



BRIEF SUMMARY

**LITIGATION AND
DISPUTE RESOLUTION:
ESTONIA**

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Litigation

1) Please describe the structure of your court system (civil courts, courts with joint authority, tier-system and etc);

Estonian court system has been structured as a three-tier system. On the first tier of the court system, there are four county courts, which adjudicate in the civil matters (Harju, Tartu, Pärnu and Viru), with separate courthouses in every county centre. On the second tier of the court system, there are two district courts located in Tartu and Tallinn and the last tier court is Riigikohus located in Tartu, which also acts as the constitutional review court. When the second tier courts act as the court of appeal obliged to hear all the cases, which have been presented to them, then the *Riigikohus* as court of cassation is allowed to select the cases it hears. *Riigikohus* will hear the matter, when the district court has wrongly applied the material law or has substantially breached the procedural norms and such aforementioned circumstances may have caused wrongful decision. *Riigikohus* also hears the matter, when it has principal importance for improving the legal certainty and creating uniform judicial practise or when it is necessary for development of the law.

The number of judges hearing the case varies from tier to tier. Civil cases in the first tier courts are heard by the single judge, however, in the second tier courts the number of judges is three. The number of judges hearing the matter at *Riigikohus* depends on the fact whether the case is heard by civil chamber with three judges, special panel with five judges or Supreme Court en banc with nineteen judges.

2) What is the average length of the civil court proceedings separately for each tier of court and in aggregate from the filing of an action to enforced court decision of last tier court?

According to the official statistics of Ministry of Justice for the year 2009, the average length of the civil proceedings in the first tier courts were 189 days. Although no official statistics exist for second and third tier courts, then according to the in-house statistics of second and third tier courts the average length of proceedings in second tier courts is approximately 200 days and for third tier court approximately 185 days. None of the aforementioned dates, except for the third tier court, include the terms for enforcement. Therefore the actual average overall length of the proceedings from filing an action to enforced decision in the first tier court is 219 days and in second tier courts 230 days. Hence the average length of the civil proceedings from the filing of the action to first tier court to the enforced decision of the third tier court is approximately 634 days.

3) Can foreign legal representatives represent their client in local courts? If yes, under what circumstances?

Foreign legal representatives can represent their client in local courts, however, there are few requirements that must be considered:

- a) the legal representative must be able to represent its client in Estonian language;
- b) the legal representative must have passive and active legal capacity;
- c) when the legal representative represents its employer, the court will assess, whether the legal representative has the sufficient knowledge and experience;
- d) when the legal representative has been registered as associated member of Estonian Bar Association (must be citizen of European Union member state and have the right to work as attorney in any European Union member state) he/she may represent its client in first and second tier court in co-operation with sworn attorney and in the third tier court only together with the sworn attorney,
- e) when the legal representative has not been registered as associated member but he /she may work as attorney in any European Union member state, he / she may represent its client in the court together with the sworn attorney;
- f) when the legal representative has acquired higher education in law, which has been recognized in Estonia, he /she may represent its client in the first and second tier court;
- g) when the legal representative has right to work as the attorney in any other state than European Union member state, he / she may represent the client, after the professional qualification has been recognized by the Estonian Bar Association and after he /she has been registered as sworn attorney in the Estonian Bar Association;
- h) the legal representative may act as a council, who may perform at court together with the party to the proceedings, but cannot make procedural acts or make any requests.

4) Is it possible to request for application of interim measures prior to filing an action? If yes, during what time period must the action be filed?

It is possible to request for the application of interim measures prior to filing an action, however, the court will establish a term upon applying the interim measures by which date the action must be filed. Such term may not be longer than one month. In all the other matters, the usual regulation concerning the application of interim measures will be applied.

- 5) Does the law prescribe an exhaustive list of interim measures or does the court have the authority to decide over the most suitable interim measure on case-by-case bases? Please enlist the most common interim measures applied by the courts.**

The law prescribes a non-exhaustive list of interim measures and court may decide the most suitable interim measure on case-by-case bases. The most common interim measures applied by the courts are:

- a) judicial mortgage over the immovable of the defendant;
- b) arrest on the defendant's bank account;
- c) suspending the compulsory enforcement procedure;
- d) entering notation concerning the prohibition to transfer the immovable to the land register.

- 6) What are the criteria, which court controls prior to satisfying the request for applying the interim measures?**

Court will apply interim measures only, when the refusal to apply the interim measures would complicate or render impossible the performance of the court decision, and only to the extent it is justified by the interests of the claimant.

