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ALTERNATIVE DISPUTE RESOLUTION

A Guide to Private Arbitration

CHAPTER I

Why is Arbitration Needed?

In 1997 the Parliament of Georgia adopted the Law on Private Arbitration, which provides for the establishment of arbitration and general principles of arbitration practice. What is private arbitration and what are its advantages compared to courts of common law/general courts? This issue is of particular importance today when courts have increased caseloads and parties are often involved for long periods of time in litigation. In order to avoid this parties try to reach an agreement and they refer to private arbitration. Arbitrators are selected by the parties. None of the parties enjoy any supremacy in this process and no conflict of interest is allowed. The election reduces the chances of corruption to a minimum. It has to be noted that any information supplied to arbitration has to be treated as confidential. Compared to court procedure, where sessions are public, arbitration sessions are always closed. It is also important that there are tight deadlines for case review and there is no secondary and tertiary jurisdiction (appellation and cassation). Taking into consideration the low level of execution of writ, arbitration organized and the rules established by the parties on a voluntary basis increase the chances of decisions being executed. . The issue of competencies is extremely important as well. The judges appointed have to have a law degree. In cases when a specialist knowledge is required (e.g. disputes relating to customs operations, commerce etc.) a judge will involve an expert. Private arbitration takes into consideration the specifics of a dispute and experts in relevant fields are appointed. The basic principle of private arbitration is disposition, com-

petition of the parties involved. The parties define their claims and decide on how to defend them. The position of arbitration is that of assessment only. The low level of costs (the costs translate into fees to be paid to the members of arbitration) is also one of the positive features. The disadvantage of private arbitration is the fact that a dispute settled in this way is no longer within the jurisdiction of general courts and the verdict can only be reviewed in specific, strictly defined circumstances.

CHAPTER I

How to Set Up and Use Arbitration Courts

General Regulations

According to the “Law on Private Arbitration” of Georgia, a civil dispute between parties (these can be corporate persons or individuals) can be submitted to permanent or ad hoc arbitration based on agreement between the parties. It has to be underlined that private arbitration deals with civil disputes and it is not allowed to review cases arising from other types of legal relations (e.g. administrative cases).

The law distinguishes between two types of arbitration: permanent and ad hoc, the principal difference between the two being the rules of formation. According to the Law on Arbitration, permanent arbitration has to be established in an organizational form specified in the Law on Entrepreneurs. It is also mandatory for a private arbitration to be registered at a court according to the aforementioned law. The principal activity of such enterprises (arbitration courts) is to deal with civil disputes. According to the Law on Arbitration of Georgia, permanent arbitration has to adopt arbitration regulations that will reflect the rules of appointment of an arbitration court as well as rules of case review. Arbitration is required to publish arbitration regulations in the press prior to the commencement of its activities.

As for the ad hoc arbitration courts, the rules for their formation are much simpler. These can be established in relation to any specific civil dispute and their court registration is not mandatory.

- **Formation of Arbitration Courts**

Civil disputes are referred to private arbitration based on agreement of the parties. The agreement is called arbitration agreement. According to the law, the agreement has to be put in writing. The common practice is that the said agreement is usually a part of the contract drawn up between the parties; however the parties can design a separate agreement. The Law on Private Arbitration identifies the key information that needs to be considered in the agreement: 1) Parties and their formal addresses (if the party is a corporate person, a corporate address has to be included); 2) the subject of the dispute (i. e. what is the dispute about); 3) time and place of the arbitration agreement. It has to be noted that if the dispute has been submitted to arbitration (i. e. if there is an arbitration agreement) a court can no longer deal with this particular case. The only exception to this general rule is a situation where both parties insist on court procedure, or if a court overrules the arbitration agreement.

According to the Law there are 2 methods of arbitration formation. In one case, the arbitration agreement provides for the number of arbitrators and their appointment rules (this is the case with ad hoc arbitration courts, or if the parties have decided on the number and appointment rules of the arbitrators). In other cases, these issues are provided for in the regulations of a permanent arbitration court.

In the process of defining of arbitration formation, the following provisions of the Law on Private Arbitration have to be considered:

Persons representing the parties can appoint the arbitrators themselves or through a third party. A proposed arbitrator has to submit a written consent for his participation in the arbitration.

