law}: Party autonomy dictates that there are no restrictions upon the parties as to their choice of law. This is true of the governing law of the contract as well as the arbitration clause and/or arbitration agreement. Article 39(1) of the 2011 Private International Law stipulates that the arbitration clause shall be governed by the law chosen by the parties. Where this is not stated, paragraph 2 of Article 39 states that:

the arbitration agreement shall be governed by the law of the country in which the place of arbitration determined by the parties’ agreement is situated. In the absence of such agreement, the arbitration agreement shall be governed by the law applicable to the legal relationship to which the dispute relates; it shall be sufficient, however, for the arbitration agreement to be effective pursuant to the law of the country in which the arbitration takes place or in which the arbitral tribunal issued the award.

\textbf{Arbitrators’ qualifications}: There are generally no restrictions as to who may be appointed as arbitrator. Under Article 1170(2) CCP, active judges may not accept appointment as arbitrators. This limitation does not apply to retired or ex judges.

\textbf{Liability of arbitrators}: There are no specific provisions in the CCP on the liability of arbitrators. Article 1175 CCP simply states one situation that may provide some guidance, namely where the arbitrator resigns without serious reason, in which case he is liable for any damages caused. Commentators suggest that the relationship between the parties and the arbitrators is contractual, albeit the standard rules of contractual liability are unable to fully explain the judicial function of arbitrators which must enjoy some protection or immunity from liability. They suggest that arbitrators may be liable contractually for their actions and omissions during the proceedings but can only be liable for the contents of the award rendered if they have succumbed to a very grave fault or wilful action.\textsuperscript{421}

\textbf{Tribunal powers}: In accordance with Article 1155(1) CCP where the parties have failed to determine the seat of the arbitration this may be done by the tribunal.

Tribunals possess full kompetenz-kompetenz powers to assess their jurisdiction under Article 1180(1) CCP.

\textsuperscript{419} Wisniewski (2012), at 16. 
\textsuperscript{420} Wisniewski (2012), at 16. 
\textsuperscript{421} Wisniewski (2012), at 28-29.
The tribunal may take evidence as it sees fit, but it does not have authority to apply any compulsory measures in this respect under Article 1191(1) CCP.

Tribunals are allowed to adapt contracts to changed circumstances. Article 3571 of the Civil Code allows the courts and tribunals to adapt contracts to an extraordinary change of circumstances which causes excessive hardship for the performance by one of the parties or results in the terms of the contract being grossly damaging to it.

**Court assistance and intervention:** In accordance with Article 1171 CCP where the parties fail to reach agreement on the appointment of arbitrators and umpire they can request the courts to undertake this task.

In accordance with Article 1176 CCP the court may ultimately decide, upon request by the parties, challenges against arbitrators. Under 1177(2) CCP upon a request of any of the parties, the court may remove an arbitrator if it is obvious that the arbitrator will not perform his activities in due time or if he delays the performance thereof without a justified reason.

The arbitrators may approach the court for assistance in determining and recovering their fees. In accordance with Article 1179(1) the remuneration due should be determined in proportion to the arbitrators' workload and the value of the subject of the dispute. The decision of the courts in this regard is appealable under paragraph 2 of Article 1179 CCP.

Where a tribunal has asserted that it does not have jurisdiction in respect of a particular dispute (having exhausted its kompetenz-kompetenz powers), the parties may challenge this decision before the courts in accordance with Article 1180(3) CCP.

Under Article 1192(1) the tribunal may request local courts to take evidence in respect of arbitral proceedings.

**Appeals against awards:** These are prohibited, save where the parties have decided otherwise under Article 1205(2) CCP.

**Tribunal deciding ex aequo et bono:** This is indeed possible in accordance with Article 1194(1) CCP. The same provision also states that tribunals may be authorised to decide cases on the basis of “general principles”.

**Interim measures:** The tribunal possesses the power to order interim measures. Article 1181(1) CCP does not use the term “interim measures”, adopting instead “measures of protection”, but it is assumed that this term encompasses the same actions as generally included under the term “interim measures. Although these measures are binding between the parties they are not automatically enforceable. In order for this to happen leave of enforcement must first be granted by the court under Article 1181(3) CCP.

**Setting awards aside:** The grounds for setting awards aside under Article 1206 CCP are similar to those listed in the UNCITRAL Model Law.

**Enforceability of (domestic) awards:** In accordance with Article 1212 CCP, in order for an award to become binding and constitute res judicata it is necessary that it be declared enforceable by the local courts. This is not an ex officio examination or a necessary condition before any award can be declared binding. Rather, as Article 1213 CCP stipulates the recognition or declaration of enforceability must be requested by one of the parties. One understands that such an exceptional recourse (in addition to set aside proceedings) may unnecessarily protract proceedings. The grounds for refusal of enforcement are listed...
in Article 1214(3) CCP and include lack of arbitrability and violation of public policy (these are examined ex officio).

**Types of awards**: It is not clear in the CCP what types of awards tribunals can render in all parts of the proceedings. Commentators suggest that tribunals can make final and partial awards, as well as additional awards, including awards on interlocutory matters, such as that relating to their jurisdiction.\(^\text{422}\)

**Deposit of awards**: Unlike other UNCITRAL jurisdictions the CCP requires that awards be deposited with the courts or remain on file with the institution under the auspices of which the arbitration took place. In the latter case the courts may have unlimited access to awards filed with arbitral institutions, in accordance with Article 1204 CCP.

**Fees and cost**: There does not exist a general rule in the CCP but under the rules of most arbitral institutions the parties’ costs are not reimbursable.

**Enforcement of foreign awards**: The CCP generally follows almost verbatim the New York Convention. The Supreme Court has held that the judgment of a foreign court by which it held that an award should not be set aside is not subject to enforcement or recognition in Poland.\(^\text{423}\)

### 2.23. Portugal

Arbitration in Portugal is regulated by the 2011 Portuguese Voluntary Arbitration Law No 63/2011. This replaces a law that was in place close to thirty years but which was very much outdated and out of touch with contemporary arbitration trends. It is quite telling that unlike the usual procedure followed in Portugal whereby laws are drafted by academics (even without practical experience of the subject matter), in the case at hand the government called upon eminent arbitration specialists, namely the board of directors of the Portuguese Arbitration Association (APA). It is noted by commentators that the chief reason why the APA draft was accepted by the Portuguese government was the existence of a MOU between the country and its creditors, namely the IMF, the EU and the ECB on the basis of which Portugal was under an obligation to modernise its arbitration legislation by 2011.\(^\text{424}\) The 2011 Portuguese Arbitration Law (PAL) is exceptionally detailed and is based on the UNCITRAL Model Law, unlike its predecessor. One of the stated aims of the government was to render Portugal a global arbitration seat, particularly in respect of disputes in the Portuguese-speaking world. As a follow-up, the government recently opened up tax arbitration and commentators have noted an increase in tax arbitration in the country.\(^\text{425}\) This exceptionally pro-arbitration stance of the PAL and of Portugal in general (save perhaps for some cautions judgments by Portuguese courts which shall be examined in the course of this chapter) has culminated in the autonomy of the PAL from the Portuguese Civil Procedure Code (CPC) which was a cause for concern and legal uncertainty for parties to arbitral proceedings.

**Scope of application (international versus domestic)**: The distinguishing feature between a domestic and international arbitration is the existence of “international trade interests”, in accordance with Article 49 of the PAL. This may ultimately turn on the

\(^{422}\) Wisniewski (2012), at 40.

\(^{423}\) ET Sp Z.o.o v TMD GmbH et al, Supreme Court ruling (6 November 2009).

\(^{424}\) Júdice (2012).

nationality of the parties. Even so, Article 49 – and indeed the rationale of the PAL – makes it clear that there are no real differences between domestic and international arbitration taking place on the territory of Portugal and hence the same rules – with very minor exceptions – apply to both.

**Scope of application (commercial versus other):** Subject to any arbitrability requirements, Article 1(1) of the PAL stipulates that “any dispute involving economic interests” may be submitted by the parties to arbitration. The relevant agreement need not be contractual but be contained in any legal relationship, such as a trust deed, in accordance with Article 1(3).

**Institutional versus ad hoc arbitration:** Both are well known and used in equal measure in Portugal. However, two recent judgments whereby the claimants challenged arbitrator fees in *ad hoc* arbitrations as excessive (to which the courts concurred) may turn the tide towards institutional arbitration.\(^{426}\)

**Arbitrability:** Article 1(2) of the PAL stipulates that an arbitration agreement concerning disputes that do not involve economic interests is also valid provided that the parties are entitled to conclude a settlement on the right in dispute.

Article 50 of the PAL states that in arbitrations involving a state instrumentality, the latter is not allowed to offer as a defence that the subject matter of the dispute is not arbitrable.

**Arbitration agreement:** Unlike other arbitration laws, the PAL not only specifically states that the arbitration agreement may submit contentious disputes to arbitration, but also gives the tribunal the power to “complete and adapt contracts with long-lasting obligations to new circumstances”.

The Lisbon Court of Appeal has held that a party (a limited liability company) was not bound by an arbitration agreement it entered into but which it did not sign and the fact that the company was created on the same day as the arbitration agreement was entered into did not imply that the company was bound by the arbitration clause which it had not signed. Furthermore, the court noted that the company’s deed of incorporation did not even refer to the agreement.\(^{427}\)

Moreover, in accordance with Article 5(4) of the PAL the “invalidity, inoperativeness or unenforceability of an arbitration agreement cannot be discussed autonomously in an action brought before a state court to that effect or in an interim measure procedure brought before the same court, aiming at preventing the constitution or the operation of an arbitral tribunal”. This provision is meant to deter and prevent anti-arbitration injunctions through the back door.

**Human rights considerations:** The Portuguese Supreme Court has held that an arbitration agreement is manifestly null and void where it is clear that the appointment of one or more arbitrators does not guarantee independence and impartiality and that such an agreement would impinge on the parties’ right to a fair trial.\(^{428}\)

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\(^{426}\) Lisbon Court of Appeals judgment on arbitrators’ fees (11 July 2013); Lisbon Court of Appeals judgment on arbitrators’ fees (2 May 2013).

\(^{427}\) A v B Sociedade, case no 960/80.4TBPDL.L1-2, Lisbon Court of Appeal judgment (26 May 2011).

\(^{428}\) X v Z, case no 170751/08.7YIPRT.L1.S1, Portuguese Supreme Court judgment (12 July 2011). The Court cited the IBA Guidelines on Conflicts of Interest in International Arbitration in approval.
As regards the right to fair trial, the Supreme Court held that the right of access to justice should prevail over the obligation to comply with an arbitration agreement. The court took into account the plaintiff's inability to bear legal costs for lack of economic resources and decided that the plaintiff qualifies for legal aid that was conceded in the form of full support in the lawsuit before the judicial court. The Court held that the interest sacrificed by the rejection of the arbitration clause was purely procedural as opposed to the substantive interest in the case of the right to a fair trial.\(^{429}\)

**Agreement in writing:** Arbitration agreements must be in writing, but the form is not important, provided that it is recorded in a written document, including electronic means of communication.\(^ {430}\) The written requirement is also met where the agreement “is recorded on an electronic, magnetic, optical or any other type of support that offers the same guarantees of reliability, comprehensiveness and preservation”, accordance with paragraph 3 of Article 2. Finally, agreements by incorporation are valid as well as the absence of challenge in the parties statement of claim and defence, in accordance with paragraphs 4 and 5 of Article 2 respectively. However, The Coimbra Court of Appeal ordered a dispute over three related contracts to be heard by state courts when only one of the contracts included an arbitration agreement.\(^ {431}\) In the case at hand, the Court of Appeals could not be certain that the parties intended to submit disputes arising from all three agreements to arbitration (a matter of poor contract drafting). Oral agreements are excluded.

In accordance with Article 29(1) of the PAL, Portuguese courts may issue interim orders for the assistance of arbitral proceedings, irrespective of the tribunals’ location.

**International public policy:** In respect of international arbitration the courts must observe international public policy in accordance with Article 54 of PAL. Neither this nor domestic public policy are defined in any way.

**Arbitrators’ qualifications:** There are no restrictions or qualifications required for appointment as arbitrator.

**Liability of arbitrators:** Article 9(4) of the PAL is not entirely clear on this matter and no commentary takes up the issue beyond this. This provision simply states that “arbitrators may not be held liable for damages resulting from their decisions, save for those situations in which judges may be so”. A first reading seems to suggest that the liability of arbitrators is not contractual nor necessarily in tort, given that this necessarily applies to judges. But, if they are to bear some liability (hence the rationale for any reference to liability) this must be in tort and specifically spelt out in the PAL. This observation is consistent with Article 12(5) of the PAL whereby if an arbitrator unjustifiably withdraws from the proceedings he is liable for any damage caused to the parties. Equally, under Article 43(4) of the PAL, arbitrators are liable for any damage caused by unjustifiably failing to observe the 12 month time limit for rendering their award. Paragraph 5 of Article 9 of the PAL makes it clear that the liability of arbitrators is only towards the parties.

**Court intervention and assistance:** One of the underlying rationales of the PAL is to limit court intervention as much as possible and to assist the tribunal and the parties. The

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\(^{429}\) Wall Street Institute de Portugal - Centro des Ingleses SA WSI – Consultadoría e Marketing and others v Centro des Ingleses Santa Barbará LDA, Supreme Court judgment no 311/2008 (30 May 2008).

\(^{430}\) Arts 2(1) and (2) PAL.

\(^{431}\) S, LDA and MJ v A, SA and R SA, case no 477/11.8TBACN.C1, Coimbra Court of Appeal judgment (19 December 2012).
PAL does not, however, go beyond what is typical of other arbitration statutes implementing the UNCITRAL Model Law.

Article 10 of the PAL specifies that where the parties are unable to agree on the appointment of party-appointed arbitrators or chairman the courts will undertake the task of appointment. In accordance with Article 10(7) of the PAL such decisions are not subject to any appeal.

In accordance with Article 14(5) of the PAL stipulates that challenges against arbitrators may be submitted to the courts, whose judgments are not subject to appeals.

The courts have authority to determine arbitrators’ fees. In accordance with Article 17(3) and (4) of the PAL:

1. (...) any of the parties may request the competent State court to reduce the amounts of the fees or the expenses and respective advance payments fixed by the arbitrators, whereby that State court may define the amounts it deems adequate, after having heard the members of the arbitral tribunal on the issue.

2. In the case of a failure to make advance payments for fees and expenses previously agreed or fixed by the arbitral tribunal or the State court, the arbitrators may suspend or end the arbitral proceedings after a reasonable additional time limit granted to that effect to the party or parties in default has elapsed, without prejudice to the provisions of the following paragraph of this article.

Under Article 38(1) of the PAL the courts may assist the tribunal with the taking of evidence.

**Tribunal deciding ex aequo et bono and as amiable compositeur:** This is indeed possible in accordance with Article 39 of the PAL. However, in accordance with paragraph 5 of Article 39 of the PAL, awards decided ex aequo et bono or under amiable compositeur conditions may not be appealed to the courts (assuming the parties had agreed that appeals are possible).

**Interim measures:** In accordance with Article 7 of the PAL the parties may turn to the tribunal and the court for interim measures without in any way violating the terms of the arbitration agreement.

**Multi-party arbitration:** Article 11 of the PAL states where there are multiple defendants or multiple plaintiffs each group must appoint a joint arbitrator, failing which this matter may be decided by the courts, upon request by one of the parties. Exceptionally, under paragraph 3 of Article 10 of the PAL the “court may appoint all arbitrators and indicate which one of them shall be the chairman, if it becomes clear that the parties that failed to jointly appoint an arbitrator have conflicting interests regarding the substance of the dispute, and in such event the appointment of the arbitrator meanwhile made by one of the parties shall become void”.

**Third party (joinders):** The general rule in Article 36(1) is that “only third parties bound by the arbitration agreement, whether from the date of such agreement or by having subsequently adhered to it, are allowed to join ongoing arbitral proceedings. Such adhesion requires the consent of all parties to the arbitration agreement and may only take place in respect of the arbitration in question”. The second condition is that the joinder must be agreed to by the tribunal, provided that it does not disrupt the proceedings and if there are good reasons justifying the joinder. These good reasons are:
a) the third party has an interest in relation to the subject matter of the dispute equal to that of the claimant or respondent, such that it would have originally permitted voluntary joinder or imposed compulsory joinder between one of the parties to the arbitration and the third party; or

b) the third party wishes to present a claim against the respondent with the same object as that of the claimant, but which is incompatible with the latter’s claim; or

c) the respondent against whom a credit is invoked that may, prima facie, be characterized as a joint and several credit, wants the other possible joint and several creditors to be bound by the final award; or

d) the respondent wants that third parties to be joined, against whom it may have a claim in case the claimant’s request is completely or partially granted.

In another case, however, the Court of Appeal of Lisbon held that an arbitration clause included in a contract setting up a pensions fund (hereinafter the Contract) binds a worker that, although not a party to that contract, accepted in a work contract termination agreement to be a beneficiary of said fund, with the inherent rights and prerogatives.432 However, In Autor v Companhia de Seguros BB, S.A. & Companhia de Seguros CC, S.A., the Supreme Court held that an arbitration clause included in an insurance contract between two insurance companies and a third company does not bind an employee of the latter.433

**Group of companies doctrine:** Article 36(1) spells out the general position and the Lisbon Court of Appeals has specifically stated that the group of companies doctrine does not apply in Portuguese law. The Court held that the fact that that the defendants are in a group relationship is not enough to extend the arbitration agreement to the companies that were not parties to it.434

**Tribunal powers:** In accordance with Article 18(1) of the PAL tribunals possess kompetenz-kompetenz powers. Under paragraph 8 of Article 18 the tribunal possesses the discretion as to whether to issue its decision on jurisdiction in the form of an order or an award. This is a significant power, the effect of which is that if the decision is issued as an award it constitutes res judicata, whereas if it is issued as a mere order it is subject to a challenge before the local courts.435

Under Article 20(2) of the PAL the tribunal may equally issue an interim measure in the form of an award or an order. The same provision sets out what these interim measures may in fact be.

Under Article 22(1) of the PAL the tribunal may attach a preliminary order to interim orders. The party against whom a preliminary order is issued shall have the right to present its case.436 Preliminary orders are binding on the parties but are not automatically

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432 X v Y, case no 373/09.0TTLSB.L1-4, Lisbon Court of Appeal judgment (13 January 2010).
434 C SA v V, AS and Others, case no 3539/08.6TTLSB.L1-7, Lisbon Court of Appeals judgment (11 January 2011).
435 Art 18(9) PAL.
436 Art 22(2) PAL.
enforceable\textsuperscript{437} and hence the parties will have to turn to the courts in case the party against whom they were issued fails to comply.

**Types of awards:** We have already seen that the tribunal can issue an award as regards the determination of its jurisdiction. Moreover, tribunals may issue as many partial awards as they see fit, in addition to a final award.\textsuperscript{438} Equally, tribunals may, following a request by the parties, issue additional awards.\textsuperscript{439}

**Fees and costs:** There is no general rule on this (save for Article 42(5) of the PAL below) and the parties are free to pre-determine costs and in institutional arbitration the institutional rules usually set the arbitrators’ fees and allocation of costs among the parties. We have already seen (in the introduction to the chapter) in what manner the Lisbon Court of Appeals reduced arbitrators’ fees in \textit{ad hoc} arbitration by deeming them excessive. In these cases, the fees had been agreed in advance but the parties settled halfway through. Even so, the arbitrators still charged full fees although the cases were not complex and had spent very little time working on them.

In addition, Article 42(5) of PAL states that “unless otherwise agreed by the parties, the award shall determine the proportions in which the parties shall bear the costs directly resulting from the arbitration. The arbitrators may furthermore decide in the award, if they so deem fair and appropriate, that one or some of the parties shall compensate the other party or parties for the whole or part of the reasonable costs and expenses that they can prove to have incurred due to their participation in the arbitration”.

**Time limit to render award:** This is set at 12 months (previously six months in the old law), although this may be extended in exceptional circumstances.\textsuperscript{440}

**Setting aside:** The grounds for setting awards aside under Article 46(3) of the PAL are almost identical to those found in the UNCITRAL Model Law, although, exceptionally, the PAL’s public policy requirement is expressly inclined towards the international rather than the domestic variant.

It is clear that the emphasis of the PAL is to save an award against which a valid ground for setting aside has been lodged, if the tribunal can remedy the defect. Hence paragraph 8 of Article 46, following the UNCITRAL trend, stipulates that: “the competent State court, when asked to set aside an arbitral award, may, where appropriate, and if it is so requested by one of the parties, suspend the setting aside proceedings for a period of time determined by it, in order to give the arbitral tribunal the opportunity to resume the arbitral proceedings or to take such other action as the arbitral tribunal deems likely to eliminate the grounds for setting aside”.

**Appeals against awards:** This is only possible in respect of international awards and only if the parties so mutually consent, in accordance with Article 53.

\subsection*{2.24. Romania}

Arbitration in Romania is regulated by the recently enacted (2013) code of civil procedure (CCP). The CCP largely follows the UNCITRAL Model Law and is generally not controversial,

\textsuperscript{437} Art 22(5) PAL.
\textsuperscript{438} Art 42(2) PAL.
\textsuperscript{439} Art 45 PAL.
\textsuperscript{440} Art 43(1) PAL.
but its structure is odd at times and although it contains numerous provisions it is not especially elaborate. As a result, some issues remain somewhat vague, particularly as to the meaning of public policy and the boundaries of arbitrability under Romanian law, given that the CCP provides no definition of the former and suggests that besides the matters specifically designated as non-arbitrable in the CCP there could be others as prescribed in other national legislation. Commentators do not refer to case law emanating from the country’s lower or superior courts, suggesting that little useful guidance has yet been provided by the courts. The rules of the CCP apply insofar as the parties or the arbitral tribunal have not themselves established rules regarding the procedure to be used in the arbitration.441

Scope of application (international versus domestic): Book IV (Articles 541-621) and V (Arts 635 and 705) apply exclusively to domestic arbitrations, namely disputes where the parties and the subject matter of the dispute relate solely to Romania. Book VII, on the other hand, regulates international arbitral proceedings. According to Article 1110(1) and (2) of the CCP, an arbitration that takes place in Romania is considered international if it “arises from a private law relation with a foreign element“. This is the case even where the place of the arbitration is in Romania and at least one of the parties, at the time when the arbitration agreement was concluded, did not have its domicile or habitual residence or its headquarters in Romania. Only a few provisions cover international arbitrations, as opposed to the elaborate scheme of Book IV. However, a number of articles in Book VII clearly state that where there is ambiguity or a gap in the regulation of international arbitrations and the parties have not otherwise agreed how to resolve such gap or ambiguity (e.g. by reference to institutional rules), the provisions relating to domestic arbitration apply by analogy.442 As a general rule, the vast majority of the rules relating to domestic arbitration apply mutatis mutandis to international arbitration.

Scope of application (commercial versus non commercial): There is no reference in the CCP as to the scope of its application so it is assumed that it applies to all types of disputes, whether they are commercial or not, subject to any arbitrability limitations.

Institutional versus ad hoc arbitration: Both are permitted and well-known in Romania; however, there are very few ad hoc arbitrations. Unusually, Article 619(2) CCP gives preference to the rules of any arbitral institution selected by the parties to administer their arbitration over any particular rules the parties may have agreed. Any deviation from the rules of the arbitral institution is deemed null and void, unless the leadership of the institution in question agrees to the deviation.

Arbitrability: The general rule is that the parties may submit to arbitration any disputes regarding rights which they are free to dispose of, subject to some notable exceptions found in the CCP (while not excluding others, but such an eventuality would be especially rare). Article 542(1) especially excludes from arbitration disputes concerning personal status, personal capacity, inheritance, family relations, “as well as those rights which the parties cannot freely dispose”. With the exception of consumer disputes which will be examined in the next section the only other non-arbitrable dispute that is not included in the CCP relates to individual employment disputes, given that collective labour disputes may be submitted to arbitration in accordance with Article 179 of Law no 62/2011 on Social

441 Art 544(4) CCP
442 For example, Art 1113(1) relating to the arbitral tribunal; Art 1120(3) concerning the award and; Art 1122 concerning auxiliary procedural rules.
Equally, the High Court of Cassation has held that disputes related to public procurement are not arbitrable, in accordance with Article 286 of Government Emergency Ordinance 34/2006.444

Consumer Disputes: The CCP does not make any reference to consumer disputes and hence the conclusion is that such disputes are indeed generally arbitrable. However, Romanian contract law may serve to render an arbitration agreement (whether pre-dispute or post-dispute) void as a result of its possible abusive character.445

Public policy: This concept is not elaborated in the CCP. Article 544(2) of the CCP dictates that the procedure chosen by the parties must be consistent with public order, good morals and the mandatory provisions of the law. This is also the case with Article 608(1)(h) regarding set aside proceedings. This suggests that conformity with the law is distinguished from public policy and certainly the introduction of “good morals” brings a very vague and indeterminate factor into arbitral proceedings, which may be capitalised by protracting parties. Article 1124 of the CCP which relates to the enforcement of foreign arbitral awards stipulates that said awards must be consistent with the public order provisions of Romanian private international law. This is an odd dimension of international public policy.

Agreement in writing: Article 548(1) expressly states that the arbitration agreement must be in writing. The writing requirement is fulfilled when the parties agree to resort to arbitration through an exchange of correspondence, irrespective of form, or through exchanges of procedural submissions. Although this clearly excludes oral agreements, it implicitly encompasses all those exchanges that are in written form, including emails, irrespective if the parties have appended electronic signatures. Article 1112(1) of the CCP which relates specifically to international arbitrations explicitly encompasses electronic mail.

Arbitration agreement: We have already determined that the arbitration agreement must be in writing. Article 544(2) introduces the possibility of a last minute arbitration agreement concerning the details of the procedure. This provision is oddly phrased. It states that the parties may determine the arbitrators or their chosen rules of procedure not only in the arbitration agreement but they can also do so at a later stage, namely not later than the constitution of the arbitral tribunal. This may be achieved through a deed, either expressly or by reference to a particular instrument. This deed is in all likelihood a new agreement (not necessarily a contract) which need not necessarily (as per this author’s personal opinion) be notarised. In accordance with Article 548(2) of the CCP if the arbitration agreement concerns a dispute connected with the transfer of a property right and/or the creation of another right in rem related to immovable assets, the arbitration agreement must be authenticated by a notary public under the sanction of absolute nullity.

In accordance with Article 550(3) of the CCP, in case of doubt, the arbitration clause shall be interpreted to apply to all disputes that derive from the contract or from the legal relation to which it refers. This is an important provision which legitimises tribunals to encompass within the arbitration agreement all relevant relationships, whether contractual, tort or other.

Article 557 states that any clause in an arbitration agreement shall be null and void to the extent that it confers a privilege on one of the parties in designating the arbitrators, or

443 Sidere (2011), at 646-47.
444 Romanian High Court of Cassation judgment no 3483 (29 June 2010).
445 Sidere (2011), at 646.
provides one party with the right to appoint an arbitrator on behalf of the other party or to have more arbitrators than the other party.

**Separability:** Articles 550(2) and 1112(3) give formal recognition to the doctrine of separability.

**State instrumentalities:** In accordance with Article 542(2) state and public authorities may enter into arbitration agreements as long as they are allowed to do so by law or are otherwise permitted to do so by reason of an international agreement binding upon Romania. It is therefore strongly suggested that foreign parties consult local counsel with respect to such domestic laws so as to ensure the legality of the agreement.

**Arbitrators’ qualifications:** There are no restrictions as to who may be appointed as arbitration under Article 555 of the CCP.

**Arbitrators’ conflicts of interest:** Unlike other UNCITRAL-inspired statutes that simply state that an arbitrator shall be independent and impartial, Article 562(1) of the CCP lists several grounds that cast doubt as to the arbitrator’s impartiality and independence, namely:

- a) The failure to satisfy the qualifications or other conditions concerning the arbitrators contained in the arbitration agreement;
- b) When the arbitrator is a shareholder of, or serves in the management of, a legal person having an interest in the dispute;
- c) If the arbitrator is employed in, works for, or has direct commercial relations with one of the parties, or with a company that is controlled by one of the parties or placed under the common control of the parties;
- d) If the arbitrator worked as consultant for, assisted or represented one of the parties, or testified in one of the preceding phases of the dispute.

**Liability of arbitrators:** Arbitrators are specifically liable under Article 565 of the CPC where they have caused damage if they:

- a) resign, without cause, after accepting the appointment;
- b) fail, without cause, to participate in the resolution of the dispute or do not render the award within the term required by the arbitration agreement or the law;
- c) do not observe the confidential character of the arbitration, by either publishing or disclosing information acquired in their capacity as arbitrators without the parties' approval; or
- d) breach other duties in bad faith or gross negligence.

**Representation of parties in arbitral proceedings:** Article 546 of the CCP does not set out particular requirements in respect of those requested to represent the parties in arbitral proceedings. A power of attorney will be crucial however.

**Tribunal powers:** Under the terms of Article 579 of the CCP the tribunal possesses kompetenz-kompetenz powers. Significantly, the tribunal’s positive ruling as to its jurisdiction, although not an award (at least nothing of this nature is stipulated in Article 579) can only be challenged by set aside (annulment) proceedings in accordance with paragraph 2 of Article 579.
The tribunal may question willing witnesses and experts but without administering an oath.\textsuperscript{446} The arbitral tribunal can neither compel nor sanction witnesses or experts. To obtain such measures, the parties may address the court.\textsuperscript{447}

The arbitral tribunal may request written information from the public authorities about their acts and actions that are necessary for the resolution of the dispute.\textsuperscript{448} If the public authority refuses then the tribunal may seek assistance from the courts.

Article 591 stipulates that the arbitrators shall evaluate the evidence pursuant to their personal conviction. Although the rationale behind this provision is to avoid any interference by the parties it is poorly phrased and may be used by arbitrators to input personal prejudices into the deliberations, whether of a religious or other nature.

**Tribunal deciding ex aequo et bono:** In accordance with Articles 601(2) and 1119(2) the tribunal may decide cases ex aequo et bono if the parties so wish.

**Court assistance and intervention:** The general rule is posited in Article 547 of the CCP which states that the parties may request the courts for assistance and the latter shall entertain such request "without delay with priority through expedited procedures ... that are not subject to appeal".

Under Article 561(1) of the CCP the court may appoint the presiding arbitrator in case the parties are unable to reach agreement among themselves. Such determination shall not be subject to appeal in accordance with paragraph 2.

Article 612 stipulates that the court of appeal can suspend the execution of the arbitral award against which an action for annulment (set aside) was filed. Judgments upholding an annulment are subject to appeal in accordance with Article 613(4) of the CCP.

**Provisional and conservatory measures:** These may not be ordered by the tribunal but by the court, in accordance with Article 585(1) of the CPC. The provision does not list such measures, but since they are to be issued by the court it is evident that they are identical to those available in judicial proceedings.

**Multi-party arbitration:** Article 557(3) of the CCP makes provision for multi-party arbitration but is rather optimistic that in all cases the parties with common interests shall be able to appoint a mutually acceptable arbitrator. Hence, the law is silent in situations where the parties are unable to appoint common arbitrators and whether the courts have the power (or discretion) to break up the various claimants and defendants into multiple proceedings.

**Third parties:** In accordance with Article 581(1) of the CCP third parties may participate in the arbitral proceedings but only with their consent and the consent of all parties. This general rule notwithstanding, the third party intervention in support of a party to the dispute is admissible even without satisfying this requirement of consent.

**Time limits for arbitration:** In accordance with Article 567(1) of the CCP the arbitral tribunal must render the award not later than 6 months from its constitution, under the sanction of lapse of the arbitration. The tribunal may decide to extend this time limit up to

\textsuperscript{446} Art 589(1) CCP.
\textsuperscript{447} Art 589(3) CCP.
\textsuperscript{448} Art 590(1) CCP.
a further three months for a justifiable reason.\textsuperscript{449} If the parties fail to declare in writing the expiry of the time limit during the first time when they are legally notified to appear they are presumed to have waived their right.\textsuperscript{450} In accordance with Article 1114(4) these time limits are doubled in international arbitrations.

**Communication of procedural documents:** Article 577(1) of the CCP makes a grand departure from unnecessary formalities as regards the communication of documents during proceedings. It states that the communication of documents related to the dispute, notices, arbitral awards and interlocutory orders between or to the parties shall be made by registered mail with declared contents and confirmation of receipt. Notification of the parties of other measures ordered by the arbitral tribunal may be made via telefax, electronic mail or other means that ensure the transmission of the text of the document and confirmation of its receipt.

**Form of arbitral award:** The relevant formalities are identical to those required under the UNCITRAL Model Law, with the addition of the signature of the secretary of the tribunal, where applicable, in accordance with Article 603(1)(g) of the CCP.

When the award is communicated to the parties it is final and binding.\textsuperscript{451} The tribunal must deposit the case file with the competent court as well as proof of communication to the parties.\textsuperscript{452} The arbitral award constitutes a writ of execution and shall be enforced in the same manner as a court judgment.\textsuperscript{453}

Awards issued in disputes relating to the transfer of ownership or other in rem rights over immoveable assets must be presented to the court or to a public notary in order to obtain a court decision or notarial deed, which will serve as basis for the registration in the land book.\textsuperscript{454} It is not clear which procedure the court or the notary must follow once either of them is presented with an arbitral award.

**Types of awards:** Tribunals may issue final and partial awards, as well as additional awards.

**Set aside (annulment) proceedings:** Only documents, not witnesses, may be used in set aside proceedings.\textsuperscript{455} The grounds set out in Article 608(1) of the CCP are more or less the same as those set out in the UNCITRAL Model Law, although public policy is rather broader than usual (explained in more detail in the relevant section). The unique ground is point (i), which provides that:

If, after the award is made, the Constitutional Court decides on an objection raised in that case, declaring unconstitutional a law, a government ordinance or a provision of a law or an ordinance that was the subject of that objection, or other provisions from the challenged legislation which, necessarily and clearly, cannot be dissociated from the provisions mentioned in the action for annulment.

