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Georgia

INTERNATIONAL ARBITRATION

Contributing firm

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Georgia.

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GEORGIA

INTERNATIONAL ARBITRATION



1. What legislation applies to arbitration in your country? Are there any mandatory laws?

Georgian legislation is remarkable for its modern and arbitration-friendly approach that makes Georgia an ideal forum and place for arbitration.

The laws that apply to arbitration in Georgia are the following:

- **The Law of Georgia on Arbitration**

On June 19, 2009 the Parliament of Georgia adopted the Law on Arbitration, which entered into force on January 1, 2010. The Law of Georgia on Arbitration was developed on the basis of a Model Law on International Commercial Arbitration 1985 (taking into consideration the amendments made to it in 2006) adopted by the United Nations Commission on International Trade Law (UNCITRAL) (hereinafter referred to as the “**UNCITRAL Model Law**”) and is in full compliance with international standards and best practice. According to its Article 1 (1) “This Law establishes the rules of development of arbitral tribunal, conduct of arbitration proceedings and rendering of arbitration awards in Georgia, as well as recognition and enforcement of arbitration awards rendered outside Georgia.” This Law applies to both domestic and international arbitration proceedings.

The Law of Georgia on Arbitration is based on the principle of party autonomy on the whole. The parties are free to agree on different rules and procedures than those provided in the law. However, the law contains several mandatory provisions as well. For example, Article 37 (2) of this law has made it mandatory that during the decision-making process an arbitrator does not have the right to abstain from voting.

The Law provides for the mandatory enforcement of both Georgian and foreign arbitral awards. Courts of appeal are the competent courts for awards rendered in the territory of Georgia, and the Supreme Court of Georgia for awards rendered outside Georgia (according to Article 44 (1) of this Law).

- **The Civil Procedure Code of Georgia**

The participation of a court in arbitration proceedings and enforcement of an arbitral award is regulated by the Civil Procedure Code of Georgia, Chapter XLIV³ – Chapter XLIV⁵ of Section Seven¹. A court shall intervene in arbitration proceedings only in cases directly provided by the Law of Georgia on Arbitration and according to the procedures provided for in the Civil Procedure Code of Georgia.

- **The New York Convention 1958**

Georgia is also subject to the United Nations Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the New York Convention), which was ratified by the resolution of the Parliament of Georgia of February 3, 1994. This means that arbitral awards rendered in Georgia can be recognized and enforced abroad, as well as arbitral awards rendered outside Georgia can be recognized and enforced in Georgia.

When deciding upon the recognition and enforcement of the foreign arbitral awards, the Supreme Court of Georgia applies the rules of the New York Convention together with the domestic law. Under the New York Convention, foreign arbitration agreements are also subject to enforcement in the territory of Georgia.

- **The Law of Georgia on Private International Law**

In accordance with Article 1 of the Law of Georgia on Private International Law, “This law determines which legal order is applied when there are factual circumstances of a case related to a foreign law, as well as the rules of procedural law that are applied during these proceedings.” When the parties have not determined the applicable substantive law to their arbitration agreement and it is up to a court or an arbitral institution to decide, they might take into consideration the provisions of the above law. Therefore, provisions of this law may also apply to arbitration. However, there is no practice regarding this in Georgia

and the application of the rules of Private International Law in Arbitration is highly controversial.

However, regarding the international arbitral awards, the rules that regulate the recognition and enforcement of foreign court decisions provided for in the Law of Georgia on Private International Law are applied.¹

The Georgian Supreme Court, when dealing with recognition and enforcement issues, tends to apply the Law of Georgia on Private International Law and The Minsk Convention of 1993 (a treaty between the CIS-Countries), application of which is criticized in doctrine.²

¹Tsertsvadze, Giorgi, International Arbitration (Comparative Analysis), Publishing House "Meridiani", Tbilisi 2012, p.701 ² Tsertsvadze, Giorgi, Interpretation and Application of the New York Convention in the Republic of Georgia, Recognition and Enforcement of Foreign Arbitral Awards, George A. Bermann (Editor), Ius Comparatum - Global Studies in Comparative Law, Volume 23, p. 326

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Georgia is a signatory to the New York Convention, which was ratified by a resolution of the Parliament of Georgia of February 3, 1994. There are no reservations to the general obligations of the Convention. It is fully applicable in Georgia, making the New York Convention applicable *erga omnes*.

Georgian courts also enforce arbitral awards made in the territory of states not being members of the New York Convention. Such issues, namely the recognition and enforcement of foreign arbitral awards, are regulated by bilateral agreements between the countries.

For the purposes of the New York Convention, regarding the validity of arbitration agreement, under the Law of Georgia on Arbitration, an arbitration agreement can be considered to be in writing if it is concluded by electronic notification, in particular, pursuant to Article 8 (5) of this Law, "An electronic notification, if the information presented in the notification is accessible for future use, complies with the requirement for an arbitration agreement to be in writing".

3. What other arbitration-related treaties and conventions is your country a party to?

Conventions³

In addition to the New York Convention, Georgia is a party to the following conventions:

- Convention on the Settlement of Investment Disputes between States and Nationals of Other States (The ICSID Convention 1965) (*entered into force for Georgia on September 06, 1992*)
- The Vienna Convention on the Law of Treaties of 23 May 1969 (*entered into force for Georgia on 8 July 1995*)
- The Hague Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents of 5 October 1961 (*entered into force for Georgia on 14 May 2007*)
- The Energy Charter Treaty 1994 (*entered into force for Georgia on April 16, 1998*)

⁴ Information on conventions which Georgia is a party to is available at: <<http://www.supremecourt.ge/aqtebi>>

Bilateral Investment Treaties⁴

Georgia has bilateral agreements on investment promotion and mutual protection enforced with 31 countries, namely: the United States of America, Armenia, Austria, Azerbaijan, Belgium-Luxemburg Economic Union, Bulgaria, China, the Czech Republic, Estonia, Finland, France, Germany, Greece, Iran, Israel, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lithuania, Moldova, the Netherlands, Romania, Spain, Sweden, Switzerland, Turkmenistan, Ukraine, the United Kingdom, and Uzbekistan.

Among them are the following:

- Trade and Investment Framework Agreement (TIFA) with the United States of America (*signed in 2007*).
- In 2012, The United States of America and Georgia established a High-Level Dialogue on Trade and Investment.
- Georgia has shared a Bilateral Investment Treaty (BIT) with the United states of America since 1997.
- Association Agreement (AA), together with a Deep and Comprehensive Free Trade Area (DCFTA) with the European Union (*signed on June 27, 2014*)
- Free trade agreement with the European Free Trade Association (EFTA) countries of Iceland, Liechtenstein, Norway, and Switzerland (*signed in 2016*)
- Free trade agreement with China (*entered into force in January 2018*)
- Free trade agreement with Hong Kong (*signed in 2018, which is awaiting its ratification by*

Parliament)

- The “Agreement between Japan and Georgia for the Liberalisation, Promotion and Protection of Investment” (Japan-Georgia Investment Agreement) (*signed on 29 January, 2021*)

³ Information on Georgia’s international investment agreements are available at:

<<https://investmentpolicy.unctad.org/international-investment-agreements/countries/77/georgia>>

⁴ Information on Georgia’s international investment agreements are available at:

<<https://investmentpolicy.unctad.org/international-investment-agreements/countries/77/georgia>>

<<https://www.privacyshield.gov/article?id=Georgia-Bilateral-Investment-and-Taxation-Treaties>>

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The law governing international arbitration in Georgia is the Law of Georgia on Arbitration which is based on the UNCITRAL Model Law (as amended in 2006). While deriving from the UNCITRAL Model Law, in the Law of Georgia on Arbitration, there are some provisions that are different from those of the UNCITRAL Model Law. Some of the differences will be discussed below:

- The scope defined by the Law of Georgia differs from the wording proposed by the UNCITRAL Model Law. In particular, according to the UNCITRAL Model Law, its scope extends to “commercial” arbitrations. Despite the fact that the adoption of the Georgian Law itself, as well as subsequent amendments to the Law in 2015, served to develop “commercial” arbitration in the country, the term “commercial” is not even mentioned by the Georgian legislature.⁵ However, in practice, the scope of the Law extends to arbitration proceedings for commercial disputes as well.
- The UNCITRAL Model Law entails, *inter alia*, *ad hoc* The Law of Georgia on Arbitration does not mention *ad hoc* arbitration as such. The status of *ad hoc* arbitration or the name itself is not directly mentioned, nor defined. However, the Law of Georgia on Arbitration recognizes and regulates *ad hoc* arbitration. The Law was amended on March 18, 2015, and according to the current wording, the parties were given the opportunity for *ad hoc* arbitration as well.

- The Law of Georgia on Arbitration, in contrast to the UNCITRAL Model Law, sets a specific time limit for a party when making an allegation of exceeding the scope of authority by the arbitral tribunal.⁶ According to Article 16 (3) of the Law, “An allegation of exceeding the scope of authority by the arbitral tribunal must be made by a party *within seven days* after such circumstances become known to the party”. The UNCITRAL Model Law only declares the following: “A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised *as soon as* the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.”
- The UNCITRAL Model Law acknowledges the recognition and enforcement of two types of provisional measures: Interim Measures and Preliminary Orders (See Chapter IV A of the UNCITRAL Model Law). In contrast to the UNCITRAL Model Law, the Law of Georgia on Arbitration only acknowledges interim measures as means of provisional measures and ensures its recognition and enforcement (See Article 17-23 of the Law of Georgia on Arbitration). Preliminary Orders are not considered by the Georgian Law.

