

ADR in Eastern Europe

CIArb East Anglia Branch – Annual Seminar

31 July 2015

INTRODUCTION

- In Eastern Europe ADR means any process other than Civil Litigation
- For construction contracts there is no statutory equivalent to UK Adjudication
- The primary ADR method is Arbitration
- Uptake of mediation is slowly growing

Countries under consideration

- This presentation considers three of the most northern Eastern European countries (commonly called the Baltic States):

Estonia

Latvia

Lithuania

- Annexed to former Soviet Union until 1991;
- Currently EEC member states since 2004
- Estonia adopted Euro in 2011
- Latvia adopted Euro in 2014
- Lithuania adopted Euro in 2015

Baltic States



LEGAL FRAMEWORK

Generally

- Based on Continental European system of codified law.
- **Estonia:** Has progressively reformed its legal system since 1990
- **Latvia:** Civil Code dates back to 1937
- **Lithuania:** Complete overhaul of legal system in 1992

Estonia

Two part legal system based on Continental European codified Law:

- Private Law:
 - Civil Law
 - Commercial Law

- Public Law:
 - International
 - Constitutional
 - Administrative
 - Criminal
 - Financial
 - Procedural

Latvia

- **Based on Roman Law Codes with French/German influences**
- **Civil Law in four parts:**
 - Family
 - Inheritance
 - Property
 - Obligations

Lithuania

- **Roman system based on laws**
- **Multiple Codes for each sphere of Law:**
 - Civil code (includes Commercial Law)
 - Civil Procedure Code
 - Criminal Code
 - Criminal Procedure Code
 - Administrative Penalties Code
 - Labour Code

ARBITRATION OVERVIEW

Arbitration - Estonia

Two types

1. Ad hoc:

- Not regulated by law
- Award not immediately subject to compulsory enforcement

2. Institutional

- Regulated by the Code of Civil Procedure (“CCP”)
- Tribunal Awards subject to compulsory enforcement

Arbitration Institutions - Estonia

- **One principal Institution:**

- The Arbitration Court of the Estonian Chamber of Commerce and Industry

- **(Some others)**

- The Court of Arbitration of the Tallinn Stock Exchange
- Insurance Court of Arbitration,

Non- arbitrable disputes - Estonia

- Non - monetary disputes unless the parties are entitled under the CCP to conclude a compromise in such a matter, including:
 - Employment Disputes
 - Landlord and tenant disputes
- Monetary disputes under Public Law (unless an administrative agreement is present)

Arbitration - Latvia

(as for Estonia)

Two types

1. Ad hoc:

- Not regulated by law
- Award not immediately subject to compulsory enforcement

2. Institutional

- Regulated by the Code of Civil Procedure (“CCP”)
- Tribunal Awards subject to compulsory enforcement

Arbitration Institutions - Latvia

- **More than 100 institutions: however,**
- **the best known ones are:**
 - The Latvian Chamber of Commerce and Industry Court of Arbitration,
 - The Court of Arbitration of the Association of Commercial Banks of Latvia,
 - The Riga Arbitration Court,
 - The Riga International Arbitration Court,
 - The Baltic International Arbitration Court,

Non-arbitrable disputes - Latvia

■ Any civil dispute may be referred to arbitration except disputes:

- the settlement of which might infringe the rights of third parties; or
- where at least one of the parties is a state or municipal authority; or
- relating to amendments to the civil records registry; or,
- In connection with persons whose interests protected by law; or
- regarding establishment of property rights,; or
- regarding eviction of persons from residential premises; or
- Employment contracts; or
- regarding rights and obligations of those persons who are declared insolvent before the arbitral award is rendered.

Arbitration - Lithuania

- Regulated by the **Law on Commercial Arbitration of the Republic of Lithuania**
- **Both ad-hoc and institutional arbitration recognised by law**

Arbitration Institutions - Lithuania

- **Two principal institutions:**

- The Vilnius Court of Commercial Arbitration; and,
- The Vilnius Court of International and National Commercial Arbitration

Non-Arbitrable disputes – Lithuania

■ Include:

- Disputes arising from constitutional, employment, family or administrative legal relations;
- Disputes related to competition law, patents, trademarks etc;
- Disputes related to bankruptcy
- Disputes arising from consumer contracts.

MEDIATION OVERVIEW

Mediation - Estonia

- Governed by the Conciliation Act 2010
- Per Civil Procedure Code, courts may compel mediation to resolve a dispute
- Either facilitative or evaluative mediation have equal standing in law

Mediation - Latvia

- Until recently no statutory provision for mediation in Latvia
- Court annexed mediation introduced in 2012
- Mediation Associations currently developing standards and protocols

Mediation - Lithuania

- In 2010 Parliament adopted a new law on mediation of civil disputes
- The new law separated mediation from arbitration

PRACTICALITIES - CHALLENGES TO PROCESS

Business Corruption

- **Estonia**
 - Not a problem
- **Latvia**
 - Significant Issues
- **Lithuania**
 - Some problems

CONCLUSIONS

- Common ground between each country's approach to institutionally regulated arbitration
- Ad-hoc arbitration not legally regulated in Estonia and Latvia
- Business corruption in Latvia is an impediment to dispute resolution generally
- Where conciliation is regulated by law there is no distinction between facilitative and evaluative mediation

QUESTIONS