\textsuperscript{449} Art 567(4) CCP.
\textsuperscript{450} Art 568(1) CCP.
\textsuperscript{451} Art 606 CCP.
\textsuperscript{452} Art 607 CCP.
\textsuperscript{453} Art 614 CCP.
\textsuperscript{454} Art 603(3) CCP.
\textsuperscript{455} Art 608(3) CCP.
Costs and fees: According to Article 595 of the CCP, in the absence of an agreement, the arbitration costs shall be borne entirely by the losing party if the request for arbitration is accepted entirely, or proportionally to what has been granted if the request is partially accepted.

In accordance with Article 598, at the request of either party in a domestic arbitration, the court shall examine the quality of the measures ordered by the arbitral tribunal and shall establish, through an enforceable and non-appealable decision, the amount of the arbitrators’ fees and the other costs of the arbitration, as well as the manner in which the deposit, advance or payment shall be made.

2.25. Scotland

Arbitration in Scotland is governed by the Arbitration (Scotland) Act 2010 which received Royal Assent on 5th January 2010 and substantially passed into force on 7th June 2010. Scotland has a long history of arbitration, with the first treatise covering the subject dating from 1215 and the earliest known legislation dating from 1598.

Prior to 7th June 2010, Scottish arbitration law was rather confusing, given that Scotland effectively had two arbitration systems, one dealing with international arbitration under the UNCITRAL Model Law, but handicapped by flawed implementing legislation, and another for domestic arbitration based on old case law and no significant statutory law. The 2010 Act is modelled after the Arbitration Act 1996 (applicable in England, Wales and Northern Ireland), albeit with several alterations and although it is not expressly modelled on the UNCITRAL Model Law the latter is certainly incorporated in the Scottish Act and in any event both are very much compatible.

The Scottish Government conducted a lengthy consultation process before deciding on its arbitration legislation and as has been noted Scotland is the only country to have ever repealed the UNCITRAL Model Law. With the adoption of the 2010 Act Scotland now has only a single piece of legislation regulating all types of arbitration except consumer arbitration, a matter reserved to the government of the United Kingdom. However, the Model Law remains an important cornerstone of the Scottish legislation. As a result, Section 28(1) of the Act states that ministers may by order modify the Act and its rules “in such manner as they consider appropriate in consequence of any amendment made to the UNCITRAL Model Law, the UNCITRAL Arbitration Rules or the New York Convention”.

There is a particularity of form as regards the drafting of the Act. It is divided in two parts. The first part consists of 37 Sections setting out what is encompassed and the key features of arbitration. The second part consists of a large number of rules, known as the Scottish Arbitration Rules (SAR) which are in effect the rules that apply to arbitral proceedings as such from start to finish (and should not be confused with institutional arbitration rules). Some of the rules are mandatory whereas others are not (default) and in order to make reading easy the legislator has added an M (mandatory) or a D (default) next to each rule. We should note from the outset the three founding principles of the Act (Section 1), namely fairness, party autonomy and limited court intervention.

456 Dundas (2013), 595-96 and 598.
457 There are two levels of court in Scotland, namely Sheriff courts (equivalent to county courts) and the Court of Session, equivalent to a supreme civil court, which is further divided in an Inner (appellate) House and an Outer (first instance) House.
**Scope of application (international versus domestic):** Section 2(1) of the Act makes no distinction (in terms of applicable law or rules) between domestic and international arbitration and hence any arbitration seated in Scotland is governed by the Act, irrespective of the nationality of the parties. Section 3(1) defines an arbitration as being seated in Scotland if:

a) Scotland is designated as the juridical seat of the arbitration—
   (i) by the parties,
   (ii) by any third party to whom the parties give power to so designate, or
   (iii) where the parties fail to designate or so authorise a third party, by the tribunal.

However, two or more Scottish parties may arbitrate a dispute in Scotland but if they designate as their juridical seat a foreign jurisdiction, the provisions of the 2010 Act will not apply, unless the court decides to sist proceedings (equivalent of a stay) where a valid arbitration agreement exists\(^{458}\) or later refuses to enforce the award.\(^{459}\)

Finally, in accordance with rule 52, an award is to be treated as having been made in Scotland even if it is signed at, or delivered to or from, a place outwith Scotland.

**Scope of application (commercial versus other):** Subject to any arbitrability requirements the Act does not confine arbitration to commercial disputes. In fact, Section 2(1) defines a dispute as including any refusal to accept a claim and any other difference, whether contractual or not. In this sense, the range of disputes that may be submitted to arbitration is virtually limitless.

**Arbitrability:** Section 1(b) of the Act, which is also one of the three founding principles of the Act, makes the point that the parties' freedom to resolve their disputes shall only be subject "to such safeguards as are necessary in the public interest". Section 30 of the Act is, however, rather cryptic and the available commentaries do not offer much guidance in this respect.\(^{460}\) It states that "nothing in this Act makes any dispute capable of being arbitrated if, because of its subject-matter, it would not otherwise be capable of being arbitrated". It is suggested by commentators that this absence of any real guidance on arbitrability largely stems from the nature of Scots contract law which is entirely common-law based and hence if the Act codified arbitrability in any detail it would have codified a significant part of contract law. Despite the absence of any further guidance in the Act, commentators argue that if a matter can be litigated in the courts it can be arbitrated, subject to a limited number of exceptions, namely: a) disputes arising from criminal law; b) winding up of companies; c) creation of property rights (save for infringements against such rights); d) matters pertaining to public interest and status and; e) matters subject to specific regulatory regimes.\(^{461}\)

**Separability:** This doctrine is recognised in Section 5 of the Act. Paragraph 3 of Section 5 states further that a dispute about the validity of an agreement containing an arbitration agreement may be arbitrated in accordance with that arbitration agreement.

\(^{458}\) s.10 2010 Act  
\(^{459}\) s.12 2010 Act  
\(^{460}\) But see the 2nd edition of Bartos & Dundas (2014).  
\(^{461}\) Wilson & Allan (2012), at 694.
Institutional versus *ad hoc* arbitration: Both are well known in Scotland although in practice it is fair to say that institutional arbitration is currently far more popular. At this juncture we should stress one of the major innovations of the Act which reflects on the appointment of arbitrators and the institutions that administer arbitration. Section 24 introduces the concept of an arbitral appointments referee (AAR), which consists essentially of third party institutions experienced in appointing arbitrators being responsible for the appointment of arbitrators or umpires in situations where the parties are unable to agree among themselves. AARs, moreover, are responsible for the training and discipline of appointed arbitrators. This task is typically undertaken by the courts under the Model Law and it is clear that this is not a function with which the judges are familiar and it makes absolute sense to have experts deciding on such matters. Eight professional bodies are currently registered as AARs in Scotland, including CIArb, RICS and the Law Society of Scotland.462

Agreement in writing: The Act does not follow the Model Law in this respect and commentators suggest that agreements may be made orally (although this is rare), albeit it is implicit that any record of the parties’ agreement in whatever form this is recorded (electronic or other) will suffice as an arbitration agreement.463

Choice of law: We have already noted that the Act applies to all arbitrations seated in Scotland and the Scottish Arbitration Rules contained in the Act equally apply, but the parties may choose not to apply those that are designated as non-mandatory.

Section 13(4) of the Act allows the parties to substitute non-mandatory provisions with any rules of their choice, including relevant provisions of the UNCITRAL Model Law.

Consumer arbitration: Consumer arbitration in Scotland is, and has since 31st January 1997 been, governed by ss.89-91 of the 1996 Act; consumer protection is a matter reserved to Westminster and the Scottish Government has no competence in this regard.

Legal representation in arbitral proceedings: Any person may represent the parties, regardless if he or she is a lawyer, provided that the person possesses full capacity under the law.464

Arbitrators’ qualifications: Any person with full capacity may serve as arbitrator.465 The only exception concerns judges, who may act as arbitrators or umpires where the dispute being arbitrated appears to the judge to be of commercial character and the Lord President, having considered the state of Court of Session business, has authorised the judge to so act.466 This is regarded as very unlikely to happen, in contrast to the situation in England where TCC judges do sit as arbitrators from time to time.

Liability of arbitrators: The general rule is found in the mandatory provision of rule 73 of the SAR, which states that neither the tribunal nor any arbitrator is liable for anything done or omitted in the performance, or purported performance of the tribunal’s functions, unless the act or omission is shown to have been in bad faith, or to any liability arising from the arbitrator’s unjustified resignation under rule 16(1)(c) of the SAR.

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462 Dundas (2013), at 603.
464 Rule 33, SAR.
465 Rule 4, SAR.
466 Arbitration Act, Art 25(1).
Confidentiality: An unjustified disclosure by the tribunal (or a party for that matter) of confidential information relating to the arbitration is to be "actionable as a breach of an obligation of confidence" in accordance with rule 26(1) of the SAR. This represents a novel provision for arbitration statutes, but disclosure is where it is consistent with the law or broadly in the interests of justice. In one case, a party against whom arbitral proceedings had been initiated requested documentation relating to the legal and factual bases of the plaintiff’s claims. The respondent argued that although these did not contain any business secrets they were not useful to the respondent. The Court decided that there was a balance required to be struck between the right to privacy in an arbitration and the public interest in the fair administration of justice. It decided that in order for the respondent to be in a position to fully defend the action, the documentation should be made available to them (only for use in this Court action) in the interests of public interest.\(^{467}\) That confidentiality is important to the courts is reflected in the first case to arise in respect of the AA10. There, Glennie L made it clear that confidentiality was not to be lost simply because the matter had come before the Court. He stated that: “In giving my decision I have tried to avoid setting out any details which might betray the identity of the parties. Explanation of the points at issue is necessarily lacking in particulars.”\(^{468}\)

Court assistance and intervention: One of the three founding principles of the Act as expounded in Section 1(c) thereto is that “the court should not intervene in an arbitration except as provided by this Act”. The courts, moreover, are mandated not to frustrate arbitral proceedings or awards and to try to assist arbitral proceedings as much as possible, without jeopardising the interests of justice or the parties’ own interests. A good example is Section 20(5) of the Act whereby a convention award containing decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters which were so submitted that are separable from decisions on matters not so submitted.

In accordance with Section 15 a party may approach the court for an order prohibiting the disclosure of the identity of a party to the arbitration in any report of civil proceedings. The court’s order in this respect is final and may be based, among others, on public interest or the interests of justice.

If the parties continue to disagree on the person of the arbitrators or the umpire following a decision by the AAR, the matter will be referred to the courts, whose decision on the matter is final.\(^{469}\)

The courts may remove an arbitrator following a request by one of the parties, subject to several conditions laid down in rule 12 of the SAR. Equally, the courts may dismiss the tribunal if satisfied on the application by a party that substantial injustice has been or will be caused to that party because the tribunal has failed to conduct the arbitration in accordance with the parties’ agreement or the rules.\(^{470}\)

In accordance with rule 21(1) a party may appeal to the courts against a ruling of the tribunal on its jurisdiction.

In accordance with rule 41 of the SAR, upon an application by any party, the Outer House may determine any point of Scots law arising in arbitral proceedings. This is understandably a default rule. However, such an application is valid only if agreed by the

\(^{467}\) Gray Construction Ltd v Harley Haddow LLP, Court of Session (Outer House), case no CA86/1, judgment (18 May 2012), [2012] CSOH 92.

\(^{468}\) S v M, Court of Session, judgment (5 October 2011), [2011] CSOH 164.

\(^{469}\) Rule 77, SAR.

\(^{470}\) Rule 13, SAR.
parties, determination of the legal issue at hand is likely to produce substantial savings in expenses and there is good reason why the issue should be determined by the court.\textsuperscript{471} It should be emphasised that the role of the courts in dealing with appeals against awards is severely more restricted than in England. Moreover, in any instance where a matter is capable of decision by a Sheriff, there is no right of appeal whatsoever even if that decision is in fact made in the Outer House. By way of contrast, in England any decision by any court can be appealed all the way to the UK Supreme Court. Appeals against awards (Outer House only) not only have to meet a very high entry threshold but are going to be appealable to the Inner House only in exceptional cases such as \textit{Northern Pioneer} or \textit{Golden Victory}.

There is no appeal to the UK Supreme Court under any circumstances.

\textbf{Tribunal deciding ex aequo et bono}: This is indeed possible should the parties so wish, in accordance with rule 47(2) of the SAR.

\textbf{Types of awards}: Besides final awards on the merits, tribunals may render part awards dealing with one or more issues raised in the parties’ submission.\textsuperscript{472} Exceptionally, the parties may agree that the tribunal can issue them with a draft of its proposed award to which the parties may make representations.\textsuperscript{473} In accordance with rule 49 of the SAR, the tribunal’s awards may:

(a) be of a declaratory nature,

(b) order a party to do or refrain from doing something (including ordering the performance of a contractual obligation), or

(c) order the rectification or reduction of any deed or other document (other than a decree of court) to the extent permitted by the law governing the deed or document.

\textbf{Interim orders}: This power befalls the courts in accordance with rule 46(1)(g) unless the parties agree otherwise. The parties may also seek these from the tribunal, in accordance with rule 53 of the SAR.

\textbf{Multi-party arbitration and joinders}: Rule 40 of the SAR, which is of a non-mandatory nature, stipulates that the parties are free to consolidate several arbitration cases if they so wish and they agree on the persons of the arbitrators. The tribunal does not possess authority to order such consolidation on its own initiative without the parties’ consent.

\textbf{Tribunal powers}: We will only make reference to some exceptional powers enjoyed by arbitral tribunals. Under rule 56 of the SAR, a mandatory rule, tribunals possess power to withhold an award on non-payment of fees or expenses. This is effectively identical to s.56 of the Arbitration Act 1996 (AA96).

The structure of the 2010 Act and the relevant rule of court support the view that the pre-Act practice of obtaining the arbiter’s approval of a specification of documents prior to seeking the authority of the court should remain the default position.\textsuperscript{474}

\textbf{Enforcement of arbitral awards}: Although awards are binding on the parties they are not fully enforceable. The parties must apply to the court for enforcement as an “extract

\textsuperscript{471} Rule 42, SAR.
\textsuperscript{472} Rule 54, SAR.
\textsuperscript{473} Rule 55, SAR.
\textsuperscript{474} SGL Carbon Fibres Ltd, Petition for an order to disclose documents and other materials under rule 45(1) of the Scottish Arbitration Rules, Court of Session (Outer House) case no P39/13, judgment (31 January 2013).
registered decree bearing a warrant for execution". This order can only be granted by the courts, except if the award is subject to an appeal, review or correction in accordance with Section 12(1) – (3) of the Act. This is effectively identical to s.66 AA96

**Registration of awards:** Section 12(5) of the Act stipulates that unless the parties otherwise agree, a tribunal’s award may be registered for execution in the Books of Council and Session or in the sheriff court books (provided that the arbitration agreement is itself so registered).

**Costs and fees:** In accordance with rule 60(3) - (5): This is effectively identical to s.64 AA96

3. The amount of fees and expenses payable under this rule and the payment terms are:
   
   (a) to be agreed by the parties and the arbitrators or, as the case may be, the arbitral appointments referee or other third party, or
   
   (b) failing such agreement, to be determined by the Auditor of the Court of

4. Unless the Auditor of the Court of Session decides otherwise—
   
   (a) the amount of any fee is to be determined by the Auditor on the basis of a reasonable commercial rate of charge, and
   
   (b) the amount of any expenses is to be determined by the Auditor on the basis that a reasonable amount is to be allowed in respect of all reasonably incurred expenses.

5. The Auditor of the Court of Session may, when determining the amount of fees and expenses, order the repayment of any fees or expenses already paid which the Auditor considers excessive (and such an order has effect as if it was made by the court).

Rule 63 of the SAR places a mandatory ban on pre-dispute agreements concerning liability for arbitration expenses. This is identical to s.60 AA96.

**Challenges against awards:** The envisaged challenges are equivalent to the set aside proceedings laid down in the UNCITRAL Model Law with the addition of a non-mandatory right of challenge on a point of Scots law; the latter is, however, excluded by the ICC, LCIA and some other institutional rules. The two mandatory rights of challenges are: a) against the tribunal's jurisdictional competence; b) in respect of a serious irregularity, the grounds for which are set out in rule 68 of SAR. In an interesting appeal against an award for failure to apply the law correctly, it was held that an arbitrator had erred in law with his approach to determining the minimum and maximum rents due by a tenant by taking into account the terms of the market rather than the terms of the lease, which stated that the basis ought to be seven per cent of the tenant's gross turnover. The award was thus found to be inconsistent with the parties' intention and did less than justice to the full terms of the rental provisions in the lease.

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475 Rule 69, SAR; see also X v Y, Court of Session, judgment (27 January 2011), [2011] CSOH 164, per Glennie L, who held that an appeal against an award as regards the onus of proof "must be on the party seeking to persuade the arbitrator to depart from the assessment [as designated by the terms of the contract]".

476 Rule 67, SAR.

477 *Manchester Associated Mills Ltd v Mitchells and Butler Retail Ltd*, Court of Session (Outer House), case P1013/12, judgment (10 January 2013).
Annex B - Key Features of National Arbitration Law in the Member States and Switzerland

In a recent case where a party challenged a preliminary award refusing arbitral jurisdiction, the arbitrator held that notice given to one party was improper. When set aside proceedings were heard against the preliminary award the Outer House of the Court of session ultimately remitted the case to the arbitrator to consider the merits of the dispute, arguing that the arbitrator had focused on technicalities and not on the original intention of the parties and the factual background of the case.\textsuperscript{478} It is thus clear that the courts will not accept preliminary awards whereby tribunals refuse to hear a case if the fault is not significant or is otherwise remediable, particularly if it is clear that the parties had intended to submit their disputes to arbitration.

2.26. Slovakia

Arbitration in Slovakia is principally regulated by the 2002 Arbitration Act,\textsuperscript{479} which replaced the Arbitration Act of 1996.\textsuperscript{480} The 2002 Act has subsequently been amended twice\textsuperscript{481} but its skeleton and basic principles remain unchanged. The 2002 Act is inspired by the UNCITRAL Model Law but is not fully harmonised with it. The aim of both the 1996 and the 2002 Acts was to modernise the country’s arbitration legislation as well as render Slovakia an attractive destination for international arbitration. One of the worrying trends is that the new Arbitration Act (AA) has resulted in the proliferation of arbitral institutions, most of which aim to make a profit from arbitration, in some cases regardless of whether principles of due process and equality of parties are adhered to. There are currently more than 130 such institutions operating in the country and the situation is comparable to that of Latvia and there is a real risk to the rule of law as a result. The AA provides for subsidiary application of the provisions of the Code of Civil Procedure which regulates proceedings before national courts.

In recent years Slovak courts have shown a general suspicion of arbitration. This can, to a large extent, be tied to two factors: that institutional arbitration is uncontrolled, and that courts do not differentiate between commercial and consumer arbitration. For example, while it is generally accepted that tribunals may issue declaratory relief as to whether the underlying contract is valid, two judgments by regional courts have held that the invalidity of a contract applies \textit{ab initio}, placing it beyond the reach of a settlement by the parties. Given that only disputes for which the parties have a right to settle are arbitrable, disputes where the validity of the underlying contract is challenged, the courts held, are not arbitrable.\textsuperscript{482} Such an approach is entirely inconsistent with contemporary approach to the regulation of arbitration, and seriously undermines the functioning of arbitration in Slovakia.

As a result of these problems, the Ministry of Justice set up a commission in August 2012 to examine improvements to the existing regime. Proposals have now been adapted, but it is unclear in what form they may ultimately be implemented. The original proposals envisage a distinct law for the settlement of consumer disputes which will bring it in line with the consumer protection directive and relevant ECJ judgments. There is also specific provision in the amendments to the 2002 AA for expansion of arbitrability in commercial cases, in order to remove the effect of the aforementioned judgments of the regional courts. Equally, it is envisaged that the regime for arbitral interim measures will be expanded to reflect

\textsuperscript{479} Act no 244/2002.
\textsuperscript{480} Act no 218/1996.
\textsuperscript{481} Act no 521 / 2005 Coll. and Act no 71/2009.
Article 17 of the 2006 UNCITRAL Model Law. In general, the amendments are meant to fully align the AA with the Model Law and make it impossible for arbitration institutions to be operated with a sole focus on the generation of profit.

**Scope of application (international versus domestic):** On the basis of Article 1(1) of the AA both domestic and international disputes are governed under the terms of the Act as long as the seat of the tribunal is in Slovakia.

**Scope of application (commercial versus non-commercial):** Article 1(1) of the AA stipulates that it governs proprietary disputes arising from commercial and civil disputes. Proprietary disputes are those whose subject matter encompasses a monetary value or dimension.

**Institutional versus ad hoc arbitration:** Both types of arbitration are allowed in Slovakia but commentators suggest that *ad hoc* arbitrations are exceptionally rare and parties generally prefer to submit disputes to institutional arbitration.

**Consumer disputes:** At present, the AA does not distinguish between commercial and other disputes and no exclusion is made in respect of consumer disputes. However, with the latest amendment to the AA in force since 2009, tribunals must take into consideration applicable consumer protection law in their determination, irrespective if this has been excluded in the parties’ contract, lest the award be set aside. In practice, because of the proliferation of arbitral institutions, many of which have applied unethical standards in their work, some tribunals have failed to observe the mandatory provisions of consumer protection and hence the courts have taken a strict approach to the arbitrability of consumer disputes. A new separate legislation for consumer arbitration has been proposed, but it is unclear whether and in what form it will eventually be adopted.

**Arbitrability:** The general rule is that all matters susceptible to settlement and which encompass a dispositive entitlement may be submitted to arbitration. There are some notable exceptions, however, namely: all disputes concerned with real property, personal status, enforcement of decisions and disputes arising out of bankruptcy or restructuring.\(^{483}\) As a result, not all proprietary disputes may be submitted to arbitration. Moreover, labour disputes are not arbitrable.\(^{484}\) However, this result should be viewed from a qualified lens. Although there is no rule prohibiting arbitrability of labour disputes, in practice parties do not include arbitration clauses in labour contracts given the fear that they may be treated in the same manner as consumer contracts.

**Public policy:** Like most jurisdictions, Slovakia does not have a definition of public policy legislated by statute, but instead relies on the courts’ jurisprudence. While in consumer cases the courts have traditionally given an expansive and strict interpretation of the term, in commercial cases and in particular in cases dealing with enforcement of foreign arbitral awards, they have broadly followed the exceptional and narrow understanding of public policy. The Regional Court in Bratislava, for example, recently held that “*The public policy exception is to be interpreted restrictively and the refusal of enforcement on this ground is applicable in exceptional circumstances only.*”\(^{485}\)

Different from the Model Law, the Slovak AA does not allow domestic arbitral awards to be set aside for breach of public policy. Hence court decisions debating public policy tend to

\(^{483}\) Art 1(3) AA.  
\(^{484}\) Zilizi (2012), at 796.  
\(^{485}\) Ruling of the Regional Court Bratislava [SVK], file No 20 CoE/77/2011 – 2199, dated 12 July 2012
occur only in cases of enforcement of foreign arbitral awards, where the Slovak AA copies the grounds for non-enforcement under Article V(2) of the New York Convention.

**Agreement in writing:** Article 2(2) of the AA generally follows the standard set in the Model Law and thus any written agreement, whether in the form of formal or other written exchanges (including of an electronic nature, suffices for the recognition of a valid arbitration agreement and in the absence of an agreement the situation may be remedied by the recording of the parties’ agreement in the minutes of the tribunal at its first hearing. However, unlike other arbitration statutes, if there is no agreement and a party fails to challenge the tribunal’s jurisdiction this does not give rise to a tacit waiver or estoppel. Either party may later challenge the award and have it set aside for lack of jurisdiction (absence of agreement). Oral agreements are excluded by the law. Although the Model Law and practice premised on the Law generally accepts incorporation by reference, the Slovak Supreme Court held that an arbitration clause incorporated by reference in a bank’s general terms and conditions through a main agreement without the parties having signed the said terms and conditions did not qualify as a valid arbitration clause. This ruling of the Supreme Court has been severely criticised but it should be pointed out that its rulings are not binding precedent and arbitral institutions have refused to follow it in this instance.

**Arbitration agreement:** Unless otherwise stipulated by the parties, an arbitration agreement is binding upon their legal successors in accordance with Article 3(2) of the AA. The parties may subject the arbitration clause to a law that is different to that of the governing law of their contract.

**Choice of law:** Whereas the parties can choose any law to govern their contract, in domestic arbitrations the applicable law will always be Slovak law.

**Number of arbitrators:** In accordance with Article 7(2) of the AA the number of arbitrators must be uneven, otherwise the arbitral tribunal shall be composed of three arbitrators.

**Liability of arbitrators:** The AA does not expressly deal with arbitrators’ liability, so the issue is to be resolved by reference to the general principles of Slovak law. There is no specific immunity granted by law or court jurisprudence to arbitrators or arbitral institutions. Debates have taken place as to whether the basis for liability of arbitrators under Slovak law should be understood as tortuous or contractual. The issue is unresolved. The predominant view is that where arbitral awards are issued by arbitrators in the name of the relevant arbitration institution (which is a common phenomenon in Slovakia), it is the institution rather than the arbitrators that should bear any liability for damages caused by an award.

**Arbitrators’ qualifications:** Under Sec. 6 of the AA, arbitrators are required to have a clean criminal record and to have “adequate experience to perform the function of an arbitrator”. The satisfaction of the first condition is satisfied by Slovak arbitrators with an extract from the national criminal registry and by foreign arbitrators by an equivalent document issued by their country of residence. The vague nature of the second condition

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486 Zilizi (2012), at 780.
488 Art 5(1) AA.
489 Art 31(2) AA.
490 Zilizi (2012), at 782
has lead to it being largely ignored in Slovak arbitration. It is proposed to be deleted in the next amendment to the AA.

**Legal representation during arbitral proceedings:** There are no restrictions as to who may represent the parties in arbitral proceedings seated in Slovakia. If this is done by lawyers there is no requirement that they be registered in Slovakia. **Confidentiality:** The arbitrators are obliged to observe confidentiality, but the parties are not so bound unless they conclude a separate agreement to the contrary.491

**Multiparty arbitration and joinders:** Multi-party arbitration is not regulated in the AA so the relevant provisions of the CCP come into operation mutatis mutandis.492 Third parties may be joined in the proceedings only if they are successors to parties in the proceedings or where in any other way the court and the party they wish to join as plaintiff or respondent so consents.493 The tribunal has the power to join proceedings as long as the parties are treated equally and due process rights are fully respected.494

**Court assistance and intervention:** One of the general principles arising from the CCP is that of non-intervention by the courts in arbitral proceedings.495 That is why all relevant measures related to arbitration proceedings, such as interim measures and evidence-taking, are vested in the tribunal. The courts intervene only when requested by the parties or the tribunal, especially where the measures sought are not enforceable when made by the tribunal.

In accordance with Article 27(3) of the AA the tribunal may request the courts to take evidence on its behalf as any rulings in this respect are not binding on the parties. However, court interventions in support of arbitral proceedings are very rare in practice.

**Interim measures:** The parties may seek interim measures and the tribunal is competent to order these in accordance with Article 22 AA. In fact, the tribunal is competent to order any measures it deems appropriate in order to safeguard the parties’ rights and evidence necessary for the proceedings. However, such an order is not automatically enforceable although the tribunal may draw appropriate inferences from a party’s failure to comply. As a result, if a party refuses to comply the other party may seek enforcement of the order through the courts although there are no reported cases of a successfully enforced interim measure granted by a tribunal. The AA’s provisions on interim measures are to be expanded by the next amendment to be in line with the provisions or Article 17 to 17J of the Model Law’s 2006 version.

The Supreme Court has affirmed that following the commencement of arbitral proceedings the courts have no authority to issue interim measures (as opposed to enforcing an interim measure ordered by a tribunal).496 The rationale here is to avoid court intervention in arbitral proceedings and although the parties may seek relief from the tribunal, it might frustrate their purpose if they must later enforce the tribunal’s ruling.

491 Art 8(4) AA.
492 Art 51 AA.
493 Arts 92 and 93 CCP.
494 Art 112 CCP.
495 Zilizi (2012), at 785.
496 Ruling of the Slovak Supreme Court, file no 5, 24/2013 (12 June 2013).
**Tribunal powers**: Given the limitation to the courts’ powers over arbitral proceedings as discussed above, it is natural that tribunals in Slovakia enjoy more powers as compared to other jurisdictions.

**Tribunal deciding ex aequo et bono**: This is indeed possible if the parties so agree.

**Setting awards aside**: An award rendered in Slovakia may be set aside according to Article 40(1) of the AA if:

a) the subject matter of the dispute was not arbitrable;

b) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement and the party challenging the award objected to this fact before the arbitral tribunal;

c) the award addressed issues that had already been determined by a previous court or arbitral tribunal;

d) the arbitration agreement is invalid;

e) a party to the arbitration was unable to present its case (e.g. was not duly represented);

f) the award was rendered by an arbitrator who had been removed for bias;

g) the principle of equality of the parties was violated;

h) there are compelling reasons for re-opening the case (e.g. new evidence has emerged which casts serious doubt upon the correctness of the arbitral tribunal's decision);

i) the award was obtained by fraud or other criminal conduct.

Clearly, some of these grounds are novel as compared to set aside grounds offered under the UNCITRAL Model Law, particularly ground (h). Note the conspicuous absence of a public policy ground to set aside domestic arbitral awards as per Art. 34 of the Model Law.

**Costs and fees**: Although an award must also specify the costs of arbitration and their allocation between the parties, the AA does not specify the principles regulating the allocation of fees and costs. In domestic cases the rules under the CCP and the regulation on attorney’s fees would have to be applied *mutatis mutandis*. These can sometimes lead to extremely high costs being awarded in cases with low complexity, but high value.

2.27. Slovenia

On 9 August 2008 Slovenia enacted into law its new Arbitration Law, which repealed its previous arbitration legislation. Upon the adoption of the 2008 Law a number of arbitration-pertinent instruments or provisions thereto were repealed, most notably chapter 31 of the Slovenian Code of Civil Procedure (CCP), as well as several provisions in employment-
related legislation, given that the 2008 Law has an extensive coverage of arbitration-related employment disputes. The 2008 Arbitration Law is modelled after the 2006 version of the UNCITRAL Model Law and lays down detailed provisions on consumer and employment arbitration and limits the situations under which the local courts may intervene in proceedings. Clearly, the emphasis is pro-arbitration and there are no controversial or other ambiguities in the Law, other perhaps than the fact that public policy is not defined at all. Article 2(1) of the Law goes on to say that “in the interpretation of the provisions of this Law, regard is to be had to the need to promote uniformity in the application of the UNCITRAL Model Law on International Commercial Arbitration and to the principle of good faith.”

**Scope of application (international versus domestic):** In accordance with Article 1(1) of the Arbitration Law an arbitration is considered as being domestic if the seat is in Slovenia, irrespective of the national (or country of incorporation in respect of legal persons) of the parties to the proceedings. In accordance with paragraph 2 of Article 1, an arbitration is considered foreign (or international) if its seat is abroad. Paragraph 3 of Article 1 goes on to say that until the seat of arbitration has been determined, Slovenian courts have jurisdiction to decide matters referred to in Article 9 of the Law, provided that one of the parties has its permanent or temporary residence in the Republic of Slovenia.

**Scope of application (commercial versus other):** Subject to arbitrability limitations there are no restrictions as to the application of the Arbitration Law. Article 4(1) of the Arbitration Law states that the subject of an arbitration agreement may be: “any claim involving an economic interest.” In fact, as will be discussed in another section, it applies to both consumer and employment disputes.

**Arbitrability:** The general rule is laid down in Article 4(1) whereby any claim involving an economic interest may be submitted to arbitration. Other claims may be submitted to arbitration to the extent that parties are legally permitted to settle them. Consumer disputes are arbitrable (Articles 44ff), as are also employment disputes (Articles 48-49). In respect of both, however, the agreement to arbitrate must have been signed after the dispute arose and must be individually negotiated.

On 30 July 2011 the Slovenian Parliament adopted an “authentic interpretation” of Article 40 of Law 32/93 on Commercial Public Services, which appears to make disputes arising from concession contracts non-arbitrable, although caselaw interpreting the provision is not yet available. Specifically, it states that: “where there is a dispute concerning the performance of a concession contract between the concession granter and the concessionaire, the decision will be made by the court of general jurisdiction.” It goes on to state that Article 40 “is to be understood to the effect that the resolution of disputes between the grantor of the concession and the concessionaire that may arise in connection with the performance of the concession contract is subject to the exclusive jurisdiction of the courts.”

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499 Art 11 of the Law on Employment and Social Courts (Official Gazette of the Republic of Slovenia no. 2/04 and 10/04 – corrigendum); Art 205(3) of the Law on Employment Relations (Official Gazette of the Republic of Slovenia, nos. 42/02, 79/06, 46/07 and 103/07); Art 19(3) of the Law on Electronic Commerce (Official Gazette of the Republic of Slovenia no. 61/06); Art 20(5) of the Law on Collective Bargaining (Official Gazette of the Republic of Slovenia no. 43/06); and Article 105 of the Law on the Participation of Employees in Management (Official Gazette of the Republic of Slovenia no. 42/07).

500 Arts 45-48 and 49 Arbitration Law.
Moreover, in accordance with Article 5 of the Arbitration Law, Slovenian nationals and legal persons seated in Slovenia are allowed to submit disputes to arbitration outside Slovenia, except where the dispute is subject to the exclusive jurisdiction of Slovenian courts. Presumably this provision was aimed at restricting the parties’ attempt to bypass arbitrability restrictions by submitting their dispute to foreign arbitration. This is perhaps superfluous given that a foreign award of this nature would have been refused enforcement either on arbitrability or public policy grounds.

**Consumer arbitration**: Chapter X of the Arbitration Law renders consumer disputes lex specialis in the sense that although they are susceptible to arbitration, they are also governed by the terms of consumer protection legislation. For one thing, an arbitration agreement can only be concluded by means of a compromis, not an arbitration clause. The compromis must be individually signed and negotiated. Several other safeguards have been put in place to protect consumers. The submission agreement must state the seat of the arbitration. However, a B2C arbitration agreement where the consumer has a permanent or temporary residence in Slovenia or who habitually works in Slovenia, but who, neither at the time of the conclusion of the arbitration agreement nor at the time of the submission of the statement of claim, has a permanent or temporary residence or habitually works in the state where the arbitration has its seat, is binding only if it is invoked by the consumer.