⁵ *Titberidze, Giorgi*, The Law of Georgia on Arbitration, Commentary, Second Edition, Tbilisi 2020, p. 23 ⁶ *Ibid.*, p. 104

5. Are there any impending plans to reform the arbitration laws in your country?

After adopting the Law of Georgia on Arbitration in 2009, several amendments were made to it over the years. The most significant changes were made in 2015, which is why mostly it is referred to as the Reform. There were made some interesting changes in 2017-2018 as well. Below will be discussed all the important changes that were made to the Law of Georgia on Arbitration together with the impending plans of amendments to the Law.

- In 2014, the Ministry of Justice of Georgia initiated draft amendments to the Law of Georgia on Arbitration (as of 2009 edition), with the main purpose of making arbitration financially more appealing, legally more certain and overall, closer to international best practice.⁷ The amendments significantly decreased fees for recognition and enforcement of awards and fixed flaws that existed in the 2009 edition of the Law.⁸

- The Law of Georgia on Arbitration adopted in 2009 is based on the UNCITRAL Model Law. Prior to March 2015, the Georgian Law did not recognize the possibility of creating *ad hoc* arbitration even on the basis of the expression of the will of the parties and courts also did not recognize *ad hoc* arbitration clauses. However, according to the current version of the wording, the parties were given the opportunity for *ad hoc*. Although the Law was amended on 18 March 2015 and the explanatory note to the amendments stated that parties should also have the right to apply to *ad hoc* arbitration (in addition to an institutional arbitration), the direct reference to *ad hoc* arbitration was not made in the Law.⁹ As a result of the amendment, the provision (namely Article 2(2) of the Law) was modified as follows: “The parties may agree on the rules of arbitration proceedings. In this case an arbitration agreement between the parties includes the rules of arbitration proceedings to which the parties refer in the arbitration agreement. Also, an agreement between the parties on a specific arbitral institution includes an agreement on the rules of that arbitration institution”.
- At the initiative of the Georgian Association of Arbitrators, relevant proposals have been submitted to the Parliament of Georgia to determine the status of *ad hoc* arbitration and bring other issues in line with international practice and legislation.¹⁰
- In accordance with the amendments to the Law of Georgia on Arbitration, made on March 18, 2015, the involvement of the City (District) Court in arbitration activities was reduced and, consequently, the jurisdiction of the Courts of Appeal was increased.¹¹ Before these changes the dispute over the jurisdiction of arbitration was discussed by a court of first instance. According to the new amendments, this function was transferred to the courts of appeal.
- From July 1, 2017, in accordance with the amendment to the Law of December 21, 2016, a person may not be appointed as an arbitrator when he/she is a state employee, a state political official, a political official or a public servant.
- According to the amendments made to Article 1 (2) of the Law of Georgia on Arbitration by the Parliament of Georgia on May 24, 2018, an arbitral tribunal is entitled to consider a dispute related to a public and private cooperation agreement under the Law of

Georgia on Public and Private Cooperation. According to the mentioned Law, such disputes concern infrastructural disputes arising from concession and non-concession public and private cooperation, based on transparency and foresight. However, such disputes were not excluded from the jurisdiction of the courts, meaning these amendments only expanded the arbitral jurisdiction and such disputes may be settled by arbitration in the presence of an arbitration agreement between the parties.¹²

- Following the adoption of the Law on Arbitration, the Parliament of Georgia amended the Labour Code, and interested persons were given the opportunity to apply to arbitration to resolve both individual or collective labour disputes in the presence of an arbitration agreement.

⁷ Legal and Practical Aspects of Arbitration in Georgia, The Study, February 2018, Caucasus Research Resource Center Georgia, p. 5 ⁸ *Ibid.* ⁹ According to the Explanatory Note, as a result of amending this Article, “the parties will have an opportunity to address an arbitral tribunal (*ad hoc*) established for the purposes of resolution of a specific dispute, as provided under the UNCITRAL Model Law.” ¹⁰ *Titberidze, Giorgi*, The Law of Georgia on Arbitration, Commentary, Second Edition, Tbilisi 2020, p. 4 ¹¹ *Ibid.*, p. 41 ¹² *Ibid.*

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

There are three leading arbitral institutions in Georgia:

1. **Georgian International Arbitration Centre (GIAC)**¹³

Georgian International Arbitration Centre (hereinafter referred to as GIAC) is the first non-profit arbitral institution created in Georgia. It was established as a non-commercial non-profit legal entity. While being the first Georgian international arbitral institution, GIAC is considered to be the most efficient dispute resolution institution in the entire Caucasus – Black Sea – Caspian Region. GIAC Secretariat as well as GIAC Arbitration Council is well-organised with group of highly experienced arbitration lawyers and practitioners.

GIAC was founded in December 2013 by Georgian Chamber of Commerce and Industry – the organization who supports and advocates the interests of business

entities in Georgia. Although, GIAC is structurally independent from its founder – Georgian Chamber of Commerce and Industry and is a completely independent and neutral arbitral institution in all its activities.

GIAC's main function is to administer commercial arbitration disputes and GIAC Arbitration may take place in any country, in any language and with any independent and impartial arbitrators of any nationality.

GIAC actively cooperates with other international arbitral institutions and internationally recognized arbitration practitioners.

GIAC Arbitration Rules are drafted with the active involvement of recognized international arbitration practitioners. Their rules are mostly designed for international disputes but are well suited for domestic arbitration as well. The GIAC Rules encompass recent developments and well-trying provisions creating a modern set of rules and reflecting the needs of the parties.

The GIAC Arbitration Rules were last amended on 10 March 2017. There are no amendments being considered in the near future.

2. **EBA MAC in collaboration with Tbilisi Arbitration Institute**¹⁴

In May 2018, the “EBA Mediation and Arbitration Center” (hereinafter referred to as EBA MAC) was established at the initiative of European Business Association (EBA) Georgia and Tbilisi Arbitration Institute. The main purpose was to create a center in compliance with European standards and quality.

The EBA MAC provides a unique opportunity to use alternative dispute resolution techniques separately, or as a combination. The service can be tailored individually to each customer which ensures an effective, efficient and profitable solution to dispute resolution.

The aim of the EBA MAC is to significantly contribute to the effectiveness of the Georgian Justice and Court system, by establishing a more business-oriented processes and procedures.

The EBA Mediation and Arbitration Center Arbitration Rules were last amended on 26 November 2019. There are no amendments being considered in the near future.

As for Tbilisi Arbitration Institute itself, it is one of the oldest Georgian arbitrations, which was established in 2009 in parallel with the implementation of a major arbitration reform. Considering its ethical commitment

and rendered awards that always share the best international practice, Tbilisi Arbitration Institute is acknowledged as one of the leadings in Georgia. Tbilisi Arbitration Institute ensures to constantly develop its service and, by adhering to its ethics and principles, offers customers high quality services. Its services include: Mediation, Arbitration, Med-Arb, Negotiations.

Tbilisi Arbitration Institute has considered over 3 000 cases.

The Tbilisi Arbitration Institute Arbitration Rules were last amended on 01 July 2016. There are no amendments being considered in the near future.

3. **DRC - Dispute Resolution Center**¹⁵

Dispute Resolution Center (hereinafter referred to as DRC) was established in 2008 and is a center of alternate means of resolution of disputes. DRC offers two mechanisms for resolutions of disputes: the arbitration and the mediation.

DRC takes pride in managing to develop the center distinguished by its

- independence;
- qualification;
- high standards of services.

The DRC Rules went into force on 01 June 2016. Since then, no amendments were made and none are being considered in the near future.

¹³ Official website: <<https://giac.ge/>> ¹⁴Official websites: EBA MAC: <<https://eba-mac.com/>> Tbilisi Arbitration Institute: <<https://www.taiarbitration.com/>>

¹⁵ Official website: <<http://drc-arbitration.ge/>>

7. **Is there a specialist arbitration court in your country?**

There is no specialist arbitration court in Georgia.

However, the 11/08/2020 Resolution of the High Council of Justice of Georgia on the definition of narrow specialization of judges in the Chambers of Civil, Administrative and Criminal Cases of the Tbilisi Court of Appeal¹⁶ defines the authority of judges to consider arbitration cases.

In particular, according to Article 1 (a.d) of the Resolution, “Taking into account the special intensity of proceedings in the Chambers of Civil, Administrative and Criminal Cases of the Tbilisi Court of Appeal, the categories of cases to be considered collegially and the

number of judges, as well as pursuant to Article 23 (2¹) and Article 49 (1.c) of the Law of Georgia on General Courts, a narrow specialisation of judges shall be conducted at the Chamber of Civil Cases in accordance with the following categories of civil cases: Arbitration cases, including application for provisional measures before filing the claim/ motion on arbitration case”.

Therefore, in the Tbilisi Court of Appeal, there are specialized judges who consider arbitration cases.

The 11/08/2020 Resolution defines the narrow specialization of only judges of the Tbilisi Court of Appeal.

¹⁶The 11/08/2020 Resolution is available at: <http://hcoj.gov.ge/Uploads/2021/4/10.pdf>

8. What are the validity requirements for an arbitration agreement under the laws of your country?

An arbitration agreement is considered to be valid if it meets the requirements (namely, requirement of form) prescribed in the Law. In accordance with Article 8 of the Law of Georgian on Arbitration:

1. An arbitration agreement is an agreement in which the parties agree to submit to arbitration all, or certain, disputes that have arisen or which may arise between them based on various contractual or legal relations.
2. An arbitration agreement may be made in the form of an arbitration clause in a contract or in the form of a separate agreement.
3. An arbitration agreement must be made in writing.
4. An arbitration agreement is considered to be in writing if its content is recorded in any way, regardless of the standards of making the arbitration agreement or the contract.
5. An electronic notification, if the information presented in the notification is accessible for future use, complies with the requirement for an arbitration agreement to be in writing.
6. An arbitration agreement is deemed to be in writing if it is made with an exchange of statements of a claim and statements of a defence, in which the existence of an agreement is alleged by one party and not denied by the other.
7. The reference in a contract to any document, containing an arbitration clause, is an arbitration agreement in writing, provided

that the reference makes that clause a part of the contract.