- 7) Are the person requesting for application of interim measure subjected to any additional payments? If yes, what fees must be incurred (e.g. deposit, state fee, fee of court bailiff)? In addition to minimum and maximum applicable fees, please stipulate fees for securing claims of EUR 100,000, EUR 500,000 and EUR 1,000,000.**

Person requesting for application of interim measures is subjected to state fee and fees of court bailiff. When the claim being secured is monetary claim, the court will require deposit prior to securing an action, and in case non-monetary claim, the court may require deposit. Referred deposit must at least comply with 5% of the value of the claim, but not less than EEK 500 (EUR 32) and not exceeding EEK 500,000 (EUR 31,955). Therefore, when the value of the monetary claim being secured is EUR 100,000 the deposited sum must be at least EUR 5,000 (EEK 78,233), the payable state fee is EUR 29 (EEK 450) and the fee of court bailiff is EUR 278 (EEK 4,350). When the value of the claim being secured is EUR 1,000,000 the deposited sum must be EUR 31,955 (EEK 500,000), the payable state fee is EUR 29 (EEK 450) and the fee of court bailiff is EUR 278 (EEK 4,350). All aforementioned fees must be paid by the party requesting the application of interim measures.

- 8) If any of the sums have been deposited, when and under which circumstances will such sums be released?**

When court has requested the payment of the deposited sums prior to securing an action and relevant sums have been deposited, these sums will be released, when defendant has not filed an action for claiming damages in two months after:

- (a) the enforcement of the court decision, which does not satisfy the action or refuses to hear the matter or when the proceedings have been terminated on any other ground than approving of the compromise;
- (b) it is evident that at the time of securing an action the claim or ground for securing an action was absent;
- (c) the court ruling applying interim measures prior to filing an action has been terminated, when the action was not filed on time.

The deposited sums will also be released after the action filed by the defendant has not been satisfied.

9) Does the applicable law include any regulations allowing decreasing the payable fees or releasing the requesting person fully from an obligation to pay any additional fees, when applying for interim measures?

The law stipulates that when the prerequisites for requesting the deposit have been fulfilled, the court may nevertheless waive partially or fully from demanding the deposit or designate the payment in parts, when the deposit cannot reasonably be requested from the claimant for economic or other reasons and by refusing to secure the action claimant may suffer from harsh circumstances or when the demanding of the deposit from the claimant would be unfair for any other reason.

Party requesting the application of interim measures may also request for the financial assistance from the state, which would release him fully or partially from the obligation to pay state fee or fees of bailiff or requesting party may be allowed to pay the fees in instalments. Financial assistance can only be granted, when the requesting party is not able to incur the procedural costs due to its economic situation or it is only able to pay them partially or in instalments and sufficient ground exists that the planned participation in the proceedings will be successful. Natural persons are allowed to apply for financial assistance only after fulfilment of several additional criteria and legal persons have basically no possibilities to acquire any financial assistance.

10) What are the presumptions for altering or terminating the already applied interim measures?

The already applied interim measures can be altered on the application of either of the party to the proceedings. After receiving the application the court

will submit the application to another party to the proceeding, who may file objections. Court then decides with the court ruling weighting the arguments of p 6, whether to substitute already applied interim measures.

When interim measures have been applied for securing the monetary claim, the court will determine the specific amount of money upon payment of which to the court's bank account or granting a bank guarantee in the same value the court will terminate the interim measure. Court may also terminate the applied interim measure upon the request of the party to the proceedings, when the circumstances have changed compared to the moment of securing the action. The court will terminate the applied interim measures on its own initiative, when the action has not been satisfied or the court has refused to hear the matter or when the proceedings have been terminated or when another court has decided the securing of the action, unless law prescribes otherwise.

11) When filing an action, in what language must the action and annexed documents be?

The court proceedings are being conducted in Estonian language and therefore generally all the documents presented to court must be translated into Estonian. However, documental evidence must not be translated into Estonian, when it is unreasonable considering the extent and the essence of the evidence and the parties to the proceedings do not oppose.

12) What fees are payable upon filing of an action? Please specify the minimum and maximum rates and stipulate fees payable upon filing an action of EUR 100,000 and EUR 1,000,000.