Unlike other arbitration statutes, Article 47 establishes a special set aside procedure solely for consumer disputes. The same set aside grounds applicable to ordinary awards apply (i.e. Article 40 of the Arbitration Law) and in addition the following grounds may be utilised by the courts in order to set aside a consumer award, namely:

1. There was a violation of mandatory provisions from which the parties cannot derogate even in a relationship involving an international element; or
2. There is a ground on the basis of which, pursuant to the rules of civil procedure, it would be possible to set aside a judgment and order a retrial; in such a case, the time period for raising a claim for the setting aside of the arbitral award is the period within which, pursuant to the rules of civil procedure, it is possible to request the setting aside of a judgment and a retrial.

**Institutional versus ad hoc arbitration**: Both forms are permitted and known in Slovenia but ad hoc arbitrations are rare.

**Agreement in writing**: Article 10 provides a rather broad definition of an agreement in writing on the basis of the UNCITRAL Model Law. In general, paragraph 2 provides that any exchange between the parties, electronic or on paper suffices, as long as there is “a record of the arbitration agreement that is accessible and suitable for subsequent reference.” The arbitration agreement is equally valid if it is contained in another instrument (general contract conditions or by incorporation) where this is in accordance with common usage or “is such as to make the arbitration clause part of the contract”. Moreover, an arbitration agreement is valid also if the bill of lading contains an express reference to an arbitration clause in a charter party (paragraph 5). Equally, an arbitration agreement is validly entered into if the claimant brings an action before an arbitration and the

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501 Art 45(1) Arbitration Law.
502 Id, para 2.
503 Id, para 3.
504 Art 10(3) and (4) Arbitration Law.
respondent does not raise a plea that the arbitral tribunal does not have jurisdiction at the latest in the statement of defence (paragraph 6). It is implicit that oral agreements are not recognised as valid for arbitration purposes in Slovenian law. However, an arbitration agreement will count as “in writing” if it is included in a document transmitted by one party to the other, or by a third party to both parties, and no objection to the arbitration agreement was raised “in good time” (paragraph 3).

**State entities:** State entities may validly enter into arbitration agreements. Article 4(2) of the Arbitration Law sets no restrictions.

**Court assistance and intervention:** One of the underlying rationales of the Arbitration Law is to restrict the intervention of the courts in arbitral proceedings while at the same time providing ample assistance to the tribunal and the parties. The designated court is the Ljubljana District Court. In accordance with Article 9(1) of the Arbitration Law it has jurisdiction to decide:

- The admissibility or inadmissibility of arbitral proceedings (Article 11(3));
- The appointment of an arbitrator (Article 14(3) and (4));
- Challenge of an arbitrator (Article 16(3));
- Termination of the mandate of an arbitrator (Article 17(1));
- Jurisdiction of the arbitral tribunal (Article 19(3));
- Setting aside of the arbitral award (Article 40(2));
- Declaration of enforceability of domestic awards (Article 41) and the recognition of foreign awards (Article 42).

However, in the opinion of this author the Arbitration Law fails to address delay tactics, given that paragraph 3 of Article 9 allows appeals against the judgment of the district court to the Supreme Court, with all the delays such action entails. Notably, however, appeals are allowed in every instance, and under Article 14(5) no appeal is available to a district court’s appointment of an arbitrator when the parties have been unable to agree.

According to Article 31(1) the court may assist the tribunal in the taking of evidence, particularly where the latter is not empowered as such. It is particularly significant that the arbitrators are entitled to participate in any judicial taking of evidence and to ask questions. **Interim measures:** The parties can request the courts to order interim measures whether before or during the arbitral proceedings, without this being considered a breach of their arbitration clause, in accordance with Article 12 of the Arbitration Law.

In accordance with Article 20(2) of the Arbitration Law the tribunal may order interim measures and while these are binding on the parties they may only be enforced by the courts, not by the arbitrators. Ex parte interim measures, however, are non-enforceable. The Arbitration Law is silent as to what interim measures may be ordered by the tribunal, but given the interpretative principle of Article 2(2) of the Arbitration Law, the tribunal may seek guidance from the Model Law or even general practice or similar measures under the Slovenian CCP.

**Enforcement of foreign interim measures:** Enforcement of interim measures ordered by tribunals seated outside Slovenia are permitted in accordance with Article 43 of the Arbitration Law.
**Tribunal powers:** In accordance with Article 19(1) of the Arbitration Law the tribunal possesses kompetenz-kompetenz powers.

**Tribunal deciding as amiable compositeur or ex aequo et bono:** Both of these forms of decision-making are available to the parties under Article 32(3) of the Arbitration Law.

**Arbitrators’ qualifications:** The Arbitration Law does not demand any qualifications for appointment to the office of arbitrator.

**Representation of parties in arbitral proceedings:** There are no restrictions in the Arbitration Law as to who may or may not represent the parties. Equally, there are no limitations upon lawyers that are not registered to practice in Slovenia.

**Liability of arbitrators:** There is no mention in the Arbitration Law as to the liability of arbitrators, whether contractually or as a result of tort. Equally, there is no relevant reference in available commentaries, albeit in all likelihood, following general practice, arbitrators would most likely be liable for any harm caused intentionally or by gross negligence, provided a causal link can be established. Under Article 52 of the Rules of the Ljubljana Arbitration Centre immunity extends to any act permissible under the applicable law.

**Types of awards:** On the basis of language and structure of the Arbitration Law, it seems evident that all interlocutory matters settled by the tribunal are not to be clad in the form of awards, given that all relevant measures are not considered enforceable. As a result, only the final decision on the merits is considered a final award giving rise to res judicata. The same also applies to additional awards and award recording a settlement between the parties.

**Costs and fees:** In accordance with Article 39(1), “unless otherwise agreed by the parties, the arbitral tribunal, at the request of a party, shall decide, in the award or in the order for the termination of the proceedings, which party and in what amount shall compensate the other party for the costs of the proceedings, including the costs for legal representation and the arbitrators’ fees, and bear its own costs. The arbitral tribunal does so at its discretion, taking into consideration the circumstances of the case and the outcome of the proceedings”.

**Setting aside awards:** The grounds for setting aside awards under Article 40(1) of the Arbitration Law are more or less the same as those under the UNCITRAL Model Law. Significantly, under the terms of paragraph 4 of Article 40, an arbitral award shall not be set aside because of lack of jurisdiction of the arbitral tribunal, if the district court has already decided this issue.

2.28. Spain

Arbitration is regulated in Spain by means of the Spanish Arbitration Law (Law 60/2003 of 23 December, on Arbitration), which was amended in 2009 (Law 13/2009 of 3 November for the reform of procedural legislation for the introduction of the new judicial office), as well as the significant amendments of the Arbitration Reform Law 2011 (Law 11/2011 of 20 May, on the reform of Law 60/2003 of 23 December, on Arbitration and on the regulation of institutional arbitration in the General Administration of the State). The Arbitration Law

505 Art 37 Arbitration Law.
506 Art 34 Arbitration Law.
2003 begins with a lengthy Statement of Purposes (Exposición de Motivos), which is not, however, binding upon the end users of the arbitral process. It should be stressed that the Spanish Arbitration Law (SAA) is based on the UNCITRAL Model Law, although as commentators suggest some Spanish terms do not correspond to legal terms in the Model Law or equivalent terms in other jurisdictions.

**Scope of application (international versus domestic):** Just like its developed counterparts, Article 1(1) of the SAA does not distinguish between domestic and international arbitrations, but instead on the seat of the arbitration. If this is in Spain, regardless of the international or domestic nature of the arbitration, it is encompassed under the SAA. Even so, if an arbitration is international it may be subject to different conflicts of law rules, as is the case with the form of the arbitration agreement in Article 9(6) SAA. This is also the case with respect to substantive law, whereby if the arbitration is international the parties may choose any foreign law of their choice. Also when an arbitration is international, States and State enterprises cannot invoke arbitrability as a defence in any dispute in which they have contracted with a private party, in order to evade their obligations therefrom.

In accordance with Article 3(1) SAA, an arbitration is international whenever any of the following circumstances exist:

a) that, at the time of the conclusion of the arbitration agreement, the parties have their domiciles in different States.

b) that the place of arbitration, determined in accordance with the arbitration agreement, the place of performance of a substantial part of the obligations of the legal relationship from which the dispute arises, or the place with which the dispute is most closely connected, is situated outside the State in which the parties have their domiciles.

c) that the dispute arises from a legal relationship which concerns interests of international commerce.

**Scope of application (commercial versus other):** The SAA does not limit its application to commercial disputes; hence, all disputes, unless specifically excluded by the SAA are encompassed under the terms of the SAA. Article 1(4) SAA explicitly excludes employment arbitration from its purview.

**Institutional versus ad hoc arbitration:** Both types of arbitration are recognised under Spanish law, but it seems that the most popular among the two is institutional arbitration.

**Arbitrability:** Article 2(1) SAA takes up the position espoused in the Model Law, suggesting that a dispute is generally deemed arbitrable where it may be freely disposed of by the parties.

In accordance with Article 10, arbitration may be validly provided for in a testamentary disposition to resolve disputes between beneficiaries or legatees in matters relating to the distribution or administration of the estate.

**Corporate arbitration:** Recent amendments to the SAA introduced express arbitrability in respect of corporate disputes, with Article 11(bis)(1) stating the general rule that internal corporate disputes are arbitrable. The insertion of an arbitration agreement in a corporate statute requires the vote in favour of, at least, two thirds of the votes attached to the...
shares into which the capital is divided. Moreover, the corporate statutes shall be able to provide that the challenge to corporate resolutions by shareholders or directors is submitted to the decision of one or more arbitrators, entrusting the administration of the arbitration and the designation of the arbitrators to an arbitral institution.509

Given the importance of arbitral awards on the internal functioning of corporations as well as their external relations vis-a-vis their wider stakeholder audience, Article 11ter SAA goes on to provide that an award declaring null and void a registrable resolution shall be registered in the Commercial Registry, which shall publish a summary. If the impugned resolution were registered in the Commercial Registry, the award shall provide for, in addition, the cancellation of the registration, as well as the cancellation of subsequent contradictory entries.510

Consumer arbitration: This is regulated chiefly by Law 26/1984 [General Law for the Defence of Consumers and Users], extensively amended and consolidated by Royal Legislative Decree 1/2007. Royal Legislative Decree 1/2007 has been further amended in several occasions, most recently by Law 3/2014. In accordance with Royal Legislative Decree 1/2007 (articles 57 and 58) a special consumer arbitration system has been created. Royal decree 231/2008 further develops the regulation of this system. This is a lex specialis regime – no consumer is obliged to subscribe to this – whereby a number of arbitration boards around the country are responsible for administering consumer arbitration and designate appropriate arbitration bodies in respect of disputes submitted to them. Arbitration under this system is conducted in equity, unless the parties expressly agree to a decision on legal grounds.

Further, arbitration agreements submitting disputes with consumers to a system different from the consumer arbitration system is considered as an abusive clause,511 and therefore, null and void.512 In addition, the amendment introduced by Law 3/2014 provides that, even when a consumer has submitted to the consumer arbitration system before the dispute has arisen, this arbitration agreement is not binding for the consumer, but only for the party that is not a consumer.513

As a result of the aforementioned Royal Decree 231/2008 the Spanish legislator has created a unique consumer tool in the form of collective consumer arbitration.514

Public policy: This is a ground for setting aside awards but is not defined in the SAA. The Audiencia Provincial of Madrid has confirmed that public policy should be construed very narrowly and should under no circumstances be used as a pretext for re-examining the substance of the dispute.515

Agreement in writing: Article 9 of the SAA adopts the Model Law approach and admits all types of agreement where there is a clear record of the parties’ intention to arbitrate, whether in paper, optical or electronic format. Certain commentators suggest that it is

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509 Art 11(b)(3) SAA.
510 On this topic generally, see the report issued by the Spanish Arbitration Club on corporate arbitration in Spain: https://www.clubarbitraje.com/sites/default/files/cea_Arbitraje_Societario_1.pdf.
implicit that oral agreements are permitted as long as there is some form of record.\textsuperscript{516} It equally encompasses all agreements by incorporation (although there is no reference to bills of lading) as well as the failure of the parties to declare the lack of agreement following an exchange of statements and claims before the tribunal. Paragraph 6 of Article 9 makes a slight departure in respect of international arbitrations, stipulating that the form of the agreement must be in conformity with the law chosen by the parties, or the law applicable to the merits of the dispute or Spanish law.

**Choice of substantive law:** Article 34(1) SAA provides that the parties may allow the arbitrators to decide the dispute ex aequo et bono. In addition, Article 34(2) SAA stipulates that where the arbitration is international the parties may choose any legal rules, thereby implying that in domestic arbitration the choice of law is not dependent on party autonomy; i.e. it is always Spanish law where it is not ex aequo et bono. The Statement of Purposes of the SAA clarifies that it has chosen the words "legal rules", as opposed to "law", to refer not only to foreign legal systems, but also other rules, such as *lex mercatoria* or the UNIDROIT principles.\textsuperscript{517}

**Court assistance and intervention:** In line with the Model Law the SAA applies a very limited court intervention regime. More specifically, Article 8(1) SAA provides for assistance and supervision as follows:

1. The Civil and Criminal Chamber of the Superior Court of Justice of the Autonomous Community at the seat of the arbitration shall have jurisdiction in respect of the judicial appointment and removal of arbitrators; if the seat has not yet been determined, then jurisdiction shall reside with this Chamber at the domicile or habitual place of residence of any of the respondents; if none of the respondents have their domicile or habitual place of residence in Spain, then at the domicile or habitual place of residence of the claimant, and if the claimant has no domicile or habitual place of residence in Spain, then the Civil and Criminal Chamber of the Superior Court of Justice at the place of the claimant's choice.

2. The First Instance Court at the seat of the arbitration or that of the place where the assistance is required shall have jurisdiction in respect of judicial assistance in the taking of evidence.

3. The Court at the place where the award has to be enforced shall have jurisdiction in respect of interim measures and, in default of such court, that at the place where the measures have to be implemented, in accordance with Article 724 of the Civil Procedure Law.

4. The Court of First Instance of the place where awards or arbitral decisions are made shall have jurisdiction over enforcement in accordance with Article 545(2) of the Civil Procedure Law 1/2000.

5. The Civil and Criminal Chamber of the Superior Court of Justice of the Autonomous Community of the place where the award was made shall have jurisdiction over an application to set aside the award.

6. For the recognition of awards and foreign arbitral decisions jurisdiction shall reside with the Civil and Criminal Chamber of the Superior Court of Justice of the Autonomous Community of the domicile or place of residence of the party against whom recognition is sought or of the domicile or place of residence of the person to

\textsuperscript{516} Mullerat (2004), at 141.
\textsuperscript{517} Statement of Purposes, Section VII, SAA.
whom they apply, with the territorial jurisdiction alternatively determined by the place of enforcement or where those awards or arbitral decisions ought to take effect.

**Interim measures:** In accordance with Article 11(3) SAA the parties may seek interim measures from the courts either before or during arbitral proceedings, without in this manner violating their obligations under the arbitration agreement. Under Article 23 SAA the tribunal may order interim measures, which shall be subject to set aside and enforcement proceedings regardless of the form of those measures.

**Tribunals deciding *ex aequo et bono***: In accordance with Article 34(1) SAA the parties may entrust the tribunal with deciding their case on the basis of equity.

**Arbitrators’ qualifications**: All persons enjoying full capacity may be appointed as arbitrators. However, Article 13 SAA envisages situations where a person may be disqualified by reason of his or her profession by the operation of law. As far as this author is aware such restriction is not available as regards judges. Article 15(1) SAA introduces an unusual criterion, providing that where a sole arbitrator is to be appointed – and assuming his mandate is not to decide on equity – unless the parties have otherwise indicated the arbitrator shall be a jurist. Where the number of arbitrators is three, at least one of the arbitrators must be a jurist.

**Liability of arbitrators and arbitral institutions**: In accordance with Article 21(1) SAA, the mere fact of accepting in writing one’s appointment as arbitrator – including the arbitral institution’s handling of the case – entails an obligation to comply faithfully with one’s pertinent responsibilities. If either the arbitrator or the institution do not faithfully discharge their obligations they are liable for the damage and losses they cause by reason of bad faith, recklessness or wilful misconduct. In accordance with Article 37(2) SAA the arbitrators may incur liability for their failure to deliver an award within the specified time limits set out by the parties.

Where the arbitration is entrusted to an arbitral institution, the injured party shall have a direct action against the institution, regardless of any actions for compensation available against the arbitrators in accordance with Article 21(1) SAA.

The arbitrators or the arbitral institutions on their behalf shall take out civil liability insurance or an equivalent guarantee, to the amount established by regulation. State entities and arbitral systems forming part of or dependent on the public administrations are exempt from taking out this insurance or equivalent guarantee.

**Challenge of arbitrators**: The grounds for challenging arbitrators and the requirements for impartiality and independence are the same as those found in the UNCITRAL Model Law. However, certain unique features in the SAA are worthy of mention, namely that at any time during the arbitration, any of the parties may request from the arbitrators clarification of their relationships with any of the other parties. Moreover, unless otherwise agreed by the parties, the arbitrator shall not have acted as mediator in the same dispute between the parties.

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518 Art 17(2) SAA.
519 Art 17(4) SAA.
Suspending proceedings for non-payment of fees: Article 21(2) SAA stipulates that unless otherwise agreed, both the arbitrators and the arbitral institution may require from the parties the provision of funds that they consider necessary to meet the fees and expenses of the arbitrators and those that may be incurred in the administration of the arbitration. Should the parties fail to provide the funds, the arbitrators may suspend or terminate the arbitral proceedings. If one of the parties has not made its provision within the time fixed, the arbitrators, before deciding to terminate or suspend the proceedings, shall inform the remaining parties, so that they may provide the funds within a new period fixed by the arbitrators, should they wish to do so.

Tribunal powers: Tribunals possess kompetenz-kompetenz powers in accordance with Article 22(1) SAA. Their determination on such matter will be in the form of a preliminary order or it may be included in the final award.

Ultra petita application: Article 39(1) SAA provides for the possibility of applying to the tribunal once it has issued the award for correction, supplement and clarification, as well as, after the amendment of 2011, removing those parts of the award that constitute excess of powers by the tribunal. This is unusual and not envisaged under the UNCITRAL Model Law, and it is unclear whether the failure of a party to request correction of an excess would prevent a later action to set aside the award on the grounds of the excess.

Types of awards: The SAA prescribes the form of award for final and partial awards, as well as for awards recording the parties’ settlement. All other interlocutory matters are to be settled on the basis of (non-enforceable) preliminary orders. It is not clear from the wording of Article 23 SAA whether decisions on interim measures may be issued in the form of awards, but standard practice is that this is done, and that such awards may then be enforced or subject to setting aside proceedings.

Notarisation of award: In accordance with Article 37(8) SAA, the award may be formalised before a notary public. Any of the parties, at their own expense, may require the arbitrators, before notification, to formalise the award before a notary public. Quite clearly, this is not a requirement that renders awards enforceable.

Setting awards aside: In accordance with Article 41(1) SAA, setting aside follows almost verbatim the UNCITRAL Model Law. The following grounds are permissible:

a) that the arbitration agreement does not exist or is not valid.
b) that he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.
c) that the arbitrators have decided questions not submitted to their decision.
d) that the appointment of the arbitrators or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law.
e) that the arbitrators have decided questions not capable of settlement by arbitration.
f) that the award is in conflict with public policy.

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520 Art 37(1) SAA.
Revision of awards: Awards are only ordinarily subject to set aside proceedings under Article 41 SAA, albeit under exceptional circumstances they can be challenged by means of revision, in accordance with Article 510 of the Civil Procedure Law 1/2000, before the Spanish Supreme Court. Grounds for revision relate to the appearance of new documents in defined circumstances, criminal proceedings finding evidence or testimony to be false, or corruption affecting the judgment. The application of revision proceedings to arbitral awards is envisaged in Article 43 SAA.

Enforcement of awards: Awards are enforceable and have res judicata effect. An award is enforceable even though an application to set aside has been made. Nevertheless, in that event the party against whom enforcement is sought may apply to the competent court for the suspension of enforcement, provided that it offers security for the amount awarded, plus the damages and losses that might arise from the delay in the enforcement of the award.

The judicial secretary shall lift the suspension and order that the enforcement continue when the court is satisfied that the application to set aside has been disallowed, without prejudice to the right of the party seeking enforcement to demand, if applicable, indemnification for the damages and losses caused by the delay in the enforcement.

2.29. Sweden

Arbitration in Sweden is regulated by the 1999 Arbitration Act which applies equally to both domestic and international arbitration. There is a long tradition of arbitration in the county and Sweden is a major forum for international arbitration and therefore it has a long established arbitral tradition. It is not surprising therefore that the Arbitration Act (AA) was not modelled after the UNCITRAL Model Law, but great care was taken during the drafting to make the two largely compatible.

Scope of application (international versus domestic): The AA does not distinguish between international and domestic arbitration. Rather, it covers in equal manner all arbitral proceedings whose seat is in Sweden. It is important therefore, in case of doubt, to determine when arbitration is seated in Sweden. In accordance with section 47(1) AA this is the case where the arbitration agreement or the arbitrator determines that the place of arbitration is Sweden. The same result occurs where arbitral proceedings are commenced against a party which is domiciled in Sweden or is otherwise subject to the jurisdiction of the Swedish courts with regard to the matter in dispute, unless the arbitration agreement provides that the proceedings shall take place abroad.

Although the seat of the arbitration is the determining factor under the AA, section 47 AA does make a distinction between domestic and international agreements, but only in terms of the governing law of the contract. This is explained further below. It should be noted that where none of the parties is domiciled or has its place of business in Sweden, such parties may in a commercial relationship through an express written agreement exclude or limit the application of the grounds for setting aside an award as are set forth in section 34.

521 Art 43 SAA.
522 Art 45(1) SAA.
523 Art 45(2) SAA.
524 See generally, Hobér (2011).
525 Section 46 AA.
526 Section 47(2) AA.
In this case, the recognition and enforcement of such award, even if the tribunal was seated in Sweden, shall be subject to the regime of foreign awards.527

**Scope of application (commercial versus other):** In accordance with section 1(1) the parties may instruct the tribunal to ascertain a particular fact; hence the AA is not specifically limited to disputes as such.

**Institutional versus *ad hoc* arbitration:** Both forms are valid and recognised under Swedish law and practice. Sweden is a place where a large number of international arbitrations take place and is an attractive forum for disputes concerning Russian companies and state instrumentalities.

**Arbitrability:** The general rule is that stipulated in section 1(1) AA, according to which arbitration is permissible in respect of matters which the parties are legally permitted to settle. Section 1(3) is unique, in that it is the only arbitration statute in Europe which stipulates that the private dimension of anti-competitive disputes is susceptible to arbitral resolution. Moreover, most disputes concerning rights in rem are not susceptible to arbitration.528 It is, however, accepted that although the bankrupt estate may not settle disputes with creditors through arbitration, arbitration clauses in existence prior to the declaration of insolvency are binding on the trustee.529 Moreover, injunctions under the 1990 Trade Secrets Act are not arbitrable.530

**Consumer arbitration:** Section 6(1) of the AA stipulates that where a dispute between a business enterprise and a consumer concerns goods, services, or any other products supplied principally for private use, an arbitration agreement may not be invoked where such was entered into prior to the dispute. However, such arbitration agreements shall apply with respect to rental or lease relationships where, through the agreement, a regional rent tribunal or a regional tenancies tribunal is appointed as an arbitral tribunal and the provisions of Chapter 8, section 28 or Chapter 12, section 66 of the Real Estate Code do not prescribe otherwise. In accordance with paragraph 2 of section 6 AA pre-dispute arbitration agreements are valid where they concern disputes between an insurer and a policy-holder concerning insurance based on a collective agreement or group agreement and handled by representatives of the group.

**Choice of law:** Section 48(1) AA makes a significant departure from international practice. It states that where an arbitration agreement has an international connection it shall be governed by the law agreed upon by the parties, or by the law of the country where the proceedings are intended to take place. This implicitly suggests that where the arbitration agreement does not have an international connection the governing law of the agreement is always Swedish law. This is a limitation that is not found in the arbitration statutes of leading jurisdictions and constitutes a curtailment on party autonomy.

**Agreement in writing:** No requirement of form (in fact no provision is available in the AA) exists. As a result, an arbitration agreement may be both written and oral.531 Although oral agreements are rare they may be significant in situations where one of the parties claims other related conditions (such as time limits etc) that were concluded orally.

527 Section 51 AA.
530 Hobér (2011), at 117.
531 Hobér (2011), at 95.
Public policy: In accordance with section 55(2) AA which deals with enforcement of foreign awards, one of the grounds for refusal relates to public policy. This is defined as encompassing any incompatibility with the basic principles of the Swedish legal system. The travaux to the AA include several examples of public policy, such as threats of physical violence or bribes based upon criminal acts such as debts from unlawful gambling.532 In the only case dealing with public policy, the Supreme Court refused to recognise and enforce an award where the object of dispute involved proceeds from theft and other criminal activities on the basis that it was “manifestly incompatible with the fundamental principles of the Swedish legal system”.533

Multi-party arbitration: There are no provisions in the AA regulating multi-party arbitration. However, there are no limitations on parties if they are able to agree on joint arbitration and provided that due process rights are not infringed. In practice, this is rather common and regulated under Article 13(4) of the SCC rules (as concerns the appointment of arbitrators).

Tribunal powers: Section 4(1) makes the important point that the courts may not intervene or rule on matters for which the parties have given express authority to the tribunal in their agreement. Notable exceptions to this rule include the parallel kompetenz-kompetenz power of tribunal with the courts and the authority of the courts to issue judgments on interim measures prior to the constitution of the tribunal as well as during arbitral proceedings, in accordance with section 4(3) AA.

Challenges against arbitrators on grounds of impartiality and lack of independence are decided by the tribunal, unless the parties have decided otherwise.534 If the challenge is successful it is not subject an appeal.535

In accordance with section 25(2) and (3) AA the arbitrators may refuse to admit evidence which is offered where such evidence is manifestly irrelevant to the case or where such refusal is justified having regard to the time at which the evidence is offered. The arbitrators may not administer oaths or truth affirmations. Nor may they impose conditional fines or otherwise use compulsory measures in order to obtain requested evidence.

Tribunal deciding ex aequo et bono: There is no reference in the AA as to whether the parties may instruct the tribunal to decide cases on the basis of equity. It is suggested, however, that the law places no such impediment on party autonomy.

Unlike other arbitration statutes, section 40 AA provides that the arbitrators may not withhold the award pending the payment of compensation.

In accordance with section 42 AA, unless otherwise agreed by the parties, the arbitrators may, upon request by a party, order the opposing party to pay compensation for the party's costs and determine the manner in which the compensation to the arbitrators shall be finally allocated between the parties. The arbitrators' order may also include interest, if a party has so requested.

534 Section 10(1) AA.
535 Section 10(2) AA.
Kompetenz-kompetenz: The tribunal possesses the authority to determine its own jurisdiction, but it shares this authority with the courts and there is no restriction as to which of the two must be approached first, in accordance with section 2(1) AA. The decision of the tribunal in this respect is not binding, under section 2(2) AA.

Arbitrators’ qualifications: There are no restrictions as to who may be appointed as arbitrators under section 7 AA. (To act as an arbitrator a person must possess full legal capacity in regard to his actions and his property. For example, in order to be appointed as arbitrator one must be of age (18 years old in Sweden) and not in bankruptcy).

Liability of arbitrators: There is no reference to such liability in the AA. However, it is generally agreed that the liability of arbitrators is contractual, save for their award-making dimension which should reasonably be subject to some degree of immunity. The SCC rules suggest that the liability of arbitrators arises only where they exhibit gross negligence.

Representation during legal proceedings: There are no restrictions as to who may represent the parties during proceedings. Equally, foreign lawyers do not require authorisation from Swedish bars.

Grounds impairing impartiality and independence: Section 8 lists several grounds which always suggest that an arbitrator lacks impartiality. These are:

1. where the arbitrator or a person closely associated to him is a party, or otherwise may expect benefit or detriment worth attention, as a result of the outcome of the dispute;
2. where the arbitrator or a person closely associated to him is the director of a company or any other association which is a party, or otherwise represents a party or any other person who may expect benefit or detriment worth attention as a result of the outcome of the dispute;
3. where the arbitrator has taken a position in the dispute, as an expert or otherwise, or has assisted a party in the preparation or conduct of his case in the dispute; or
4. where the arbitrator has received or demanded compensation.

The Supreme Court has held that an appearance of bias existed in the person of the chairman because he was working part-time in a law firm which was instructed on a regular basis by one of the parties to the dispute.536 However, the Supreme Court has held that an where an arbitrator has had a ten-year career in which he sat on 112 arbitrations, in 12 of which he had been appointed by the same party, this did not raise doubts about his partiality.537

Court assistance and intervention: The district court has authority to appoint arbitrators and chairmen in cases where the parties are unable to agree on said appointment.538 This is also the case where an arbitrator resigns or is otherwise discharged.539 However, in cases where an arbitrator has delayed proceedings the parties may request that a challenge against the arbitrator for his or her removal may be decided by the arbitral institution.540

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536 AJ v Ericsson (NJA 2007) p 841
537 Korsnäs Aktiebolag v AB Fortnum Värme, JNA judgment (9 June 2010).
538 Sections 14 and 15 AA.
539 Section 16 AA.
540 Section 17 AA.
Taking of evidence from witnesses and experts under oath and truth affirmation shall be requested from the district court as the tribunal has no authority to administer these itself. However, the arbitrators may be present during the hearing before the district court and shall be afforded the opportunity to ask questions.

In accordance with section 41(1) a party or an arbitrator may bring an action in the District Court against the award regarding the payment of compensation to the arbitrators.

**Interim measures:** In accordance with section 25(4) AA interim measures are ordered by the arbitral tribunal, unless the parties have expressly excluded the application of such measures. However, an order for interim measures issued by the tribunal is not enforceable and the parties must seek relief for enforcement from the courts.

**Types of awards:** Section 27 AA suggests that only final and partial awards (as well as settlement awards) shall be in the form of an award, whereas all other preliminary issues can only be clad in the form of decisions. The Svea Court of Appeal has held that an interim award on the advance of costs is not only enforceable but may also form the basis for an application for bankruptcy.

**Set-off claims:** Section 29 AA implicitly suggests that set-off claims are admissible. Specifically, it provides that a claim invoked as a defence by way of set off shall be adjudicated in the same award as the main claim.

**Challenging awards (invalidity and setting aside):** Awards may be challenged on two grounds, namely invalidity (section 33) and through setting aside proceedings (section 34).

An award (or part thereof) is **invalid if:**

1. if it includes determination of an issue which, in accordance with Swedish law, may not be decided by arbitrators;
2. if the award, or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system; or
3. if the award does not fulfil the requirements with regard to the written form and signature in accordance with section 31(1).

An award may be set aside:

1. if it is not covered by a valid arbitration agreement between the parties;
2. if the arbitrators have made the award after the expiration of the period decided on by the parties, or where the arbitrators have otherwise exceeded their mandate;
3. if arbitral proceedings, according to section 47, should not have taken place in Sweden;
4. if an arbitrator has been appointed contrary to the agreement between the parties or this Act;
5. if an arbitrator was unauthorized due to any circumstance set forth in sections 7 or 8; or

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541 Section 26(1) AA.
542 Section 26(2) AA.
543 Section 29 AA.
544 Consafe IT AB v Auto Connect Sweden AB, judgment (11 March 2009).
6. if, without fault of the party, there otherwise occurred an irregularity in the course of the proceedings which probably influenced the outcome of the case.

In respect of both challenges, the petition shall be brought before the court of appeals. The determination of the Court of Appeal may not be appealed. However, the Court of Appeal may grant leave to appeal the determination where it is of importance as a matter of precedent that the appeal be considered by the Supreme Court. This exceptional appeal, although interesting for the purpose of legal doctrine, may no doubt delay proceedings and create problems to the parties.

It should be noted that where none of the parties is domiciled or has its place of business in Sweden, such parties may in a commercial relationship through an express written agreement exclude or limit the application of the grounds for setting aside an award as are set forth in section 34. In this case, the recognition and enforcement of such award, even if the tribunal was seated in Sweden, shall be subject to the regime of foreign awards. The three-month time limit for setting awards aside begins when the party in question received the award in its entirety. In addition, the challenging party must satisfy the pertinent legal grounds. Although no extension of time is permitted the courts have shown themselves sympathetic to requests for extra time in order to complete their documentation.

It should also be noted that the Supreme Court has held that although awards must be reasoned, an award will only be set aside if it lacks reasoning in toto (completely).

Challenges against infra petita awards: Section 36 provides that the parties may challenge an award that has not dealt with the issues submitted to the tribunal. This challenge does not result in the invalidity or setting aside of the award, but instead seeks to force the tribunal to decide those non-determined issues.

Fees and cost: Unlike other arbitration statutes, section 40 AA provides that the arbitrators may not withhold the award pending the payment of compensation. In accordance with section 42 AA, unless otherwise agreed by the parties, the arbitrators may, upon request by a party, order the opposing party to pay compensation for the party’s costs and determine the manner in which the compensation to the arbitrators shall be finally allocated between the parties. The arbitrators’ order may also include interest, if a party has so requested.

2.30. Switzerland

Switzerland is a confederation of twenty-six cantons, each of which is responsible in principle for its judicial organisation and the administration of justice. In the past, arbitration in Switzerland was regulated separately in each canton. However, in 1969 an inter-cantonal arbitration convention was entered into. This convention initially governed both international and domestic arbitration. In 1987 the Swiss Private International Law Act (PILA) entered into force. Chapter 12 PILA introduced specific rules on international

545 Section 43(2) AA.
546 Section 51 AA.
548 Bostadsrättsforeningen Korpen v Byggnads AB Ake Sundvall, Svea Court of Appeal, judgment (16 February 2007).
549 Eg, see Fastigheten Preppen v Carlsberg (RH 2009:91).
arbitration. The inter-cantonal convention remained but its scope was limited to domestic arbitration.

In 2011, the Swiss Federal Code of Civil Procedure (CPC) entered into force. Part 3 of the CPC introduced specific rules on domestic arbitration, which replaced the rules of the inter-cantonal convention. Today, Part 3 of the CPC governs domestic arbitration in Switzerland. International arbitration continues to be regulated by chapter 12 PILA. Neither part 3 of the CCP, nor the PILA, are modelled on the UNCITRAL Model Law, yet as will become evident the PILA is very much compatible with the Model Law, as is the relevant part of the CCP. The analysis in this chapter will concentrate on the PILA but where relevant we will discuss the CCP, particularly where it is deemed to address issues not covered by the PILA and which are applicable mutatis mutandis.