An arbitration court can consist of one or more arbitrators. An arbitration agreement should not allow one of the parties to be in a more favorable position. If there is a similar stipulation in the agreement, it is automatically overruled by the court. If there is more than one arbitrator, one of them is appointed as Chairman of the arbitration. The arbitrators appoint a Chairman either within 5 days from the formation of

the arbitration or at the first meeting/hearing. In the process of defining the length of term for a chairman, the parties can take into consideration other specific circumstances.

There has to be an odd number of arbitrators. In cases when the parties agree on an even number, the arbitrators have to appoint one extra arbitrator within 5 days from the formation of arbitration.

If the arbitration agreement does not specify the number of arbitrators, the arbitration should consist of 3 members. If the rules of appointment are not provided for in the agreement, the parties appoint equal numbers of arbitrators who, in turn, appoint one extra arbitrator.

The parties have to define appointment deadlines in their agreement. If this is not the case, the provisions of the Law on Private Arbitration have to be considered and a party should appoint arbitrators within 10 days from the receipt of an arbitration request from another party.

It may happen that the parties or arbitrators fail to appoint arbitrators within the dates stipulated in the agreement or provided in the legislation. In such cases a party may request for the arbitrators to be appointed by court decision. Courts have to appoint arbitrators within 5 days from the receipt of the request and the court decision cannot be appealed. (According to the Law on Private Arbitration, the parties should contact a court that covers the territory where the arbitration takes place).

According to the Law on Private Arbitration, the arbitrators can be substituted only in the following cases:

1) **If a party requests to change an arbitrator appointed by the party itself**;
As a rule, a party cannot change an arbitrator appointed; this can happen only if there is an appropriate provision in the arbitration agreement

2) If an arbitrator is challenged by one of the parties;

According to the law, parties can challenge any arbitrator (no matter which party appointed the said arbitrator). A party cannot challenge an arbitrator appointed by the party itself if the reason for such a challenge was known prior to the appointment. The rules for dismissal of an arbitrator have to be provided in the agreement or in the arbitration regulation. If these are nonexistent, the rules provided by the Law on Private Arbitration have to be applied. The party wishing to challenge an arbitrator has to file a written request within 10 days. The 10-day period is calculated from the date of the appointment of the said arbitrator or from the date when the specific circumstances on which the party bases its challenge became known, According to the law, the reason for the challenge has to be indicated in the request. The Law on Private arbitration lists the following reasons for challenging an arbitrator : a) if a person is incapable or partially incapable; b) if a person is a civil servant or a political figure; c) if a person is convicted for a premeditated crime d) if a person is a relative(spouse, parent, son, daughter, sister or brother) of a party or its representative; e) if an arbitrator is not linguistically competent , i.e. does not speak the language of arbitration; f) if the person does not have the qualifications stipulated in the arbitration agreement g) if there are other doubts about impartiality or conflicts of interest (what can constitute such doubt is decided in each case individually).

If a party requests a challenge, the arbitrator is challenged if a) he/she decided to resign; b) if the second party agrees to the challenge request. In all other cases the decision is made by other arbitrators.

3) If an arbitrators is dismissed;

The rules of procedure in private arbitration allow for the dismissal of an arbitrator. This can happen if the arbitrator can no longer perform his/her duties. The law provides no specifics as to what can be regarded as a hindering factor. It is decided in each case individually (e.g. medical or personal problems). The request can be filed by parties or by the arbitrator himself. The arbitrator is dismissed if the parties reach an agreement on this or if this is the decision of the arbitration. The decision on dismissal can be reviewed by a court. In this case, the decision taken by the court is final.

● Arbitration Trial

The reason for an arbitration trial is an arbitration request/claim presented by one of the parties. The form of such a request is not specified by the law; however it is natural that the request should contain the actual claim and the circumstances on which the party bases its claim. Besides, a party has to present the evidence supporting the above circumstances. The request has to be sent to the second party and the Chairman of the arbitration. According to the law, the arbitration trial should start within 10 days from the receipt of the arbitration request. If the request is presented but the arbitration has not been formed, the 10-day period is calculated from the appointment of the arbitrators. The parties have to take into consideration the reviewed trial date.