Claimant is obliged to pay state fee upon filing of an action, which is generally based on the value of the claim. The minimum state fee is EUR 64 (EEK 1,000) and maximum state fee EUR 95,867 (EEK 1,500,000). Claimant is obliged to pay state fee of EUR 6,391 (EEK 100,000) upon filing the action in value of EUR 100,000 (EEK 1,564,660) and state fee of EUR 30,000 (EEK 469,400) upon filing the action in value of EUR 1,000,000 (EEK 15,646,600).

13) Is it possible to recover the sums paid upon the filing of an action and the legal costs incurred in relation with the court dispute from the defendant? If yes, to what extent and under what circumstances? Please estimate the approximate extent of legal fees to be incurred in each tier of court (on average).

Court will determine the allocation of the costs between the parties with the relevant court decision based on the principle that the costs will be incurred by the party against whom the court decides. When the claim is fully satisfied, the

defendant will compensate the costs (*with exception to the legal costs*) in full, and when the claim is partially satisfied the costs are compensated in proportion of the claim being satisfied. However, the legal costs incurred in the civil proceedings can only be recovered to certain extent. The extent of the recoverable legal costs has been determined by the regulation of Estonian Government No 137 dated 04 September 2008. For example, the recoverable legal costs on the claim of EUR 100,000 are ca EUR 21,100 (EEK 330,000) and recoverable legal costs on the claim of EUR 1,000,000 are ca EUR 65,030 (EEK 1,017,500).

14) Does the applicable law include any regulations allowing decreasing the payable fees or releasing the requesting person fully from an obligation to pay any additional fees, when filing an action?

Party filing an action with monetary claim to the court, must pay state fee on the value of the claim. Party filing an action may also apply for the financial assistance from the state, which would release him fully or partially from the obligation to pay state fee or requesting party may be allowed to pay the fees in instalments. Financial assistance can only be granted, when the requesting party is not able to incur the procedural costs due to its economic situation or it is able to pay them partially or in instalments and sufficient ground exists that the planned participation in the proceedings will be successful. Natural persons are allowed to apply for financial assistance only after fulfilment of several additional criteria and legal persons have basically no possibilities to acquire any financial assistance.

15) Have there recently been any cases, situations or doubts relating to the partiality of the judges?

During the last six months two judges have been arrested for accepting bribe and both judges have also been punished with real imprisonment. Both of the judges were working at the Viru County Court. Despite these two recent cases of bribe, the court system of Estonia should generally be considered fair and impartial.

16) When rendering the decision, does the court have the competence to order calculation of late payment interest rate until the obligation has been duly performed?

Yes, the court has the competence to order calculation of late payment interest rate until the obligation has been duly paid.

17) What is the term for challenging the rendered court decision? Under which circumstances, if any, can such term be prolonged?

The party to the proceedings is entitled to challenge the court decision of first and second tier court in 30 days from the delivery of the decision, but not later than after expiry of the five month term from the public disclosure of the court decision. The decision of the third tier court will enter into force at the moment of public disclosing.

The term for challenging the decision of the first tier court can be prolonged by the agreement of the parties, which must be presented to second tier court together with the appeal. Such term, however, cannot be prolonged for more than five months from the public disclosure of the decision of the court. The beginning of the term for challenging of the court decision will also be postponed, when the first or second tier court has refused to apply the legal act due to its unconstitutionality, until the Supreme Court constitutional review chamber has rendered decision on constitutionality.

18) Is it possible to enforce a court judgement prior to expiry of the challenging period?

Yes, the court may declare with the court decision on its own initiative or on the request of the party the decision promptly implementable, i.e. prior to expiry of the challenging period. The court will declare the decision promptly implementable on its own initiative, inter alia, in case the action has been accepted by the defendant or the decision has been rendered by default. When the party to the proceedings requests the court to declare the decision promptly implementable, the law requires the court to declare the decision promptly implementable only upon requesting the security from that party.

19) When challenging the rendered court decision, are there any additional payable fees (e.g. state fee)? If yes, please stipulate fees payable upon challenging the court decision in value of EUR 100,000 and EUR 1,000,000.

Party challenging the court decision of the first tier court must pay state fee on the value of the appealed claim. When the court decision has been challenged in the amount of EUR 100,000 and EUR 1,000,000, the applicable rates of state fee have been provided in p 13. Upon filing a cassation to the third tier court, the challenging party must pay security of 1% of the value of the claim of the cassation, but not less than EEK 400 (EUR 26) and not more than EEK 40,000 (EUR 2,556). Hence, the payable security on the cassation of EUR 100,000 is EUR 1,000 (EEK 15,646) and on the cassation of EUR 1,000,000 the payable security is EUR 10,000 (EEK 156,466). When the cassation has been fully or partially satisfied the security will be returned to the claimant.