**Scope of application (international versus domestic):** The PILA applies to international arbitrations seated in Switzerland, in accordance with Article 176(1), provided that at the time when the arbitration agreement was concluded “at least one of the parties had neither its domicile nor its habitual residence in Switzerland”. According to Article 21 PILA the domicile/seat of a legal person is that which is designated in its articles of incorporation. If no such seat is designated, this coincides with its place of effective management. The parties may exclude the application of chapter 12 of the PILA in writing if they have agreed to be bound by part 3 of the CCP. Article 353 of the CCP stipulates that part three thereof applies to domestic arbitrations (namely any arbitration seated in Switzerland that does not fall under chapter 12 of PILA).

**Scope of application (commercial versus other):** Article 177(1) of PILA states that any dispute involving a financial interest, thus the PILA is not restricted to commercial disputes. It has, for example, been held to encompass sports sanctions where they produce economic effects on the sanctioned party, and this is true of all competitive sport disputes.

**Arbitrability:** As already noted, Article 177(1) allows any dispute involving a financial interest to be submitted to arbitration. Hence, disputes arising from private law claims in bankruptcy proceedings are arbitrable, unless those claims are interrelated with enforcement proceedings, as are issues concerning the nullity of partnerships and companies and any challenges against shareholder resolutions. It is further suggested that private law matters arising out of anti-trust disputes are arbitrable under 1996 Federal Law on Cartels and even inheritance matters may be arbitrable, assuming that the heirs accept the arbitration clause inserted in the will of the testator; otherwise, they are only entitled to the compulsory portion of assets provided under inheritance law.

The Swiss Federal Supreme Court has held that foreign arbitrability rules are not necessarily applicable in Switzerland if the particular subject matter is arbitrable in Switzerland, irrespective of whether the ultimate award may not as a result be enforceable in the country in which the dispute is not arbitrable.

In respect of domestic arbitration, the general rule on arbitrability is found in Article 354 of the CCP which encompasses “any claim over which the parties may freely dispose”.

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551 BGE 119 II 271ff.
552 Re Mendy et Federation Francaise de boxe v AIBA, CAS judgment (31 July 1996).
553 Briner (1998), at 11.
554 Id, at 11-12.
555 A v Bulgarian Football Union, Judgment (18 March 2013).
Moreover, Article 361(4) of the CCP, in matters relating to the tenancy and lease of residential property, only the conciliation authority may be appointed as arbitral tribunal.

**Public policy**: Public policy in the PILA is to be understood as the referring to fundamental principles that Swiss courts believe should be the basis of any legal order, or to fundamental and generally recognised procedural principles required by the rule of law.\(^556\) This includes violations related to prohibitions on the misuse of the law, good faith, discrimination, uncompensated prohibition, pacta sunt servanda and others.\(^557\)

**Ad hoc versus institutional arbitration**: Both are well known and extensively used by foreign and domestic parties in Switzerland. The main institutions, besides international arbitral institutions operating in the country, are the Swiss Chambers Arbitration Institution, along with trade and professional associations such as the Court of Arbitration for Sport.

**State entities**: Article 177(2) of PILA makes it clear that state entities that have entered into an arbitration agreement cannot invoke domestic law regarding that entity’s capacity to enter into arbitration agreements, or regarding the arbitrability of the subject matter of the dispute, in order to avoid arbitration.

**Agreement in writing**: Article 178(1) of PILA makes it clear that an arbitration agreement must be in writing, although this requirement is satisfied by any form of electronic or hardcopy “which permits it to be evidenced by a text”. As a result, although oral agreements are excluded (i.e. they cannot be evidenced by witnesses) an oral agreement that is confirmed by reference to the parties’ subsequent emails, the evidence stemming from the email exchanges, satisfies the writing element. Bills of lading satisfy the existence of an agreement in writing.\(^558\) It has been held that the signatures of all parties are not required for the agreement to be valid.\(^559\)

**Court assistance and intervention**: The general rule is towards very limited court intervention and this is well reflected in both the PILA and part 3 of the CCP. In accordance with Article 179 of the PILA the courts have the power to appoint the umpire or arbitrators should the parties find themselves unable to agree on such matters. Equally, under Article 180(3) of the PILA the courts determine through a non-appealable decision any challenges against arbitrators. Although the tribunal may conduct the evidence-taking itself, it may request the assistance of the court, in which case the court is not obliged to apply the law chosen by the parties, but the law applicable to the court.\(^560\) Under Article 185 PILA the judge at the seat of the arbitral tribunal has a general power to provide further judicial assistance.

**Set off defence**: Under Article 377 CCP, an arbitral tribunal has the power to decide any set off defence, even if the subject matter of the defence does not fall within the scope of the arbitration agreement, or is subject to another arbitration agreement or forum selection agreement. No similar provision is included in the PILA, but it is expected a similar rule would be applicable if agreed upon by the parties.

\(^556\) Club Atlético de Madrid SAD v. Sport Lisboa E Benfica – Futebol SAD, Bundesgericht [BGer] [Federal Court] Apr. 13, 2010 (Switz.).
\(^557\) BGE 116 II 634.
\(^558\) Swiss Federal Court judgment (16 January 1995).
\(^559\) BGE 121 II 38.
\(^560\) Art 184 PILA.
**Legal aid:** In the context of domestic arbitration, Article 380 of the CCP states that legal aid is not available to participants in an arbitration.

**Legal representation during arbitral proceedings:** Anyone can represent the parties in arbitral proceedings and there is no requirement that the person be a lawyer, whether registered in Switzerland or otherwise.

**Arbitrators’ qualifications:** No specific qualifications are required to be appointed as arbitrator.

**Liability of arbitrators:** There is no mention of liability in the PILA, but commentators suggest that the legal relationship between the parties and arbitrators is one of mandate or quasi-mandate. As a mandatee an arbitrator is liable in cases of negligence, although due consideration must be had to the independence and freedom of arbitrators in respect of their judicial function.\(^{561}\)

**Tribunal powers:** Unless otherwise provided in the law or the parties’ agreement, the tribunal retains all powers related to arbitral proceedings. The tribunal possesses kompetenz-kompetenz powers in accordance with Article 186(1) of the PILA and any objection thereto must be submitted prior to any defence on the merits.\(^{562}\)

**Tribunal deciding ex aequo et bono:** This is indeed possible in accordance with Article 187(2) of the PILA. The Federal Supreme Court has ruled that when deciding a case ex aequo et bono, the arbitrators are only limited by public policy rules.\(^{563}\)

**Interim measures:** The tribunal may order interim and protective measures, unless the parties have otherwise agreed. If the party so ordered does not comply with the tribunal’s order, the tribunal may request the assistance of the court.\(^{564}\)

**Multi-party arbitration:** Although no mention of multi-party arbitration is made in the PILA it is suggested that such arbitrations and joinders are permitted because they are allowed in domestic arbitrations in accordance with Article 362 of the CCP, provided the parties agree on common arbitrators or in case of disagreement the competent court.\(^{565}\)

**Types of awards:** A reading of the PILA suggests that the tribunal may issue awards other than only final awards on merits. In accordance with Article 186(3) the tribunal’s decision on jurisdiction this may be rendered in the form of an award. The tribunal may also, unless the parties decide otherwise, issue partial awards on the various issues raised by the parties in their submission agreement.\(^{566}\)

**Form of awards:** In accordance with Article 189 of the PILA, in the absence of agreement by the parties on the form of the award and the procedures applicable to it, an award must be in writing, supported by reasons, dated and signed. It is not necessary that all arbitrators append their signature to the award; rather, the signature of the chairman suffices for the purposes of the PILA.

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562 Art 186(1) PILA.
563 BGE 107 Ib 63.
564 Art 183(1) and (2) PILA.
565 See also Art 376 CCP.
566 Art 188 PILA.
Setting awards aside in international arbitration (and exclusions thereof): Although the PILA is not based on the UNCITRAL Model Law, the grounds for setting aside under Article 190 therefore are very similar to the Model Law. Specifically, an award (on the merits or awards on preliminary issues) may be set aside:

a) where the sole arbitrator has been incorrectly appointed or where the arbitral tribunal has been incorrectly constituted
b) where the arbitral tribunal has wrongly declared itself to have or not to have jurisdiction
c) where the award has gone beyond the claims submitted to the arbitral tribunal, or failed to decide one of the claims
d) where the principle of equal treatment of the parties or their right to be heard in adversarial procedure has not been observed.
e) where the award is incompatible with public policy.

Article 192 of the PILA sets out the possibility of waiver or exclusion of the above mentioned set aside proceedings in respect of arbitrations where “none of the parties has its domicile, its habitual residence or a business establishment in Switzerland”. Said parties may by “an express statement in the arbitration agreement or by a subsequent agreement in writing, exclude all setting aside proceedings, or they may limit such proceedings to one or several of the grounds listed in Article 190(2) of the PILA”. Where the parties have excluded set aside proceedings the provisions of the New York Convention apply by analogy in accordance with paragraph 2 of Article 192.

Challenge of awards in domestic arbitration: It is worth noting the two possible challenges against awards rendered in domestic arbitration in Switzerland, namely objection (setting aside) and review (revision). The grounds for an objection under Article 393 CCP are:

a) the single arbitrator was appointed or the arbitral tribunal composed in an irregular manner;
b) the arbitral tribunal wrongly declared itself to have or not to have jurisdiction;
c) the arbitral tribunal decided issues that were not submitted to it or failed to decide on a prayer for relief;
d) the principles of equal treatment of the parties or the right to be heard were violated;
e) the award is arbitrary in its result because it is based on findings that are obviously contrary to the facts as stated in the case files or because it constitutes an obvious violation of law or equity;
f) the costs and compensation fixed by the arbitral tribunal are obviously excessive.

The grounds for review of an award are set out in Article 396 CCP as follows:

a) the party subsequently discovers significant facts or decisive evidence that could not have been submitted in the earlier proceedings, excluding facts and evidence that arose after the arbitral award was made;
b) criminal proceedings have established that the arbitral award was influenced to the detriment of the party concerned by a felony or misdemeanor, even if no one is
convicted by a criminal court; if criminal proceedings are not possible, proof may be
provided in some other manner;
c) it is claimed that the acceptance, withdrawal or settlement of the claim is invalid.

In addition, under Article 396(2) CCP, an additional ground for review exists if:

a) the European Court of Human Rights has determined in a final judgment that the
ECHR or its protocols have been violated;
b) compensation is not an appropriate remedy for the effects of the violation; and

c) the review is necessary to remedy the violation.

Whether the ECHR is directly applicable to consensual arbitration is a matter of dispute
amongst commentators, and Swiss commentators generally regard this provision as
unimportant in practice for this reason. However, the inclusion of such a provision in Swiss
law is certainly notable, and until the European Court of Human Rights has further clarified
its view on the relationship between the ECHR and arbitration it remains potentially
applicable.

In the case of a challenge of objection, if successful, the court will remit the award to the
tribunal setting a deadline for rectification or amendment, if at all possible.567 Conversely, a
successful application for review has the effect of setting the award aside but the court may
remit the case to the arbitral tribunal once again for a new decision.568

**Finality of awards and res judicata:** In accordance with Article 190(1) an award is final
from the moment it is communicated to the parties (assuming the relevant deadlines for
setting aside have gone by or set aside challenges have been finally dismissed by the
courts). What this means is that there is no requirement that the award be further enforced
or officiated in any other way. The parties may, however, request the court, in accordance
with Article 193(2) of the PILA, to certify the enforceability of the award,569 albeit this is
meant to facilitate the parties to enforce their Swiss award abroad; hence, it is not an
additional requirement.

**Deposit of awards:** There is no requirement that the parties must register their awards.
They may do so at their own expense in accordance with Article 193(1) of the PILA.

**Costs and fees:** In accordance with Swiss practice, the losing party pays the legal fees of
its adversary as well as the costs of the arbitration, unless the rules and the parties decide
otherwise (or the arbitrators have been given discretion to rule otherwise).570

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567 Arts 394-395 CCP.
568 Art 399 CCP.
569 According to the Federal Supreme Court, BGE 117 II 57 there are three (strict circumstances) under which the
court may deny enforcement certificate, namely: grant of a stay, extinction of the claim and application of a
statute of limitations.
REFERENCES


Kiantou-Pampouki, A., Kiantou-Pampouki *Maritime Law II* (6th ed. 2007) (in Greek)


3. ANNEX C – Arbitral Institutions Questionnaires

3.1. Arbitration and Mediation Centre of Paris (CMAP)

Instructions:

1. Please answer the questions in the space provided below each question. Answers will be provided to the Parliament as they are written below (i.e. unedited).

2. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

3. Each answer must be less than **100 words**. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The Centre for Mediation and Arbitration of Paris (CMAP) was founded in 1995.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
The CMAP was founded by the Paris Chamber of Commerce and Industry as a not-for-profit organization. The CMAP is still affiliated to the Paris Chamber of Commerce and Industry but is financially independent. For example, the President of the CMAP is formally the President of the Paris Chamber of Commerce.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
The number of the arbitration cases, handled by the CMAP, increased annually from 2009 to 2014. Over the past 5 years, around 90 new arbitrations have been commenced.

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

   (i) Less than 25,000 Euros (or equivalent in other currencies): 0%
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): 5%
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 40%
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 52%
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 3%
   (vi) over 100,000,000 Euros (or equivalent in other currencies): 0%

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

   (i) Corporate: 15%
   (ii) Construction: 17%
(iii) Telecommunications: 3%
(iv) Finance and Banking: 5%
(v) Distribution/Agency/Franchise: 3.8%
(vi) Energy: 2%
(vii) Consumer: 0.2%
(viii) Investor-State: 0%
(ix) State-State (i.e. Public International Law): 0%
(x) Maritime: 0%
(xi) Other. Please specify any significant categories.

Industry
25%

Insurance
29%

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
20%

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
None

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
None

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
None

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
Yes, our Arbitration Committee, according to article 23.2 of the CMAP’s arbitration rules, read the draft award and may make any comments it deems useful. The scrutiny concerns only formal aspects.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
According to the CMAP’s Arbitration Rules, when an arbitrator must be appointed by a party, the CMAP has to set a time limit for so doing. If the party fails to choose an arbitrator, the appointment shall be made by a special Committee which is called the
Arbitration Committee. It is a common practice for the Committee to appoint one arbitrator, especially when the arbitral tribunal is composed by a sole arbitrator (10%).

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

The CMAP does not maintain a list of arbitrators as we understand the current practice of arbitrators 'list today. However, The CMAP could suggest to the parties some names of arbitrators. The names are generally chosen according to the special nature of the litigation, the sectors, the arbitrator 's experience etc..

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

The criteria for the choice of arbitrators when the choice falls on the arbitral institution are for instance (1) Independence and Impartiality of the arbitrator (2) Availability of the arbitrator (3) Professional qualifications.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

According to the CMAP’s Arbitration Rules, any party wishing to challenge an arbitrator, for circumstances occurring or coming to light after the arbitrator’s appointment, shall immediately and within no more than 15 days of the occurrence or revelation of the particular circumstances on which the challenge is based, submit a reasoned application to the Accreditation and Appointments Committee. After afford ing each party the opportunity to be heard, the Accreditation and Appointments Committee shall rule on the application by rendering a decision which is not motivated and which shall not be subject to appeal. The arbitral proceedings shall be suspended during such inquiries. Once the award has been notified to the General Secretariat, in accordance with Article 24, paragraph 3, no challenge of arbitrators is admissible.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Art 18 CMAP’s Arbitration Rules: “Unless otherwise agreed by the parties and the arbitral tribunal, the arbitral proceeding shall be confidential and the hearings shall not be public”

Art 27.2: “The award shall be confidential. However, it may be published with the written agreement and based on the arrangements determined by the parties to the proceeding”

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

No

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

No

Collaboration and Education
18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

CMAP is member of “Paris, Home of arbitration”, a not-for-profit association which aim to spread the word about the French understanding of and approach to international arbitration and to inform people of the advantages Paris has to offer as a seat for arbitrations. In this prospective, this association intervene with the French policy makers.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

We organize, in a regular basis, symposiums, workshops and meetings on topics liked to arbitration practices. We have different kind of target: practitioners, lawyers, barristers, businesses, arbitrators, etc.

We also organize conferences dedicated to young arbitrators (recently accredited by the Arbitration Committee). Main topics deal with their access to the arbitration market. These events are a good occasion for them to meet with experienced arbitrators.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

CMAP signed formal agreements with several arbitration institutions, such as the Chamber of Arbitration of Milan (Italy), the CPR Institute (New York city), the Mauritius Chamber of Commerce and Industry (Mauritius), etc.

CMAP is also a member of the “Fédération des centres d’arbitrage” (Arbitration centers federation). For instance all members have common ethical rules for their arbitrators but also for the institution itself, the parties and their counsels.

3.2. Arbitration Institute of the Finland Chamber of Commerce

Instructions:

1. Please answer the questions in the space provided below each question.

2. Answers will be provided to the Parliament as they are written below (i.e. unedited).

3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.
General Information

1. When was your institution founded?
The Arbitration Institute of the Finland Chamber of Commerce (hereinafter referred to as “FAI”) was founded in 1911.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
FAI is an autonomous arbitration body of the Finland Chamber of Commerce. Although part of the organisation of the Finland Chamber of Commerce, the Institute carries out its functions in complete independence from the Finland Chamber of Commerce and its organs.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
336

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
(Information not available in accordance with the below classification) Over the past five years, the largest amount in dispute has been EUR 58,500,000 and the smallest EUR 149.
(In 2014, the largest amount in dispute so far has been EUR 160,800,000.)

(i) Less than 25,000 Euros (or equivalent in other currencies)
(ii) 25,000-100,000 Euros (or equivalent in other currencies)
(iii) 100,000-1,000,000 Euros (or equivalent in other currencies)
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
(vi) over 100,000,000 Euros (or equivalent in other currencies)

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate
(ii) Construction
(iii) Telecommunications
(iv) Finance and Banking
(v) Distribution/Agency/Franchise
(vi) Energy
(vii) Consumer
(viii) Investor-State
(ix) State-State (i.e. Public International Law)
(x) Maritime
(xi) Other. Please specify any significant categories.
According to FAI’s 2013 statistics, the subject matter of the cases commenced in 2013 was as follows:

Agency/Distribution/Franchising/Cooperation Agreements (18%); Shareholders’ Agreements (11%); Company Acquisition/Sale of Business (10%); Delivery/Supply Agreements (9%); Director’s Agreements (9%); Service Agreements (8%); Construction Agreements (6%); IT Agreements (6%); Employment Contracts (4%); IPR/Licence Agreements (3%); Others (17%).

No investor-State and State-State cases have been filed with the Institute. Two maritime cases have been filed in the past five years (i.e. less than 1% of the total amount of cases filed over the past five years).

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

28%

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

(Information not available)

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

(Information not available)

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

(Information not available)

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

No.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

Information available only for 2012 and 2013: 87%

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

The Arbitration Institute of the Finland Chamber of Commerce does not maintain a pre-established list of arbitrators.
13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

Arbitrators are being selected by FAI’s Board members, who will draw on their knowledge and experience to find the best experts for each case. They will consider the qualifications required of the arbitrator by the agreement of the parties, the dispute’s nature and circumstances, the parties’ and the prospective arbitrators’ nationality, the language of the arbitration, the seat of arbitration, the law or rules of law applicable to the substance of the dispute and any other relevant circumstances. FAI will only confirm the appointment of candidates fulfilling the requirements of impartiality and independence and qualifications to serve as arbitrator.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

FAI will transmit a copy of the notice of challenge to the challenged arbitrator, the other arbitrators (if any) and the other parties setting a time limit for their comments on the notice of challenge. Any comments received are circulated to all parties and the arbitrator(s).

If the other parties do not agree to the challenge or the challenged arbitrator does not voluntarily withdraw within the time limit set by FAI, FAI’s Board shall decide on the challenge. FAI’s Board has no obligation to give reasons for its decision.

**Transparency**

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Parties may deviate from FAI’s confidentiality provisions if they so wish. Nevertheless, the arbitral tribunal’s deliberations shall remain confidential in all events. Unless parties agree otherwise, FAI and the arbitral tribunal shall maintain the arbitration’s and award’s confidentiality. This obligation also applies to any expert or secretary appointed by the arbitral tribunal, FAI’s Board members and Secretariat. Unless agreed otherwise, parties undertake to keep confidential all awards, orders and arbitral tribunal’s decisions, correspondence between the arbitral tribunal and the parties, and documents and materials submitted by another party in connection with the arbitration, except in the events of Article 49.2(a)-(c).

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

Unless otherwise agreed by the parties, FAI may publish excerpts or summaries of selected awards, orders and other decisions, provided that all references to the parties’ names and other identifying details are deleted.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

Please see answer to 16. above.
Collaboration and Education

**18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.**

FAI has in June 2014 delivered a statement to the Ministry of Justice with regard to the proposed amendments to the Courts of Justice Act pursuing more transparency in the work of state judges serving as arbitrators. FAI has said in its statement that any amendments should be in line with current international best practices used in countries where state judges are allowed to serve as arbitrators.

**19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.**

Since 2012, FAI organises on a yearly basis “Helsinki International Arbitration Day”, a high-profile international seminar aimed at arbitration practitioners from Finland and abroad. Further, FAI has organised arbitration seminars targeted at female arbitration practitioners (“Ladies & Arbitration”), younger Finnish arbitration practitioners (“Juniorivälimiespäivä”), seasoned and not so seasoned Finnish arbitration practitioners (“Välimiespäivä”) and, more recently, the “Finnish Arbitration Academy” aiming to provide legal practitioners with experience or interest in arbitration with the necessary tools to effectively participate in arbitrations as counsel or arbitrators in accordance with current best practices and standards.

**20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.**

FAI has cooperation agreements in the field of arbitration with the following institutions:

- Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania
- Japan Commercial Arbitration Association
- The Chamber of Commerce and Industry of the Russian Federation
- The Association of Arbitration Courts of Uzbekistan (AACU)
- Indian Council of Arbitration and FICCI Arbitration and Conciliation Tribunal (FACT)

**3.3. Arbitration Institute of the Stockholm Chamber of Commerce (SCC)**

Instructions:

1. Please answer the questions in the space provided below each question. Answers will be provided to the Parliament as they are written below (i.e. unedited).

2. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
3. Each answer must be less than **100 words**. Due to space limitations, answers over 100 words may be deleted.

**General Information**

1. **When was your institution founded?**
   The SCC was established in 1917.

2. **Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.**
   The SCC is a part of the Stockholm Chamber of Commerce, but it’s independent from the Stockholm Chamber of Commerce, with a separate Board. The SCC Board is appointed by the Board of Directors of the Stockholm Chamber of Commerce (Art. 4, Appendix I, SCC Arbitration Rules).

**Administration of Cases**

3. **How many new arbitrations have been commenced at your institution over the past 5 years?**
   A total of 992 arbitrations have been commenced at the SCC in the past 5 years.
   
<table>
<thead>
<tr>
<th>Year</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>216</td>
</tr>
<tr>
<td>2010</td>
<td>197</td>
</tr>
<tr>
<td>2011</td>
<td>199</td>
</tr>
<tr>
<td>2012</td>
<td>177</td>
</tr>
<tr>
<td>2013</td>
<td>203</td>
</tr>
</tbody>
</table>

4. **What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories: N/A**
   
   (i) Less than 25,000 Euros (or equivalent in other currencies)
   (ii) 25,000-100,000 Euros (or equivalent in other currencies)
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies)
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
   (vi) over 100,000,000 Euros (or equivalent in other currencies)

5. **What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:**
   
   (i) Corporate: N/A
   (ii) Construction
       
       2009: 2%
       2010: 4%
       2011: 4%
       2012: 8.5%
       2013: 3%
(iii) Telecommunications: N/A
(iv) Finance and Banking
   N/A
(v) Distribution/Agency/Franchise: N/A
(vi) Energy
   N/A
(vii) Consumer: N/A
(viii) Investor-State
   2009: 1%
   2010: 1%
   2011: 2%
   2012: 5,6%
   2013: 2%
(ix) State-State (i.e. Public International Law): N/A
(x) Maritime: N/A
(xi) Other. Please specify any significant categories.

See table below:

<table>
<thead>
<tr>
<th>Category</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Total</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Venture</td>
<td>9%</td>
<td>0.0%</td>
<td>4%</td>
<td>4.0%</td>
<td>13.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>18%</td>
<td>6.8%</td>
<td>0%</td>
<td>6.8%</td>
<td>0.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agency/dist.</td>
<td>3%</td>
<td>2.9%</td>
<td>0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shareholders’ agmt</td>
<td>7%</td>
<td>6.8%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Share purchase agmt</td>
<td>13%</td>
<td>13.6%</td>
<td>13%</td>
<td>14.7%</td>
<td>16.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employment agmt</td>
<td>2%</td>
<td>7.5%</td>
<td>6%</td>
<td>2.8%</td>
<td>5.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Services</td>
<td>18%</td>
<td>18.4%</td>
<td>23%</td>
<td>22.6%</td>
<td>24.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction/Real estate</td>
<td>2%</td>
<td>3.9%</td>
<td>4%</td>
<td>8.5%</td>
<td>3.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guarantee</td>
<td>3%</td>
<td>0.0%</td>
<td>0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>License/IP</td>
<td>5%</td>
<td>5.8%</td>
<td>5%</td>
<td>4.5%</td>
<td>1.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment treaty</td>
<td>1%</td>
<td>1.0%</td>
<td>2%</td>
<td>5.6%</td>
<td>2.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CreditLoan agmt</td>
<td>2%</td>
<td>1.5%</td>
<td>4%</td>
<td>4.0%</td>
<td>4.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supply agmt</td>
<td>23%</td>
<td>15.0%</td>
<td>21%</td>
<td>18.6%</td>
<td>18.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cooperation</td>
<td>10.2%</td>
<td>5%</td>
<td>5.0%</td>
<td>2.8%</td>
<td>2.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Settlement agmt</td>
<td>1.5%</td>
<td>1%</td>
<td>0.6%</td>
<td>0.5%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Company law</td>
<td>5.0%</td>
<td>12%</td>
<td>4.5%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

These categories have been taken from the statistics available in http://www.sccinstitute.com/hem-3/statistik-2.aspx

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
46%. See the table below with detailed information.

<table>
<thead>
<tr>
<th>Category</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Total</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>International</td>
<td>96</td>
<td>91</td>
<td>96</td>
<td>92</td>
<td>86</td>
<td>461</td>
<td>46%</td>
</tr>
<tr>
<td>National</td>
<td>120</td>
<td>106</td>
<td>103</td>
<td>85</td>
<td>117</td>
<td>531</td>
<td>54%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>197</td>
<td>197</td>
<td>197</td>
<td>197</td>
<td>197</td>
<td>992</td>
<td></td>
</tr>
</tbody>
</table>
7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
N/A

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
N/A

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
N/A

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
The legal counsel in charge of a specific case will review the award rendered by the tribunal to ensure that the award complies with all formal requirements (individualization of parties, seat, date, costs, signatures, etc.) for it to be valid under the SCC Rules, and under the Swedish Arbitration Act where applicable.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
N/A

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
No.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
The counsel in charge of a case makes an initial research of candidates which are suitable for each specific dispute in consideration of criteria such as the parties’ and co-arbitrators’ nationalities, applicable law, subject matter of the dispute, language, etc.
Potential candidates are discussed at the Secretariat level before at least three candidates per dispute, are proposed to the SCC Board. The Board meets once a month. The Board may propose other candidates. The final decision is made by the Board.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).
The counsel administering a case requests the parties to exchange submissions to develop their arguments. The challenged arbitrator (if applicable, also co-arbitrators) is invited to comment. The counsel prepares a memorandum summarizing the parties’ and arbitrators’ positions, and a legal analysis of the circumstances giving rise to the challenge. The
analysis includes reference to e.g. previous SCC practice in similar cases, similar cases available in the public domain and relevant literature and the Secretariat’s conclusion. The Board is provided with the memo including all relevant submissions on the challenge. The Board decides whether to sustain or to reject the challenge. The decision of the Board is communicated to the parties and arbitrator(s) without reasons. The memorandum is archived at the SCC for future reference and internal use only.

**Transparency**

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Article 46 of the SCC Arbitration Rules states that “unless otherwise agreed by the parties, the SCC and the Arbitral Tribunal shall maintain the confidentiality of the arbitration and the award.” Regarding the organization of the SCC, Article 9 of Appendix I provides that “the SCC shall maintain the confidentiality of the arbitration and the award and shall deal with the arbitration in an impartial, practical and expeditious manner.” This constitutes a contractual obligation to keep all information about the dispute confidential. The SCC Arbitration Rules do not bind the parties to confidentiality. Each party is allowed to make information on the dispute known to the public unless, the parties are bound by a confidentiality agreement.

In investor-state arbitrations, parties can agree to apply the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration to arbitrations conducted under the SCC Rules. To learn about the interplay between the SCC Rules and the UNCITRAL Transparency Rules see: http://www.sccinstitute.com/filearchive/4/46873/Interplay%20between%20the%20draft%20rules%20on%20transparency%20and%20institutional%20rules.pdf

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

The awards are kept confidential. However, the SCC supports transparency in different ways. For instance, the SCC regularly publicise general observations and reports on specific topics (e.g. on separate awards on costs, emergency arbitrator decisions) based on information gathered from awards rendered under the SCC Rules. For this purpose, the case (parties, arbitrators, and any other type information which may lead to the identification of the case) is kept anonymous.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

Every two years the SCC publicises a report with a summary of the decisions made by the SCC Board on challenges to arbitrators. The report keeps the cases anonymous and is limited to a description of the circumstances that gave rise to the challenge, the parties’ arguments and the Board’s decision on the challenge.

**Collaboration and Education**

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

The SCC Secretary General is currently a member of a state commission in charge of reviewing the Swedish Arbitration Act to assess potential improvements. The purpose of
this initiative is to ensure that dispute resolution in Sweden continues to be modern, efficient and attractive internationally.

Also the SCC organizes seminars in conjunction with the Ministry of Justice to promote discussion and exchange of ideas between practitioners in the arbitration community and the judiciary. A patent outcome from these initiatives was the adoption by the Svea Court of Appeal of guidelines for the management of set aside proceedings. The guidelines aim at making the management of set aside proceedings more efficient, so that decisions by the Court can be made as soon as possible. The Svea Court of Appeal drafted the guidelines in consultation with experienced practitioners. The guidelines have been translated into English\textsuperscript{571}, to give an insight to international parties of the internal guidelines of the Svea Court of Appeal.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

The SCC cooperates with the Swedish Arbitration Association in organizing an arbitrator training (Sv: Skiljemannautbildningen). The training aims at educating new generations of Swedish arbitration practitioners to widen the pool of arbitrators so that more international disputes seat in Sweden. There have been four versions of the arbitrator training (2006, 2008, 2010, 2013).

For the fifth year, the SCC organizes in conjunction with VQ, the “VQ Knowledge and Strategy Forum,” a two-day event devoted to discuss innovation in the legal practice and arbitration. VQ is a knowledge management and strategic innovation consulting firm that focuses on knowledge leverage and business development.

The SCC cooperates with Young Arbitrators Sweden (YAS) and Swedish Women in Arbitration (SWAN) providing administrative support.

The SCC organizes every year a conference for the international students participating in the Vis Moot who come to the Stockholm Pre-Moot.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

The SCC cooperates with several institutions around the world on an ad-hoc basis. On a continuous basis, the SCC has cooperated with the DIS, CAM and VIAC. The four institutions annually arrange a mutual seminar held at the institutions respective seat (Stockholm, Cologne, Milan, and Vienna). Also, the four institutions invite members of the others’ staff to study visits for the purpose of exchanging ideas and learning more about the different set of arbitration rules and the case administration.

Due to our experience with investment disputes, the SCC and ICSID cooperate with each other. In May this year we organized a joint seminar to discuss ISDS.

\textsuperscript{571}http://www.sccinstitute.com/filearchive/4/47004/Arbitration%20cases%20before%20the%20Svea%20Court%20of%20Appeal,%20version%201.pdf
The SCC also cooperates with the Danish Institute of Arbitration (DIA). The DIA arranges in conjunction with Danske Advokater an arbitrator training for Danish lawyers. Participants of the training programme are invited to Stockholm to spend a 1,5 day course on arbitration in Sweden.

SCC also cooperates with CIETAC, whose Secretary General, Yu Jianlong, is member of the SCC Board. Delegations from CIETAC, the CCPIT (China Council for the Promotion of International Trade) and private Chinese delegations often come to Stockholm. The SCC organizes seminars and other activities in connection with these visits. Also SCC and Swedish representatives travel every year to China, keeping a continued cooperation with the Chinese arbitration community and promoting arbitration among younger generations, by visiting universities.

3.4. Barcelona Arbitration Court (TAB)

Instructions:

1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The TAB is an organ of the Catalan Arbitration Association which was founded on February 1989.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
The TAB is the organ with delegated functions from the Catalan Arbitration Association who carries out the administration of arbitrations and other functions set forth in the Articles of Association of the latter. The sole members of the Association are:

- Barcelona Law Society,
- Barcelona Chamber of Commerce,
- Catalan Association of Notaries Public,
- Autonomous Deaneey of Land and Mercantile Registrars of Catalonia,
- Council of Law Societies of Catalonia,
- Association of Professional Associations of Catalonia.

Therefore, it’s not that the TAB is affiliated with those bodies but constituted by them.

Administration of Cases
3. How many new arbitrations have been commenced at your institution over the past 5 years?  
From 2009 to July 2014: 390 arbitrations.

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
   (i) less than 25,000 Euros (or equivalent in other currencies): 16,34%  
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): 30,56%  
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 44,80%  
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 10,28%  
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 1,02%  
   (vi) over 100,000,000 Euros (or equivalent in other currencies):

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:
   (i) Corporate  
       (i) Corporate: 20,51%  
   (ii) Construction  
       (ii) Construction: 15,64%  
   (iii) Telecommunications: ---  
   (iv) Finance and Banking: 19,48%  
   (v) Distribution/Agency/Franchise: 13,58%  
   (vi) Energy: ---  
   (vii) Consumer: ---  
   (viii) Investor-State: ---  
   (ix) State-State (i.e. Public International Law): ---  
   (x) Maritime: ---  
   (xi) Other. Please specify any significant categories.  