According to the law, a party can represent itself at the arbitration or alternatively it can be represented by its appointee.

The procedure of the arbitration is specified by the parties. If there is no agreement the procedure is defined by the existing regulations. (Arbitration regulations - in case of a permanent arbitration, however the parties and permanent arbitration can reach a different agreement as well).

If not otherwise agreed by the parties, the arbitration has to inform the parties about the date and place of the arbitration trial in writing 5 days prior to the trial date. The arbitration is also responsible for sending copies of all materials presented by a second party 2 days prior to the arbitration trial date. The arbitration cannot make a decision without listening to the parties, except in cases when a party deliberately avoids such explanations. (If a party is absent at the trial and no explanation is provided as to the reason for such absence, the arbitration can proceed, unless a second party requests a change of the date). The arbitrator has to treat the information received during the arbitration trial as confidential and not make it public. As mentioned above, since the parties define the arbitration procedure themselves, they can agree on rules different from the above.

The arbitrators can interview witnesses and request evidence, appoint experts at the parties' request or independently and refer to a court (at a party's request) to collect or reinforce the evidence.

The parties can settle the dispute at any stage of a trial. The arbitration has to discontinue the trial within 3 days from the receipt of the request for the voluntary settlement of the dispute.

We have stated above that some of the provisions of the legislation are not mandatory and can be reviewed by the parties. It may happen that the arbitration fails to take into consideration the provisions of the legislation or of the arbitration agreement. If this is the case and if the party continues its participation in a trial without presenting a counter-claim, it will be considered that it has turned down the right to appeal. For the appeal to be formal it has to be presented immediately or within the time-frame stipulated by the parties.

One of the most important steps in arbitration involves taking the final decision. The formal deadline for taking the decision is 1 month from the start of the trial. However, the parties can agree on a different deadline. If the arbitration fails to produce a decision by the set deadline, it has to resign unless otherwise agreed by the parties. If the arbitrators resign, the new arbitration has to be appointed within 10 days from the resignation date. If the new arbitration fails to produce a decision again, the agreement between the parties is void.

The arbitration decision is taken by a majority vote, unless otherwise agreed by the parties. The arbitrators are not allowed to abstain from voting, again, unless otherwise agreed by the parties.

According to the legislation, the arbitration decision has to be presented in writing and it should contain the following information:

a) time and place of the arbitration decision and the names of arbitrators;
b) the arbitration agreement designed by the parties;
c) list of the parties involved;
d) subject of a dispute;
e) basis of the arbitration decision, listing all the factors that determined the decision (unless the parties have agreed that the decision does not have to contain this information.)
f) arbitration statement, identifying the responsibilities of the parties;
g) deadline for the execution of writ (this pertains to voluntary execution.)According to the legislation, the execution of the arbitration decision is mandatory only for the parties involved in the arbitration; it cannot refer to a third party (i.e. a party not involved in the arbitration).

In many cases the document will contain the trial costs. (including the fees to be paid to the arbitrators according to the agreement). The expenses are to be equally covered by the parties unless otherwise agreed. .

All arbitrators have to sign the decision and it has to be certified by a notary. A copy of the decision is provided to each party as well as to the appropriate regional court.

The parties can agree to appeal to another arbitration. According to the legislation, the deadline for such an appeal is 30 days, unless otherwise agreed by the parties.

CHAPTER I

Execution

Appeal and Execution

Some parts of an arbitration decision on civil disputes may seem ambiguous to the parties. An analysis of common practices re: civil cases in this country reveal that this is often the case. Although, considering the specifics of dispute resolution by arbitration and comparing arbitration to court practices, it is expected that the percentage of such cases will be lower in arbitration, and it is natural that the Law on Private arbitration should provide for appeal/review procedures. According to the legislation, if the parties agree, each party has a right to appeal to arbitration for clarification of certain points of the decision. The arbitration provides clarification within 20 days from the receipt of such a request. The clarification has the same legal power as the arbitration decision, if not otherwise agreed by the parties.

As a rule, the arbitration decision concerns property relations and it is natural that often a decision contains calculations. Errors as well as misprints cannot be altogether ruled out in these cases. The parties can request amendment of such errors, unless otherwise agreed by the parties.