20) Do the national courts enforce and recognize the court decisions rendered in foreign states? Please describe shortly the procedure. What is the length of and what are the costs related to such procedures?

Yes, national courts enforce and recognize the court decisions rendered in foreign states. The legal acts under which the decisions will be enforced and recognized differ based on the state in which the decision was rendered. Decisions rendered in the member states of European Union will be enforced and recognized under the EC Regulation No 44/2001 dated 22 December 2000 (hereinafter "Regulation"). All other decisions will be enforced and recognized under the Code of Civil Procedure.

The recognition and declaring the decision enforceable have separate legal importance and therefore the procedures of recognition and declaring the decision enforceable have few variations. As a general rule of Regulation all the court decisions rendered in a member state of European Union will be recognized in another member state without any special procedure. The procedure of declaring the decision enforceable has also been designed to be as quick as possible. The court decision rendered in any member state of European Union will be declared enforceable immediately after the court has been submitted a copy of the court decision in a form enabling to verify its authenticity and a standard form annexed to the Regulation. Only subsequently is the obliged party entitled to object the enforcement the court decision. However, such objections may only be based on the grounds included in art 34 and 35 of the Regulation. It is important to emphasise that under no circumstances may the decision be reviewed as to its substance.

The procedures of recognition and declaring the decisions enforceable under Code of Civil Procedure are in the general terms the same as under the Regulation. The court decisions of the foreign states are as a rule recognized without carrying out any special procedure. For declaring the court decision enforceable, requesting party must file the written request together with the annexes in Estonian to the court. When all the following criteria have been fulfilled the court will declare the decision enforceable:

- (a) recognition of the decision would be clearly contrary to the essential principles of Estonian law (public order) and, above all, the fundamental rights and freedoms of persons;
- (b) the defendant or other debtor was unable to reasonably defend the rights thereof and, above all, if the summons or other document initiating the proceeding was not served on time and in the requisite manner, unless such person had a reasonable opportunity to contest the decision and the person failed to do so within the prescribed term;

- (c) the decision is in conflict with an earlier decision made in Estonia in the same matter between the same parties or if an action between the same parties has been filed with an Estonian court;
- (d) the decision is in conflict with a decision of a foreign court in the same matter between the same parties which has been earlier recognised or enforced in Estonia;
- (e) the decision is in conflict with a decision made in a foreign state in the same matter between the same parties which has not been recognised in Estonia, provided that the earlier court decision of the foreign state is subject to recognition or enforcement in Estonia;
- (f) the court which made the decision could not make the decision in compliance with the provisions of Estonian law regulating international jurisdiction.

As under the Regulation, the court may under no circumstances review the matter as to its substance. The person requesting the decision to be recognized or declared enforceable by the court must pay state fee of EUR 64 (EEK 1,000). Due to very little court practise the average time period cannot be specified.

21) What alternative dispute resolution procedures exist in your jurisdiction? Please specify shortly the essence of each procedure.

The main alternative dispute resolution procedures recognized in the Estonian legal system are as follows:

- (a) Arbitration – includes ad hoc and institutional arbitration;
- (b) Conciliation – parties voluntarily conclude an agreement with the assistance of the conciliator and after such agreement has been approved by the court, it becomes enforcement document;
- (c) Expedited procedure in matters of payment order – in case claim of payment of certain sums arisen under private law relationship person is allowed to file an application to court to solve the matter under expedite procedure. The maximum amount, which can be recovered in expedited procedure, is EUR 6,391 (EEK 100,000). The court will review the request in seven (7) days from receiving the application and if it accepts the request, the court will compose a payment proposal to the defendant. Unless the defendant objects the proposal in fifteen (15) days after the delivery, the court will render a court ruling ordering the payment of the sums. Such court ruling can be presented directly to bailiff for enforcement;
- (d) Lease committee – hears all the disputes arising from the residential lease agreements with monetary value not exceeding

- EEK 50,000 (EUR 3'195). Lease committee only hears the matter, when the same matter has not been addressed to the court;
- (e) Labour dispute committee – hears all the private law disputes between the employer and the employee arising from the employment agreement. However, the maximum value of monetary claims has been limited with EUR 9,590 (EEK 150,000).