The other 30,79% corresponds to issues such as sales of goods, Intellectual Property, business sales, leasing of industry and others.

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
10% approximately.

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
Less than 5%.

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
Spain.
9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located? None.

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
Yes, it does; the TAB scrutinises the awards before its delivery to the parties. This is precisely one of the tasks of the members of the Board of Directors. The scope of the scrutiny is limited to the formal aspects of the awards rendered by the arbitrators.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
95%. Just a few times the parties themselves have appointed the sole arbitrator or the party arbitrator or the chairperson. It is the institution who usually appoints them giving the parties the possibility to participate in the appointment in advance providing them with a short list of candidates between which the appointment will be made as the TAB may deem appropriate according to its rules.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
The TAB has not a public list of arbitrators but a data base of candidates who can be appointed according to the circumstances of the case submitted and the preferences put forth by the parties in their request for arbitration. The parties intervene in the appointment giving their opinion about the names proposed by the Board of Directors in the short list made up on the basis of the parties preferences and the roster of candidates by specialities in different fields of law.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
When submitting a request for arbitration both parties express the profile of the arbitrator they deem appropriate for the case. Taking their preferences into consideration, the TAB selects from its roster (of voluntary registration through the TAB’s website) three arbitrators for each one who has to be appointed and provides the parties with a short list of candidates to submit their preference for a time limit of five days. These preferences are only binding on the TAB when there is coincidence among the parties. Otherwise, the TAB may appoint the arbitrator as it may deem appropriate.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).
When one of the parties submit a challenge of an arbitrator, the TAB summons the other party and the arbitrator to answer the challenge and allege what they consider appropriate in law and express any matter which could affect his or her freedom of independence and/or impartiality. The final decision shall be made by the TAB.
Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

The principle of confidentiality is laid down by law (art. 24 of Spanish Act). All the members of the Board of Directors of the TAB, its staff and other people involved in the administration of arbitrations subscribe a binding commitment of confidentiality. Also the arbitrators and the parties are obliged to keep confidential any information they become aware of through arbitration proceedings and both of them sign a clause in that sense in the formal statement for the commencement of the proceedings.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

No, due to confidentiality. Even though article 28 of TAB’s rules lays down that awards having doctrinal interest are not subject to the rule of not making awards public the TAB has never published any award. Those awards which are deemed of doctrinal interest are sometime selected to be commented on the journal published by the TAB (Anuario de Justicia Alternativa. Derecho Arbitral) removing any information that can identify the subject or the parties of the arbitration in question.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

Never due to the principle of confidentiality which is fulfilled strictly by the TAB. It’s applicable what is mentioned in the answer to question 16.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

Yes. The TAB played a great role on the improvement of the 11/2011 new Arbitration Act suggesting amendments and proposals to the Spanish Parliament for which contributions was publicly congratulated. The TAB took publicly a strong position against the intended elimination of the arbitration ex aequo et bono which finally prevailed. Recently, the TAB filed amendments to the draft of the Spanish Criminal Procedure Code on the offence of false witness in arbitration and currently is working on the amendment of other bills and drafts such as the Non-contentious Jurisdiction and the Corporate Enterprise Act.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

The TAB is engaged in educational activities and promotion of arbitration culture in Spanish and French Universities and Business Schools and signs with them cooperation agreements for further education initiatives. The TAB also delivers lectures whenever and wherever it is possible in conferences and congresses on arbitration.
20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
Even though there are no agreements subscribed, the TAB regularly cooperates in the administration of cases (usually hearings) with any institutions that manifests their interest. On the other hand, the TAB was the promoter of the First Congress of Corporative Spanish Arbitral Institutions which is going to be held in its sixth edition, again in Barcelona, this year. The aim of it is the exchange of information and the discussion of issues of common interest.

3.5. Belgian Centre for Mediation and Arbitration (CEPANI)

Instructions:

1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
1969

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
CEPANI was founded in 1969, under the auspices of the Belgian National Committee of the International Chamber of Commerce (ICC) and the Federation of Belgian Enterprises (VBO/FEB).

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
Over 400

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
   (i) less than 25,000 Euros (or equivalent in other currencies): 10%
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): 30%
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 40%
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 20%
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies):
5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located? <5%

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
No

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
No

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
CEPANI does not work with a list of registered or acknowledged arbitrators. One cannot submit an application to become an arbitrator appointed by CEPANI. When a party submits a request for arbitration to CEPANI, the Appointments Committee considers on a case by case basis who is the most qualified person to settle the dispute at hand. In making this decision, the factors that are taken into account are the nature of the dispute, the language, the identity of the co-arbitrators, the arbitrator's qualifications and availability, the urgency of the situation, what is at stake... CEPANI has a number of renowned Belgian or foreign arbitrators at its disposal whose assistance it can request.
14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

A challenge for reasons of any alleged lack of independence or for any other reason, shall be communicated to the secretariat in writing and shall contain the facts and circumstances on which it is based.

In order to be admissible the challenge must be communicated by a party either within one month of the receipt by that party of the notification of the arbitrator's appointment, or within one month of the date on which that party was informed of the facts and circumstances which it invokes in support of its challenge, whichever date is the later.

The secretariat shall invite the arbitrator concerned, the other parties and the members of the Arbitral Tribunal, as the case may be, to present their written observations within a time period fixed by the secretariat. These observations shall be communicated to the parties and to the arbitrators. The parties and arbitrators may respond to these observations within the time period fixed by the secretariat.

The latter then transmits the challenge and the comments received to the Challenge Committee. The Committee decides on the admissibility and on the merits of the challenge.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Unless it has been agreed otherwise by the parties or there is a legal obligation to disclose, the arbitration proceedings shall be confidential.

The arbitrator shall observe the rules of strict confidentiality in each case attributed to him by the Secretariat.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

Collection of arbitral awards: series published by CEPANI and is in line with CEPANI’s wish to promote arbitration by a better knowledge of the awards rendered on the basis of its Rules. The periods covered vary. Each decision is anonymous and published with express consent of all parties concerned. Each decision is accompanied by a commentary in the language in which it was rendered. A summary is included in the two other languages. A list of keywords makes for user-friendly access.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

No

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

Yes to promote legislative change. New law of June 24, 2013
19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

Numerous Educational programmes/ lunch debates for under 40 practitioners, lunch debates with company layers and CEO's, annual colloquia, meetings abroad with other sister organizations on burning issues in arbitration, colloquia intended for judges, arbitration classes, training based on practical cases: witness examination/ arbitral hearing etc.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

China International Economic and Trade Arbitration Commission (CIETAC)
Deutsche Institution für Schiedsgerichtsbarkeit (DIS)
The Court of Arbitration at the Polish Chamber of Commerce in Warsaw (Sad Arbitrazowy)
The Cairo Regional Center for International Commercial Arbitration (CRCICA)
Cour d’Arbitrage de Côte d’Ivoire (CACI)
Nederlands Arbiterage Instituut (NAI)
The International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine (ICAC at the UCCI)
Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft (VIAC)
Russian Chamber of Commerce and Industry

3.6. Centre for Effective Dispute Resolution (CEDR)

Instructions:

1. Please answer the questions in the space provided below each question.

2. Answers will be provided to the Parliament as they are written below (i.e. unedited).

3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
IDRS was founded in 2007 by the Chartered Institute or Arbitrators and became a subsidiary of CEDR (Centre for Effective Dispute Resolution) in 2012. Please note that this response does not include the commercial work of CEDR as its arbitration work is more ad hoc in nature.
2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
CEDR is a London-based non-profit organisation and a registered charity supported by multinational businesses, leading professional bodies and public sector organisations. CEDR raises the main part of its revenue through the operation of commercial services in the fields of dispute resolution and conflict management.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
1,829 (1,407 of which were with ABTA, the remainder with other smaller arbitration schemes)

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
We do not keep statistics on this.
(i) Less than 25,000 Euros (or equivalent in other currencies): N/A
(ii) 25,000-100,000 Euros (or equivalent in other currencies): N/A
(iii) 100,000-1,000,000 Euros (or equivalent in other currencies): N/A
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): N/A
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): N/A
(vi) over 100,000,000 Euros (or equivalent in other currencies): N/A

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:
(i) Corporate: N/A
(ii) Construction: N/A
(iii) Telecommunications: N/A
(iv) Finance and Banking: N/A
(v) Distribution/Agency/Franchise: N/A
(vi) Energy: N/A
(vii) Consumer: 100%
(viii) Investor-State: N/A
(ix) State-State (i.e. Public International Law): N/A
(x) Maritime: N/A
(xi) Other. Please specify any significant categories: N/A

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
Nil

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
UK (England and Wales)

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
Nil

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
All arbitration awards are checked by professional proof-readers prior to being released.

**Appointment of Arbitrators**

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
100%

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
Yes. Arbitrators are added to the list by administrators. Appointment is carried out on a rota basis from the list of arbitrators. We also have an arbitration panel for larger cases.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
Appointments are carried out on a rota basis for the list of arbitrators.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).
The arbitration schemes we run have an appeal stage built into them, allowing an appeal within a fixed time period after the initial award has been made. An appeal arbitrator will consider the appeal on the basis of the evidence provided by the parties.

**Transparency**

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.
Our arbitration schemes have a section in their rules which provide that both the claimant and respondent undertake not, at any time, to disclose to any person any details of the arbitration, except where necessary to uphold an arbitral award.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)
No.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
CEDR formed a CEDR Arbitration Commission in 2007, tasked with reviewing current practice regarding the facilitation of settlement by international arbitral tribunals and to come up with recommendations to improve this aspect of the process for end-users. The Commission was comprised of 70 members with 45 observer organisations and was co-chaired by Lord Woolf of Barnes and Gabrielle Kaufmann-Kohler, with Dr Karl Mackie, CEDR’s Chief Executive as Commission Director. The commission resulted in the production of the CEDR Rules for the Facilitation of Settlement in International Arbitration (the Settlement Rules). These outline steps Arbitral Tribunals can take with a view to facilitating settlement by the parties in an international arbitration.
For more information: http://www.cedr.com/about_us/arbitration_commission/

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.
See above.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
No.

3.7. Chamber of Arbitration of Milan

Instructions:

1. Please answer the questions in the space provided below each question.

2. Answers will be provided to the Parliament as they are written below (i.e. unedited).

3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.
General Information

1. When was your institution founded?
1987

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)?
   Please identify.
   Yes: the Milan Chamber of Commerce.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
   Along the last 5 years (2009-2013), 717 new arbitrations have been commenced.

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
   This data is not available for the requested period.
   The economic value in dispute (average amount) over the past 5 years has been of 5,672,770,00 €.
   In particular, on a yearly basis: the average amount for 2009 has been 6,534,293,42 €; for 2010 it has been 4,246,451,14 €; for 2011 it has been 7,151,109,00 €; for 2012 it has been 6,708,231,00 €; for 2013 it has been 3,723,764,00 €.
   In 2013 only, these are the requested percentages:
   (i) less than 25,000 Euros (or equivalent in other currencies): 7,8%
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): 16,8%
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 46,7%
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 24%
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 4,1%
   (vi) over 100,000,000 Euros (or equivalent in other currencies): 0,6%

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:
   (i) Corporate: 27,6%
   (ii) Construction: 20%
   (iii) Telecommunications
         Information not collected
   (iv) Finance and Banking: 2,7%
   (v) Distribution/Agency/Franchise: 2,7%
   (vi) Energy
         Information not collected (statistics regarding the triennium 2011 - 2013: 14,71%)
   (vii) Consumer: Information not collected
   (viii) Investor-State: 0%
   (ix) State-State (i.e. Public International Law): 0%
(x) Maritime: Information not collected
(xi) Other. Please specify any significant categories.
   47% (this percentage may include those previous sectors filled with the voice “information not collected”).

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
10,6%

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
Until now, our institution has administered commercial arbitrations only; we have had neither State-State cases nor investment arbitration cases. Sometimes we did administer arbitrations involving a State-controlled party or a Public Entity such as a Region or a Municipality; the percentage of these cases has not been collected.

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
Italy, Switzerland.

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
0,26%

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
Art.30 Para 4 of the Arbitration Rules of our institution provides that “The Secretariat shall indicate any non-compliance with the formal requirements under this Article to the arbitrators asking for an examination of the draft award before signing it.” It means that our institution provides an optional formal scrutiny of awards on arbitrator’s demand (statistically, requested by the arbitrators more than 90% of our cases).

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
Along the last 5 years (2009-2013), 1,345 arbitrators were appointed, 514 of whom were appointed by the Chamber of Arbitration of Milan directly, that is to say 38% (486 by the Arbitral Council and 28 by the President of the Chamber). Under the Milan Rules, when the appointment of arbitrator is referred to the Chamber, it is carried out by the Arbitral Council, that has general competence – together with the Secretariat - over all matters relating to the administration of arbitral cases.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
No, it does not.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

Arbitrators are selected on a case by case basis, considering the expertise on the matter in dispute, the knowledge of substantial and procedural rules, the seat, the language of the case and its value. The Secretariat is requested to collect names of candidates, to be submitted to our Council (together with a description of the major features of the proceedings), in order to help the Council to take the final decision and appoint the most “appropriate” arbitrators.

Nationality: unless the parties agreed otherwise, the sole arbitrator/chair shall be of a nationality other than the parties when they have different nationalities or registered offices in different countries.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

The prospective arbitrator shall sign a statement of independence where disclosing any relationship with the parties, their counsel or any person or entity involved in the arbitration, any personal or economic interest (direct or indirect) in the dispute, any bias or reservation. The Secretariat forwards the statement to the parties, who can submit comments or challenge the arbitrator within 10 days. If an unqualified statement is submitted and no comment is filed, the Secretariat confirms the arbitrator. In any other case, the final decision on the confirmation or on the challenge of the arbitrator is up to the Arbitral Council.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

The Milan Chamber of Arbitration, the parties, the Arbitral Tribunal and the experts shall keep the proceedings and the arbitral awards confidential except in the case it has to be used to protect one’s rights (see Rules, art. 8.1). Confidentiality does affect all persons taking part in the proceedings. The set of Rules offers the certainty that throughout the proceedings their need for privacy will be given the highest degree of protection, that the pleadings they file will be kept in a strong box within the institution itself and distributed only to those taking part in the arbitration and, lastly, that hearings will be held in the strictest privacy and not open to anyone not involved in the arbitration.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

Yes, it does.

For purposes of research, the Milan Chamber of Arbitration may publish the arbitral award in anonymous format, unless, during the proceedings, any of the parties objects to publication (see Rules, art. 8.2). Thus, once the award is rendered and unless the parties have expressed specific objections to publication, we publish, in anonymous form and in a manner that does not allow the parties to be recognised, the awards that are most important for the building up of case law and of the growth of a culture of arbitration.
We see no contradiction between these two aspects: the guarantee of privacy while the proceedings are ongoing can go hand in hand with the needs for publicity and publication once those proceedings are over.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)
No, or rather, not yet.

We plan to start the publication of decisions on challenges of the arbitrators by January 2015 in the form of a digest of reasoned and sanitized (i.e. anonymous) challenge cases decisions. The Milan Chamber website seems to us the best place for a timely and continuous publication.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
Yes, it did.

In the last 5 years, CAM has been involved in the latest legislative changes concerning ADR (mediation law, decree n.180/2010 and decree 145/2011) and it is now involved in the ongoing so-called “Reform of Italian Civil Justice” (mediation and arbitration).

CAM played an active role in the promotion of arbitration and mediation within the judicial system, either at a local level (in partnership with the Milan Court of Appeal) and a national level (in partnership with the Consiglio Superiore della Magistratura-CSM, the Italian High Council of Magistrates.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.
During the past 5 years, CAM has engaged the following activities:

1. annual basic training activities (approximately 40 hours per edition) addressed to various professionals (lawyers, engineers, accountant, etc.) interested in deepening their knowledge of arbitration;
2. advanced seminars on specific topics addressed to various categories of professionals (judges, lawyers, etc.);
3. international events, also in cooperation with other primary foreign Institutions, focused on the most relevant topics of the arbitration panorama;
4. seminars also in cooperation with other national and internationals Organizations aimed at promoting awareness of CAM practice;
5. simulation training activities addressed to students.
20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

The Milan Chamber of Arbitration

- regularly cooperates with SCC, VIAC, DIS organizing periodical training events;
- has cooperated with several organizations for the organization of international events; among the others: IBA, AIA (Italian Arbitration Association), Francarbi, ARBit, ASA, ICCA, ASLA, CMAP, CPR;
- is part of the network of ISPRAMED (Institute for the Promotion of Arbitration in the Mediterranean) aimed at elaborating common principles in the management of arbitral procedures of its members (CRCICA, CACI; CCAT, ITO, ICC Morocco, CCIB);
- is a board member of IFCAI and cooperates in organizing its biennial conferences;
- organizes the annual debate of the Club of Arbitrators of the CAM, an association of highly regarded experts and practitioners of international repute;
- has signed several cooperation agreements with the world leading arbitral institutions.

3.8. Civil and Mercantile Court of Arbitration (CIMA)

Instructions:

1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
En el año 1989.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
No existe intermediación alguna de carácter público o privado al ser una Corte privada que se autofinancia por sus propios asociados.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?

29
En total entre los años 2009-2013, se han administrado 276 arbitrajes.

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
   (i) less than 25,000 Euros (or equivalent in other currencies)
   (ii) 25,000-100,000 Euros (or equivalent in other currencies)
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies)
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
   (vi) over 100,000,000 Euros (or equivalent in other currencies)

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:
   (i) Corporate
   (ii) Construction
   (iii) Telecommunications
   (iv) Finance and Banking
   (v) Distribution/Agency/Franchise
   (vi) Energy
   (vii) Consumer
   (viii) Investor-State
   (ix) State-State (i.e. Public International Law)
   (x) Maritime
   (xi) Other. Please specify any significant categories.

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

Appointment of Arbitrators
11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

CIMA dispone en la actualidad de una completa relación de Árbitros de ámbito nacional e internacional. Para adquirir la condición de asociado (árbitro) de CIMA, éstos deberán reunir necesariamente las tres condiciones siguientes:

a) Estar dado de alta en un Colegio de Abogados como ejerciente con una antigüedad no menor de diez años.

b) No haber sido sancionado disciplinariamente como colegiado, ni expulsado de la asociación, ni condenado por delito doloso.

c) Pertenecer o haber pertenecido al Cuerpo de Letrados del Consejo de Estado o al de Abogados del Estado, o tratarse de jurista de reconocida competencia y probada experiencia, a juicio de la Comisión de Gobierno.

d) La decisión sobre la admisión como árbitro de CIMA, la adoptará la Comisión de Gobierno, teniendo en cuenta el número de árbitros de la Corte y su relación con el número de asuntos a laudar en el tiempo.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

La designación de Árbitros, una vez realizados los trámites preparatorios del arbitraje, tendrá lugar por sistema automático y rotativo, por riguroso orden número y correlativo.

Dicho automatismo sólo se alterará:

a) Cuando las partes se pongan de acuerdo en la designación de un árbitro o tribunal arbitral, de entre los árbitros incluidos en la lista de la Corte.

b) Cuando cada una de las partes designe un árbitro de entre los de la lista de la Corte y encomienden a los designados la elección del tercero que actuará de Presidente del Tribunal y que, asimismo, deberá pertenecer a la lista de la Corte.

c) Cuando cada una de las partes designe a un árbitro de entre los de la lista de la Corte, dejando la designación del tercero al Presidente de la misma, que designará, al que por turno corresponda quien asumirá la Presidencia del tribunal arbitral.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

Una vez designados los árbitros en un procedimiento, éstos comunicaran a la Corte su aceptación o los motivos para no aceptar el encargo. En el escrito aceptando su designación, el árbitro deberá revelar todas las circunstancias que puedan dar lugar a dudas justificadas sobre su imparcialidad o independencia. La aceptación del árbitro o árbitros será comunicada por la Corte a las partes, quienes, en el plazo de 15 días podrán manifestar, por escrito, la aceptación de aquéllos o, en su caso, su recusación. No obstante, las partes podrán recusar al árbitro o árbitros, en cualquier momento de procedimiento anterior al laudo, dentro de los 15 días siguientes a la fecha en que tengan
conocimiento de cualquier circunstancia que dé lugar a dudas sobre su imparcialidad o independencia.

La recusación de los árbitros se ajustará a lo dispuesto sobre la materia en la vigente Ley de Arbitraje, si bien contra el acuerdo no aceptando la recusación, parte recusante podrá recurrir ante la Comisión de Gobierno de la Corte, por escrito y aportando los medios de prueba de que disponga. La Comisión adoptará las decisiones procesales que estime pertinentes y decidirá sobre la recusación en el plazo de un mes a partir de la recepción del recurso, previa audiencia del árbitro y de las partes.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
El laudo solo podrá hacerse público con el consentimiento de todas las partes.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

3.9. Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry

Instructions:

1. Please answer the questions in the space provided below each question.

2. Answers will be provided to the Parliament as they are written below (i.e. unedited).

3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an
inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
   1949

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
   Our Permanent Arbitration Court is attached to the Hungarian Chamber of Commerce and Industry.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
   2010: 269
   2011: 335
   2012: 236
   2013: 177
   2014: 94

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
   (i) less than 25,000 Euros (or equivalent in other currencies): 52 %
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): 20%
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 20%
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 7%
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 1 %
   (vi) over 100,000,000 Euros (or equivalent in other currencies): 0 %

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:
   (i) Corporate: 1 %
   (ii) Construction: 12 %
   (iii) Telecommunications: 0 %
   (iv) Finance and Banking: 24 %
   (v) Distribution/Agency/Franchise: 16 %
   (vi) Energy: 1 %
   (vii) Consumer: 2 %
   (viii) Investor-State: 0
(ix) State-State (i.e. Public International Law): 0
(x) Maritime: 0
(xi) Other. Please specify any significant categories.
   Agriculture 10 %
   Property development (lease contracts) 20 %

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
   10 %

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
   6 %

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
   Hungary

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
   0

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
    No.

**Appointment of Arbitrators**

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
    15 %

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
    Yes, a roll of arbitrators of informative character, which is obligatory to the institution if it is required to appoint an arbitrator. Considering the proposal of the Presidium of the Arbitration Court and on the basis of the position taken by the arbitral body thereupon, the Assembly of the Delegates of the Hungarian Chamber of Commerce and Industry shall establish the roll of arbitrators from among persons who command legal, economic and other knowledge necessary for the resolution of legal disputes by arbitration. The roll of arbitrators is drawn-up for a three-year period and includes 120 persons, Hungarian and foreign nationals alike.
13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

It is the decision of the President of the Arbitration Court, no description of the mechanism.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

Art. 19 (4) of the Rules of the Proceedings provides that the other members of the arbitral tribunal shall decide in respect of a challenge made by a party, or the disclosure provided by the arbitrator or presiding arbitrator. If no agreement can be reached, or two arbitrators or the sole arbitrator have been challenged, the Presidium of the Arbitration Court shall make a decision relating to the challenge. In the same way, the Presidium shall judge any challenge submitted prior to the formation of the tribunal.

According to the Section 20 of the Arbitration Act of 1994 if a challenge under the procedure is not successful, the challenging party may request the competent county court within thirty days of receiving notice of the decision rejecting the challenge, to decide on the challenge.

**Transparency**

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Art. 15 of the Rules of Proceedings of the Arbitration Court provides that the Arbitration Court, the arbitrators, the staff of the Secretariat, the parties and their representatives may not give any information on pending proceedings and on its decisions rendered, or on the contents thereof. The decisions of the Arbitration Court may be published in legal journals or special publications only upon the permission of the President of the Arbitration Court and only in a such a way that the interests of the parties will not suffer any harm; furthermore, the names of the parties, their countries of residence, the nature and counter-value of the services rendered, or any one of these particulars can only be included in a publication with the express consent of both parties.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

Yes, abstracts of the awards in redacted form in legal periodical “Economy and Law”

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

No.

**Collaboration and Education**

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

No.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for
junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

There was no primary educational activity.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

<table>
<thead>
<tr>
<th>Institution</th>
<th>Activity</th>
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<tbody>
<tr>
<td>VIAC International Arbitral Centre of the Austrian Federal Economic Chamber</td>
<td>special arbitration rules for the cooperation in the</td>
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<tr>
<td>AAA American Arbitration Association</td>
<td>special arbitration rules for the cooperation in the</td>
</tr>
<tr>
<td>Court of Arbitration on Foreign Trade of the Chamber of Commerce of the Republic of Cuba</td>
<td>promotional activity</td>
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<tr>
<td>Italian Association for Arbitration</td>
<td>promotional activity</td>
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<tr>
<td>The Korean Commercial Arbitration Board</td>
<td>promotional activity</td>
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<tr>
<td>Greek Arbitration Association</td>
<td>promotional activity</td>
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<td>ASA Swiss Arbitration Association</td>
<td>promotional activity</td>
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<tr>
<td>Commercial Arbitration Association of the Republic of China</td>
<td>promotional activity</td>
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<tr>
<td>DIS Deutsche Institution für Schiedsgerichtsbarkeit e.V.</td>
<td>promotional activity</td>
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<tr>
<td>LCIA London Court of International Arbitration</td>
<td>promotional activity</td>
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<tr>
<td>ACICA Australian Centre for International Commercial Arbitration</td>
<td>promotional activity</td>
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<tr>
<td>Mongolian Foreing Trade Arbitration Court of the Mongolian Chamber of Commerce and Industry</td>
<td>promotional activity</td>
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<tr>
<td>SIC Singapore International Arbitration Centre</td>
<td>promotional activity</td>
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<tr>
<td>Permanent Court of Arbitration attached to the Chamber of Commerce and Industry of Slovenia</td>
<td>promotional activity</td>
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<tr>
<td>Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania</td>
<td>promotional activity</td>
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<tr>
<td>Court of Arbitration of Latvian Chamber of Commerce and Industry</td>
<td>promotional activity</td>
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<tr>
<td>FICCI (Federation of Indian Chambers of Commerce &amp; Industry) Arbitration and Conciliation Tribunal</td>
<td>promotional activity</td>
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3.10. Court of Arbitration of the Estonian Chamber of Commerce and Industry

Instructions:

1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
1992

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
Estonian Chamber of Commerce and Industry

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
From 2010 up to now 85 cases

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

   (i) less than 25,000 Euros (or equivalent in other currencies): 31%
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): 24%
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 18%
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 18%
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 1%
   (vi) over 100,000,000 Euros (or equivalent in other currencies): 0%

   Remark:
   8% non-monetary claims

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

   (i) Corporate: 15%
   (ii) Construction: 20%
   (iii) Telecommunications: 10%
   (iv) Finance and Banking: 25%
6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
30%

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
10%

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
Seat of arbitration always Estonia

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
0%

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
No

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
Council has appointed the tribunal in 35.3% of cases, including 14.1% only sole arbitrator has been appointed.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
We have the list, which is not compulsory, but only providing possible candidates for those who need some assistance in this regard

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
Usually we appoint arbitrators from the list, proposals are made by the members of the council of the arbitration court, the decision shall be adopted by the council of the arbitration court

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

The challenge application shall be submitted by the party to the council, the other party is given possibility to respond to the application, the final decision shall be adopted by the council during 15 days from the date of application

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

According to the rules of the arbitration court (article 41) the parties and the tribunal may disclose information regarding arbitration dispute only upon written agreement of both parties. We have some cases where a party had violated this principle and had turned to the press.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

no

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

no

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

Yes, we had cooperated with Ministry of Justice to amend Estonian Civil Procedural Code regarding arbitration matters and most of our proposals have been accepted and the law has been amended accordingly

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

We have organized two international conferences in Tallinn regarding international commercial arbitration (2007 and 2012), two seminars for state judges, several seminars for our arbitrators; we have participated with presentations on several seminars organized by Estonian Chamber and ICC Estonia, on Estonian Bar Association young lawyers educational event, on Baltic Arbitration Days in Riga (2013); we are participating on annual meetings of ICC European Arbitration Group (starting from 1997).
20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
ICC European Arbitration Group (ICC International Arbitration Court), Arbitration Court of Latvian Chamber of Commerce, International Commercial Arbitration Court of Chamber of Commerce of Russian Federation.

3.11. Court of Arbitration of the Hamburg Chamber of Commerce

Instructions:
1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The Hamburg Chamber of Commerce set up a general arbitration court in 1884 as an arbitration court of the Hamburg commodity exchange. It was opened in 1893 for all disputes arising out of business transactions.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
The Court of Arbitration of the Hamburg Chamber of Commerce is formally affiliated with the Hamburg Chamber of Commerce. The permanent Court of Arbitration of the Hamburg Chamber of Commerce administers arbitration proceedings before it on behalf of the parties pursuant to the directions of the Chairperson of the arbitral tribunal. In addition, a Legal Counsel from the Chamber of Commerce plays an advisory role in hearings. This ensures that the legal and economic expertise of the Hamburg Chamber of Commerce is made available to the parties and arbitrators.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
Five to ten per year

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

   (i) less than 25,000 Euros (or equivalent in other currencies): approx. 50 %
(ii) 25,000-100,000 Euros (or equivalent in other currencies): approx. 15%
(iii) 100,000-1,000,000 Euros (or equivalent in other currencies): approx. 25%
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): approx. 10%
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 0
(vi) over 100,000,000 Euros (or equivalent in other currencies): 0

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate
(ii) Construction
(iii) Telecommunications
(iv) Finance and Banking
(v) Distribution/Agency/Franchise
(vi) Energy
(vii) Consumer
(viii) Investor-State
(ix) State-State (i.e. Public International Law)
(x) Maritime
(xi) Other. Please specify any significant categories.

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
approx. 50%

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
None

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
Germany

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
None

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
A permanent Legal Counsel from the Hamburg Chamber of Commerce plays an advisory role regarding formal and legal aspects. This ensures that the legal and economic expertise of the Chamber of Commerce is made available to the parties and arbitrators. The Legal Counsel has no voting rights.

Appointment of Arbitrators
11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
Approx. 40%

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
The Court of Arbitration of the Hamburg Chamber of Commerce maintains no list of arbitrators. The association Rechtsstandort Hamburg e.V., which was established to promote Hamburg as the jurisdictional destination for national and international litigation and dispute resolution provides such a list (http://www.dispute-resolution-hamburg.com/de/people/) and also the association Hamburg Arbitration Circle e.V. (www.hamburg-arbitration.de/mitglieder.html).

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
The selection depends on the conditions laid down in any agreement between the parties, on the qualification needed to decide the case (e.g. knowledge of a field of law, foreign language, a special branch, a foreign country, its laws and business practices, experience,..) and on his disposability. The permanent Legal Counsel of the Hamburg Chamber of Commerce or his deputy identifies the names. A deputy has to give his consent to the choice (four-eyes principle). The final decision is made by the President of the Hamburg Chamber of Commerce.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).
A challenge can only be based on circumstances that give rise to justified doubts as to the impartiality or independence of the arbitrator, or suggest that he does not fulfil the conditions the parties agreed on. The Hamburg Chamber of Commerce informs the arbitrators and the other party of the challenge and sets a time limit for the challenged arbitrator and the other party to respond. If the Chamber of Commerce dismisses the challenge, the challenging party shall be entitled to apply to the Higher Regional Court of Hamburg for a decision (Art. 7 of the Rules).

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.
The arbitrators, the parties and the persons at the Chamber of Commerce concerned with arbitration proceedings shall maintain confidentiality vis-à-vis everyone at every stage of the proceedings, in particular with respect to the parties, witnesses, experts and any other form of evidence involved. Any person involved by the parties in the proceedings shall be placed under an obligation to maintain confidentiality. Oral hearings shall not be public (Art. 5 of the Rules).

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
The Chamber of Commerce may publish the arbitral award if both parties agree to this. Under no circumstances may such publication include the names of the parties, their legal counsel or other information which could permit identification of those concerned. The Chamber of Commerce shall be permitted to publish information on arbitral proceedings in a compilation of statistical data, provided the information given excludes identification of those concerned (Art. 29 of the Rules).

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)
Since the permanent Legal Counsel of the Hamburg Chamber of Commerce and his deputy have been working for the Hamburg Chamber of Commerce (approx. 15 years) there have been no challenges at all.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
We promote arbitration within Hamburg government regularly at least once a year. We publish several brochures, leaflets, articles and give interviews to inform the public about ADR and arbitration.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.
We publish brochures, leaflets and articles to inform the public about ADR and arbitration and we organise at least two events per year with a focus on arbitration. We are in contact with the representatives of other Hamburg arbitration courts, arbitrator’s associations and the German DIS e.V. We are one of the founding members of the association Rechtsstandort Hamburg e.V., which was established to promote Hamburg as the jurisdictional destination for national and international litigation and dispute resolution. Please refer to http://www.dispute-resolution-hamburg.com.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
We have a formal cooperation agreement with the Dubai International Arbitration Centre (DIAC).

3.12. Court of Arbitration of the Polish Chamber of Commerce

Instructions:
1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

**General Information**

1. **When was your institution founded?**
The Court of Arbitration at the Polish Chamber of Commerce was established on January 1st, 1950 and initially operated under the name of the Council of Arbitrators at the Polish Chamber of Foreign Trade as a separate, independent unit, created in order to settle international trade disputes.

2. **Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.**
Since 1990, the Court of Arbitration has continued its operations at the Polish Chamber of Commerce in Warsaw.

**Administration of Cases**

3. **How many new arbitrations have been commenced at your institution over the past 5 years?**
1647

4. **What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:**
   Our institution keeps the statistics based on the following categories:
   
   (i) less than 25,000 Euros (or equivalent in other currencies)
   less than 2.500 Euros: 89
   (ii) 25,000-100,000 Euros (or equivalent in other currencies)
   2.500 -25.000 Euros: 669
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies)
   25.000 -250.000 Euros: 639
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
   250.000- 2.500.000 Euros: 194
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
   over 2.500.000 Euros: 51
   (vi) over 100,000,000 Euros (or equivalent in other currencies)

5. **What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:**
   
   (i) Corporate: 52
   (ii) Construction: 380
6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

Our institution has been established to recognize the disputes according to the Rules approved by our Court. We also allow to administrate the proceedings with accordance to other rules, however these cases constitute a small percent of our overall activity. During the last five years we have reviewed 5 cases based on the UNCITRAL Model Law.