An arbitration decision is mandatory for persons that have been assigned specific responsibilities by the verdict. In most of the cases, decisions are executed on a voluntary basis. If this is not the case, a decision is executed by force. This is levied according to the execution produced by the arbitration Chairman

within 5 days from the request made by one of the parties or at his own initiative. Then the execution is presented to the appropriate regional execution department (it depends on the formal address of a debtor or the location of his property) and the execution procedure is carried out according to the Law on Execution Procedure of Georgia and in line with the Civil Code of Georgia.

As mentioned above, the arbitration decision is final and the parties have no right of appeal. However the Law on Private Arbitration allows for exceptions and a court can review the case and change the arbitration decision. This is allowed only in the following cases: a) when the arbitration decision is in conflict with administrative or criminal codes; b) if the rules stipulated in the arbitration agreement or provided for by Law on Private Arbitration are violated by the arbitration. We have already indicated that the parties define the rules of arbitration themselves. At the same time, the Law on Private Arbitration lists the conditions that need to be met in the course of arbitration. Failure to satisfy the above conditions leads to the arbitration decision being overturned; c) if an arbitrator commits a crime which has been prosecuted according to article 189 of the Criminal Code (except for the cases when this has not affected the arbitration decision). As mentioned above, the arbitration practice is regulated by the Law on Private Arbitration of Georgia that has been in force since 17 April 1997. According to the Criminal Code in force then, article 189 provided for criminal penalties for bribery. The current Criminal Code was introduced on 1 June 2000 and article 189 refers to misappropriation of intellectual property. Apparently this is an inaccuracy and what is actually meant here is that if an arbitrator is involved in bribery and the said fact is confirmed by the relevant court verdict, the arbitration decision is overruled. Therefore it is implied that the criminal action of an arbitrator could determine the arbitration decision. We hope that this error will be dealt with in the near future.

Although the Law allows for appeal re: an arbitration decision; but the execution of the decision is not suspended in the course of the review procedure. The court is authorized to suspend the execution of the arbitration decision only if this can inflict a fatal damage to a party. The court is authorized to make a decision as to what constitutes such damage (e.g. bankruptcy) in each individual case.

CHAPTER IV

International Arbitration

- ***London Court of International Arbitration***

The London Court of International Arbitration is the most acclaimed among such institutions. It administers cases according to its regulations. Below we will look at the principle provisions of the regulations in detail, as the guidelines and procedures constituting the document are characteristic of many arbitration courts. The regulations distinguish between the LCIA proper and the LCIA Court; the main difference between the two being that the LCIA court is an administrative, co-ordination body.Its mandate will also be reviewed below. The regulations offer the parties an arbitration contract form to be used if they intend to settle their dispute at the LCIA. The contract has to include the following points (blank spaces should be filled in, taking into consideration the context of the words in brackets):

Any dispute resulting from this contract or in relation to it, like disputes on the existence, authenticity or cancellation of the contract is subject to submission to an arbitration court, according to the LCIA regulations. The court will review the case and announce the verdict.

“FORM:

Number of arbitrators ____________ (one/three)

The place of arbitration ____________ (city/country)

The language of arbitration ____________ ( )

The legislation regulating the present contract is ____________ (country) legislation.

If a dispute related to the present contract arises between the parties and if there is no agreement on submitting it to arbitration, or if the parties wish to change the present contract and wish the dispute to be reviewed by the LCIA, the following provision is recommended for inclusion (blank spaces should be filled in, taking into consideration the context of the words in brackets):

The parties agree that the dispute related to ( ) will be submitted to for review and final decision to the arbitration court, according to the LCIA regulations.

Number of arbitrators ____________ (one/three)

The place of arbitration ____________ (city/country)

The language of arbitration ____________ ( )

The legislation regulating the present contract is ____________ (country) legislation.”

How to apply to the LCIA?

The party wishing to submit a dispute to arbitration according to the regulations (i.e. the claimant) has to send its claim to the LCIA registrar. The claim has to be accompanied by the following:

- Details of the parties or their representatives including, names, addresses, telephone, fax, telex and e-mail (if known).

- Copies of the arbitration agreement in writing and a copy of the contract that provides for the arbitration or of the contract on which the dispute submitted for arbitration is based.