22) Please describe shortly the substantial changes in the laws regulating litigation, which have been made during the last year. Are you aware of any substantial changes being made during the next six months?

The Conciliation Act entered into force from the 01 of January 2010, which essence has been briefly described in p 21. The purpose of the conciliation is to offer parties the neutral and informal forum with assistance for solving their disputes without any obligation to reach any solution. We are not aware of any substantial changes being made during the next six months.

Arbitration

23) How many arbitration institutions have currently been established in your jurisdiction? Please point out the most authoritative institutions.

As of 05 May 2010 there have been established four arbitration institutions in Estonia. For a long time-period the Arbitration Court of Estonian Chamber of Commerce and Industry held the monopoly in the field of general institutional arbitration (specific Arbitration Court of Tallinn Stock Exchange), however, during the year 2010 two other institutional arbitration courts have been established, namely Estonian Arbitration Court and the Arbitration Court of Chamber of Notaries. As the two latter institutional arbitration courts are very new and have no court practise so far, we can only recommend Arbitration Court of Estonian Chamber of Commerce and Industry as the most authoritative institution.

Contact information:

Arbitration Court of Estonian Chamber of Commerce and Industry
Toom-Kooli 17, Tallinn, 10130,
Phone: 6 040 060
Fax: 6 040 061

24) If possible to determine, what is the approximate yearly number of cases arbitrated in your jurisdiction (e.g. in institutional arbitration)?

According to the oral information provided by the Arbitration Court of Estonian Chamber of Commerce and Industry the average number of 30 cases is being arbitrated every year in the given institution. As no cases have been arbitrated in Estonian Arbitration Court and in the Arbitration Court of Chamber of Notaries, no cases were arbitrated in 2009 in the Arbitration Court of Tallinn Stock Exchange and no statistics is available about the ad hoc arbitration courts, the approximate yearly number of cases arbitrated in our jurisdiction cannot be exactly estimated. Nevertheless, we assume that less than 50 cases are being arbitrated every year, which is insignificant compared to ca 25,000 civil court cases heard each year in regular courts.

25) Are all disputes arbitrable in your jurisdiction? If not, please stipulate the type of disputes not arbitrable under your jurisdiction.

As a general rule, most of the disputes arising from the private law relationships can be subjected to arbitration. Nevertheless, Code of Civil Procedure stipulates few explicit exceptions of the cases, which cannot be arbitrated:

- (a) non-monetary claims, when the parties are not allowed to conclude a compromise over the object of the dispute;
- (b) dispute over the validity and cancelation of the residential lease agreement concerning the residential premises located in Estonia and releasing the residential premises located in Estonia;
- (c) dispute over the termination of the employment agreement.

Monetary claim arising from the public law may be subjected to arbitration only, when the parties can conclude administrative agreement over the object of the dispute.

26) When parties have subjected themselves to arbitration, under what circumstances are they allowed to address the general court in order to dispute the validity of the arbitration clause? What state's law would the general court apply to decide over the matter of validity?

Arbitration agreement is an agreement separate from the agreement it has been included and hence it can be disputed in courts under the same circumstances as the casual agreement. Absence of the legal capacity, breach of the formal requirements, the conclusion of the agreement under fraud, breaching the prohibition arising from the law and etc are all sufficient grounds for disputing the validity of the arbitration clause. However, the validity of the arbitration clause cannot be disputed once the arbitration court has already been established and the arbitration court has not yet denied its competence.

Estonian courts can be addressed, when they have the jurisdiction under the Code of Civil Procedure Act. For example the arbitration agreement can be disputed in Estonian courts, when the defendant is resided/located in Estonia or the arbitration proceedings are deemed to take place in Estonia. Once the Estonian court has established its jurisdiction to hear the matter, it will determine the applicable law.

As a general rule, the court will apply the law, which application has been agreed upon in the arbitration agreement, however, the imperative norms of Estonia will always be applied (e.g. the arbitrable disputes, the good morals and etc). When the law has not been agreed upon the court will apply the substantive law of the state of the arbitration with the due consideration to the imperative norms of Estonia.

27) What are the mandatory requirements for the validity of the arbitration clause?

Mandatory requirements for the validity of the arbitration clause:

- (a) The arbitration agreement has to be concluded in a format, which can be reproduced in writing (in case of consumer the agreement must be signed by the consumer in hand writing or digitally);
- (b) agreement must explicitly stipulate the disputes, which will be subjected to the arbitration; and
- (c) disputes must be arbitrable under Estonian law.