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

1%

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

Poland

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

0

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

Our Institution takes scrutiny of awards only with its formal aspects.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

755- The number of arbitrators appointed by the Arbitral Council
159- The number of arbitrators appointed by the President of the Court
18% in total

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
Our institution keeps the Panel of Arbitrators recommended by the Court of Arbitration at the PCC and it includes 248 names. The arbitrators are signed on the list according to the approval of the Arbitral Council.

The Chairman of the Tribunal and the Sole Arbitrator must be appointed from the Panel of Arbitrators. The parties of proceeding may appoint the arbitrator from outside the list.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

If an arbitrator is not appointed by a party/parties or if the sole arbitrator or Chairman of the Arbitral Tribunal is not appointed, or in other cases specified in these Rules, the Arbitral Council shall appoint the arbitrator from among the persons included in the List of Arbitrators.

In appointing an arbitrator, the Arbitral Council shall take into account the qualifications which an arbitrator, the sole arbitrator or Chairman of the Arbitral Tribunal should possess under the agreement of the parties as well as any other circumstances which may be relevant to the appointment of an independent and impartial person qualified to consider and resolve a dispute between the parties.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

An arbitrator can be challenged only if there are circumstances giving the rise to justified doubts about his independence or impartiality and/or if he lacks the qualifications specified in the parties’ agreement or in these Rules. If the parties fail to determine the mode of operation concerning the challenge of an arbitrator, the provisions of these Rules shall apply.

The party challenging an arbitrator shall file a written request with the Arbitral Council through the Secretary General of the Court, citing the circumstances justifying its demand (grounds for challenge).

A party can challenge an arbitrator within two weeks after becoming aware of the grounds for such challenge. Upon lapse of this period, the party shall be deemed to have waived its right to challenge an arbitrator on such grounds.

The Arbitral Tribunal shall make a decision on repeating a part or the whole of proceedings with the participation of a new arbitrator.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

The proceedings in our Court are confidential. The parties of proceedings or their attorneys have access to files or may participate in the hearings.

Our institution hasn't got a special rules regarding confidentiality of arbitral proceeding and arbitral award. We have got a regulation about confidentiality of Proceedings in our main Rules:

"Any proceedings before the Court shall be confidential. All participants in proceedings before the Court shall abide by the principle of confidentiality, taking into account the extent that the parties agreed the said principle in an agreement or in their mutual declarations, submitted to the Court in writing or appended to the record of the hearing."
The parties may agree that the very fact of commencement of proceedings shall be deemed confidential.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

The Court of Arbitration at the PCC published the awards in the Arbitral Bulletin which is issued by our institution. The publication of award is only possible after the mutual consent of both parties of the proceeding.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

No.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

Our institution is engaged in the project regarding the changes in Polish arbitral law which is developed by the Parliamentary Commission on Codification Changes.

On May 24th 2013 the Court of Arbitration at the Polish Chamber of Commerce and the Parliamentary Commission on Codification Changes has organised a conference “ARBITRATION: Law, Practice, Institutions” in the Polish Parliament. Ms. Ewa Kopacz, the Speaker of the Parliament of the Republic of Poland was the honorary patron of this event. The initiative to organise a meeting stemmed from the belief that the period which has passed since the amendment of the Code of Civil Procedure in 2005, the experiences gathered during that time, and the changes taking place in the legislation of other countries lead us to reflect fundamentally on the state and further development of the institution of arbitration in Poland and the directions in which Polish arbitration law will continue to evolve. We believe that the conference in the proposed formula– a broad debate under the aegis of the Polish Parliament – will be the best forum in which to exchange opinions and ideas on this subject.

The first conference organised by our Court eleven years ago in the Polish Parliament was an event which undoubtedly had a significant influence on the development of Polish arbitration and arbitration law. It was one of the factors that led to a thorough amendment of the Code of Civil Procedure in 2005 by transforming the Polish arbitration law into a modern regulation compliant with the highest international standards.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

The Court of Arbitration at the Polish Chamber of Commerce jest is the organizer of the cyclic events such as:

- Arbitral Workshops for arbiters and young practitioners
- Science Conferences co-organised with the Polish Universities
- meetings with judges from the common courts of law
- conferences regarding construction disputes based on FIDIC
- spotkania z wybitnymi międzynarodowymi praktykami arbitrażu w ramach działającego przy Sądzie Young Arbitration Forum
- the publisher of the first Polish Arbitral Bulletin
- Other occasional publishers
- the publisher of Arbitration in Poland, widespread among international law communities
- organisation of moots for law students - Moot Court regarding the DFCR problems (2 editions), the moot for the best M.A. thesis regarding arbitration and (6 editions)

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

1. Swiss Arbitration Association
2. Korean Commercial Arbitration Board
3. Arbitration Office, Ministry of Justice, Thailand
5. Permanent Court of Arbitration attached to the Chamber of Commerce and Industry of Slovenia
6. Chamber of Commerce and Industry of the Russian Federation
7. Court of Arbitration of the Latvian Chamber of Commerce and Industry
8. Australian Centre for International Commercial Arbitration
9. Cairo Regional Centre for International Commercial Arbitration
10. International Center for Dispute Resolution (the International Division of the American Arbitration Association)
11. Singapore International Arbitration Centre
12. Kuala Lumpur Regional Centre for Arbitration
13. Hong Kong International Arbitration Centre
14. German Institution of Arbitration (DIS)
15. International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry
16. International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna
17. Camera Arbitrale Nazionale e Internazionale di Milano
18. CEPANI – Belgian Centre for Mediation and Arbitration
19. Vilnius Court of Commercial Arbitration
20. Dubai International Arbitration Centre (DIAC)
21. Permanent Tribunal of Arbitration attached to the Kosovo Chamber of Commerce
3.13. Cyprus Arbitration & Mediation Centre (CAMC)

Instructions:

1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The Cyprus Arbitration and Mediation Centre was (C.A.M.C.) founded on the 9th January, 2010 as a charitable company and by permission of the Council of Ministers is not using the word limited a part of its name.

2. Is your institution formally affiliated with any superior/sponsoring organisation/ entity (e.g. chamber of commerce, bar association, government)? Please identify.
The C.A.M.C. is a fully independent organisation. It receives no financial assistance by any of the above mentioned bodies.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
We are a new organization in arbitration yet we had our share. New arbitrations that have commenced at our institution are three in number. The said number represents applications to the Centre as an institution. A number of arbitrators, whose names are included in our list of arbitrators, have been approached by litigants directly and they did accept in particular cases.

People are not yet accustomed to the idea of approaching a centre which will take care of all necessary details. This policy is remnant of the old law (Arbitration Law, Cap. 4) which is still operative.

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
Before an attempt is made to answer the question above it must be said emphatically that there is no record of arbitrations kept by any person of legal or physical existence. The great majority of arbitrations that are carried out in Cyprus are carried out in private without any disclosure either of the parties to the arbitration procedure or of the matter in dispute and it goes without saying that the outcome is considered as a sacred secret. We can only enumerate the numbers we were invited to handle.

- Less than 25,000 Euros (or equivalent in other currencies): None
- 25,000-100,000 Euros (or equivalent in other currencies): One
(iii) 100,000-1,000,000 Euros (or equivalent in other currencies): Two
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): None
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): None
(vi) over 100,000,000 Euros (or equivalent in other currencies): None

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:
Before replying specifically to the questions that follow we must repeat the statement made above in answering questions which were included in part four.

   (i) Corporate: One
   (ii) Construction: One
   (iii) Telecommunications: Finance and Banking
   (iv) Distribution/Agency/Franchise: Energy
   (v) Consumer: Investor-State
   (vi) State-State (i.e. Public International Law)
   (vii) Maritime
   (viii) Other. Please specify any significant categories.
          Land division into building plots.

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
Answers to questions 6 to 9 inclusive can be given together. As stated in other sections, the people in Cyprus are not used to the idea of applying to a Centre for the resolution of their difference. We are the first institution in Cyprus offering this service and we are not yet well known. The state does not seem interested to take the necessary initiatives to that end.

Even organisations such as CIArb or ICC are not approached as centres. Interested parties get the list of members and appoint arbitrators personally. No records are kept and no publications are made in any way.

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
The Centre exercises an overall invigilation of the procedure followed by the arbitrator in question, only to make certain that no delays occur in the handling of the matter in
dispute. The parties are free in the event they feel that any interference was made to the arbitrator concerning his finding to apply to the court for an order setting aside the award.

**Appointment of Arbitrators**

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

In all three cases the appointments were made by the Centre. It concerned the appointment of one arbitrator only as the parties agreed to the appointment of one arbitrator by the Centre instead of the usual procedure as laid down by Arbitration Law.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

We are currently going through a period of changes of our constitution. The draft of the said changes has gone out to the members of the Centre and a meeting has been called for the 4th September to approve the recommended changes.

As per the recommendations the Centre will keep a register of members which at the same time will serve a register of arbitrators. The members/arbitrators will be classified as follows.

a) **Corresponding Members**: These are members with University qualification who have undergone the examinations of the Centre specially provided for Mediators or who are registered on the Roll of Mediators kept by the ministry of Justice.

b) **Associate Members**: The holders of a university degree or diploma or professional qualification (...) who have successfully completed the first cycle examinations organized by the Cyprus Arbitration & Mediation Centre – Department of Arbitration or other equivalent organisation.

c) **Full Members**: The holders of a university degree or diploma or professional qualification for exercising the legal profession or other profession, who have successfully completed the second cycle examinations organized by the Cyprus Arbitration & Mediation Centre or by another scientific or University Institution recognized by the Cyprus Arbitration & Mediation Centre

d) **Fellows**: The holders of a university degree or diploma or professional qualification for exercising the legal profession or other profession, who have successfully completed the third cycle of examinations organized by the Cyprus Arbitration & Mediation Centre or by another scientific or University Institution recognized by the Cyprus Arbitration & Mediation Centre

e) **Honorary Fellows**: Persons who undertake international arbitrations and who are willing and consent to be registered as honorary members and the Board of Directors of the Cyprus Centre of Arbitration and Mediation, upon recommendation of the Members Registration Committee, invites same to be registered as Honorary Fellows of the Centre.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
After the interested party files a written request to the Centre stating the subject matter of
the difference and the submission of relevant documentation including the agreement of
the parties the Registrar of Cases specifies date and time for a meeting with the applicants.
The parties to the arbitration are given a list of the arbitrators of the Centre with the
necessary qualifications (at least 5 in number). The applicants may raise objection for the
appointment of any particular person. Reasons must be given.

Within 15 days thereafter the President and/or the Secretary of the Centre, will proceed to
the appointment of such arbitrator.

14. Please describe the mechanism by which you decide challenges to arbitrators
(e.g. how information is collected to decide the challenge, who makes the final
decision).
A challenge to arbitrators is raised immediately after a list of the arbitrators is given to the
parties. Objection is raised within 8 days from the receipt of the Arbitrators list. Any such
objection must be accompanied by enough evidential material as to persuade the registrar,
need to exclude the particular arbitrator.

Another objection may be raised after the appointment is made. In such a case the
appointed arbitrator will hear argument and rule accordingly. If he rules in favour of the
objection, the President appoints a substitute. If he rules against such exclusion, he carries
on and it is up to the litigant objecting to take whatever steps he considers proper for the
removal of the said arbitrator.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral
proceedings and arbitral awards.
As mentioned in paragraph above, the matter of confidentiality is taken very seriously by
our Institution and as such no copies of awards or other confidential material are kept by or
disclosed to the institution.

16. Does your institution make arbitral awards publicly available (e.g. in redacted
form; in the form of periodic summaries/overviews of decisions)?
No we do not but if the parties concerned agree to such publication then we do.

17. Does your institution make decisions on challenges to arbitrators publicly
available (e.g. in redacted form; in the form of periodic summaries/overviews of
decisions)
The answer is similar to 16 above.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or
other governmental entities, either to promote legislative change or to promote
the understanding of arbitration within government? Please describe.
Yes, we had several meetings with the Minister of Justice and members of the Justice
Committee of the House of Representatives. The Attorney General together with the
President of the Supreme Court or his representative was always invited and present to our
Seminars where our suggestions were extensively discussed and approved. Both the
previous as well as the present Attorney General have accepted appointment as Honorary
Presidents of C.A.M.C.
19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

The C.A.M.C. is taking an active role in setting up an institution for arbitration courses. The said courses will be organised jointly with an English University and it is envisaged to be of a very high quality. On completion of the first four months course, the successful candidate will be offered an Associate Membership of the C.A.M.C. On completion of the second four months course the candidate will be offered Full Membership and on completion of the last four month period the candidate will become Fellow.

C.A.M.C. organises two Seminars annually, one during November and another in May.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

So far we cooperated with the Chartered Institute of Arbitrators (Cyprus) in the organisation of the last two Seminars. We see no reason why we should not continue cooperating with them.

The administration of cases is done entirely by us as we have amongst our members, expertise in the field.

3.14. Danish Institute of Arbitration

Instructions:

1. Please answer the questions in the space provided below each question.

2. Answers will be provided to the Parliament as they are written below (i.e. unedited).

3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
1981

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
No

Administration of Cases
3. How many new arbitrations have been commenced at your institution over the past 5 years?

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

   (i) Less than 25,000 Euros (or equivalent in other currencies)
   see

   (ii) 25,000-100,000 Euros (or equivalent in other currencies)
        less than 100,000 Euros:
        33.4 %

   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies)
        32 %

   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
        above 1,000,000 Euros:
        16.4 %

   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
        1.4 %

   (vi) over 100,000,000 Euros (or equivalent in other currencies)
        0.5 %

   Disputed amount not stated in Statement of Claim: 16.3 %

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

   Please be aware that some categories overlap.

   (i) Corporate
       17 % M&A + 15.1 % Shareholder Agreements = 32.1 %

   (ii) Construction: 7.3 %

   (iii) IT/Telecommunications: 17.5 %

   (iv) Finance and Banking: 5.4 %

   (v) Distribution/Agency/Franchise: 7.4 %

   (vi) Energy: 1.2 %

   (vii) Consumer: 0

   (viii) Investor-State: 0.3 %

   (ix) State-State (i.e. Public International Law): 0

   (x) Maritime: 3.6 %

   (xi) Other. Please specify any significant categories.
       Employment/CEO contracts: 6 %
       Cooperation Agreements: 11 %
       Services and Sale of goods: 8.2 %
6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

26%

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

7.7%

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

Germany
Hong-Kong

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

0.5%

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

Mostly formal aspects and some procedural aspects of Danish law. Article 28 of our Rules of Arbitration Procedure (hereafter "the Rules") states: “Before the rendering of the award, the Secretariat shall scrutinize the draft award. The Secretariat may propose modifications as to the form of the award and without affecting the Arbitral Tribunal’s jurisdiction, draw its attention to other issues, including issues of importance to the validity of the award and its recognition and enforcement. Notwithstanding the scrutiny by the Secretariat, the responsibility for the contents of the award lies exclusively with the Arbitral Tribunal”.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

In cases with a 3 member tribunal the parties will in 80-90% of the cases each appoint the co-arbitrator and in roughly 15% of the cases jointly appoint the presiding arbitrator.

In cases with a sole arbitrator, the sole arbitrator will be appointed by the Institute in about 90% of the cases.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

No.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

The Secretariat is in charge of researching arbitrators.
Arbitrators are selected based e.g. on the knowledge of the sector, experience as arbitrator, etc.

The Chairman’s Committee confirms every appointment (Article 11 (1) of the Rules).

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

Article 13 of the Rules describes the mechanism of challenge to an arbitrator.

The information to decide the challenge comes from the parties and the arbitrator. Sometimes the Institute will be in possession of the information and the parties and arbitrators will be informed by the Institute.

The parties and the arbitrator are invited to comment and the final decision is taken by the Chairman’s Committee.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Under Danish law the parties are not obligated to keep the proceedings confidential. Following Article 18(7) of the Rules, the Arbitral Tribunal can render the arbitration confidential upon request of the parties.

Article 34 of the Rules deals with the duty of confidentiality of the Institute, the Arbitrators, etc. but not the parties.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

If the parties agree to it, the Institute can publish arbitral awards in a redacted form. So far no awards have been made publicly available.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

Yes, see article 34 of the Rules, in a redacted form.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

The Danish Institute of Arbitration has created in 2013 a working group for the reform of the Danish Arbitration Act 2005. Meetings have also been held with the State Department in order to promote the Institute when visiting other countries with trade delegations.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.
The staff of the Institute regularly participates as speakers/educators in different forums, e.g. the Arbitrators education program, Hamburg Arbitration Circle, different universities of Denmark, etc.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
Milan Chamber of Arbitration (CAM)

3.15. Department of Arbitration, Athens Chamber of Commerce and Industry

Instructions:
1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The ACCI founded under the Royal Decree of May, 22nd 1836 "Regarding the establishment of Chamber of Commerce and commercial entities " and the Presidential Decree, with number 31/12.01.79 (Government’s Newspaper 9A`/22.01.1979), establish the institution of the Permanent Commercial Arbitration, of Athens of Commerce and Industry Chamber (ACCI).

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
My institution is the Athens Chamber of Commerce and Industry (ARBITRATION DEPARTMENT & ACCI MEDIATION CENTER ).

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
25 new Arbitration finished over the past 5 years

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
   (i) less than 25,000 Euros (or equivalent in other currencies)
   (ii) 25,000-100,000 Euros (or equivalent in other currencies)
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies)
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
(vi) over 100,000,000 Euros (or equivalent in other currencies)

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate
(ii) Construction
(iii) Telecommunications
(iv) Finance and Banking
(v) Distribution/Agency/Franchise
(vi) Energy
(vii) Consumer
(viii) Investor-State
(ix) State-State (i.e. Public International Law)
(x) Maritime
(xi) Other. Please specify any significant categories.

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
90% of Arbitrations are International under the UNCITRAL Model Law on International Commercial Arbitration

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
10%

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
Austria, Cyprus, Czech Republic.

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
Usa, Mexico.

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
15%
12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

**Article 5** of the Presidential Decree, with number 31/12.01.79 (Government’s Newspaper 9A /22.01.1979):

1. The Board of Directors of the ACCI establishes, during the month of December of every second year, a list of arbitrators, which is posted up, during the same month, in the Hall of the ACCI, and is published in its monthly Bulletin. The List is also submitted to the Ministry of Commerce, to the Athens Court of First Instance, and is sent to the Greek Industries Association and to the Athens Merchants’ Association.

2. The list of arbitrators comprises up to 100 persons, that are distinguished for their integrity, morality, qualifications, and experience, and belong to various branches of Commerce or Industry, or are high grade civil servants, lawyers, judges, professors or assistant professors of Universities, engineers, chemists, chartered accountants, etc., so that suitable arbitrators might be appointed, according to the kind of the dispute. Judges are included in the list following a proposal by the High Council of Judicature.

3. An arbitrator may be included again in the list, when the list is renewed or completed.

4. The list remains in force for two years, starting from the first day of January next. The first list of arbitrators is established and published within three months’ time from the date this Decree is published; it remains valid for the rest of the year and the two following years.

5. Arbitrators who have not declared that they are prevented from being appointed as such, for one of the reasons mentioned in Article 8 below, as well as bankrupt and not discharged merchants are crossed out from the list by decision of the Board of the ACCI.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

**Article 6** of the Presidential Decree, with number 31/12.01.79 (Government’s Newspaper 9A /22.01.1979):

Appointment of arbitrators and of a chairman.

1. The arbitrators and the chairman of the arbitral tribunal are chosen from the list of Article 5 hereof.

2. By the agreement provided for by Article 2, the parties may appoint either one arbitrator, or two arbitrators and the chairman. If in one dispute there are more than two parties, they cannot appoint more than two arbitrators and the chairman.

3. If the arbitrators were not appointed by the agreement, each party appoints one arbitrator, informs the other party in writing about the appointment and summons it to appoint, within at least eight (8) days, another arbitrator. The other party must, within this time limit, inform the first party about the arbitrator it has appointed. If
the party that is summoned has its domicile or residence far from the seat of the ACCI, the time limit for appointing his arbitrator is extended by ten (10) days; and if it has its domicile or residence in another State, by thirty (30) days

4. The arbitrators appointed in accordance with para. 3, provided that the parties did not decide differently by the arbitration agreement, must appoint a chairman of the arbitral tribunal within eight (8) days at least from the day the second arbitrator was appointed.

5. If the second party does not appoint an arbitrator, or if the arbitrators do not appoint a chairman within the time limits, the President of the ACCI appoints them, upon the application of one of the parties to the arbitration agreement. The President's decision is final.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

Articles 6, 7, 8, 9, 10, 11 of the Presidential Decree, with number 31/12.01.79 (Government’s Newspaper 9A’/22.01.1979)

Appointment of arbitrators and of a chairman.

1. The arbitrators and the chairman of the arbitral tribunal are chosen from the list of Article 5 hereof.

2. By the agreement provided for by Article 2, the parties may appoint either one arbitrator, or two arbitrators and the chairman. If in one dispute there are more than two parties, they cannot appoint more than two arbitrators and the chairman.

3. If the arbitrators were not appointed by the agreement, each party appoints one arbitrator, informs the other party in writing about the appointment and summons it to appoint, within at least eight (8) days, another arbitrator. The other party must, within this time limit, inform the first party about the arbitrator it has appointed. If the party that is summoned has its domicile or residence far from the seat of the ACCI, the time limit for appointing his arbitrator is extended by ten (10) days; and if it has its domicile or residence in another State, by thirty (30) days

4. The arbitrators appointed in accordance, provided that the parties did not decide differently by the arbitration agreement, must appoint a chairman of the arbitral tribunal within eight (8) days at least from the day the second arbitrator was appointed.

5. If the second party does not appoint an arbitrator, or if the arbitrators do not appoint a chairman within the time limits, the President of the ACCI appoints them, upon the application of one of the parties to the arbitration agreement. The President's decision is final.

Article 7.

Acceptance by an arbitrator of his appointment.

A person appointed to serve as an arbitrator or as a chairman is not bound to accept the appointment.

An arbitrator or a chairman of an arbitral tribunal that has accepted his appointment may refuse to carry on his duties for an important reason and only with the permission of the
President of the ACCI, such permission being irrevocable and not subject to modification or withdrawal.

Article 8.

Inability to be an arbitrator or a chairman.

Physical persons who are totally or partially incapable, or those who, as a result of a criminal Court conviction, have lost their citizen's rights, as well as legal persons, cannot be appointed as arbitrators or chairmen of arbitral tribunals.

Article 9.

Revocation and challenge of the arbitrators and the chairman.

The parties to the arbitration agreement may in common revoke the sole arbitrator or the arbitral tribunal.

The arbitrators and the chairman may ask to be relieved from their duties or may be challenged by the parties to the arbitration agreement, in conformity with Article 883 para. 2 of the Code of Civil Procedure.

Article 10. Death or inability of the arbitrators or of the chairman.

1. If the sole arbitrator appointed by the President of the ACCI dies, or for whatever reason, is prevented from acting, or refuses to act, or is challenged, then upon the application of one of the parties, the President of the ACCI is bound to summon them to appoint, within eight (8) days, an arbitrator; if this time limit expires, the President of the ACCI appoints the arbitrator.

2. If an arbitrator appointed by one of the parties or by the President of the ACCI dies, or, for whatever reason, refuses to act, or is challenged, the other party may summon in writing the appointing party or the President of the 28 ACCI to appoint another arbitrator within at least eight (8) days. The party summoned must communicate to the summoning party the name of the arbitrator it has appointed, within the above time limit.

3. If the chairman appointed by the arbitrators or by the President of the ACCI dies, or for whatever reason, refuses to act, or is prevented from acting, and if the arbitrators or the President of the ACCI do not appoint another one, each party may ask the arbitrators in writing to appoint another chairman within eight (8) days and let the parties know about his appointment.

Article 11.

Responsibility of arbitrators and of the chairman.

The arbitrators and the chairman of the arbitral tribunal, during the performance of their duties, are responsible for fraud and gross negligence only.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Article 27 of the Presidential Decree, with number 31/12.01.79 (Government’s Newspaper 9A’/22.01.1979):

Article 27.

1. The award is complete as soon as it is signed in accordance with Article 26 para. 1.
2. The arbitrator, or the chairman of the arbitral tribunal, or an arbitrator authorized by him, must, unless the arbitration agreement provides differently, deposit one original of the award to the Secretariate of the ACCI permanent Arbitration Institution, and another original to the Clerk of the Athens Judge of First Instance, and deliver copies of the award to the parties to the arbitration agreement.

Additional copies, certified by the Secretary, are delivered to the parties to the arbitration proceedings, upon their request. Such copies are never delivered to third parties.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

Article 27§2 of the Presidential Decree, with number 31/12.01.79 (Government’s Newspaper 9A΄/22.01.1979):

Article 27.

1. The award is complete as soon as it is signed in accordance with Article 26 para. 1.

2. The arbitrator, or the chairman of the arbitral tribunal, or an arbitrator authorized by him, must, unless the arbitration agreement provides differently, deposit one original of the award to the Secretariate of the ACCI permanent Arbitration Institution, and another original to the Clerk of the Athens Judge of First Instance, and deliver copies of the award to the parties to the arbitration agreement.

3. Additional copies, certified by the Secretary, are delivered to the parties to the arbitration proceedings, upon their request. Such copies are never delivered to third parties.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

Article 27§2 of the Presidential Decree, with number 31/12.01.79 (Government’s Newspaper 9A΄/22.01.1979)

Article 27.

1. The award is complete as soon as it is signed in accordance with Article 26 para.

2. The arbitrator, or the chairman of the arbitral tribunal, or an arbitrator authorized by him, must, unless the arbitration agreement provides differently, deposit one original of the award to the Secretariate of the ACCI permanent Arbitration Institution, and another original to the Clerk of the Athens Judge of First Instance, and deliver copies of the award to the parties to the arbitration agreement.

Additional copies, certified by the Secretary, are delivered to the parties to the arbitration proceedings, upon their request. Such copies are never delivered to third parties.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

The ACCI has a committee of lawyers that aims to upgrade the Presidential Degree 31/12.01.79 and the understanding the specific rules of arbitration
19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.
Advanced Workshops, Seminars, Meeting and Conferences.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
Cooperation Agreement between the Arbitration Court of Bulgarian Chamber of Commerce and Industry (BCCI) and the Athens Chamber of Commerce & Industry (ACCI)
Cooperation between the Arbitration Court of Milan Chamber of Commerce and the Athens Chamber of Commerce & Industry (ACCI)
Cooperation between the CENTRE OF ARBITRATION AND MEDIATION - CMAP of Paris Chamber of Commerce and Industry (PCCI) and the Athens Chamber of Commerce & Industry (ACCI)
Full Member of ICC – Paris
Harmonised with ICC rules for International Arbitration
Harmonised with the Convention of New York 1958
Harmonised with the UNCITRAL Arbitration Rules

3.16. DIS (German Institute of Arbitration)

Instructions:
1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The DIS has a longstanding tradition as a dispute resolution service provider that reaches back to the 1920s.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
The DIS is a private and fully independent institution that sets its own policy and is not attached to any chamber of commerce, government or other body.
**Administration of Cases**

3. How many new arbitrations have been commenced at your institution over the past 5 years?
743 arbitrations

4. **What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:**
   (i) Less than 25,000 Euros (or equivalent in other currencies)
   (ii) 25,000-100,000 Euros (or equivalent in other currencies)
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies)
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
   (vi) over 100,000,000 Euros (or equivalent in other currencies)

   Information not readily available.

5. **What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:**
   (i) Corporate
   (ii) Construction
   (iii) Telecommunications
   (iv) Finance and Banking
   (v) Distribution/Agency/Franchise
   (vi) Energy
   (vii) Consumer
   (viii) Investor-State
   (ix) State-State (i.e. Public International Law)
   (x) Maritime

   Other. Please specify any significant categories.

   Information not readily available.

6. **What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?**
36%

7. **What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?**
2%

8. **Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.**
   Germany, Luxembourg, Switzerland, Hungary, Austria.
9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

1.3%

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

The DIS undertakes no formal scrutiny of the awards. The DIS secretariat will, however, informally review the award. Compliance with formal requirements necessary (signatures, the date of rendering the award and the place of arbitration) is always checked.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

(i) 4% chair
(ii) 4% party-appointed arbitrator
(iii) 17% sole arbitrator
(iv) 75% of arbitrators are appointed by the parties or co-arbitrators.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

The DIS does not maintain a list of arbitrators.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

The DIS Appointing Committee nominates an arbitrator upon request of a party. The DIS Appointing Committee consists of three members and three alternative members who are appointed by the DIS Board of Directors for a period of two years. The Appointing Committee nominates an arbitrator upon proposal of a candidate by the DIS Secretariat, which conducts the research. The candidates are selected on the basis of the circumstances of each individual case, having regard to its legal and factual specifications and the requirements for the arbitrator resulting therefrom.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

Pursuant to the DIS Arbitration Rules, the arbitral tribunal decides on any challenge filed by a party. In practice, the challenged arbitrator will abstain from the decision.
Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.
The duty of confidentiality rests on all participants of the proceedings, i.e. parties, their legal representatives, the arbitrators, the persons assisting the parties or the arbitral tribunal in the conduct of the proceedings and the persons at the DIS Secretariat involved in administering the proceedings.

The confidentiality obligation, however, do not prevent the DIS from publishing statistical information to the extent that no specific data concerning individual cases can be distracted from it.

A task force of the DIS Advisory Board recently recommended the publication of awards in appropriate cases. The recommendation is currently being implemented.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
S.a. Not yet but regular publication in the future.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)
S.a. Challenges are decided by the arbitral tribunal.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
The DIS enjoys an observer status with the UNCITRAL annual sessions and working group sessions. In particular, it participated in the working groups on UNCITRAL Model Law on Arbitration, Online Dispute Resolution, Transparency Rules in Treaty-based Investor-State arbitration etc.

The DIS commented on the draft of the Directive 2011/83/EU of 25 October 2011 on consumer rights, in particular regarding the proposed dispute resolution mechanisms.

Based on its expertise and substantive knowledge in sport-related matters, the DIS (which hosts the Court of Arbitration for Sport) works closely with the Ministry of Internal Affairs regarding the implementation of the WADA-Codex in Germany.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.
The DIS regularly organizes conferences on arbitration and other ADR and it publishes the German Arbitration Journal.
Every two years, the DIS awards a prize to recognize outstanding academic works in the field of arbitration or other types of ADR.

The DIS also provides access to state court jurisprudence in arbitration-related matters through its online database.

The DIS initiative DIS 40 is a forum for the exchange of experience among young arbitrators. Its activities focus on subjects that are of interest to young lawyers. These subjects are discussed in regular meetings with arbitration practitioners in an informal circle.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

The DIS has formal cooperation agreements with arbitral institutions from the following countries: Albania, Austria (Vienna Center), Australia, Azerbaijan, Bahrain, Belarus, Belgium (CEPANI), Bosnia and Herzegovina, China (CIETAC), Croatia, Czech Republic, Egypt (Cairo), Hong Kong, Hungary, India, Italy (Mailand and Rom), Japan, Kyrgyzstan, Korea, Kosovo, Macedonia, Mauritius, Montenegro, Poland, Romania, Russia (MKAS), Serbia, Slovenia, Sweden (SCC), Switzerland (ASA), Taiwan, Thailand, UK (LCIA) and USA (AAA).

According to the agreements concluded with 19 chambers of industry and commerce in Germany, the DIS is charged with the administration of cases initiated under the arbitration rules of the respective chambers.

3.17. International Centre for Dispute Resolution

Instructions:

1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
Parent Company (AAA) 1926; ICDR 1996

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.

The International Centre for Dispute Resolution® (ICDR®) is the international division of the American Arbitration Association®. ICDR maintains separate staff, administration, advisors, procedures and panel lists. ICDR maintains specialized administrative facilities in New York, where a staff of multilingual (currently 10 languages) attorneys supervises the
administration of international cases. ICDR also has a presence in Mexico City, Seoul, Bahrain and Singapore and a Senior Executive domiciled in Europe serving Europe, the Middle East and Africa (EMEA). Parties in ICDR administered proceedings have access to hearing facilities and services around the world pursuant to 73 cooperative agreements with arbitral institutions in 48 countries.

**Administration of Cases**

3. How many new arbitrations have been commenced at your institution over the past 5 years?
Statistics include cases filed and administered by the ICDR between 2009-2013

<table>
<thead>
<tr>
<th>Case Statistic</th>
<th>5 Year Total</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICDR International Cases</td>
<td>4,879</td>
<td>836</td>
<td>888</td>
<td>994</td>
<td>996</td>
<td>1,165</td>
</tr>
</tbody>
</table>

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

(i) less than 25,000 Euros (or equivalent in other currencies)
   See table below.
(ii) 25,000-100,000 Euros (or equivalent in other currencies)
   See table below.
(iii) 100,000-1,000,000 Euros (or equivalent in other currencies)
   See table below.
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
   See table below.
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
   See table below.
(vi) over 100,000,000 Euros (or equivalent in other currencies)
   See table below.

<table>
<thead>
<tr>
<th>Claim Range</th>
<th>% of 5 Year Total</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>non-monetary/undisclosed</td>
<td>14.65%</td>
<td>10.12%</td>
<td>11.84%</td>
<td>13.85%</td>
<td>11.78%</td>
<td>21.81%</td>
</tr>
<tr>
<td>less than € 25,000</td>
<td>17.42%</td>
<td>16.09%</td>
<td>16.79%</td>
<td>13.60%</td>
<td>15.90%</td>
<td>22.55%</td>
</tr>
<tr>
<td>25,000-100,000</td>
<td>8.97%</td>
<td>9.95%</td>
<td>9.30%</td>
<td>9.15%</td>
<td>9.54%</td>
<td>7.64%</td>
</tr>
<tr>
<td>€ 100,000-1,000,000</td>
<td>29.25%</td>
<td>33.17%</td>
<td>29.24%</td>
<td>29.48%</td>
<td>31.80%</td>
<td>24.88%</td>
</tr>
<tr>
<td>€ 1,000,000-10,000,000</td>
<td>22.67%</td>
<td>23.05%</td>
<td>24.29%</td>
<td>25.41%</td>
<td>23.79%</td>
<td>18.55%</td>
</tr>
<tr>
<td>€ 10,000,000-100,000,000</td>
<td>6.08%</td>
<td>5.80%</td>
<td>7.80%</td>
<td>7.12%</td>
<td>6.83%</td>
<td>3.82%</td>
</tr>
<tr>
<td>over € 100,000,000</td>
<td>0.96%</td>
<td>1.82%</td>
<td>0.75%</td>
<td>1.40%</td>
<td>0.35%</td>
<td>0.75%</td>
</tr>
</tbody>
</table>

**NOTE:** *conversion rate @ 11:51AM EST 8/23/14*
5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate
   See table below.
(ii) Construction
    See table below.
(iii) Telecommunications
     See table below.
(iv) Finance and Banking
     See table below.
(v) Distribution/Agency/Franchise
    See table below.
(vi) Energy
    See table below.
(vii) Consumer
     See table below.
(viii) Investor-State
       See table below.
(ix) State-State (i.e. Public International Law)
    See table below.
(x) Maritime
    See table below.
(xi) Other. Please specify any significant categories.
    See table below.