- Short description of the general circumstances and nature of the dispute as well as the claimant's claim to the defendant.

- All major issues relating to the trial administration have to be listed (e.g. place and language(s) of the arbitration, number of arbitrators, their election and qualifications). The parties should be in agreement over the above.

- Details of the arbitrators suggested by the party including, names, addresses, telephone, fax, telex and e-mail (if the arbitration agreement provide for nomination of the arbitrators by the parties).

- Fees provided for in the articles on arbitration fees and expenses. The claim will not be considered complete without the above information and the court will not proceed until the information is received.

Confirmation that copies of the claim will be forwarded by one or more communication channels (to be specified) to all parties involved.

The date of receipt of the documentation by the registrar is considered as the starting date of the arbitration. If it is intended to appoint 1 arbitrator, the documents package has to be sent in two copies. If the parties agreed that the number of the arbitrators is 3, the package is to be submitted in 4 copies.

Any message or other information requested from the parties is to be sent in writing by registered mail, courier, fax, e-mail or other means of communication that allows for acknowledgement of receipt.

The arbitrators should remain impartial and independent in the course of the arbitration and should not act in favor of any of the parties. Prior to the commencement of the arbitration procedure, arbitrators have to present their CVs listing their previous experience, sign the contract on fees and sign a declaration stating

that they are not aware of any circumstances that may cause them to act in favor of any of the parties. Should such circumstances arise in the course of the arbitration after the declaration has been signed, the arbitrator has to inform the LCIA court and other arbitrators immediately. The LCIA has an exclusive right to appoint arbitrators. They are appointed according to the written requests of the parties taking into consideration the relevant criteria – the nature of the arbitration agreement and the dispute as well as citizenship, location and number of the parties and the language of the arbitration need to be considered while appointing an arbitrator. If 3 arbitrators are appointed, the LCIA has to appoint the court Chairman (these cannot be the arbitrators nominated by the parties).If not otherwise agreed by the parties, 1 arbitrator is appointed, unless the LCIA decides that 3 member arbitration will be more efficient. This decision is usually based on the specific nature of a dispute. The chairman cannot hold the same citizenship as the parties if the parties have different countries of origin.

Prior to the formation of the arbitration, all communication between the parties and the arbitrators happens via the registrar. If the registrar is sending any message addressed to one of the parties it has to be copied and sent to all other parties. Consequently, if a party is sending a message to the registrar it has to be copied and sent to all arbitrators and other parties and the registrar has to be notified of the above.

The parties are allowed to agree on the arbitration procedure; however the following general rules have to be followed:

Fairness and impartiality have to be observed in relation to all parties;

All parties have to be allowed to express their positions and present their claims without any hindrance;

The procedure has to be determined according to the specific circumstances of a dispute. Unjustifiable procrastination and expenses have to be avoided. This will allow for fair and efficient dispute resolution.

The agreement has to be in writing and or has to be documented by the arbitration at the parties' request and consent.

Where such agreement is absent, the arbitration court is free to administer the arbitration procedure according to rules and legislation regarded necessary.

If not otherwise agreed by the parties or in the absence of a different arbitration decision, the written phase of arbitration is administered in the following way:

Within 30 days from the receipt of the confirmation from the registrar on the formation of arbitration, the claimant sends his claim to the registrar. The claim has to include facts and the legal basis used by the claimant as well as the claim *per se* described in a more detailed manner than in the initial request. Within 30 days from the receipt of the claim, a defendant has to send a counter-claim to the registrar. In this claim the defendant confirms the factual and legal circumstances presented by the claimant, and his own grounds. Any counter-claim has to be sent in the form of a claim. If the defendant fails to produce a counter-claim, the arbitration can still proceed and take its course.

The parties can agree on the location of the arbitration and confirm the agreement by signing it. In the absence of such an agreement, the location of the arbitration is London by default, unless the LCIA decides on some other location, taking into consideration suggestions of the parties. The hearings, meetings and trial can take place in any location. A decision taken elsewhere has the same legal power as one taken in the official location.

The legislation of the official arbitration location is used in the course of arbitration unless the parties have signed an agreement to use some other legislation. However, such an agreement should not be considered illegal according to the legislation of the official location.