8. If one of the parties to a contract or arbitration agreement is a natural person or an administrative body, the arbitration agreement must be made in writing in the form of a document signed by both parties. Paragraphs 4 and 6 of this article do not apply to such agreements.

The consideration of the form was and still is of fundamental importance due to the special legal consequences that arises from the arbitration agreement, meaning that the denial by a party of the right to apply to a court in favour of arbitration must be recorded in an appropriate form.¹⁷

An arbitration agreement is a private law agreement. It is a transaction in writing provided for in the Civil Code of Georgia. Therefore, in terms of substance, arbitration agreement shall meet the requirements of the Civil Code of Georgia on transaction.¹⁸

Under the Law, the essential terms of an arbitration agreement (*essentialia negotii*) include only the following:¹⁹

1. a) the agreement of the parties to submit the dispute to arbitration for consideration;
2. b) a defined legal relationship which is to be considered by the arbitral tribunal.

¹⁷Tsertsvadze, Giorgi, Prerequisites of International Arbitration Process (Comparative Analysis), 2008, p.138

¹⁸See e.g. The Supreme Court of Georgia, Case No 56-148-140-2017, January 18, 2018 ¹⁹ Group of Authors, Sophio Tkemaladze (Scientific Editor), Arbitration Guide for the First Instance Courts, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2017), p. 34

9. Are arbitration clauses considered separable from the main contract?

Separability of the arbitration clause is recognized by the legal system of Georgia. This principle is incorporated in the Law of Georgia on Arbitration. According to Article 16 (1) of this Law, “...an arbitration clause that is a part of a contract shall be treated as an independent agreement that is unrelated to other terms of the contract. Annulment of the contract does not result in the invalidity of the arbitration clause.”

10. Do the courts of your country apply a validation principle under which an

arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

A validation principle as such has not been recognized nor applied by Georgian courts. Georgian courts respect any explicit (or even implicit) choice of law by the parties with reference to their arbitration agreement. However, there are some recommendations stated in literature, some scholarly opinions and guides based on international standards and experience regarding the case when no such choice has been made.

According to the Arbitration Guide for the First Instance Courts, when deciding upon the validity of the arbitration agreement, the courts shall consider the following:²⁰

1) The law of the place of arbitration (or the place of rendering arbitral award);

This is the most common approach. The parties' choice of the place of arbitration is considered to be an implicit agreement of the parties to apply the law of the place of arbitration to the arbitration agreement (*lex arbitri*). Georgian legislation stipulates that during the process of the recognition-enforcement of arbitral awards, the validity/invalidity of the arbitration agreement shall be regulated by the law determined by the parties in the arbitration agreement, and if they haven't determined it, then the law of the place of rendering arbitral award (or the place of arbitration) shall apply. Regarding the arbitral awards rendered in the territory of Georgia, the law explicitly states that the Georgian law is applied when determining the validity/invalidity of the arbitration clause. If the award is rendered in Georgia, then the legislation of Georgia shall apply to the arbitration agreement, which is the basis of this award. In the case of ongoing arbitrations in a foreign country, the law of the country where the arbitration will take place (and, consequently, an arbitral award will be rendered) shall apply when deciding upon the validity of the arbitration clauses.

2) The law applicable to the principal contract;

Nowadays, the prevailing view is that the determination of the law applicable to the principle contract does not necessarily imply that the parties have made the same choice as to the law applicable to the arbitration agreement. Such view is based on the principle of separability of the arbitration agreement according to which the principal contract and the arbitration agreement are two separate agreements.

3) National legislation (in certain cases).

The parties may indirectly indicate the applicable law at the stage of the court hearing. For example, if a party indicates the invalidity of an arbitration agreement under Georgian law, while the opposing party does not indicate to apply another law and instead discusses the validity of the arbitration agreement also under Georgian law, the court may apply Georgian law to determine the validity of the arbitration agreement. However, this approach is used only in extreme cases, when it is clear that both parties want the issue to be considered under chosen (in this case Georgian) law.

²⁰ Group of Authors, Sophie Tkemaladze (Scientific Editor), Arbitration Guide for the First Instance Courts, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2017), pp. 14-19

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

A validation principle as such has not been recognized nor applied by Georgian courts. Georgian courts respect any explicit (or even implicit) choice of law by the parties with reference to their arbitration agreement. However, there are some recommendations stated in literature, some scholarly opinions and guides based on international standards and experience regarding the case when no such choice has been made.

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of ongoing arbitrations in a foreign country, the law of the country where the arbitration will take place (and, consequently, an arbitral award will be rendered) shall apply when deciding upon the validity of the arbitration clauses.

2) The law applicable to the principal contract;

Nowadays, the prevailing view is that the determination of the law applicable to the principle contract does not necessarily imply that the parties have made the same choice as to the law applicable to the arbitration agreement. Such view is based on the principle of separability of the arbitration agreement according to which the principal contract and the arbitration agreement are two separate agreements.

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²¹ Group of Authors, Sophie Tkemaladze (Scientific Editor), Arbitration Guide for the First Instance Courts, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2017), pp. 14-19

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Third parties or non-signatories can be bound by an arbitration agreement only under specific circumstances, such as based on a contractual agreement (e.g. a third party who is the beneficiary of a contract, etc.) or by way of legal succession or inheritance or assignment (e.g. assignment of a claim, assumption of a debt or transfer of a contract containing an arbitration clause, etc.).

Georgian law does not specifically define the participation of a third party as a party to the arbitration proceedings. Article 4 of the Law of Georgia on Arbitration stipulates only the delegation of the right of decision making to a third party. The possibility of the extension of the binding arbitration agreements on third parties or non-signatories may not be excluded.²²

Case Law in this regard is very scarce. However, there is one interesting court ruling: The Tbilisi Court of Appeals considered the complaint of "Kh. K.". The plaintiff's request was to annul the arbitral award rendered by one of the arbitral institution. The complaint became pending with a court in accordance with the procedures prescribed under the Civil Procedure Code of Georgia by which the court laid the groundwork for disseminating the legal consequences of the arbitration agreement to third parties. The disputed arbitral award directly concerned the rights and obligations of the author of the complaint, therefore he/she was considered to be the authorized person to file a complaint. In particular, the attorney of "A. Ch." confirmed at the trial that the area registered as a property of "Kh. K." and the area that was declared as the property of "A. Ch." by the award of the arbitral institution were the same area. The Chamber further clarifies that when considering this complaint, the Chamber is not considering the legality of the registration of "Kh. K."s property. It is clear from the facts that "Kh. K." was neither a party to the arbitration agreement nor participated in the arbitration proceedings, though, the legal consequence of the arbitration agreement was applied to him/her.²³

²² *Tsertsvadze, Giorgi*, Brief Commentary to The Georgian Arbitration Law 2009, Publishing House "UNIVERSAL", Tbilisi 2011, p. 66

²³ *Kazhashvili, Guliko*, Extension of the Legal Consequence of the Arbitration Agreement to the Third Parties, Georgian Commercial Law Review, II Issue, Tbilisi 2013, p.93

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

These are some types of dispute that cannot be subjected to arbitration i.e. considered non-arbitrable.

Matters of family law (e.g. child custody, divorce, inheritance, etc.), criminal law, public policy, tax law, insolvency law, as well as disputes concerning minors, status and capacity of individuals are all considered non-arbitrable.

Non-arbitrable issues are sometimes explicitly stated in laws and in some cases, the restriction of arbitration arises from the provisions provided in the law implicitly.

The Law of Georgia on Arbitration and the Code of Civil Procedure do not list what disputes cannot be dealt with by arbitration. However, such prohibitions may be enshrined in other laws.²⁴

For example: According to Article 296 (1) of the Tax Code of Georgia, "A tax dispute may be resolved within the system of the Ministry of Finance of Georgia and in court". This provision explicitly excludes the jurisdiction of arbitration over tax disputes, as it establishes other competent dispute resolution authorities, thus excludes the possibility of reviewing this dispute by arbitration.²⁵

Similarly, different laws enshrine the norms concerning both the exclusive jurisdiction of the court and the right to apply to the court (including the right to apply to arbitration). However, this does not mean that all other disputes that are not directly prohibited are considered arbitrable.²⁶ The starting point for determining the scope of arbitration is the Law of Georgia on Arbitration itself.

The Law of Georgia on Arbitration (Article 1(2.a)) defines the scope of cases to be considered by the arbitral tribunal, according to which:

"An arbitral tribunal is entitled to consider:

- a. a property dispute of a private nature based on the equality of the parties, which can be resolved by the parties between themselves;"

Therefore, the main aspects to consider are the following:²⁷

1. A relationship based on the equality of the persons;
2. A property dispute;

The Law of Georgia on Arbitration stipulates that only a property dispute can be arbitrable i.e. a dispute that does not concern a personal right.

3. Can be resolved by the parties between themselves.

In general, due to the specificity of the arbitration, the parties may not agree to subject the dispute to the arbitral tribunal if it gives rise to obligations to third parties (i.e. to parties not bound by the arbitration agreement).

There has been evolution in this regard in recent years. Namely, after the amendments made to the Labour Code of Georgia, the parties have the right to refer both individual and collective disputes to arbitration.

²⁴Group of Authors, Sophie Tkemaladze (Scientific Editor), Arbitration Guide for the First Instance Courts, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2017), pp. 22-23 ²⁵ *Ibid.* ²⁶ *Ibid.* ²⁷ *Ibid.*, p. 24-27

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

There are no recent court decisions, however, there are some recommendations given in different literature or guides on how the court should act at this time. In particular, in order to determine the law applicable to the arbitration agreement, the court shall pay attention to the following circumstances:²⁸

1. Where the arbitral award will be rendered i.e. where the arbitration will take place;
2. Whether the parties agreed on the law applicable to the principal contract;
3. Whether the action of the parties indicate/imply the application of any law.