<table>
<thead>
<tr>
<th>Sector</th>
<th>% of 5 Year Total</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Services</td>
<td>4.12%</td>
<td>1.66%</td>
<td>5.10%</td>
<td>5.46%</td>
<td>4.48%</td>
<td>3.63%</td>
</tr>
<tr>
<td>Energy</td>
<td>3.97%</td>
<td>3.65%</td>
<td>4.05%</td>
<td>5.34%</td>
<td>4.71%</td>
<td>2.52%</td>
</tr>
<tr>
<td>Franchise</td>
<td>14.83%</td>
<td>15.09%</td>
<td>13.79%</td>
<td>10.29%</td>
<td>13.19%</td>
<td>19.94%</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>1.71%</td>
<td>2.16%</td>
<td>2.10%</td>
<td>1.65%</td>
<td>1.65%</td>
<td>1.30%</td>
</tr>
<tr>
<td>Construction</td>
<td>12.11%</td>
<td>8.62%</td>
<td>12.29%</td>
<td>13.21%</td>
<td>13.43%</td>
<td>12.12%</td>
</tr>
<tr>
<td>Consumer</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Investor-State</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>State-State</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Maritime</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

Virtually all of the arbitrations conducted by the ICDR are consistent with the UNCITRAL definition with the caveat that foreign owned subsidiaries doing business in the U.S. may be designated as an international matter, i.e. China Acme Widgets, USA – licensed in USA but China owned.
7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

<table>
<thead>
<tr>
<th>Party Category</th>
<th>% of 5 Year Total</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governmental Body OR State / Federal Government</td>
<td>0.23%</td>
<td>0.00%</td>
<td>0.30%</td>
<td>0.51%</td>
<td>0.12%</td>
<td>0.19%</td>
</tr>
</tbody>
</table>

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

<table>
<thead>
<tr>
<th>Seat of Arbitration</th>
<th>Seat of Arbitration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>Italy</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Argentina</td>
<td>Japan</td>
</tr>
<tr>
<td>Australia</td>
<td>Mexico</td>
</tr>
<tr>
<td>Bahamas</td>
<td>Monaco</td>
</tr>
<tr>
<td>Barbados</td>
<td>Netherlands</td>
</tr>
<tr>
<td>Bermuda</td>
<td>Nicaragua</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>Panama</td>
</tr>
<tr>
<td>Brazil</td>
<td>Paraguay</td>
</tr>
<tr>
<td>Canada</td>
<td>Peru</td>
</tr>
<tr>
<td>China</td>
<td>Qatar</td>
</tr>
<tr>
<td>Colombia</td>
<td>Romania</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Saint Kitts and Nevis</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Saint Vincent and the Grenadines</td>
</tr>
<tr>
<td>Egypt</td>
<td>Singapore</td>
</tr>
<tr>
<td>El Salvador</td>
<td>Spain</td>
</tr>
<tr>
<td>France</td>
<td>Switzerland</td>
</tr>
<tr>
<td>Germany</td>
<td>Taiwan</td>
</tr>
<tr>
<td>Guadeloupe</td>
<td>Thailand</td>
</tr>
<tr>
<td>Haiti</td>
<td>Trinidad &amp; Tobago</td>
</tr>
<tr>
<td>Honduras</td>
<td>Turkey</td>
</tr>
<tr>
<td>Hong Kong (PRC)</td>
<td>Ukraine</td>
</tr>
<tr>
<td>Hungary</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>Iceland</td>
<td>United States of America</td>
</tr>
<tr>
<td>India</td>
<td>Uruguay</td>
</tr>
<tr>
<td>Ireland</td>
<td>Virgin Islands, British</td>
</tr>
</tbody>
</table>
9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

<table>
<thead>
<tr>
<th>Seat of Arbitration</th>
<th>% of 5 Year Total</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside of US</td>
<td>5.30%</td>
<td>5.10%</td>
<td>5.40%</td>
<td>4.00%</td>
<td>3.70%</td>
<td>7.60%</td>
</tr>
</tbody>
</table>

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

All awards are reviewed by ICDR staff prior to transmittal to the Parties. There is a multi-step review process beginning with the Case Counsel and concluding with the ICDR VP of Administration. Care is given to ensure that the enforcement requirements of the NY Convention are addressed by the award and that costs are allocated between and amongst the Parties. Detailed attention is given to ensuring that all parties and claims are accounted for, reasoning is provided, and that grammar, spelling and mathematical calculations are correct.

**Appointment of Arbitrators**

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

Although this is not a tracked statistic the occurrence of an administrative appointment (aka institutional appointment) at the ICDR is an uncommon occurrence. We encourage parties to agree on some method of selection other than institutional appointment, including our default List Method, which allows parties to participate. On average the ICDR may administratively appoint an arbitrator, or an entire 3-member tribunal, on one to two cases per month (out of 1,165 newly filed cases in 2013).

The above does not include the administrative appointments of Emergency and Consolidation arbitrators.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

The ICDR does maintain a closed panel (list) of neutrals, both arbitrators and mediators. Additions to the panel are made through individual applications vetted through an annual comprehensive review of all applicants by both internal ICDR management and external advisors. Likewise the existing list is also reviewed for possible removals of arbitrators based on performance or lack of need in a practice area.

Any administrative appointment of an arbitrator made by the ICDR will be of an arbitrator on the ICDR roster/panel.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

The first step in any administrative appointment is consultation with all parties to discuss the needs of the case in regards to arbitrator experience and personal requirements. These
requirements or preferences may include: Practice area experience or expertise including length of experience in a particular industry; legal background and/or bar admission/licenses; physical location; citizenship; language capability; availability and compensation rate. Once a candidate based on the above is identified, they are contacted and requested to conduct a conflicts search and advise of availability before appointment.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).
Once a challenge is received comments are requested from all parties. Once all comments are received the Case Counsel will review and make a recommendation of reaffirmation or removal. A Team Leader then does the same. Finally, in most instances, the Vice President (or Asst. VP) will make the final determination. In more complicated or contentious cases consultation with Senior Management may occur. If there is no objection to or if there is concurrence with the challenge the arbitrator will, in most instances, be removed. The arbitrator may be requested to submit supplemental disclosures or details in some instances.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.
Confidential information disclosed during the arbitration shall not be divulged by the Tribunal or the ICDR. All other matters relating to the arbitration or award shall be kept confidential, unless otherwise agreed by the parties or required by law. The Tribunal may make orders to protect trade secrets, confidential information, the arbitration as well as any matters connected to it, unless otherwise agreed by the parties (Article 37 ICDR Rules).

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
An award in its original form may only be made publicly available with the parties’ consent or as required by law. However, the ICDR may publish selected awards administered under the ICDR Rules that have been edited to conceal any identifying information, unless otherwise agreed by the parties. In addition, the ICDR may publish or make publicly available selected awards that have become public in the course of court proceedings (Article 30 ICDR Rules).A database of these awards are currently maintained on WestLaw.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)
The ICDR does not share the reasoning of its determinations on challenges with the parties, and following suit it does not make the decisions or any summaries publicly available. The ICDR may on occasion issue summaries in form of generic articles, statistics or other publication materials concealing the identity of the parties, case and arbitrator.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
ICDR routinely responds to requests for information and assistance from ministries of justice and economic development as well as the courts globally to further the appropriate
use of arbitration, mediation and other forms of alternative dispute resolution. By way of example ICDR worked with the office of the Attorney General in Ireland in the drafting of the Irish Arbitration Act 2010.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

ICDR educates young internationalists through ICDR Young & International – a no cost networking and educational organisation for legal practitioners, corporate and government employees under the age of 40 – In the past 5 years, ICDR Y&I has hosted 83 events in 26 countries.

In the past 5 years, ICDR senior staff for Europe, the Middle and Africa has organised and/or participated in educational programmes in eighteen (18) European States.

By way of example, in October, 2011 ICDR convened a leadership group of policy makers, business and legal leaders from developed and developing states to discuss pressing issues in international dispute resolution.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

ICDR has a long history of working collaboratively with leading Arbitration and Mediation institutions globally.

By way of example the ICDR will host the 31st Annual Joint Colloquium together with the International Chamber of Commerce Court of Arbitration (ICC) and the International Center for the Settlement of Investment Disputes (ICSID) in November 2014.

ICDR has cooperation agreements with 73 arbitration and mediation institutions in 48 countries. These Agreements are largely for educational purposes but also assist the effective facilitation of arbitrations and mediations.

Report respectfully submitted by:
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3.18. Italian Association for Arbitration

Instructions:

1. Please answer the questions in the space provided below each question.

2. Answers will be provided to the Parliament as they are written below (i.e. unedited).

3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

When was your institution founded?
1985

Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
No.

Administration of Cases

How many new arbitrations have been commenced at your institution over the past 5 years?
23 (with an increasing frequency in the last three years)

What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

(i) Less than 25,000 Euros (or equivalent in other currencies)
(ii) 25,000-100,000 Euros (or equivalent in other currencies) 30% ca
(iii) 100,000-1,000,000 Euros (or equivalent in other currencies) 70% ca
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
(vi) over 100,000,000 Euros (or equivalent in other currencies)

What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate: 50% ca.
(ii) Construction
(iii) Telecommunications
(iv) Finance and Banking: 20% ca.
(v) Distribution/Agency/Franchise: 20% ca.
(vi) Energy: 10% ca.
(vii) Consumer
(viii) Investor-State
(ix) State-State (i.e. Public International Law)
(x) Maritime
Other. Please specify any significant categories.

What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
25%

What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
10%

Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
The Court of Arbitration undertakes a scrutiny which is only concerned with formal aspects of the award.

Appointment of Arbitrators

In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
50%

Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
There is no list of arbitrators.

Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
Prospective arbitrators are selected by the Court of Arbitration on the basis of ascertained expertise, academic position and review of cv, considering: seat of the arbitration, nature of the dispute, complexity of the case.
Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).
Cases for challenge are considered by the Court of Arbitration.

Transparency

Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.
Article 9 - Transmission of Pleadings and Written Statements
Omissis.

Any person who has been requested by the Court, its Secretariat, the parties or the arbitral tribunal to take part in an AIA arbitration, shall sign the following declaration: “the undersigned, in accepting the task assigned to me or the request made to me, declare that I have read the AIA Rules of Arbitration and undertake to act in accordance with the terms and conditions and to perform the obligations provided therein”.

Article 37 - Duty to Abide by the Rules and Obligation of Confidentiality.
By accepting his office, the arbitrator, the arbitratore, the expert and the conciliator undertake to abide by the present Rules and to respect the duty of confidentiality with respect to the course and the outcome of the proceedings, by signing the declaration provided by Article 9.6. The parties, the counsel, the experts appointed by the arbitral tribunal and the parties, the witnesses and any other person who is requested and authorized to take part in the proceedings administered by the AIA shall have the same duties and shall be informed thereof at the time of the appointment or authorization.

Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
Not often and only in redacted form.

Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)
No

Collaboration and Education

Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
Yes, AIA was (and presently is) involved in the reform of arbitration.

Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.
Educational programmes/courses for junior practitioners, arbitrators or judges. Seminars (one single day or longer). Conferences. Workshops. Presentation of newly printed books followed by discussions with experts.
Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
Yes, AIA cooperates with Camera Arbitrale di Milano-CAM, but also with other arbitral institutions.

6.30. London Court of International Arbitration (LCIA)

Instructions:

1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The LCIA was founded in 1892. In 1981 it was re-named “The London Court of International Arbitration”.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify
The LCIA was originally set up as a tribunal to be administered by the City Corporation with the London Chamber of Commerce and, in 1975, the Chartered Institute of Arbitrators joined as the third administering body.
In 1986, the LCIA became fully independent, and a private non-profit company limited by guarantee.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
From 2009-2013, a total of 1297 new arbitrations were referred to the LCIA.

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

   (i) less than 25,000 Euros (or equivalent in other currencies)
   (ii) 25,000-100,000 Euros (or equivalent in other currencies)
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies)
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
(vi) over 100,000,000 Euros (or equivalent in other currencies)

Details of the value of disputes (based on the amount of the Claimants’ claims) are in the LCIA annual reports (www.lcia.org) and are summarised below:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>US$1m or less</th>
<th>US$1-5m</th>
<th>US$5-10m</th>
<th>US$10-20m</th>
<th>US$20m +</th>
<th>Declaratory relief/specific performance/unquantified sums</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>33.6%</td>
<td>30.2%</td>
<td>11.2%</td>
<td>5.2%</td>
<td>19.8%</td>
<td>% per footnote</td>
</tr>
<tr>
<td>2012</td>
<td>10.25%</td>
<td>15.25%</td>
<td>8.75%</td>
<td>3.25%</td>
<td>11.5%</td>
<td>51%</td>
</tr>
<tr>
<td>2011</td>
<td>21.5%</td>
<td>17%</td>
<td>8.5%</td>
<td>6%</td>
<td>16%</td>
<td>31%</td>
</tr>
<tr>
<td>2010</td>
<td>22%</td>
<td>16.5%</td>
<td>9%</td>
<td>8%</td>
<td>16.5%</td>
<td>28%</td>
</tr>
<tr>
<td>2009</td>
<td>18%</td>
<td>20%</td>
<td>12%</td>
<td>10%</td>
<td>16%</td>
<td>24%</td>
</tr>
</tbody>
</table>

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate
(ii) Construction
(iii) Telecommunications
(iv) Finance and Banking
(v) Distribution/Agency/Franchise
(vi) Energy
(vii) Consumer
(viii) Investor-State
(ix) State-State (i.e. Public International Law)
(x) Maritime

Other. Please specify any significant categories
Main areas in which disputes have arisen:

2013
- Commodity transactions 13%
- Loan/other financial agreements 10%
- Joint ventures and shareholders’ agreements 12%
- Oil & gas 15%
- Broader energy and resources 7%

2012
- Commodity transactions 16%
- Loan/other financial agreements 11%
- Joint ventures and shareholders’ agreements 9%
- Oil and gas 8%
- Legal and other professional services 8%
- Construction, projects, infrastructure 8%

2011
- Commodity transactions 13%

572 7.7% of the claims from US$1m or less bracket, 14.3% from US$1-5m, 15.4% from US$5-10m, were coupled with a claim for unquantified damages. Therefore, the breakdown underrepresents the real amounts sought.
6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
Almost all of the arbitrations referred to the LCIA over the past 5 years were international arbitrations.

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
Approximately 5-10%.

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
We are unable to provide this information due to the confidential nature of LCIA arbitrations.

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
Of all the cases filed with the LCIA over the past 5 years under the LCIA Rules, approximately 80-90% of arbitrations were seated in London (which is where the Secretariat of the LCIA is located).

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
There is no formal scrutiny of draft Awards by the LCIA Court. However, the Secretariat will check the formal requirements (for example, that the Award specifies the seat) and, if the Secretariat is requested to do so by a Tribunal, will also review the procedural section and check the Award for typographical and similar errors. The LCIA does not review the substance of the award.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
The LCIA appoints arbitrators in all cases, with the parties having a right to nominate if so agreed.
Between 2009 and 2013, the LCIA Court selected a candidate for appointment in respect of approximately 45% of the individual appointments made.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
The LCIA does not have a formal list, but maintains an internal database of neutrals. If an arbitrator wishes to be included on the database, he/she submits a CV and a completed arbitrator form for our consideration.

When asked to make an appointment, the Court will usually look to the database to find suitable candidates in the first instance. Appointments are made on the basis of the most appropriate candidate for each case.
The database is not a closed list and arbitrators not on the database are not precluded from appointment.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
The LCIA procedure of selecting arbitrators is not mechanical. It includes establishment of the key criteria (experience, expertise, language, legal training and any other criteria specified by the parties, are all important) for the qualifications of the arbitrator(s) in order to draw an initial list from the LCIA’s arbitrators’ database. The information of the potential arbitrators is then forwarded to the LCIA Court, which decides which arbitrator(s) (whether or not on the initial list) the Secretariat should contact. If there is party nomination, the Court advises whether the nominee is suitable, subject to conflicts checks. The Court formally appoints all arbitrators.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).
Under the Constitution of the LCIA, a challenge will be decided by an individual or a division of three members of the LCIA Court in the name of the Court. The Secretariat provides information about the challenge to the individual/division, who/which may request further submissions from the parties and the challenged arbitrator.
The Court considers that the parties and the arbitrators should be made aware of its views of the matters said to give rise to doubts as to the arbitrator’s independence or impartiality. It is therefore the practice of the Court to give reasons for its decisions.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.
Article 30 of the LCIA Rules expressly provides that the parties and the Tribunal keep the matters and materials in the arbitration confidential, unless otherwise agreed by the parties or in certain other limited circumstances. Article 30 also precludes the LCIA from publishing awards without the prior consent of all the parties and the Tribunal.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
By virtue of Article 30 of the LCIA Rules, the LCIA does not publish Awards, nor parts of Awards, even in redacted form. It can only do so with the prior consent of all the parties and the Tribunal.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

The LCIA has published abstracts of challenge decisions, in redacted form, in the journal Arbitration International (Volume 27:3 (2011)).

**Collaboration and Education**

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

Please see the answer to question 20, below.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

The LCIA has a rolling programme of conferences, as we run educational events throughout the year.

The LCIA conference programme typically includes 10 or 12 events each year, two of which are its flagship symposia, held each spring and autumn in the UK. Other conferences are held in venues throughout the world, including now-traditional back-to-back conferences with the International Bar Association. These conferences address the most important and topical issues in the fields of arbitration and ADR.

The conference schedule, and details of past events, is available at www.lcia.org.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

In 2013, the LCIA entered into a cooperation agreement with the Seoul International Dispute Resolution Centre (Seoul IDRC) where the LCIA has stationed an Asia representative.

In 2008, the LCIA signed a joint agreement with the Dubai International Financial Centre to set up DIFC-LCIA Arbitration Centre and, in 2011, the LCIA entered a joint venture with the Government of Mauritius to set up LCIA-MIAC. In addition, LCIA India, an independent subsidiary of the LCIA, was launched in 2009.
3.19. London Maritime Arbitrators Association

Instructions:

5. Please answer the questions in the space provided below each question.

6. Answers will be provided to the Parliament as they are written below (i.e. unedited).

7. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

8. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

When was your institution founded?
The London Maritime Arbitrators Association (LMAA) was founded in 1962

Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
No

Administration of Cases

How many new arbitrations have been commenced at your institution over the past 5 years?
The LMAA does not administer arbitrations and there is no formal process for the registration of ad hoc arbitrations commenced under LMAA Terms. From statistics provided by the 38 Full Members of the LMAA it is estimated that some 3,500 arbitrations were commenced in the years 2009-2012. The numbers for 2013 are estimated at 2,700. These figures are undoubtedly significantly understate the number of maritime arbitrations commenced under LMAA Terms and Procedures as they do not take into account the very many arbitrations in which the arbitrators are members of the Bar or others (often Supporting Members of the LMAA) who are not Full Members. The general trend since 1996 when figures were first compiled has been upward.

What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

- Less than 25,000 Euros (or equivalent in other currencies)
- 25,000-100,000 Euros (or equivalent in other currencies)
- 100,000-1,000,000 Euros (or equivalent in other currencies)
- 1,000,000-10,000,000 Euros (or equivalent in other currencies)

No figures are available. The LMAA Small Claims Procedures are used in many cases involving amounts up to USD50,000 but sometimes also for claims as large as USD200,000. A rough estimate would be that about 25% of arbitrations commenced involve claims of up to USD50,000.

(i) 25,000-100,000 Euros (or equivalent in other currencies)
(ii) 100,000-1,000,000 Euros (or equivalent in other currencies)
(iii) 1,000,000-10,000,000 Euros (or equivalent in other currencies)
(iv) 10,000,000-100,000,000 Euros (or equivalent in other currencies)
(v) Over 100,000,000 Euros

Few

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

   (i) Corporate: None
   (ii) Construction
   (iii) Perhaps 10-20% from shipbuilding contract arbitrations or contracts for the construction of offshore rigs and other units.
   (iv) Telecommunications: None
   (v) Finance and Banking
   (vi) None directly, although many shipbuilding contract arbitrations involve claims on bank guarantees
   (vii) Distribution/Agency/Franchise
   (viii) A small number involve ship agency agreements
   (ix) Energy: None directly
   (x) Consumer: None
   (xi) Investor-State: None
   (xii) State-State (i.e. Public International Law): None
   (xiii) Maritime: Virtually all
   (xiv) Other. Please specify any significant categories.

   Perhaps 10% involve commodity contracts or other contracts for the sale of goods.

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

All

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

None

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

England 95%. Hong Kong 2.5%; Singapore 2.5%

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

See above answer to Q9µ

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

No
Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

5%.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

There is a published list of Full Members of the LMAA as well as of Aspiring Full members and Supporting Members willing to take arbitration appointments. It is rare for arbitration agreements to impose qualification on the arbitrators to be appointed. It is occasionally the case that an arbitration agreement may mandate that the arbitrators appointed should be “commercial men” (or women), members of the LMAA or members of the Baltic Exchange.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

The arbitrators are appointed by the President from among the Full Members of the LMAA on a rotational basis and taking account of qualifications and experience relevant to the dispute.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

The decision is made by the arbitrators themselves in accordance with the principle Kompetenz Kompetenz or by the court under the Arbitration Act 1996 if the parties choose to refer to the court. The LMAA does not make any decisions in this regard.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

The LMAA does not itself have a policy on confidentiality. However, under English law there is an implied duty of confidentiality on the parties and the arbitrators.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

Arbitral awards may be made public by the LMAA (suitably anonymised) if the parties consent or do not refuse if consent is requested.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

No. There have been no relevant changes in English legislation governing arbitration in this period. The principal legislative act is the arbitration Act 1996. Members of the
LMAA took an active part in the Departmental advisory Committee which advised the UK Government on the Act whilst it was in preparation and subsequently in a further report on the Act after it had come into operation. Members also participated in an informal committee established under the chairmanship of Lord Mance to consider whether there should be any legislative change to permit more appeals to the Commercial Court from awards in maritime cases.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

The LMAA is actively involved in promoting London arbitration through a programme of seminars and conferences in London and in the Asia Pacific Region (notably China, Hong Kong, Korea, Taiwan and Japan).

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

The LMAA has relatively loose cooperation agreements with China Maritime Arbitration Commission and Shanghai Institute for Shipping Industry (SISI).

3.20. Madrid Court of Arbitration (CAM)

Instructions:

1. Please answer the questions in the space provided below each question.

2. Answers will be provided to the Parliament as they are written below (i.e. unedited).

3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
1989.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
Yes, The Madrid Chamber of Commerce and Industry.
Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
632

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

   (i) less than 25,000 Euros (or equivalent in other currencies): 10%
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): 22%
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 38%
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 25%
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 4%
   (vi) over 100,000,000 Euros (or equivalent in other currencies): 1%

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

   (i) Corporate: 17%
   (ii) Construction: 18%
   (iii) Telecommunications: 9%
   (iv) Finance and Banking: 24%
   (v) Distribution/Agency/Franchise: 11%
   (vi) Energy: 11%
   (vii) Consumer: 0%
   (viii) Investor-State: 0%
   (ix) State-State (i.e. Public International Law): 0%
   (x) Maritime: 1%
   (xi) Other. Please specify any significant categories.

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
30%

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
4%

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
   Spain
   Chile
   Portugal
   Mexico
9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
1%

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

Our Rules of Arbitration provide for the award to be scrutinized prior to being notified by the parties. Such revision comprises not only formal aspects of the award but also allows the Court, without affecting the freedom of decision of the arbitrators, to call the arbitrators attention to certain matters relating to the merits of the case, as well as to the determination and apportionment of costs.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

It varies greatly depending on the composition of the Arbitral Tribunal. In cases of Sole Arbitrators, the Court has directly appointed the arbitrator in approximately 75% of the cases over the 5 past years.

In cases of a panel of 3 arbitrators, the Court has directly appointed the chairman in approximately 55% of the cases over the past 5 years. The Court has been responsible for approximately 9% of the appointment of arbitrators who would normally be appointed by a party in the past 5 years, mainly in cases where Respondent did not appear.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

The Madrid Court of Arbitration counts with an open list of more than 290 reputed arbitrators from 18 different nationalities. This list, however, is not binding for the parties, subject to confirmation by the Court. This list, along with an arbitrator search engine is public and available at the Court’s webpage www.arbitramadrid.com. When the Court is required to appoint an arbitrator it will normally select one of the list. The Court, however, is not bound by the list and can (and have done so in certain cases) appoint an arbitrator outside the list when it deems it is appropriate given the circumstances of the arbitration and/or the requirements the arbitrator must meet. To be included in the list, a request must be made to the Court. The request is then reviewed by the Appointing Committee, which takes into account the professional background and expertise of the candidate and the needs of the Court.

The Court aims to develop a balanced list of arbitrators, and will take into account for such purposes various aspects such as areas of technical expertise, age and gender.
13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

A proposal (either one candidate or a short list of candidates) is made by the Secretariat, upon consultation with the President of the Court. Each proposal takes into account (i) any potential conflict of interest with the parties or the parties’ representatives, (ii) the subject matter of the case (iii) the amount in dispute, (iv) the procedural complexity of the case, (v) the language of the arbitration, (vi) the nationality of the parties, and (vii) any other relevant circumstance.

The proposals may, depending on the complexity and value of the arbitral claims, provide one candidate or a short list of potential arbitrators.

The Appointment Committee will review the proposals and take the final decision (or may request that a new proposal be made). The composition and members of the Appointment Committee is public.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

Unless otherwise agreed by the parties, it shall fall to the Court to decide on the challenges made. A challenge to an arbitrator must be submitted to the Court no later than 15 days after receiving communication of the appointment or confirmation of the arbitrator or after the date, if later, on which the parties learned of the facts on which the challenge is based. Such challenge must specify and support the facts on which the challenge is based. The challenged arbitrator and to the rest of the parties are given 10 days to answer to that challenge. If the other party or the arbitrator agrees to the challenge, the challenged arbitrator will be discharged of his/her functions. If neither agree to the challenge, then the Court shall issue a reasoned decision on the challenge raised. On deciding the Court keeps in mind the IBA Rules of Conflict of Interest.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Unless otherwise agreed by the parties, the Court and the arbitrators are obliged to keep the arbitration and the award confidential.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

According to the Court Rules an award may be made public of the following conditions:

a) That the relevant request for publication is made to the Court or the Court itself believes it is of interest for legal doctrine;

b) That all references to the names of the parties and to information by which they may be readily identified are eliminated; and

c) That none of the parties to the arbitration objects to such publication within the period of time fixed by the Court for such purpose.

To date, no award has been made public under the Court Rules.
17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)
No.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
The Court was very active with the legislator when the Arbitration Act was amended in 2011 and also when the Mediation Act was issued in 2012. Some of the Courts proposal where included in the final text approved by the Parliament.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.
Over the 5 past years the Court has carried out more than 40 educational/promotional activities he following activities, among others:
   1. The organization of the 5th, 6th, and 7th Edition of an Advanced Arbitration Practice Program in collaboration IE (Instituto de Empresa)
   2. The Sponsorship of 5 editions of the International Competition in Arbitration and Commercial Law Moot Madrid, an academic competition for law students conducted in Spanish.
   3. 8 interns have benefitted from the Court’s internship programme.
   4. In 2013 the Court organized a Congress on Investment arbitration in Latin-American with over 250 participants. It also organized the first Congress that put together the judiciary with the arbitration practitioners and arbitrators, with over 200 attendees.

Over the 5 past years the Court has organized 12 seminars on arbitration for the business community.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
The Madrid Court of Arbitration holds collaboration agreements with local arbitral institutions in Latin-America and Europe, mainly in Peru, Brazil, Mexico, Germany and Austria.

The Madrid Court of Arbitration is the first and only Spanish institution to hold the Observer Status before the United Nations Commission on International Trade Law (UNCITRAL), both for Group II (Arbitration and Conciliation) and Group III (Online Dispute Resolution).
3.21. Malta Arbitration Centre

Instructions:
1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The Malta Arbitration Centre commenced its operation in March 2000.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
No.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
2,127 cases

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
   (i) less than 25,000 Euros (or equivalent in other currencies): 1,912 cases
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): 80 cases
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 32 cases
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 5 cases
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): None
   (vi) over 100,000,000 Euros (or equivalent in other currencies): None

TO NOTE: [98 cases had no monetary value]
5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate: 60 cases  
(ii) Construction: 42 cases  
(iii) Telecommunications  
(iv) Finance and Banking: 1 case  
(v) Distribution/Agency/Franchise  
(vi) Energy: 91 cases  
(vii) Consumer  
(viii) Investor-State  
(ix) State-State (i.e. Public International Law)  
(x) Maritime: 1 case  
(xi) Other. Please specify any significant categories.  

Civil: 35 cases

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

13 cases

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

No Information available at present

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

All cases have been seated in Malta.

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

None

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

Scrutiny is exercised by the Centre in connection with the formal aspects of arbitral award.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

No Information available at present.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
Yes, the Centre maintains Panels of Arbitrators which are grouped according to the area of expertise such as Maritime Panel, Insurance Panel, Banking, Finance, Accounting and Taxation Panel.

Membership to the Domestic Panels of Arbitrators is effected by the filing of an application form, provided the applicant has at least 7 years professional experience, which application form is then submitted to the Board of Governors of the Centre for its consideration. Membership to the International Panel of Arbitrators is at present being revised.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

The Arbitration Act provides that the Chairman of the Centre shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and to the members on the Centre’s Panels of Arbitrators. However, there have been cases when the appointed person was not a member on the Centre’s Panels.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

The Arbitration Act provides for the procedure to be adopted in the case an arbitrator is challenged [please refer to Articles 24 to 27 of the Arbitration Act, Chapter 387 of the Laws of Malta].

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Confidentiality is provided for in the Arbitration Rules, Rule 47 – every person who participates in the arbitration proceedings in whatever capacity must maintain the confidentiality of the arbitration; the existence of proceedings and the filing of the Notice of Arbitration and the award will not be publicised or otherwise publicly acknowledged by the Centre or the parties; Centre shall treat all documents filed with it as confidential; hearings will be held in private chambers.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

No, except in the case of mandatory arbitrations which are public and the awards are available on the Centre’s website: www.mac.org.mt

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

No

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
Yes, when there was the need to introduce amendments to the Arbitration Act and/or Arbitration Rules, the Centre liaised with the relevant Government Ministry to effect the necessary changes.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

A number of training courses, workshops and information sessions have been held, all with the intention to promote arbitration as an alternative method of dispute resolution as well as the Centre’s awareness among the business community and the general public.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

The Centre has a number of co-operation agreements with different arbitral institutions, however at present these are being reviewed.

3.22. Netherlands Arbitration Institute

Instructions:

1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than **100 words**. Due to space limitations, answers over 100 words may be deleted.

General Information

1. **When was your institution founded?**
   1949

2. **Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.**
   No

Administration of Cases

3. **How many new arbitrations have been commenced at your institution over the past 5 years?**
   640
4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

(i) less than 25,000 Euros (or equivalent in other currencies): 10.7 %
(ii) 25,000-100,000 Euros (or equivalent in other currencies): 18.4 %
(iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 36.3 %
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 24.5 %
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 8 %
(vi) over 100,000,000 Euros (or equivalent in other currencies): 1.4 %
Other: 0.7 %

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate: 16.9 %
(ii) Construction: 20.3 %
(iii) Telecommunications: 4.5 %
(iv) Finance and Banking: 13 %
(v) Distribution/Agency/Franchise: 10.6 %
(vi) Energy: 8.4 %
(vii) Consumer
(viii) Investor-State
(ix) State-State (i.e. Public International Law)
(x) Maritime: 4.2 %
(xi) Other. Please specify any significant categories.
   Intellectual property 1.7 %
   Real Estate 7.2 %
   Health care 4.2 %
   Other 9 %

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
   There was only one case in which the NAI was the appointing authority.

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
   8 %

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
   the Netherlands, Aruba and Sweden

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
   0.3 %

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
The NAI only undertakes scrutiny of awards concerned with formal aspects of the awards.

**Appointment of Arbitrators**

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

Approximately 10.5%. Unfortunately it is not possible to give the exact percentage at this time.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

Yes it does. The board decides if names are added to the list. Because the list is so extensive, only names may be added in a single specific field.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

The arbitrators who will be on the list of arbitrators need to fill out a form with their competences in the field. The NAI can select in its computer system the competences it needs for a specific case.

It is the administrator who makes the final decision.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

The NAI does not decide on challenges anymore. The parties need to go to the district court in the Netherlands.

**Transparency**

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

In article 55 of the NAI Rules is stated: Arbitration is confidential and all individuals involved either directly or indirectly are bound to secrecy, save and insofar as disclosure ensues from the law of the agreement of the parties.

Unless a party communicates in writing to the Administrator his objections thereto within one month after receipt of the award, the NAI shall be authorised to have the award published without mentioning the names of the parties and deleting any further details that might disclose the identity of the parties.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

In article 55 of the NAI Rules is also stated: Unless a party communicates in writing to the Administrator his objections thereto within one month after receipt of the award, the NAI shall be authorised to have the award published without mentioning the names of the parties and deleting any further details that might disclose the identity of the parties.
17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

The challenges of the arbitrators will be handled by the district court in the Netherlands. So the district court decides if it publishes the decision on the challenge.