Following the formation, the arbitration decides on the language to be used, taking into consideration the views expressed by the parties. If a document presented by the party is not written in the arbitration language, the arbitration can request the submission of a translation.
Any party can be represented by a practicing lawyer or other representative. The arbitration can request documentation confirming their authority.
All parties have a right to represent themselves in front of the arbitration unless there is a prior agreement that all proceedings take place in writing.
The arbitration sets the date, time and location of the hearings and informs the parties accordingly. All sitting and hearings are closed, unless otherwise agreed by the parties and the arbitration.
The arbitration can interview witnesses and experts. The cost of such expertise is covered from the advance payment made by the parties and is included in the arbitration expenses.

Unless otherwise agreed by the parties, the arbitration is authorized to take the following actions at its own or one of the parties' initiative:

Allow a party to change a claim/counter-claim;
Extend or bring forward a deadline, provided for by the arbitration agreement or the regulations, related to the arbitration;
Conduct any examination, approved by the arbitration and seek clarification of contentious issues or facts;
Request the submission of any items by the parties for examination.
Request the submission of any documentation that can cast light on the circumstances of a dispute:
Involve third parties in the arbitration process, provided the third party and the party at whose request the third party is involved will sign an agreement and recognize the decision of the arbitration as final.
The parties agree on the regulations to be used during the arbitration proceedings and agree not to appeal to any other court on the issues dealt with by the arbitration, unless otherwise agreed by the parties.
The arbitration makes its decision based on the legislation selected by the parties for dispute settlement.
If there is no prior agreement on the above, the arbitration is authorized to make the above decision itself.

The defendant can make an announcement that the arbitration is incompetent, but this has to be made before the counter-claim is presented. If this is not the case, it will be considered that the defendant voluntarily refuses to use the right. The announcement that the arbitration has exceeded its competence has to be made immediately after the arbitration intends to announce its decision on the matter that according to a party is not within the arbitrators' competence. If the announcement is not made accordingly this is regarded as a voluntary refusal to exercise the above right. However, the arbitration is authorized to receive such an announcement at a later stage if the delay is justifiable.

The LCIA court can request from the parties to cover arbitration expenses in several installments. The advance payment is transferred to the LCIA account and can be used to cover the fees for arbitrators or experts as well as pay for the LCIA expenses. The LCIA will not proceed with the arbitration procedure if the appropriate funding is not confirmed by the registrar.
If one of the parties fails or refuses to pay in advance, according to the LCIA regulations, the LCIA can require that another party pays the advance in order for the arbitration procedure to commence. In this case, the party that pays the advance on behalf of the other party can request a refund from the said party. If a claimant or a defendant fails to pay the full amount of the advance payment, the LCIA can refuse to review a claim or a counter claim.

The arbitration decision is made in writing and, unless otherwise agreed by the parties, it has to include the basis of the said decision. The decision has to list the date and the official location of the arbitration. It has to be signed by the arbitration or the arbitrators that agree to it. If one of the arbitrators fails to fulfill his responsibilities according to the legislation, the remaining arbitrators are authorized to proceed without him/her, provided the failure to participate is reflected in the arbitration decision. In cases involving a 3-member arbitration, when arbitrators fail to reach consensus the decision is made by a majority vote. If there is no majority vote then the decision is to be made by the Chairman. If one of the arbitrators refuses to sign the decision, a majority vote or signature of the Chairman is required. The arbitration can make different decisions at different times. These decisions have the same legal power as any other arbitration decisions. If the parties resolve a dispute by settlement, the arbitration will announce the settlement de-

cision at the parties' request. This kind of a decision does not require an explanation. As soon as the arbitration receives confirmation of dispute resolution by settlement from all the parties involved, the arbitration is dismissed and the proceedings are stopped, provided the arbitration expenses are covered by the parties. Any arbitration decision is final and the execution of writ is mandatory on the parties. When the parties sign the initial agreement they thereby refuse the right to appeal or review the case in any other court or different judicial institution. Expenses are totaled by the LCIA and indicated in the arbitration decision. Unless otherwise agreed by the parties, the expenses are equally divided between them. The decisions of the LCIA court are final and mandatory both for the parties and the arbitration. These decisions are regarded as administrative and therefore the LCIA court is not required to present its reasoning.