²⁸ Group of Authors, Sophie Tkemaladze (Scientific Editor), Arbitration Guide for the First Instance Courts, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2017), p. 14

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

Primarily, the law applicable to the substance of a dispute is determined by the agreement of the parties. This includes not only rules provided for in various national legal systems, but includes also other sources of law, such as general principles of commercial law, *lex mercatoria*, etc.

According to Article 36 (1) of the Law of Georgia on Arbitration, "The arbitral tribunal shall resolve a dispute in accordance with the rules of law that are chosen by the parties".

This issue is highly relevant in the case of contracts in which one of the parties is a natural or legal person of a foreign country. If the participants in the arbitration process are residents of Georgia, the applicable law will be Georgian law. The parties to the international arbitration proceedings may agree on the rules of law applicable to both the main contract and the arbitration agreement. Such an agreement shall be enclosed in the main contract of the parties. In the absence of such reference to the law applicable to the arbitration agreement in the main contract, the law chosen by the parties applies only to the main contract, hence the principle of the separability of the arbitration agreement from the main contract.²⁹

The Georgian legislature has not provided tribunal's right to rule *ex aequo et bono* or *amiable compositeur*.³⁰ In the absence of an agreement of the parties, the arbitral tribunal is entitled to determine and apply the law it considers appropriate in the circumstances. According to Article 36 (2) of the Law of Georgia on Arbitration, "In the absence of the agreement of the parties, the rules of law that are determined by the arbitral tribunal shall be used during the arbitration proceeding".

Set of choice of law rules do exist in Georgia, namely the Law of Georgia on Private International Law. Despite its exclusive applicability to courts' conduct, it may nevertheless be relevant when deciding upon the applicable substantive law to the arbitration agreement. However, in accordance with the aforementioned passage, this is quite a controversial issue.

Even under the terms of the agreement between the parties, the arbitral tribunal shall take into account the commercial customs and traditions applicable to such an agreement when making its decision.³¹ This is in compliance with the provision of Article 339 of the Civil Code of Georgia, as well as Article 28 (4) of the UNCITRAL Model Law, according to which "In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction".

²⁹ *Titberidze, Giorgi*, The Law of Georgia on Arbitration, Commentary, Second Edition, Tbilisi 2020, pp. 167-169 ³⁰ *Tsertsvadze, Giorgi*, Brief Commentary to The Georgian Arbitration Law 2009, Publishing House "UNIVERSAL", Tbilisi 2011, p. 145 ³¹ *Titberidze, Giorgi*, The Law of Georgia on Arbitration, Commentary, Second Edition, Tbilisi 2020, p. 172

16. Have the courts in your country applied the UNIDROIT or any other transnational principles as the substantive law? If so, in what circumstances have such principles been applied?

In some cases of civil law, Georgian courts have referenced the UNIDROIT principles as Soft Law. The UNIDROIT or any other transnational principles have been considered by Georgian courts as analytical aides or comparative sources when interpreting contractual terms and clauses. But the courts in Georgia have never applied them as the substantive law.³²

Georgia has not yet ratified the UNIDROIT. Nevertheless, according to the provisions of this document, in any kind of civil proceedings, in Georgia it is possible to consider its principles as a universal, unified document.³³

³² See e.g. The Supreme Court of Georgia, Case No 16-467-2020 June 25, 2021 ³³ *Matiashvili, Zviad*, UNIDROIT – Principles of International Commercial Agreements, International Law (III), December 2000, Almanac Publishing House, Georgian Young Lawyers Association, p. 6

17. In your country, are there any restrictions in the appointment of arbitrators?

The legislation in Georgia does not impose any restriction in the appointment of arbitrators nor qualification requirements on arbitrators. It is a matter of the parties' choice. The arbitrator can be any person that has legal capacity. Accordingly, the arbitrator can be a citizen of Georgia or a foreigner, as a lawyer or a representative of another profession. The main thing is for the parties to consider him as a suitable candidate to consider their dispute. It is permissible for the parties to establish specific requirements in the arbitration agreement.³⁴

The Law does not prescribe any specific requirements or rules of procedure as to how the parties or a court should appoint arbitrators. However, it does specify the cases in which the candidacy of an arbitrator may not be considered. According to the Article 11 (7) of the Law of Georgia on Arbitration:

A person may not be denied appointment as an arbitrator, except for the case when he/she:

1. is a person with limited legal capacity or a beneficiary of support, unless otherwise defined by the court judgement;
2. is a state employee, a state political official, a political official or a public servant;
3. has been convicted of committing a crime and his/her conviction has not been vacated or expunged;
4. was either a mediator in the same case or another case substantively related to that case.

In addition, according to Article 14⁹ (2) of the Law on Enforcement Proceedings, "A private bailiff cannot be a member of arbitration."

When appointing an arbitrator by a court or other institution, the law requires that the qualification requirements agreed upon by the parties be taken into account. The steps taken by them must be in line with the purpose set. As a rule, the parties may have specific requirements for arbitrators, therefore they should have

criteria in which cases this or that arbitrator is preferred. The parties may also nominate arbitrators by sending a list of arbitrators to the relevant institution, or the institution itself may provide for the nomination of arbitrators. The institution may also apply to the Georgian Association of Arbitrators, which may be a good source to obtain an initial list of arbitrators.³⁵

Proper competence, neutrality, independence and impartiality – these are considered the most important requirements that an arbitrator participating in the arbitration process shall have.

Under the Law of Georgia on Arbitration, it is inadmissible to appoint a person as an arbitrator without his consent. A written consent of the arbitrator to participate as an arbitrator in the case is a mandatory requirement. This rule applies even when the candidates for arbitration are selected from the list of any arbitral institution. Being on the arbitrator's list itself does not mean her/his consent to take part in the arbitration proceeding in resolving any dispute.³⁶ In addition to the above, the arbitrator himself/herself shall provide the institution/court with a declaration relating to its good faith, impartiality, independence and neutrality. Also, one shall state whether there are any factors prescribed in the law that preclude the possibility of appointing a person as an arbitrator.³⁷

³⁴ Group of Authors, Sophie Tkemaladze (Scientific Editor), Arbitration Guide for the First Instance Courts, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2017), p.76 ³⁵*Ibid.*, pp.76-81 ³⁶*Ibid.* ³⁷*Ibid.*

18. Are there any default requirements as to the selection of a tribunal?

The parties are free to agree on a procedure for selecting the members of the tribunal. If the parties do not provide for the procedure in their agreement or their chosen method for selecting arbitrators fails, then there is a default procedure prescribed in the law.

According to Article 11 (3) of the Law of Georgia on Arbitration, "In the case of absence of an agreement between the parties for appointing an arbitrator (arbitrators) and presiding arbitrator, or in the case when the agreed procedure is impossible to perform:

- a. When the arbitral tribunal consists of three arbitrators, each party shall appoint one arbitrator, and the two arbitrators appointed in accordance with this rule, shall appoint the presiding arbitrator; if a party does not appoint an arbitrator within thirty days after receipt of a request to do so from the other

party, or if the two arbitrators within thirty days after their appointment, cannot agree on the appointment of the third arbitrator, based on the request of a party, within thirty days after submitting an application, an arbitrator shall be appointed by a court.

- b. In an arbitration that is to be conducted by a sole arbitrator, if the parties cannot agree on the appointment of the arbitrator, based on the request of a party, within thirty days after submitting an application, the arbitrator shall be appointed by a court."

The court judgement on the appointment of arbitrators shall be final and without appeal.

19. Can the local courts intervene in the selection of arbitrators? If so, how?

The parties have the right to determine the identity or number of arbitrators and the rules for appointing them. However, there may be a case where they didn't or couldn't agree on the procedure for appointing arbitrators, or the procedure for appointing arbitrators provided by them failed to carry out. In such cases, the law provides that one of the parties is entitled to apply to the court and request the appointment of arbitrator(s). Thus, the court intervenes in the selection of arbitrators when the applicable procedural law directly requires it.

In the case of institutional arbitration, the parties have the right to apply to the court if they have a written agreement that they do not recognize the arbitration rules of the arbitral institution in the appointment of the arbitrator(s) and that they will apply to the court in case of disagreement.³⁸ In the case of institutional arbitration, it is also possible for the parties to apply to the court, when for one reason or another the arbitral institution fails to appoint an arbitrator.³⁹

The court judgment on the appointment of arbitrator(s) shall be final and without appeal. Therefore, it is important that the parties themselves are involved in the process of appointing arbitrators. This will give the parties the opportunity to express their views on the candidates for arbitration in advance, which will ensure, as far as possible, that the selected candidate is impartial and independent and suitable for the case.⁴⁰ It is essential that the court, when considering the appointment of an arbitrator, pay attention to whether the parties have agreed on any requirements for the appointment of arbitrators. The court shall assess the merits of the parties' positions and then make a decision on the appointment of a specific arbitrator.⁴¹

When selecting a candidate for the appointment of an arbitrator, the court shall take into account the following:⁴²

1. Criteria to be met by the arbitrator;
2. Whether the person is prohibited to be an arbitrator by law;
3. What may be the source of selection of arbitrator candidates;
4. Whether the candidate agrees to be an arbitrator;
5. The importance of the involvement of the parties in the process of appointing an arbitrator.