28) Is it possible to request for application of interim measures prior to filing an action to the arbitration court? If yes, during what time period must the action be filed?

Yes, it is possible to request for the application of interim measures prior to filing an action to the arbitration court. In that case the court determines the term during which the action must be filed to the arbitration court. Such term cannot be longer than one month.

29) Are there any types of interim measures, which cannot be applied in the arbitration proceedings?

Interim measures, which restrict the personal freedom of another party, cannot be applied (e.g. prohibition to depart from his /her residence, ordering detention).

30) Is the assistance of the general court required in order to apply interim measures?

Code of Civil Procedure stipulates that the decision of arbitration court applying interim measures will be implemented only under the court ruling of the regular court. However, in practise the decisions of Arbitration Court of Estonian Chamber of Commerce and Industry applying interim measures are usually submitted directly to the bailiff without the intervention of the regular court.

31) What costs are to be incurred, when requesting for the application of interim measures?

As every arbitration institution has its own rules of procedure, they also have their own requirements for applying interim measures. The only requirement stipulated in the law enacts that the party requesting the application of interim measure must pay deposit to the regular court's account, when requesting the application of interim measures in the civil court proceedings. For relevant rates please see p 7.

32) Please enlist the extent of the costs to be incurred, when filing an action to any of the three, if applicable, most authoritative arbitration institutions? Please stipulate fees, when filing an action in value of EUR 100,000 and EUR 1,000,000 and the matter is heard by one arbitrator.

There are currently four institutional arbitration courts operating in Estonia, of which we would point out Arbitration Court of Estonian Chamber of Commerce and Industry as the most authoritative. According to the regulation of the referred arbitration court the party filing an action must pay upon filing an action a registration fee and prior to establishment of the arbitration tribunal, council of the arbitration court will make a proposal to defendant and claimant to also pay an arbitration fee.

The registration fee to be paid upon filing of an action is a fixed sum of EUR 256 (EEK 4,000). The amount of the arbitration fee, however, depends on the value of the action, number of the arbitrators, the complexity of the case and is determined by the council of the arbitration court. However, based on the table of the arbitration fees it could be estimated that the arbitration fee payable on the action in value of EUR 100,000 is approximately EUR 7,475 (EEK 116,950) and on the action in value of EUR 1,000,000 is approximately EUR 19,748 (EEK 309,000).

33) Are parties to the arbitration proceedings free to choose the language of the arbitration proceedings (e.g. requirements of law and three, if applicable, most authoritative arbitration institutions);

The law prescribes that the parties to the arbitration proceedings are free to choose the language of the proceedings. The regulation of Arbitration Court of Estonian Chamber of Commerce and Industry stipulates that parties are free to choose the language of proceedings, and when failing to determine the language the council of the arbitration court will determine the language based on, inter alia, the language of the action.

34) Are parties free to choose the arbitrators under the regulations of three, if applicable, most authoritative arbitration institutions;

Parties are, as a rule, free to choose the arbitrators. However, the regulation of Arbitration Court of Estonian Chamber of Commerce and Industry stipulates that when the arbitration agreement provides one of the parties at the appointment of the arbitrators with the economic or any other benefit, which materially harms the other party, the council of the arbitration court is entitled to refuse from approving the appointed arbitrators. In such case the council makes a proposal to appoint arbitrators using a method stipulated in the regulation and provides a term for appointment. When parties have not appointed the arbitrators by the end of the term, the council of the arbitration court will appoint the arbitrators itself.

35) Have the arbitrators been subjected to any mandatory requirements arising from the law?

Law prescribes that the arbitrator must be natural person with full active legal capacity, impartial, competent and independent.

36) What is the average length of the arbitration proceedings in the three, if applicable, most authoritative arbitration institutions?

According to the regulation of Arbitration Court of Estonian Chamber of Commerce and Industry the dispute must be settled in the shortest time possible, but not exceeding the period of six months from the moment the action has been delivered to the arbitration tribunal. In practise the general term for settling the dispute is 3-4 months from delivering the action to the arbitration tribunal.

37) Is the award of the arbitration court instantly enforceable? Does the challenging of the award suspend the enforcement of the arbitral award?