The parties are required to observe confidentiality in relation to arbitration decisions and the materials used. The sittings of the arbitration court should also be conducted in confidentiality. The LCIA cannot make the arbitration decision public without the permission of the parties. The LCIA, the LCIA court, arbitrators, the registrar and his/her assistants and experts are not responsible for any faults or damages unless a party can prove that the said damage was inflicted by conscious breach of legislation. After the announcement of the arbitration decision, the LCIA, the LCIA court, arbitrators, the registrar and his/her assistants and experts are not required to make any statements in relation to the arbitration decision, nor should anyone attempt to use them as witnesses in a court procedure that may result from the arbitration. If a party is aware that one of the provisions listed in the arbitration decision or in the regulations has been violated and fails to makes this knowledge public immediately, it is deemed that it has voluntarily waived the right of appeal. All other issues not covered by the regulations are dealt with by taking into consideration the nature and spirit of the regulations. The LCIA court, arbitration and the parties should make every effort to ensure that the arbitration decision has legal power and is ultimately executed.

- ***The Arbitration Institute of the Stockholm Chamber of Commerce***

The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) is one of the most recognized arbitrations centers in the world. It was established in 1917. Initially it dealt exclusively with internal state disputes. Over time the number of international disputes involving state and private bodies grew. The

popularity of the Institute has been guaranteed by the excellent qualifications and experience of the arbitrators. The geographical location is also quite favorable - due to its location, Sweden has always been the center for settlement of economic disputes between the former Soviet Union and western countries.

Sweden's arbitration procedure is governed by the Law on Arbitration and the Law on External Arbitration Agreements and Decisions. In the course of a dispute resolution parties can establish their own rules, use the SCC regulations or any other arbitration regulations. However, one has to take into account that according to Swedish legislation the arbitration regulations selected may not be recognized in Sweden if they contradict imperative provisions of Swedish legislation.

The basis for commencement of arbitration is a request for arbitration which is submitted in writing. It has to contain a claim presented by one of the parties as well as the exact details of the dispute. The other party must also be notified about the request. Before the commencement of the arbitration it may be required to ensure processing of the request (e.g. arrest in civil process).

The next step in the procedure is nomination of the arbitrators. As a rule there should be an uneven number of arbitrators. According to the SCC regulations if the parties agree to nominate one arbitrator this sole arbitrator will be appointed by the SCC. If the number of arbitrators is more than 1, the parties nominate an equal number of arbitrators each and one member is appointed by the SCC and this member is the Chairman of the arbitration. The important factors in the nomination process are the professionalism and competencies of the candidates. It is not allowed to appoint a person that may have certain financial links with one of the parties.

Certain expenses, naturally, need to be covered in the course of the arbitration procedure. More specifically these are administrative expenses and fees to be paid to the arbitrators. According to article 30 of the SCC regulations the fees are defined based on the administration needed, complexity of a dispute and the total value of a dispute.

As for the arbitration expenses, the SCC has established a flat administrative fee (this includes

stenographical services, fees to be paid to the experts etc). As a rule these expenses are covered by the party that loses the case, although alternative arrangements may also be made.

One of the key issues in the arbitration procedure is the language of the arbitration. English and French are the working languages of the leading arbitration courts of the world. According to the SCC regulations the arbitration defines the language, unless otherwise agreed by the parties. In some countries it is a common arbitration practice that the arbitration is administered without hearings, i.e. the parties present their positions in writing. In other arbitration traditions it is allowed to interview the parties and witnesses, to conduct cross-examination of the witnesses, to provide written notifications to the lawyers, to conduct special investigations by the arbitrators and to produce minutes of the arbitration sittings.

According to the SCC regulations the arbitration has to be conducted according to the agreement between the parties and taking into consideration the suggestions expressed by the parties. As a rule there are court hearings. The duration of the arbitration, its organizational and judicial form is defined in consultations with the parties.