³⁸ *Titberidze, Giorgi*, The Law of Georgia on Arbitration, Commentary, Second Edition, Tbilisi 2020, p. 73 ³⁹ *Ibid.* ⁴⁰ Group of Authors, Sophie Tkemaladze (Scientific Editor), Arbitration Guide for the First Instance Courts, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2017), p.80 ⁴¹ *Ibid.*, p.81 ⁴² *Ibid.*, pp. 75-76

20. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

The Law of Georgia on Arbitration provides for the right of a party to challenge an arbitrator. This Law sets out the grounds for challenging an arbitrator (Article 12), as well as the procedure for challenging an arbitrator (Article 13). Here are excerpts from the relevant articles of the Law:

Article 12 - Grounds for challenging an arbitrator

1. If an arbitrator does not qualify under the qualifications agreed to by the parties, or/and if there are circumstances that may cause reasonable doubt about his/her impartiality or independence, a party to the arbitration has the right to challenge the arbitrator.
2. A party may challenge an arbitrator appointed by him/her only for reasons that become known for him/her after the appointment of the arbitrator.
3. A person to be appointed as an arbitrator, or an appointed arbitrator, from the time of his/her appointment throughout the arbitration proceedings, is obliged to immediately notify the parties and the arbitral tribunal, about any circumstances that make his/her impartiality and independence doubtful.

Article 13 - Procedure for challenging an arbitrator

1. In accordance with the requirements of this article, the parties may agree on a procedure for challenging an arbitrator.
2. In the case of absence of an agreement between the parties, within fifteen days after the day that the appointment of the arbitrator or one of the grounds for challenge provided for by this law became known to him/her, a party who intends to challenge an arbitrator is obliged to submit a written statement of challenge of the arbitrator to the arbitral tribunal. A written statement of challenge of an arbitrator must indicate the grounds and motives for challenging the arbitrator. If the challenged arbitrator, whose challenge is pending, within thirty days after submission of a written statement of challenge, does not announce his/her withdrawal from the position, or if the other party does not agree to the challenge, within 30 days after expiration of the initial 30-day term, the arbitral tribunal shall decide the issue of challenge to the arbitrator.
3. If the arbitral tribunal denies the challenge to the arbitrator, within thirty days after the notice of the decision rejecting the challenge was served on him/her, the challenging party may file a claim challenging the arbitrator in a court.
4. In an arbitration with a sole arbitrator, within thirty days after the appointment of the arbitrator, or after one of the circumstances provided for by this law that is a ground for the challenge to an arbitrator becomes known to him/her, the party is entitled to file a claim challenging the arbitrator in a court.
5. On matters that are provided for by paragraphs 2¹ and 3 of this article, the court shall render a judgement within fourteen days after the application is submitted. This judgement shall be final and without appeal. In such a case, the arbitrator also may withdraw from the position before the court judgement is made. Before the court makes its judgement about the challenge to an arbitrator, the arbitral tribunal may continue the arbitration proceedings and render an arbitral award with the challenged arbitrator participating in the proceedings.
6. If the grounds for the challenge exist, the arbitrator is obliged to announce his/her withdrawal from the position.

21. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

Early in 2013, the Georgian Association of Arbitrators (hereinafter referred to as “GAA”) was established.⁴³ It is the first professional body of arbitrators in Georgia. With the aim of maintaining high standard and building confidence in arbitration throughout Georgia, in June 2014, GAA developed and adopted a Code of Ethics for Arbitrators with the support of international experts. The Code of Ethics sets out the ethical standards and obligations for arbitrators that is to ensure that they practice arbitration in a fair and just manner, the arbitration process is conducted fairly and in good faith, as well as to maintain neutrality, impartiality and independence of arbitrators themselves and to oblige them to disclose any interests or relationships i.e. any conflict of interest that may affect their impartiality and influence their judgement.⁴⁴ It also sets communication rules for arbitrators and dispute parties in order to avoid excessive and unnecessary expenses.⁴⁵

In 2018, the GAA’s Ethics Committee was established and Disciplinary Rules were introduced with the support of both EU and UNDP. This means that the enforcement mechanism has been created. In particular, a violation of the Code of Ethics can lead to disciplinary proceedings before the GAA’s Ethics Committee that can impose sanctions ranging from confidential recommendations to expulsion from the GAA.⁴⁶ GAA’s Ethics Committee has the power to react to arbitration cases handled by non-GAA members.⁴⁷

According to Principle I (2) of the GAA’s Code of Ethics, “A person shall agree to be appointed as an arbitrator only if he/she is assured that:

- a. he/she can act impartially;
- b. he/she can act independently from the parties, potential witnesses and other arbitrators;
- c. has appropriate competence;
- d. has sufficient time to commence the arbitral proceedings in accordance with the requirements of the proceedings and to devote due time and attention to the proceedings after the commencement of the proceedings.”

According to Principle I (7) of the GAA’s Code of Ethics, “An arbitrator’s ethical obligation begins as soon as he or she is appointed as an arbitrator and continues until the end of the arbitration process. In addition, in cases defined by the Code of Ethics, some ethical obligations

start from the moment a person is asked to act as an arbitrator, while some ethical obligations continue after the parties have received the arbitral award.”

⁴³ Legal and Practical Aspects of Arbitration in Georgia, The Study, February 2018, Caucasus Research Resource Center Georgia, p. 5

Official website of GAA: <<http://gaa.ge/>>

⁴⁴ Source:

<<https://eu4georgia.ge/ka/10-%E1%83%AC%E1%83%94%E1%83%9A%E1%83%98-%E1%83%90%E1%83%A0%E1%83%91%E1%83%98%E1%83%A2%E1%83%A0%E1%83%90%E1%83%9F%E1%83%98%E1%83%A1-%E1%83%A8%E1%83%94%E1%83%A1%E1%83%90%E1%83%AE%E1%83%94%E1%83%91/>>

⁴⁵ Source: <<https://eu4georgia.ge/leading-georgian-arbitration-institutions-commit-to-common-standards-of-ethics/>>

⁴⁶ *Ibid.*

22. Have there been any recent decisions in your concerning arbitrators’ duties of disclosure, e.g., similar to the UK Supreme Court Judgment in *Halliburton v Chubb*?

There has been no such precedent that would directly be associated with UK Supreme Court Judgment in *Halliburton v Chubb*. However, The General Courts of Georgia seem to attach significant importance/mandatory character to arbitrators’ duties of disclosure.

In one of its decisions The Supreme Court stated that parties’ right to have their case heard by an independent and impartial arbitrator is the matter of basic principle of procedural fairness and thus, mandatory.⁴⁸

The importance was even more highlighted by the fact that despite the party who was the addressee of the award did not challenge the arbitrator on the grounds of independence and impartiality during the arbitral process (which in turn equals to waiver of the right to object at later stages, if parties had the opportunity to file similar types of procedural redress during the arbitral proceedings in light of both the New York Convention and Article 31 of the Law of Georgia on Arbitration), The Supreme Court still used its discretion to assess the matter *ex officio* in light of the contradiction with public policy.

The Supreme Court stated that despite the fact that the respondent’s motion to disqualify the arbitrator was not raised during arbitral process, which in turn deprived the

party of the right to file such complaint at the stage of recognition and enforcement of the arbitral award, The Supreme Court of Georgia considered it expedient to assess the arbitrator's challenge on the grounds of independence and impartiality on its own initiative based on the legal foundation empowering the competent authority to refuse the recognition and enforcement of an award *ex officio*.⁴⁹

Despite the fact that above-mentioned decision concerned the matter of enforcement of foreign arbitral award, The Supreme Court delivered its reasoning in light of Georgian (domestic) public policy and stated that if the decision-making body was not impartial and independent, the enforcement of the decision by such body may be contrary to public policy.⁵⁰

Therefore, an assumption can be made that waiver of this right in its entirety ought not be permissible, as impartiality and independence of the arbitrator, as declared, is a matter of public policy. Hence, duty of disclosure and its waiver by the agreement might not be the subject of party autonomy.

⁴⁸ The Supreme Court of Georgia, Case No 3-3947-3-93-2020, March 2, 2021, paragraph 31 ⁴⁹ *Ibid.*, paragraph 30 ⁵⁰ *Ibid*

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Georgian legislation does not address the matter of truncated tribunal directly. It provides for the general provision, in accordance of which, in the case when authority of an arbitrator terminates, a substitute arbitrator shall be appointed in compliance with the rules applicable to the appointment of the previous arbitrator.⁵¹

Therefore, both the institutional rules and the rules adopted by the parties would be of significant guidance in this instance, unless and to the extent that these rules do not contradict with the procedural law, i.e. the Law of Georgia on Arbitration.

For instance, according to Article 18 (5) of arbitration rules of Georgian International Arbitration Centre (GIAC) "Where the dispute is to be resolved by a tribunal of three arbitrators, instead of making the relevant replacement, the Arbitration Council may decide that the remaining two arbitrators shall proceed with the arbitration. When making such a decision, the Arbitration Council shall take into consideration the stage of the proceedings as well as the comments of the other arbitrators and the parties". Similar provision is

envisaged in Article 18 (4) of arbitration rules of Dispute Resolution Centre (DRC), namely "Subsequent to the closing of the proceedings and receiving final comments of parties on the case, instead of replacing an arbitrator who has died or has been removed by the Court pursuant to Articles 18.1., the Court may decide, if considers appropriate, that remaining arbitrators shall continue the arbitration and make arbitration award. In making such determination, DRC Court shall take into account the views of remaining arbitrators and parties and such other matters that it considers appropriate in the circumstances".

Therefore, it can be deduced that these rules are in line with procedural law and serve only as gap-fillers.

⁵¹The Law of Georgia on Arbitration, Article 15

24. Are arbitrators immune from liability?

Generally, such legislative immunity of arbitrators is less common in civil law countries. Instead, liability may be limited under institutional rules and / or the agreement concluded between the arbitrator and the party.⁵²

Before the amendments to Criminal Code of Georgia, members of the tribunal were subject to criminal liability for abuse of official powers.^[2] However, this liability is no longer envisaged in Georgian legislation.