**Collaboration and Education**

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

Yes it did. The NAI wrote an advise to the government regarding the amendment of the Act of arbitration in the Netherlands. Furthermore the NAI has participated in different ways to the review of the Arbitration Act, for instance through the participation in expert meetings. Also, the NAI organised meetings to bring the legislator in contact with users of arbitration. Few meetings were organised where the legislator could present its plans and participants could reflect. The NAI is always willing to inform delegations of the government and welcomed government employees on more than one occasion to inform them about arbitration. It also promotes arbitration through conventions and courses.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

The NAI organises courses for its arbitrators and for other interested persons, like lawyers and younger people who would like to act as secretary to an arbitral tribunal. The NAI organises the following courses: course for secretaries to arbitral tribunals, base course for arbitrators, international arbitration course, course practicing to write awards, course for calculation of capital damages, course efficient hearing sessions and emotion management and the course commercial contract law for the arbitration practice, consisting of two parts; part I: realization and content; part II: remedies. For persons under 40, NAI Young Arbitration Practitioners organises gatherings throughout the year.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

The NAI has drawn up so called joint clauses with, amongst others, the AAA, the Japan Commercial Arbitration Association, the Surinam Arbitration Institute, the Korean Arbitration Association, the Indonesian Arbitration Association and the Association of South African Arbitrators. Also, the NAI and ICC Netherlands jointly organise a course in international arbitration. The NAI has a collaboration with CEPINA. These contacts focus mainly on the exchange of information regarding the administration of cases, but are also very helpful in international cases in the event one looks for an arbitrator from another country with specific knowledge of a subject.
3.23. Permanent Arbitration Court of the Slovak Banking Association

Instructions:
1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
July 1, 2003. According to Act No. 492/2009 Coll. on payment services payment service providers shall, either jointly or through their professional association establish a permanent court of arbitration. Banks are obligated to offer their customers an irrevocable proposal for the conclusion of an arbitration agreement.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
According to legal obligation, Permanent Arbitration Court of Slovak Banking Association (PAC SBA) is formally affiliated with Slovak banking association. Representative of National bank of Slovakia is part of the Board of PAC SBA. PAC SBA is funded exclusively from fees collected in arbitration proceedings. In general, fees from commercial cases contribute to covering the costs of consumer cases.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
2009-2013: 29 290 cases. 88% consumer cases, 12% commercial cases.

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

   (i) less than 25,000 Euros (or equivalent in other currencies): approx. 25 000 cases (85%)
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): approx. 4000 cases (13%)
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 119 cases; (1%)
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 17 cases (less than 1%)
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): zero cases
(vi) over 100,000,000 Euros (or equivalent in other currencies):

Zero cases

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate: zero
(ii) Construction: zero
(iii) Telecommunications: zero
(iv) Finance and Banking:
    12% - commercial cases, banking industry
(v) Distribution/Agency/Franchise: zero
(vi) Energy: zero
(vii) Consumer:
    88% - consumer cases, banking industry
(viii) Investor-State: zero
(ix) State-State (i.e. Public International Law): zero
(x) Maritime: zero
(xi) Other. Please specify any significant categories: zero

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

zero

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

zero

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

Slovak Republic

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

zero

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

Yes, formal aspects of the award.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

98
In most consumer cases. In commercial cases parties regularly appoint the arbitrators.

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
Yes PAC SBA maintain public list of arbitrators. Board of the PAC SBA is entitled to add or delete arbitrator from the list. Reasons are regulated. When appointing an arbitrator, PAC SBA is obliged to appoint arbitrator from the list.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
Chairman of the Board is entitled to appoint an arbitrator from list only. Parties are entitled to appoint ad-hoc arbitrators. Chairman is entitled to forward this authority to Secretary of PAC SBA.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).
Information is collected from arbitration parties, arbitrator and public sources. Chairman of PAC SBA is entitled to make the final decision. Decisions on challenges to arbitrators are substantially and formally regulated in the same way like decisions on challenging judges in civil court proceedings.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.
PAC SBA do not publish awards. According to law, arbitration proceedings are not public.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
No.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)
No.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
Yes, through SBA. SBA is regularly participating and commenting on new legislative proposals.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please
summarise in general terms if this is necessary to keep your answer within 100 words.
PAC SBA directly do not promote educational activities.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
No.

3.24. Scottish Arbitration Centre

Instructions:
1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The Scottish Arbitration Centre was founded in March 2011. It is a promotional body, which can make appointments. However, it is not an institution capable of servicing arbitration at present.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
No. However, the Scottish Arbitration Centre is made up of five member bodies: the Chartered Institute of Arbitrators; the Law Society of Scotland; the Faculty of Advocates; the Royal Institute of Chartered Surveyors; and the Scottish Ministers.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
Not applicable. The Scottish Arbitration Centre does not service arbitrations. However, it does have facilities which we hire for arbitration hearings.

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
Not applicable.
   (i) less than 25,000 Euros (or equivalent in other currencies)
   (ii) 25,000-100,000 Euros (or equivalent in other currencies)
   (iii) 100,000-1,000,000 Euros (or equivalent in other currencies)
5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:
Not applicable.
(i) Corporate
(ii) Construction
(iii) Telecommunications
(iv) Finance and Banking
(v) Distribution/Agency/Franchise
(vi) Energy
(vii) Consumer
(viii) Investor-State
(ix) State-State (i.e. Public International Law)
(x) Maritime
(xi) Other. Please specify any significant categories.

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
Not applicable.

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
Not applicable.

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
Not applicable.

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
Not applicable.

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
Not applicable.

**Appointment of Arbitrators**

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
Not applicable. However, the Scottish Arbitration Centre can make appointments in ad hoc arbitrations. Our formal appointment system is still being finalised and will be published in due course.
12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

The Scottish Arbitration Centre does not have a list of arbitrators.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

When parties specify that the Scottish Arbitration Centre is to appoint an arbitrator to deal with their dispute, the selection of the arbitrator is made by the Centre’s Arbitral Appointments Committee. The Committee will act independently from the Centre’s Board, and has complete discretion to choose the most suitable arbitrator for the dispute from the leading Scottish and international arbitrators.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

Parties cannot challenge the Arbitral Appointments Committee’s decision.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Not applicable.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

Not applicable.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

Not applicable.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

The Scottish Arbitration Centre successfully lobbied the UK Government to ensure that the separate legal jurisdictions of Scotland and Northern Ireland were also covered in the international promotion of UK legal services.

The Centre also met with the UK Government to discuss its implementation of the EU Consumer ADR Directive; acted as a stakeholder to promote ADR in respect of the Court Reform Bill and other relevant legislation; and is also engaged in the Scottish Government’s Digital Justice Strategy.

This year the Scottish Government announced that Scottish arbitration was the default position in all Scottish government goods and services contracts.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase
understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

Every year, the Scottish Arbitration Centre hosts an Arbitrator Training Day which aims to give practical guidance on acting as an arbitrator under the Scottish Arbitration Rules (forming Schedule 1 of the Arbitration (Scotland) Act 2010). This year, leading practitioners will give an update on arbitration and recent case law; guidance on how to apply the Rules to common problems; how to deal with difficult cases; and how to avoid challenges to awards.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

No.

3.25. Spanish Court of Arbitration (CEA)

Instructions:

1. Please answer the questions in the space provided below each question.

2. Answers will be provided to the Parliament as they are written below (i.e. unedited).

3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The Spanish Court of Arbitration (CEA) is the oldest of the Spanish arbitration institutions, created by Royal Decree by the Spanish Council of Ministers on May 22, 1981.

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
The Spanish Court of Arbitration constitutes an independent service that administers national and international arbitration - a service attached to the High Council of Chambers of Commerce, future Chamber of Commerce of Spain, Corporation of Public Law, which performs functions of a public and private nature.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?

347
4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

(i) less than 25,000 Euros (or equivalent in other currencies): 0,15%
(ii) 25,000-100,000 Euros (or equivalent in other currencies): 30,75%
(iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 40,50%
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 28,25%
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 0,32%
(vi) over 100,000,000 Euros (or equivalent in other currencies): 0,03%

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate: 13%
(ii) Construction: 19%
(iii) Telecommunications: 4%
(iv) Finance and Banking: 11%
(v) Distribution/Agency/Franchise: 27%
(vi) Energy: 24%
(vii) Consumer_
(viii) Investor-State
(ix) State-State (i.e. Public International Law)
(x) Maritime: 2%
(xi) Other. Please specify any significant categories.

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?

11%

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?

15%

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.

Italy, Portugal, Brazil, Peru, Turkey.

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?

3%

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.

Pursuant article 30 of the Spanish Court of Arbitration Rules, the Court, respecting the principle of independence and freedom of decision of the arbitrators can suggest that strictly formal modifications be made to the draft that it considers necessary.
Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

78%

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

Yes. Although the Parties and the Court can also appoint arbitrators that are not on its lists, the Spanish Arbitration Court maintains a list including more than 350 national and international experienced lawyers, specialized in all areas of the law. The arbitrators are appointed using an open system, with the candidates being appointed or proposed by the Spanish Court of Arbitration, or those appointed by the parties being confirmed by the Court. The Spanish Court when in requires to directly appoint an arbitrator, considers the matter, complexity and any other circumstances involved, bearing in mind the requirements established by the Parties for the arbitrator.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

If the Court appoints the arbitrators, the Committee for the appointment of arbitrators shall prepare a list with several names. It proposes a number of names (at least three) so that the parties can express their preferences regarding the proposed candidates, improving the chance of selecting the ideal candidate for each arbitrator that must be nominated, always considering the matter, complexity and any other circumstances relating in particular to the arbitration procedure. Within the 5 days following receipt of the list, each of the parties shall cross out the names that deserve an objection numbering the rest of the names on the list in order of preference. If, after this, no name results pointed out of the list, the arbitrator shall be freely appointed by the Court.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

The parties may challenge the arbitrators once their appointment has been confirmed, when circumstances arise in relation thereto which lead to justified doubts on their impartiality, independence or suitability. The Court must hear the Parties and decide on the challenge procedure.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Unless otherwise expressly agreed by the parties, the Court, the arbitrators and the parties are obliged to keep the confidentiality of the arbitration, the information disclosed through it, its deliberations, arbitral proceedings, as well as, if applicable, the terms and content of the award. The same duty shall apply to the parties with regard to the information referring to the rest of the parties to which they had access during and/or as a result of the arbitral proceedings. This notwithstanding, the arbitrators may adopt, ex officio or at the request of
a party, the measures they deem relevant in order to preserve and guarantee the enforceability of said duty of confidentiality, and in particular to those meant to protect commercial or industrial secrets.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
For the Court or for any of the parties to be able to proceed with the publication of the awards that puts an end to the arbitration, both parties must expressly consent to this within the term established for clarifying the award. The arbitrator cannot use confidential information acquired during the arbitration to obtain a personal or other advantage or to adversely affect the interest of another party.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions).
No. This is due to the duty of confidentiality, which operates during the whole arbitration procedure, unless otherwise agreed by the Parties.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
The Spanish Arbitration Act 60/2003 was amended in 2011. As Arbitral Institution attached to The High Council of the Chambers of Commerce, public law corporation, an opinion writ with commentaries to the text was drawn up by request of the Spanish Ministry of Justice, for the amendment of the Arbitration Spanish Act. The Spanish Court of Arbitration has also signed cooperation-agreements for the development and consolidation of arbitration with the General Council of the Judiciary and the Spanish Institute of Engineering.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.
One of the main missions of the Spanish Court of Arbitration is to promote arbitration by spreading information on arbitration culture, in general, and by increasing understanding of arbitration within practitioners, specially the youngest ones. The CEA sponsors conferences and International Congresses of the Spanish Arbitration Club. It also organizes free legal youth days about new trends and other arbitration seminars with The Spanish Energy Club or the General Council of Notaries, amongst others. It works with the University-Business Foundation (Fundación Universidad-Empresa) providing internships for young practitioners within the Arbitral Institution.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
Throughout the General Council of Notaries, the Spanish Court of Arbitration organizes arbitration promotional activities with the Fundación Notarial Signum, created by the
Annex C - Arbitral Institutions Questionnaires

Notaries Society of Madrid. It also signed cooperation agreements for the development of arbitration with the Association of Galician Businessmen in Madrid (AEGAMA) and with the Chamber of Commerce of Chile. It is foreseen that The General Council of Notaries and the Spanish Court of Arbitration sign a cooperation agreement on October 2014, in order to promote Mediation and ADR in Spain.

3.26. Swiss Chambers' Arbitration Institution

Instructions:

1. Please answer the questions in the space provided below each question.
2. Answers will be provided to the Parliament as they are written below (i.e. unedited).
3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded? 1.1.2004

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
   7 Swiss Chambers of Commerce are the (sole) members of the institution (which is incorporated in the form of an association)

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years? 445

4. What percentage of arbitrations commenced at your institution over the past five years have involved an amount in dispute in the following categories:

   (i) less than 25,000 Euros (or equivalent in other currencies): information not available
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): information not available
   (iii) less than 1,000,000 Euros (or equivalent in other currencies): 41.6 %
   (iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 41.2 %
   (v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 14.4 %
   (vi) over 100,000,000 Euros (or equivalent in other currencies): 2.8 %

5. What percentage of arbitrations commenced at your institution over the past five years arose from the following sectors:

   (i) Corporate: 86%
(ii) Construction: 3%
(iii) Telecommunications: n.a.
(iv) Finance and Banking: n.a.
(v) Distribution/Agency/Franchise: 9%
(vi) Energy: n.a.
(vii) Consumer: n.a.
(viii) Investor-State: n.a.
(ix) State-State (i.e. Public International Law): n.a.
(x) Maritime: 0
(xi) Other. Please specify any significant categories.

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
89%

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
Information not available

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
Switzerland, Germany, France, Austria, Turkey, Singapore, India, Vietnam, Spain, USA

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
10%

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
Before an award, termination order or decision on a request is rendered, the Court will approve or adjust the determination on costs. The decision of the Court is binding on the arbitral tribunal. No other scrutiny is undertaken by the institution.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?
Chairman appointed by the institution in 51% of the cases
Arbitrators appointed by the institution who would normally be appointed by a party in 7.2% of the cases

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
For each case a separate Case Administration Committee is formed which renders administrative decisions and selects arbitrators when necessary. Arbitrators are selected based on the requirements of each individual case.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).
Decisions on a challenge, a removal or a replacement of an arbitrator are rendered according to Art. 10-13 of the Swiss Rules. The decision is taken by the Court Special Committee.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Article 44 Swiss Rules:

1. Unless the parties expressly agree in writing to the contrary, the parties undertake to keep confidential all awards and orders as well as all materials submitted by another party in the framework of the arbitral proceedings not already in the public domain, except and to the extent that a disclosure may be required of a party by a legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a judicial authority. This undertaking also applies to the arbitrators, the tribunal-appointed experts, the secretary of the arbitral tribunal, the members of the board of directors of the Swiss Chambers’ Arbitration Institution, the members of the Court and the Secretariat, and the staff of the individual Chambers.

2. The deliberations of the arbitral tribunal are confidential.

3. An award or order may be published, whether in its entirety or in the form of excerpts or a summary, only under the following conditions:
   (a) A request for publication is addressed to the Secretariat;
   (b) All references to the parties’ names are deleted; and
   (c) No party objects to such publication within the time-limit fixed for that purpose by the Secretariat.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
No

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
In November 2014 the first presentation on this subject shall be made at a conference in Switzerland by a vice-chairman of the Arbitration Court. A publication is planned.
Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

In 2011, the Swiss Chambers’ Arbitration Institution intervened with the Swiss Parliament (Nationalrat) concerning a motion of a Member of Parliament to change Art 7 of the Swiss Statute on Private International Law.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

Educational activities within Switzerland are the domain of ASA (Swiss Arbitration Association), the Swiss Arbitration Academy and the Universities.

The Chambers of Commerce who are members of the institution are regularly organising events for their local business community on arbitration, mediation and other types of dispute resolution.

The Swiss Chambers’ Arbitration Institution regularly organises workshops in other countries in order to promote the Swiss Rules. It is sponsoring the VIS Moots in Vienna and Hong Kong as well as arbitration events organised by other associations (ICCA, AJJA, UIA, ASA, IPBA, etc.).

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

Cooperation agreement with CADR (Tel Aviv)
Ad hoc Marketing Cooperation with DIS, Vienna, etc.

3.27. Venice Chamber of Arbitration

Instructions:

1. Please answer the questions in the space provided below each question.

2. Answers will be provided to the Parliament as they are written below (i.e. unedited).

3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
1990

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
Founding member: Camera di Commercio Industria Artigianato e Agricoltura di Venezia

Members:

- Comune di Venezia
- Ordine degli Avvocati della Provincia di Venezia
- Ordine dei Dottori Commercialisti e degli Esperti Contabili della Provincia di Venezia
- Consiglio Notarile del Distretto di Venezia
- Ordine Ingegneri della Provincia di Venezia
- Ordine degli Architetti della Provincia di Venezia
- Consulenti del Lavoro di Venezia – Consiglio provinciale di Venezia
- Collegio dei Geometri di Venezia
- Camera Civile Veneziana
- Confindustria Venezia
- A.N.C.E. Venezia - Associazione Nazionale Costruttori Edili di Venezia e provincia
- Confcommercio Unione Venezia
- Confartigianato Provinciale di Venezia
- U.P.P.I. sezione provinciale di Venezia - Unione Piccoli Proprietari Immobiliari
- Associazione Giuristi della Proprietà Industriale
- F.I.A.I.P. provinciale di Venezia - Federazione Italiana Agenti Immobiliari Professionali
- A.N.A.C.I. provinciale di Venezia - Associazione Nazionale Amministratori Condominiali Immobiliari
- Associazione Artigiani e Piccole Imprese Mestre CGIA

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
66

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:

(i) less than 25,000 Euros (or equivalent in other currencies): 21.21%
(ii) 25,000-100,000 Euros (or equivalent in other currencies): 39.39%
(iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 33.33%
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 6.06%
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 0
(vi) over 100,000,000 Euros (or equivalent in other currencies): 0
5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate: 22,73%
(ii) Construction: 30,30%
(iii) Telecommunications
(iv) Finance and Banking
(v) Distribution/Agency/Franchise
(vi) Energy
(vii) Consumer
(viii) Investor-State
(ix) State-State (i.e. Public International Law)
(x) Maritime: 1,52%
(xi) Other. Please specify any significant categories.

46,97% - Real Estate

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration? The vast majority of proceedings administered by the Venice Chamber of arbitration are national.

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party? 0

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
Italy.

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located? 0

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award. The Chamber undertakes a formal scrutiny of the awards, while regarding expenses the Chambers retains the power to accepts or reject the arbitrators proposal relating to expenses.

Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)? 100%
12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.
The Chamber includes an arbitrator in the list upon request but subject to verification of adequate professional skills and ethical standards.
In general the Chamber appoints arbitrators drawn from the list. In case of need (specific technical skills required etc.) can appoint arbitrators who are not in the list.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).
Appointments are made by the Chamber’s board. The process is quite informal as the members of the Board exchange suggestions and experiences regarding the potential candidates. So far all appointments have been made by unanimous decision.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).
In our experience there has been only one case where an arbitrator appointed by one party has been challenged. The case was not controversial so the Board, who is in charge of the final decision, refused to approve the appointment.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.
The Chamber enforces a rule of strict confidentiality on proceedings and awards.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
No

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)
No

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
Not directly though there has been informal exchanges with governmental officials interested in the matter.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please
The Chamber promotes ADR culture very actively mainly through seminars (in average about 10 per year) and training courses for mediators and arbitrators (in average 15 per year).

The Chamber participate in the summer program of the Georgia University hosting each summer the students participating to the program for one seminar on Italian arbitration.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.

The Chamber has in place cooperation memorandum of understanding with about 20 similar institutions. In practice we mainly cooperate with institution which are complementary with ours like Resolutia which is a training institution.

3.28. Vienna International Arbitral Centre

Instructions:

1. Please answer the questions in the space provided below each question.

2. Answers will be provided to the Parliament as they are written below (i.e. unedited).

3. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.

4. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
   In 1975; local predecessors have been existing since 1949

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
   Yes, with the Austrian Federal Economic Chamber

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
   329 (Jan 2009 – Dez 2013)

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
   (i) less than 25,000 Euros (or equivalent in other currencies): 5%
(ii) 25,000-100,000 Euros (or equivalent in other currencies): 16%
(iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 45%
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 22%
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 8%
(vi) over 100,000,000 Euros (or equivalent in other currencies): 3%

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:
VIAC can only provide statistic for the last 3 years:
(i) Corporate (Share purchase agreements): 10%
(ii) Construction (and engineering): 19%
(iii) Telecommunications: not gathered
(iv) Finance and Banking: 13%
(v) Distribution/Agency/Franchise: 11%
(vi) Energy: 7%
(vii) Consumer: 0% (not allowed under Austrian Law)
(viii) Investor-State: 0%
(ix) State-State (i.e. Public International Law): 0%
(x) Maritime: 0%
(xi) Other. Please specify any significant categories.
General Trade: 15%; Business Services: 12%, Machinery: 10%

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
100%

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
about 10 percent

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
Austria, Switzerland, Czech Republic, Belgium, Deutschland

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
1-2%

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
VIAC does not undertake a formal scrutiny of awards, but reviews the award before being sent to the parties and comments on it vis-á-vis the arbitrators.
Appointment of Arbitrators

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

40%

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

There is a list of Arbitrators, published on our Website, but it is not binding and should only be used as a working draft. The information contained therein is not binding for the Board when nominating arbitrators. Everybody with arbitration experience may ask to be added to this list, has to fill-in a questionnaire that is then reviewed by the Secretariat.

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

The decision, which arbitrator is to appoint is up to VIAC’s board (consisting of leading arbitration-experts as lawyers, academics, judges and ministry officials). The board considers in its discussion all aspects of the case (e.g. language skills needed, preferences of the parties, nationalities of the parties, economic aspects, connected cases and many more).

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not fulfil the qualifications agreed by the parties. A party may challenge the arbitrator it nominated only for reasons the party became aware of after the nomination.

If the challenged arbitrator does not resign, the Board shall rule on the challenge. Before the Board makes a decision, the Secretary General shall request comments from the challenged arbitrator and the party/parties. The Board may also request comments from other persons.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

Arbitral awards in Austria are considered to be confidential documents which are owned by the parties to the arbitration. Publication would, therefore, require the consent of the parties. For this reason, arbitral awards are rarely published. The Vienna Rules have a provision entitling the Board of VIAC to publish a summary of the award in legal journals or in its own publications in anonymous form, unless publication is objected to by at least one party within thirty days after service of the copy of the award on it (Art. 41).

Board members, Secretariat and arbitrators have the duty to keep confidential all information acquired in the course of their duties (Art. 2 para 4; Art 4 para 4; Art 16 para 2)
16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?
As VIAC celebrates its 40th anniversary in 2015, it is planned to publish short anonymous abstracts of the most interesting awards since 1975 and to comment on them.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)
no

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.
As VIAC is part of the Austrian Federal Economic Chamber, we are invited to comment on legislative changes that are touching our field. VIAC also initiates changes, e.g. VIAC was the driver of the most important amendments of the Austrian Arbitration Act 2006 and 2013, namely that as of 1 January 2014 the Austrian Supreme Court is the first and only instance in setting aside proceedings for arbitral awards. VIAC is also part of a working group to further improve Austrian arbitration law.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.
VIAC organizes a seminar for prospective barristers and law students interested in arbitration every year. It is also permanently involved in the organisation of Moot Courts in the fields Arbitration and Mediation. VIAC’s Secretary General and Deputy regularly teach Commercial Arbitration courses at Vienna University. VIAC is in permanent exchange with other leading institutions of arbitration and organizes discussions concerning interesting arbitration-related problems. VIAC is also co-organizer of the Austrian Arbitration Days, the leading Arbitration Conference in Austria with participants from all around the world. Periodically VIAC initiates Road Shows in many parts of the world.

20. Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.
There are cooperation-agreements regarding arbitration with the Chambers of Commerce of Croatia, the Czech Republic, Hungary and Slovenia. Furthermore there are many more agreements with diverse institutions (e.g. AAA, CEPANI, CIETAC, ACICA, DIS, CAM, KCAB; cf http://www.viac.eu/en/materials).

Together with SCC, DIS and CAM VIAC organizes discussions concerning interesting arbitration-related problems once a year in all 4 countries. There is also an exchange of case managers for sharing best practices.
3.29. Vilnius Court of Commercial Arbitration (VCCA)

Instructions:
Please answer the questions in the space provided below each question.

1. Answers will be provided to the Parliament as they are written below (i.e. unedited).
2. Many questions simply request a number, rather than a narrative answer (i.e. sentence form). However, if you believe just providing a number would give an inaccurate picture of your institution, or if you are unwilling or unable to provide a specific number, you are welcome to write a narrative answer instead.
3. Each answer must be less than 100 words. Due to space limitations, answers over 100 words may be deleted.

General Information

1. When was your institution founded?
The Vilnius Court of Commercial Arbitration (VCCA) founded in October 2003 after the reorganisation (as a result of merger) of the Arbitration Court at the Association International Chamber of Commerce Lithuania (1997) and the Vilnius International Commercial Arbitration (1996).

2. Is your institution formally affiliated with any superior/sponsoring organisation/entity (e.g. chamber of commerce, bar association, government)? Please identify.
VCCA is a separate legal entity.
The founders of the VCCA are the main associated business structures:
   1. International Chamber of Commerce ICC Lithuania;
   3. Lithuanian Confederation of Industrialists;
   4. Association of Lithuanian Banks;
   5. Lithuanian National Road Carriers’ Association “Linava”;
   6. Lithuanian Lawyers’ Association;
   7. Association “Infobalt”.

Administration of Cases

3. How many new arbitrations have been commenced at your institution over the past 5 years?
151 arbitration cases have been commenced at the VCCA over the past 5 years (from year 2009 to year 2013).

4. What percentage of arbitrations commenced at your institution over the past 5 years have involved an amount in dispute in the following categories:
For years 2009 - 2013
   (i) less than 25,000 Euros (or equivalent in other currencies): 17.88 %
   (ii) 25,000-100,000 Euros (or equivalent in other currencies): 24.5 %
Annex C - Arbitral Institutions Questionnaires

(iii) 100,000-1,000,000 Euros (or equivalent in other currencies): 36.42 %
(iv) 1,000,000-10,000,000 Euros (or equivalent in other currencies): 15.89 %
(v) 10,000,000-100,000,000 Euros (or equivalent in other currencies): 0.66 %
(vi) over 100,000,000 Euros (or equivalent in other currencies): 0.66 %
(vii) non-pecuniary disputes: 3.97 %

5. What percentage of arbitrations commenced at your institution over the past 5 years arose from the following sectors:

(i) Corporate
    *Data included in other categories.
(ii) Construction: 17% (Construction & Engineering, 2010 - 2013)
(iii) Telecommunications: 3.6 % (Telecommunications & IT, 2010 - 2013)
(iv) Finance and Banking: 9.8 % (Finance & Insurance, 2010 - 2013)
(v) Distribution/Agency/Franchise: 36.6 % (General trade & Distribution, 2010 - 2013)
(vi) Energy: 8.9 % (Energy, 2010 - 2013)
(vii) Consumer
(viii) Investor-State
(ix) State-State (i.e. Public International Law)
(x) Maritime: 6.3 % (Transport and Logistic, 2010 - 2013)
(xi) Other. Please specify any significant categories.
    8.9 % (Services (legal aid, consulting etc., 2010 - 2013)
    7.1 % (Real Estate and Lease, 2010 - 2013)
    1.8 % (Industrial Equipment, 2010 - 2013)

6. What percentage of arbitrations commenced at your institution over the past 5 years constituted international arbitrations under the definition provided in the UNCITRAL Model Law on International Commercial Arbitration?
55 % (2009 - 2013)

7. What percentage of arbitrations commenced at your institution over the past 5 years have involved a State, Parastatal or Public entity as a party?
2.6 %

8. Please list all States in which arbitrations commenced at your institution over the past 5 years have been seated.
Lithuania

9. What percentage of arbitrations commenced at your institution over the past 5 years have not been seated in the State in which your institution is located?
0 %

10. Does your institution undertake any scrutiny of awards before they are delivered to the parties? Please describe any scrutiny undertaken, whether solely concerned with formal aspects of the award, or also concerned with the substantive aspects of the award.
Under the Arbitration Rules of the VCCA, before signing any arbitral award (final, partial or additional), the Arbitral Tribunal submits it in draft form to the VCCA (the Secretariat) for assessment of the compliance of the arbitral award with the requirements of the form (in this case the legitimacy and validity of the rendered arbitral award are not assessed). Nevertheless, attention of the tribunal may be brought to noticed writing and counting mistakes, lack of clarity or motivation.

**Appointment of Arbitrators**

11. In what percentage of arbitrations commenced at your institution over the past 5 years has your institution directly appointed one or more of the arbitrators (please include both appointment of the chair of the tribunal and appointment of arbitrators who would normally be appointed by a party)?

The institution has appointed arbitrators:
- in 56% of cases received in 2011 (1 on behalf of the claimant, 3 on behalf of the respondent, 1 presiding arbitrator and 5 sole arbitrators).
- in 59% of cases received in 2012 (9 on behalf of the respondent, 2 presiding arbitrators and 6 sole arbitrators).
- in 29% of cases received in 2013 (4 on behalf of the respondent, 2 presiding arbitrators and 4 sole arbitrators).

12. Does your institution maintain a list of arbitrators? If so, please describe how names are added to the list, and the role played by the list when your institution is required to directly appoint an arbitrator.

The VCCA has the list of recommended arbitrators consisting from Lithuanian and foreign arbitrators. The list is approved, supplemented or amended by the decision of the Board of VCCA subject to education, also practical experience or academic background in arbitration, good standing and reputation, recommendations of the applying candidates. The list of arbitrators is of recommendatory nature to the parties. Personal involvement to the list of arbitrators of VCCA does not guarantee appointment of a person as an arbitrator to settle the disputes. However, when appointing arbitrators, the Chairman of VCCA normally shall choose from the list (exceptions are allowed).

13. Please describe the mechanism by which your institution selects arbitrators when required to appoint one (e.g. who researches potential arbitrators, how names are identified, who makes the final decision).

Before appointing the arbitrator, the Chairman of VCCA takes into account the substance of the dispute, the language(s) of arbitration, knowledge of substantive law to which the dispute is addressing, the circumstances ensuring independence and impartiality of the arbitrator and the requirements established by the parties for an arbitrator. In appointing an arbitrator, the prospective arbitrator's experience and a possibility to appoint as arbitrator a person of other citizenship or national status that of the parties are taken into consideration. Usually appointments are made from the list of the recommended arbitrators, unless parties agree upon the special requirements for an arbitrator.

14. Please describe the mechanism by which you decide challenges to arbitrators (e.g. how information is collected to decide the challenge, who makes the final decision).

The party requesting a challenge of an arbitrator shall submit a request to the VCCA. In the request to challenge an arbitrator the party shall indicate the circumstances on which the
challenge is based and present evidence supporting such circumstances. The VCCA presents copies of the received request for challenging the arbitrator to the other party (parties) to the dispute and the Arbitral Tribunal in order for them to express their opinion in respect of the challenge within the indicated time limit. The Chairman of the VCCA makes the final decision, which is not subject to appeal.

Transparency

15. Please describe your institution’s rules on confidentiality of arbitral proceedings and arbitral awards.

The Arbitral Tribunal, the Chairman of the VCCA and the Secretariat examines and resolves the issues attributed to their competence in accordance with the principal of confidentiality. All information regarding arbitral proceedings and arbitral awards are confidential.

16. Does your institution make arbitral awards publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)?

No, the arbitral awards (in any form) are not made available publicly.

17. Does your institution make decisions on challenges to arbitrators publicly available (e.g. in redacted form; in the form of periodic summaries/overviews of decisions)

No.

Collaboration and Education

18. Over the past 5 years has your institution engaged directly with legislators or other governmental entities, either to promote legislative change or to promote the understanding of arbitration within government? Please describe.

VCCA has contributed to the work at group preparing the new Law on Commercial Arbitration that was passed by the Parliament of the Republic of Lithuania in year 2012.

19. Please describe the primary educational/promotional activities in which your institution has engaged in the past 5 years (e.g. educational programmes for junior practitioners, arbitrators or judges; activities designed to increase understanding of arbitration within the business community; programmes intended to promote awareness of your institution in other States). Please summarise in general terms if this is necessary to keep your answer within 100 words.

The VCCA organizes seminars and lectures for business community in Lithuanian cities in cooperation with the founders of VCCA. In 2013 a seminar was organized for arbitrators by VCCA in cooperation with the Lithuanian bailiffs association for the purpose to increase the understanding of the enforcement of the arbitral awards and the influence of the form of arbitral award in the enforcement process.

Early VCCA organizes national and international conferences (Arbitration Day 2011, 2012, 2013, Vilnius Arbitration Day 2014) and Open days.

In 2014 the new courses for arbitrators will start for arbitral proceedings according to the VCCA rules of arbitration.
20. **Are there other arbitral institutions with which your institution has formal cooperation agreements, or with whom your institution regularly cooperates, with respect to either the administration of cases or educational/promotional activities? Please identify.**

VCCA has cooperation agreements with Latvian and Polish, arbitral institutions:
- The Court of Arbitration at the Polish Chamber of Commerce;
- The Court of Arbitration of the Latvian Chamber of Commerce and Industry;
- Sad Arbitrazowy Pomorza Zachodniego (Szczecin).
REPORTERS

Note: Reporters provided expert guidance to the Authors. They are not responsible for any views expressed in the Study. All views expressed are the responsibility of the Authors. 573

Commercial and Investment Arbitration in the European Union – John Gaffney
Consumer Arbitration – Christopher Hodges
Online Arbitration - Pablo Cortés

Austria – Günther J. Horvath
Belgium - Françoise Lefèvre & Olivier van der Haegen
Bulgaria – Angel Ganev
Croatia - Edin Karakaš
Cyprus - Costas Tsirides & Sonia Ajini
Czech Republic - Karolina Horáková
Denmark– Ole Spiermann
England, Wales and Northern Ireland – Karyl Nairn
Estonia - Pirkka-Marja Põldvere
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DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C
CITIZENS’ RIGHTS AND CONSTITUTIONAL AFFAIRS

Role
Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas
- Constitutional Affairs
- Justice, Freedom and Security
- Gender Equality
- Legal and Parliamentary Affairs
- Petitions

Documents