The award of the institutional arbitration court located in Estonia will enter into force instantly after it has been rendered and may be presented directly to bailiff for enforcement. The awards of the ad hoc arbitration courts will enter into force also from the moment of rendering, however, such award will

become enforceable only after the regular court has recognized the award and declared the award enforceable. When party has challenged the arbitration award in the regular court, the regular court may suspend the enforcement of the arbitration award.

38) To what extent can the costs incurred during the arbitration proceedings be recovered from the losing party?

Regulation of Arbitration Court of Estonian Chamber of Commerce and Industry stipulates that the extent to which the incurred costs will be compensated is determined by the extent the action is satisfied. When the action is satisfied in full the defendant will compensate all the costs incurred by the claimant and when the action is satisfied in part, the costs incurred will be compensated in proportion to the satisfaction of the claim. All the costs incurred must have been reasonable and necessary.

39) Under what circumstances can the award of the arbitration court be challenged? When challenged, what is the attitude of general courts' towards satisfying such claims?

Arbitration award can be appealed to district court under very exceptional cases. Based on the petition of a party, the regular court shall annul the decision of an arbitral tribunal rendered in Estonia if the party proves that:

- (a) the active legal capacity of a person who entered in the arbitration agreement was restricted;
- (b) the arbitration agreement is null and void pursuant to the law of Estonia or another state, based on whose law the parties agreed to evaluate the validity of the arbitral agreement;
- (c) the party was not notified of the appointment of an arbitrator or of the arbitration proceeding in conformity with the requirements, or a party was unable to present or protect the positions thereof due to another reason;
- (d) the award of the arbitral tribunal concerns a dispute which was not set out by the arbitration agreement or which exceeds the limits determined by the arbitration agreement;
- (e) the formation of the arbitral tribunal or the arbitration proceeding did not conform to the provisions of the Code of Civil Procedure or to the permitted agreement of the parties, and such fact can be presumed to have significantly influenced the award of the arbitral tribunal.

In addition to aforementioned, the court shall annul a decision of an arbitral tribunal based on the request of a party or on the court's own initiative if the court establishes that:

- (a) pursuant to Estonian law, the dispute should not have been adjudicated by an arbitral tribunal;
- (b) the decision of the arbitral tribunal is contrary to Estonian public order or good morals.

Finally, the court may annul a decision of an arbitral tribunal based on a petition of a party and refer the matter back to the arbitral tribunal if this is reasonable.

Despite the little practise in the field of challenging the arbitration awards, it can be alleged that the courts are in favour of not satisfying such claims.

40) Do the national courts enforce and recognize the arbitral awards rendered in foreign states? Please describe shortly the procedure. What is the length of and what are the costs related to such procedure?

Yes, the regular courts recognize and declare the foreign arbitration awards enforceable in accordance with the 1958 New York Convention. The procedural aspect of recognition and enforcement of foreign arbitration award has been stipulated in the Code of Civil Procedure. According to the Code of Civil Procedure in order for the award to be recognized and declared enforceable the party must file:

- (a) a relevant application;
- (b) the document evidencing the payment of the state fee;
- (c) the authenticated original award or its relevant certified copy,
- (d) original written agreement under which the parties have subjected themselves to the arbitration or its relevant certified copy;
- (e) the translation of the aforementioned documents to national court.

The court will thereafter decide the matter with the court ruling after controlling the compliance of the award with the conditions set in art 5 of the New York Convention. The party requesting the arbitration award to be recognized and declared enforceable in Estonia must pay state fee of EUR 64 (EEK 1,000). Due to little court practise the length of the average court proceedings of recognizing and declaring the award enforceable cannot be uniformly determined.

41) Have there been any substantial changes in the regulation of arbitration proceedings in the past year? Can any changes be predicted to take place in the next six months?

No substantial changes have taken place in the regulation of the arbitration proceedings in the past year and no changes can be predicted to take place in the next six months.

42) What are the trends regarding the popularity of arbitration proceedings?

Until 01.01.2010 there was only one* institutional arbitration court in Estonia (Arbitration Court of Estonian Chamber of Commerce and Industry), but as of 16 April 2010 two additional institutional arbitration courts have been established Estonian Arbitration Court and the Arbitration Court of Chamber of Notaries. As the new arbitration institutions have considerably lower arbitration fees compared to the Arbitration Court of Estonian Chamber of Commerce and Industry, the number of the arbitration proceedings is expected to grow, however, not remarkably.

* - not considering the Arbitration Court of Tallinn Stock Exchange.