⁵² Group of Authors, Sophie Tkemaladze (Scientific Editor), Arbitration Guide for the First Instance Courts, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2017), p.111 ⁵³ Article 332 of Criminal Code of Georgia (1999, amended 2019)

25. Is the principle of competence-competence recognized in your country?

Yes, it is. The Law of Georgia on Arbitration recognizes this principle embodied in Article 16 (1), according to the first sentence of which "An arbitral tribunal shall have power to make a determination regarding its own competence, including the determination of the existence or authenticity of the arbitration agreement".

26. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

As of 2015 court practice is stable and consistent in this matter making the existence of an arbitration agreement sufficient to terminate the proceedings and refer parties

to arbitration.⁵⁴ In accordance with Article 9 (1) of the Law of Georgia on Arbitration “A court before which an action is brought in a matter that is the subject of an arbitration agreement, based on a request of a party that is made before the expiration of the time for submitting a statement of defence, is obliged to terminate the proceedings and refer the parties to arbitration, unless it finds that the agreement is void, invalid or incapable of being performed”.

However, this was not the case before the aforementioned date, when the existence of arbitration agreement was one of the grounds for dismissal of an action.⁵⁵

⁵⁴ Legal and Practical Aspects of Arbitration in Georgia, The Study, February 2018, Caucasus Research Resource Center Georgia, p.25 ⁵⁵ Article 186 (1) (d) of Georgian Civil Code of Procedure, 08.10.2014, is available at <<https://matsne.gov.ge/ka/document/view/29962?publication=92> >

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

Commencement of the proceedings

According to Article 26 of the Law of Georgia on Arbitration “Unless otherwise agreed to by the parties, the arbitration proceedings shall commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent”.

Limitation periods

Under Georgian Law, the statute of limitation is a matter of substantive law. In contractual matters, the limitation period amounts to three years. In accordance with Article 130 of The Civil Code of Georgia (hereinafter referred to as “GCC”) “A period of limitation shall commence from the moment at which the claim arises. The claim shall be deemed to have arisen from the moment at which the person became or ought to have become aware of the violation of the right”.

GCC does not provide for the possibility of suspending the statute of limitations by agreement. Accordingly, the parties cannot agree upon this matter under Georgian law.⁵⁶

However, substantive law provides for the statutory provision regarding the suspension period when person

brings an action for satisfaction of the claim or for its ascertainment. Under Article 138 of GCC “The running of the period of limitation shall be interrupted if the rightful person brings an action for satisfaction of the claim or for its ascertainment, or tries to satisfy the claim by some other means such as by filing a declaration of the existence of the claim with a state body or with a court, or by obtaining a writ of execution. Articles 139 and 140 shall apply accordingly”.

Despite the fact that Article 138 refers to filing a claim or statement in front the court, the consequences of this article should also apply when the relevant person applies to arbitral tribunal with due jurisdiction instead of a court.⁵⁷

⁵⁶ *Tsertsvadze, Giorgi*, Prerequisites of International Arbitration Process (Comparative Analysis), 2008, p.175

⁵⁷ The Supreme Court of Georgia, Case No 15-1586-1489-2012, April 22, 2012; *Svanadze, Giorgi*, Online Commentary to the Civil Code of Georgia, 24.12.2017, Article 138

28. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

Georgia is not signatory to European and UN Conventions regarding the state immunity, nor does it exist the law of Georgia on state immunity. However, ICSID Convention on the Settlement of Investment Disputes Between States and Nationals of Other States is in force in Georgia since September 6, 1992.

In general, Georgian legislation recognizes the doctrine of limited state immunity according to which the immunity of the state can be invoked only in light of sovereign activities.⁵⁸

⁵⁸ *Begalishvili, Nino*, State Immunity in the Context of Recognition and Enforcement of ICSID arbitral awards, Ivane Javakhishvili Tbilisi State University Publishing House (2021), Journal of Law, No 1 (2020), p.129; *Lilushvili, Bakur*, Recognition and Enforcement of Foreign Court decisions in Georgia, Tbilisi State University Publishing House (2009), pp.71-72

29. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

In accordance with Article 30 (5) of the Law of Georgia on Arbitration, if respondent fails to file the statement of

defence, proceedings shall nevertheless be continued. Arbitral tribunal in such an instance renders the award on the basis of a claim and pieces of relevant evidence presented by the claimant. Therefore, local courts can not compel participation.

30. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Neither the Law of Georgia on Arbitration, nor the leading institutional rules address the matter of third party intervention.

31. Can local courts order third parties to participate in arbitration proceedings in your country?

As discussed above, local courts can not compel participation, be it an original party to the agreement and / or third party.

32. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

According to Article 17 (2) of the Law of Georgia on Arbitration, the arbitral tribunal is authorised, by a written award, to order a party to a) maintain or restore the status quo before rendering the final award; b) take measures that would prevent causing damage to the other party or to the arbitral proceeding; c) provide a means of preserving assets out of which a subsequent award may be satisfied; d) preserve and maintain evidence that may be relevant to the dispute and its resolution.

In addition to that, interesting observations can be made based on Georgian arbitration and court practice. There are certain instances when the arbitral tribunal goes beyond the listed scope and issues the type of interim measure that is not included in the Law of Georgia on Arbitration and is only envisaged in Georgian Civil Code of Procedure (governing securing of the claims, exclusively, during the court proceedings, Articles 191 – 199¹), such as attachment of the property. Despite that, Appellate Court of Georgia still recognizes and enforces such an award.⁵⁹

In accordance with Article 23 (1) of the Law of Georgia

on Arbitration, an arbitration party may apply to a court requesting granting interim measures, which can also be arranged before the constitution of the tribunal. Since 2015 amendments to the Law of Georgia on Arbitration, court has been given discretion to use the interim measure even before filing the arbitration claim.⁶⁰

⁵⁹ Tbilisi Court of Appeals, Case No N20 / 1889-15, May 15, 2015; *Machaidze, Otar*, Conditions of Application, Recognition and Enforcement of Interim Measures in Arbitral Proceedings, 2020, p.97, is available at: <<https://www.jtconsulting-geo.com/uploads/files/publications/8/ghonisdziebebis-gamoyenebis-da-tsnoba-aghsrulebis-pirobebi.pdf>> ⁶⁰ Explanatory Note, draft amendments to 2015 The Law of Georgia on Arbitration; *Machaidze Otar*, Conditions of Application, Recognition and Enforcement of Interim Measures in Arbitral Proceedings, 2020, p.60

33. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Georgian legislation is not familiar with anti-suit/anti-arbitration injunction.⁶¹ However, in accordance with legal doctrine, in case if arbitrators broadly interpret the scope of the interim measures stipulated under the Georgian Law in parallel with international standards, the latter has the potential to acquire viability in Georgian practice.⁶²

⁶¹ *Machaidze Otar*, Conditions of Application, Recognition and Enforcement of Interim Measures in Arbitral Proceedings, 2020,p.107 ⁶² *Ibid*.

34. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Georgian law does not provide for specific set of rules governing evidentiary matters in arbitration.

Role played by the domestic courts in obtaining the evidence is provided for in Article 35 (3) of the Law of Georgia on Arbitration, namely “At any stage of the arbitration proceeding, the arbitral tribunal or a party, with the consent of the arbitral tribunal, may request from a court assistance in taking evidence”.

Local courts can compel participation of witnesses. Despite the fact that assistance in witness attendance is

not specifically mentioned in Article 35 of the Law of Georgia on Arbitration, this provision is interpreted broadly, including *inter alia* the court's assistance in obtaining the witness statement, as the latter is one of the pieces of evidence. The only difference is that while assistance in obtaining the evidence may be granted both upon parties' or tribunal's request, witness attendance may only be arranged upon the tribunal's request.⁶³

⁶³ *Ibid.*, pp.130-131

35. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Arbitrators' Code of Ethics apply to arbitrators' conduct designed by Georgian Association of Arbitrators in 2013 (amended later in 2018 as a result of introducing the enforcement mechanism), application of the rules of which is expanded to four leading arbitration institutions throughout the country together with the members of the Association.⁶⁴

As for the counsels' conduct both in court and arbitration proceedings, Code of Ethics for lawyers introduced by the Georgian Bar Association is applicable.

⁶⁴ Further information is available at: <https://eu4georgia.ge/leading-georgian-arbitration-institutions-commit-to-common-standards-of-ethics/>

36. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Yes, there is. In accordance with Article 32 (4) of Law of Georgia on Arbitration "Unless otherwise provided for by law or agreement of the parties, all arbitration proceedings must be closed. Documents, evidence, written or oral statements of the proceedings shall not be published, or transferred to and used in another judicial or administrative proceedings". In addition to that, following provision, Article 32 (5) states that "Subject to the paragraph 4 of this article, arbitrators and any person participating in the arbitration proceedings must keep confidential information disclosed to them during the arbitration proceedings". In addition to that, Code of Ethics of Arbitrators state that "If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either: a) Secure the consent to the

disclosure from the person who furnished the information or the holder of the privilege; or b) Withdraw".⁶⁵

However, after 2015 amendments to Law of Georgia on Arbitration, Article 27 defines that "Unless otherwise determined by this Law or by the agreement of the parties, written notices shall be served upon the parties in accordance with the provisions for court notices and summons provided for by the Civil Procedure Code of Georgia". This provision may give rise to inconsistent practice, taking into consideration the fact that even the information regarding the arbitral process should remain confidential according to the established international arbitral practice. This principle may be neglected by the reference to the Civil Code of Procedure, which enables the court notices and summons to be issued publicly. This regulation is neither in line with the rules provided for by the leading international institutional rules nor the UNCITRAL Arbitration Rules. Hence, the confidentiality nature of arbitral proceedings may be jeopardized.⁶⁶

⁶⁵ Code of Ethics of Arbitrators, Principle II (9) ⁶⁶ *Titberidze, Giorgi*, The Law of Georgia on Arbitration, Commentary, Second Edition, Tbilisi 2020, pp.142-144

37. Are there any recent decisions in your country regarding the use of evidence acquired illegally in arbitration proceedings (e.g. 'hacked evidence' obtained through unauthorized access to an electronic system)?