There are different approaches to the form of arbitration decisions - issues of, inclusion of the motivation as part of the decision, unanimous vs. a majority vote, have to be decided by agreement between the parties especially if these are not provided for by the regulations. It is important that in some countries the material and procedural issues resulting from the arbitration can be reviewed by courts. Elsewhere courts are authorized to partially or fully review the procedure of the arbitration as well as the arbitration decision. Therefore, it may be useful to agree on the status and legality of the arbitration decision.
It is also important to include a provision on possible review or cancellation of parts of the arbitration decision and stipulate whether the said cancellation can possibly affect other parts of the agreement or the authenticity of the entire agreement.

● ***Chambre Arbitrale de Paris***

The objective of the Paris Arbitration Chamber is to resolve disputes according to its own arbitration regulations. The chamber conducts its mediation according to the Regulations on Arbitration Courts. Defini-

tion of the arbitration procedure by the Chamber implies that it rules out the possibility of appeal to general courts. The arbitration decision is final and is not subject to review or appeal. With regard to the Paris Arbitration Chamber the norms relate to the so P.A.R.A.D. procedure which represents a speedy procedure for dispute resolution in arbitration. This process perfects the procedure provided for in the regulations of the arbitration court of the Paris Arbitration Chamber. The P.A.R.A.D. procedure commences if a claim is of a contractual nature and its value is less than EUR106.714, excluding the compensation and damages to be paid. The P.A. R.A.D. procedure is not used in case of several claimants or defendants. Two copies of a special claim form are filled in and sent to the secretariat of the Paris Arbitration Chamber and copies must be forwarded to the second party. The claim is then provided to the judge/arbitrator of the Paris Arbitration Chamber who is nominated by the Chairman of the Chamber. The claim is administered by this sole arbitrator. The duration of the P.A.R.A.D. procedure is 1 month from the commencement of oral hearings; if however the general rules are applied, this period is 1 year from the commencement of oral hearings.

Recognition and Execution

Issues related to the recognition of foreign arbitration decisions in Georgia are regulated by the Convention on Recognition and Execution of Foreign Arbitration Decisions of 31 December 1958. This convention was ratified by the Georgian Parliament by resolution on 3 February 1994.

According to the convention, Georgia (and naturally other countries that have joined the convention) recognizes arbitration decisions as mandatory for execution. According to the convention, the party requesting recognition and execution of the arbitration decision has to present the following: a) the arbitration agreement (an original or a properly certified copy); b) agreement to submit the dispute for arbitration (in writing). According to the convention such written agreement can be reached by the parties by signing the arbitration agreement or by the exchange of telegrams. If the above documents have not been written in the official language of the country where the request is submitted, a certified translation has to accompany the document package.

The defendant can address the competent body (in our case it is a court) and request the non-recognition

and non-execution of the arbitration decision. In this case, the party has to submit documents confirming that: 1. The above written agreement has been signed by an incapable party (or parties), or that the agreement has lost its legal power according to the legislation that governed the above decision or according to the legislation of the country where the decision has been signed. 2. the defendant has not been duly informed on the appointment of the arbitrator or on the arbitration trial and therefore (or due to other justifiable reason) was not able to present its explanations (counter-claim). 3. the composition or the arbitration procedure did not comply with the agreement reached by the parties or the legislation of the country where the arbitration took place. 4. the decision has not been final for the parties. Or that the decision has been annulled or the execution has been suspended by the authorities of the country of arbitration or by the country in which the legislation was used in arbitration; 5. the arbitration decision has been made on the dispute that had not been provided for by /or was not subject to the arbitration agreement. Or that the dispute exceeded the competency identified by the arbitration decision. In cases where it is possible to single out the conclusions of the decision that comply with the arbitration agreement, these conclusions have to be recognized and executed.

It is possible to refuse recognize and execute the arbitration agreement if the authorities of the country where the execution has to take place, perceive that according to the country's legislation the subject of the dispute could not have been subject to arbitration or that the execution of the decision is in conflict with the rule of publicity.

According to the Law on Private International Law of Georgia, cases related to the recognition and execution of foreign arbitration decisions are processed by the Supreme Court of Georgia. The solicitation is examined without an oral hearing, unless requested by the party. The decision on recognition and execution of foreign arbitration decisions is made in the form of a resolution by the Supreme court.

The execution is administered according to the Law on Execution Proceedings of Georgia, which stipulates that the execution has to be presented to the appropriate execution department - according to the address of the debtor or the location of his/her property.