There is no recent decision dealing with this matter in the context of arbitral proceedings. However, based on the uniform court practice, evidence obtained illegally cannot be admitted in the course of proceedings.⁶⁷ Hence, if arbitral tribunal renders the award on the basis of evidence acquired illegally, Georgian courts will either rule positively on the application for setting aside the award or refuse the recognition and enforcement of the latter, with a high degree of probability.

⁶⁷ The Supreme Court of Georgia, Case No 16-1155-1101-2014, May 4, 2015

38. How are the costs of arbitration proceedings estimated and allocated?

There are different approaches to the cost estimation. Whilst some institutional rules determine the costs of administrative nature and honorarium of arbitrators separately, others provide for the total amount for the

aforementioned costs.⁶⁸

Rules of leading arbitral institutions on cost allocation are somewhat similar, therefore, following generalized tendency can be formed – costs are fixed within the final award, which contains the proportion on the basis of which party's participation is determined. Allocation of costs is being made taking into consideration all the circumstances which are deemed to be relevant upon tribunal's discretion.⁶⁹ However, allocation of costs is generally dependent on the outcome of the case in practice.

⁶⁸ Georgian International Arbitration Centre (GIAC) Arbitration Rules, Annex I Schedule of fees; EBA Mediation and Arbitration Center (EBA MAC) Arbitration Rules, Appendix I of the Arbitration Rules of EBA Mediation and Arbitration Center LLC ⁶⁹ Georgian International Arbitration Centre (GIAC) Arbitration Rules, Articles 42-43; EBA Mediation and Arbitration Center (EBA MAC) Arbitration Rules, Article 48

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

Payment of interest as a claim is governed by the substantive law in Georgia. However, there is no distinction being made regarding pre – and post – award interest.

Under Article 403 Civil Code of Georgia, interest is due and payable throughout the whole period of delay of payment of funds, given that the interest was pre – determined by the parties upon the agreement.

Post – award interest, although not directly envisaged under the Georgian legislation, might still find its expression during the course of proceedings, when competent authority may grant the disputing party's request to order the opponent the payment of interest until the enforcement of the decision rendered.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Under Article 39 (2) of Law of Georgia on Arbitration “An arbitration award is binding on the parties to the arbitration agreement. It must be in writing. It must be signed by an arbitrator(s). In arbitral proceedings with more than one arbitrator, an arbitration award must be

signed by the majority of the arbitrators. If an arbitrator refuses to sign the arbitration award and/or holds a dissenting opinion, a respective record shall be made. The arbitration award must specify the decision-making arbitrators, the parties, the date and the place of rendering the arbitration award”.

As for the following provision, “The arbitration award must contain the tribunal's reasoning, stating the reasons based on which the arbitration award was rendered by the arbitral tribunal, unless the parties have agreed on not to have the basis of the decision stated or the arbitration award is rendered in accordance with Article 38 of this Law”.⁷⁰

Under Article 44 (1) of Law of Georgia on Arbitration recognition and enforcement of an award becomes binding upon bringing a written motion to the court. Whilst in case of awards rendered in the territory of Georgia courts of appeal are competent, awards issued outside Georgian territory are subject to the competence of the Supreme Court of Georgia.

As for the judicial standard of review of the award, the same pattern embodied in UNCITRAL Model Law is incorporated in procedural legislation – no judicial review of arbitration awards on the merits. However, court practice is not quite complementary with this standard. There are certain instances when courts review the award on the merits during the setting aside or recognition and enforcement stage on their own initiative relying on the argumentation that the award is contradictory to the domestic public policy.⁷¹

⁷⁰ Article 39 (3) of The Law of Georgia on Arbitration ⁷¹ *Titberidze, Giorgi*, The Law of Georgia on Arbitration, Commentary, Second Edition, Tbilisi 2020, pp.42-43

41. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

Under Article 35⁶²¹ (3) of the Law of Georgia on Arbitration, timeframe for the competent court to deem the award recognized and enforceable is 30 days.

There is no possibility to bring a motion for the recognition and enforcement of an award on an *ex parte* basis. Moreover, application of a party seeking for the recognition and enforcement of an award is sent to the party against whom the arbitration award was rendered. The latter in turn is given the possibility to file an application to prove that the legal grounds for

recognition and enforcement of an award do not exist Under Article 356²¹ (2¹) of the Law of Georgia on Arbitration.

42. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

The standard of review adopted by Georgian courts for recognition and enforcement of a foreign award and a domestic award is similar. However, there are some differences.

First of all, both Georgian and almost all local legislations ensure the enforcement of the decision rendered by the arbitral tribunals. In addition to the domestic law, the New York Convention is considered to be the basis for the effectiveness of arbitration in this regard.⁷² The Convention is based on a pro-enforcement attitude and therefore, it facilitates and ensures the enforcement of arbitration agreements and awards. By ratifying the Convention, compliance with the requirements of this Convention is binding on Georgia and the existence of a pro-enforcement attitude at the international level should be taken into consideration. Article 44 of the Law of Georgia on Arbitration concerns the issues regarding recognition and enforcement. Article 44 (1) of the Law of Georgia on Arbitration fully reflects the provision of Article 1 of the Convention that "This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought." Hence, domestic law provides for the mandatory enforcement of both Georgian and foreign arbitral awards. However, differentiated jurisdiction is established, namely the Courts of Appeal are considered to be the competent courts for decisions rendered in Georgia, and the Supreme Court of Georgia for foreign arbitral awards.⁷³ The legislator opted for a unified Georgian regulatory system.⁷⁴

The motion of the party interested in the enforcement and recognition of the arbitral award, as well as any statement, must meet the grounds for its adoption in the proceedings.⁷⁵ The party bringing a motion for recognition and enforcement of foreign arbitral awards shall supply the original award, or a duly certified copy thereof, as well the original arbitration agreement referred to in Article 8 of this Law or a duly certified copy

thereof (if any). If the award or arbitration agreement is not made in Georgian, the party shall supply a duly certified translation thereof into Georgian.⁷⁶

As for the authenticity of the original or a copy of the documents to be submitted, a document issued in a country party to The Hague Convention must be apostilled, and if the document is issued in a country, which is not a party to The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents, then the documents must be submitted to the court in a legalized form and with a duly certified translation into Georgian (notarized translation). According to international practice, it is not obligatory to submit a translation of the entire agreement and it is sufficient to submit only an excerpt that includes an arbitration clause.⁷⁷

Furthermore, the law of Georgia completely defines the grounds for refusal of the recognition-enforcement. Of these grounds, public order is the only means by which a court can deal with a substantive part of an arbitral award.⁷⁸ Public order of national and international scale is differentiated. While courts may take into account only the equivalent (substantive or procedural) values of public order in their domestic arbitral awards, in the case of foreign arbitral awards, the courts must take into consideration the international nature of the dispute, the needs of international trade and only consider those rules as public order, which the Country wants to follow in the international context as well.⁷⁹ Even though the latter approach is not yet followed by the Georgian Courts, The Supreme Court of Georgia should still give priority to the wording of the New York Convention in recognizing and enforcing foreign arbitral awards, hence to Convention's "pro-enforcement attitude" and use public order to prevent the recognition and enforcement of foreign arbitral awards only in special and rare cases. The necessity of such an approach is conditioned by the Law of Georgia on Normative Acts, which gives the international treaty, in this case the New York Convention, the precedence over the law.⁸⁰

⁷² *Machaidze, Otar*, Conditions of Application, Recognition and Enforcement of Interim Measures in Arbitral Proceedings, 2020, Tbilisi, p.28, is available at: <<https://www.jtconsulting-geo.com/uploads/files/publications/8/ghonisdziebebis-gamoyenebis-da-tsnoba-aghsrulebis-pirobebi.pdf>> ⁷³ *Tsertsvadze, Giorgi*, International Arbitration (Comparative Analysis), Publishing House "Meridiani", Tbilisi 2012, p.701, Group of Authors, Sophie Tkemaladze (Editor-in-Chief), A Guide to Arbitration for Judges of the Courts of Appeal of Georgia, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2018), p. 97 ⁷⁴ *Tsertsvadze, Giorgi*, Interpretation and Application of the New York

Convention in the Republic of Georgia, Recognition and Enforcement of Foreign Arbitral Awards, George A. Bermann (Editor), *Ius Comparatum - Global Studies in Comparative Law*, Volume 23, p.318⁷⁵ Group of Authors, Sophie Tkemaladze (Editor-in-Chief), *A Guide to Arbitration for Judges of the Courts of Appeal of Georgia*, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2018), p. 96⁷⁶ *Ibid.*, p. 98⁷⁷ *Titberidze, Giorgi*, *The Law of Georgia on Arbitration, Commentary, Second Edition*, 2020, Tbilisi, pp. 205-208, *A Guide to Arbitration for Judges of the Courts of Appeal of Georgia*, p. 102⁷⁸ *Tkemaladze, Sophio*, *Georgian Business Law Review*, "Public order" as a ground for annulment of the arbitral award or refusal on recognition-enforcement (a brief overview of Georgian practice), 2013, p.15⁷⁹ *Ibid.*, p.19⁸⁰ *Ibid.*, p.20

43. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

No, Georgian legislation does not impose limits on the available remedies.

44. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Under Article 356²¹ (6) of the Georgian Civil Procedure Code, Georgian court decisions concerning arbitration are generally not appealable. The Supreme Court's only authority provided for by arbitration law is recognition and enforcement of foreign awards. There is no appeal; the only option is to reopen the case and seek a judgement that the judicial decision is void due to the new circumstances.⁸¹ Georgian Arbitration Law's provisions governing arbitral awards are generally in compliance with the corresponding provisions of the UNCITRAL Model Law.⁸² Georgian law, like the UNCITRAL Model Law, provides only one legal remedy against an arbitral award. In particular, a party having a claim against an arbitral award may request setting aside an arbitration award.⁸³ An arbitral award may only be appealed by applying to court for setting aside motion. Such cases are heard by the courts of appeal of Georgia. According to Article 356²⁴ of Civil Procedure Code of Georgia "Based on the grounds defined under the Law of Georgia on Arbitration, an arbitration award shall be reversed by filing an appeal with a court." The law allows the party against whom the final arbitral award is rendered to object to it and defines the grounds the existence of which lead to the setting aside of an arbitration award, rendered in Georgia. In addition, the grounds for the setting aside of the decision are

comprehensive and the court is bound by these grounds, which means that the court does not enter into a substantive hearing of the dispute and does not examine and evaluate the evidence presented by the parties⁸⁴ Consideration of the issue of setting aside an arbitration award does not in any case involve revision of the substantive part of the decision.⁸⁵ The grounds for setting aside an arbitral award is comprehensively listed in Article 42 (Paragraphs 2 - 5), that is also based on the 2006 edition of the UNCITRAL Model Law Article 2 A.⁸⁶ According to Article 42 (2), "An arbitration award made in Georgia may be set aside by a court only if: a) the party against whom the award is rendered files a complaint with the court and furnishes proof that: a.a) a party, when executing the arbitration agreement was legally incapable or was a beneficiary of support and a legal guardian was appointed for the party with relation to the issues under the arbitration agreement but the support has not been obtained, or that said agreement is not valid or is null and void according to the law chosen by the parties have subjected it, and in the case of absence of such an indication, in accordance with the legislation of Georgia. a.b) a party, requesting an arbitration award to be set aside was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or was otherwise unable to present his/her case or protect his/her interests; a.c) the arbitration award is rendered on a dispute, that was not submitted to the arbitral tribunal by the parties, or the arbitration award contains decisions on matters beyond the scope of the request submitted to the arbitral tribunal, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; a.d) the composition of the arbitral tribunal or the arbitral procedure did not comply with the agreement of the parties, or in the cases of absence of such an agreement, did not comply with this Law; b) the court finds that: b.a) the subject-matter of the dispute may not be settled by arbitration according to the legislation of Georgia; b.b) the award is in conflict with the public order of Georgia".

The procedure is also determined by Article 42, according to which, "A party may submit a complaint to set aside an arbitral award with a court within 90 days after the date on which the award was served on the party. The court is obliged to review the appeal and issue a motivated decision within 30 days of receiving the appeal. If a request has been made under Article 41 of the Arbitration Law, the period for making the application to set aside shall begin from the date on which the respective award reacting to the request was served on the parties. In the case of submitting complaint to a court to set aside an arbitration award,

enforcement of the arbitration award shall not be suspended, except in a case that an application to set aside or suspend an award has been filed to the court, the court where the recognition or enforcement is sought may, if it considers it proper, adjourn its decision for no longer than 30 days, and may also, on the request of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security. If the court renders a judgement to recognize and enforce the arbitration award, no award shall be set aside on the grounds that a party requested to refuse recognition and enforcement of the award that the court denied while hearing the case on its merits. In this case, the complaint to set aside the arbitration reward may not be acceptable; if the complaint has been accepted, the proceedings shall be terminated”.

Also, according to Article 43 The court, when asked to set aside an award, is authorized, where requested by a motion of a party, to suspend setting aside proceedings for a period of time no longer than thirty days in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings, or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside the award. The court shall notify the arbitral tribunal about a suspension based on these grounds, within three days after the suspension of the proceedings to set aside the award.

⁸¹ *Tsertsvadze, Giorgi*, International Arbitration (Comparative Analysis), Publishing House “Meridiani”, Tbilisi 2012, p.701; *Tsertsvadze, Giorgi*, Interpretation and Application of the New York Convention in the Republic of Georgia, Recognition and Enforcement of Foreign Arbitral Awards, George A. Bermann (Editor), *Ius Comparatum - Global Studies in Comparative Law*, Volume 23, p.327 ⁸² *Tsertsvadze, Giorgi*, Interpretation and Application of the New York Convention in the Republic of Georgia, Recognition and Enforcement of Foreign Arbitral Awards, George A. Bermann (Editor), *Ius Comparatum - Global Studies in Comparative Law*, Volume 23, p.318 ⁸³ Group of Authors, Sophie Tkemaladze (Editor-in-Chief), A Guide to Arbitration for Judges of the Courts of Appeal of Georgia, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2018), p.65 ⁸⁴ Tbilisi Court of Appeals, Case № 20/3782-17, September 14, 2017 ⁸⁵ *Titberidze, Giorgi*, The Law of Georgia on Arbitration, Commentary, Second Edition, 2020, Tbilisi, p. 192 ⁸⁶ *Ibid.*, p. 193

45. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such

as in the arbitration clause)?

The courts of model law countries have different practices as to whether it is possible to limit or cancel any rights of appeal or challenge of an award by agreement of the parties.⁸⁷ Georgian law does not explicitly provide that the parties can waive any rights of appeal or challenge to an award by agreement before the dispute arises. According to the party autonomy principle parties can make certain arrangements under the arbitration agreement. For instance, exclude the use of interim measures. However, waiving any rights of appeal or challenge to an award by agreement before the dispute arises, may be considered unjustifiable, because of the importance of all or some of the procedural guarantees.⁸⁸

⁸⁷ Group of Authors, Sophie Tkemaladze (Editor-in-Chief), A Guide to Arbitration for Judges of the Courts of Appeal of Georgia, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2018), p.85 ⁸⁸ *Ibid.*, p.87

46. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

This issue is relevant for Georgia, as international arbitration is becoming increasingly popular, especially in the field of investment disputes. As of today, the legislative regulation of Georgia in terms of state immunity is “episodic”.⁸⁹ It is important to distinguish recognition and enforcement regarding the state immunity. State immunity against enforcement cannot become an impediment to the recognition of the ICSID Arbitration Award, and the arbitral award acquires prejudicial force, regardless of the existence of State immunity against enforcement. This was confirmed by the *ad hoc* Committee in its decision to suspend the arbitration award of *Kardassopoulos v. Georgia*, according to which the simplified and automatic enforcement system established by Article 54 (1) of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States is not related to enforcement measures prescribed by a court for the enforcement of an arbitral award pursuant to Article 54 (2) of the Convention. However, in case law, there can be seen a violation of the automatic regime provided in Article 54 (1) and a non-uniform interpretation of this norm.⁹⁰ Also important in this case was the bilateral investment agreement between Georgia and Greece, according to Article 4 (2) of BIT the beneficiary state of the investment is obliged to pay compensation to the investor if he expropriates the assets of the company which is constituted under the laws in force in any part

of its own territory and in which the second party owns shares.⁹¹

According to the scholarly opinion, immunity extends only to actions of the state which are carried out within the framework of public jurisdiction. Therefore, in many cases it may be necessary to clarify the issue, whether the state exercises its public jurisdiction or it acts as a private person, thus the content of the actions is very important.⁹²

On October 8, 2009, the Supreme Court of Georgia issued a ruling recognizing and enforcing the case on the territory of Georgia the award on *Ares International & Metalgeo Ltd v. Georgia* rendered by the ICSID Tribunal on 28 February 2008 imposing monetary compensation on Georgia for the losses incurred by *Ares International Ltd. and Metalgeo Ltd.*⁹³ In the judgment the court did not discuss either compulsory enforcement proceedings or state immunity against enforcement, which is in line with Article 54 of the Convention. It can be said that the practice of recognizing and enforcing ICSID arbitral awards in Georgia is very limited and the issue of state immunity does not appear in it at all.⁹⁴

⁸⁹ *Begalishvili Nino*, State Immunity in the Context of Recognition and Enforcement of ICSID arbitral awards, *Ivane Javakhishvili Tbilisi State University Publishing House* (2021), *Journal of Law*, No 1 (2020), p. 117 ⁹⁰ *Ibid.*, pp. 122-123 ⁹¹ *Takashvili, Simon*, "International Standards for the Protection of Foreign Investments and Compliance of National Legislation with the European and International Investment Regime", 2018, Tbilisi p.26, is available at:

<<https://www.jtconsulting-geo.com/uploads/files/publications/12/takashvili-simoni.pdf>> ⁹² *Liluashvili Bakur*, Recognition and Enforcement of Foreign Court decisions in Georgia, *Tbilisi State University Publishing House* (2009), p. 72 ⁹³ The Supreme Court of Georgia, Case № 5-1858-შ-53-09, October 8, 2009 ⁹⁴ *Begalishvili, Nino*, State Immunity in the Context of Recognition and Enforcement of ICSID arbitral awards, *Ivane Javakhishvili Tbilisi State University Publishing House* (2021), *Journal of Law*, No 1 (2020), p. 128

47. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Normally, only the parties to the arbitration proceedings are bound by the arbitral award.⁹⁵ As for third parties or non-signatories, Georgia's practice in this regard is very limited.⁹⁶ The law of Georgia does not directly provide for the arbitral award to be extended to third parties.⁹⁷ In

the process of arbitration, succession of the title is possible, during which the parties are not signatories to the arbitration agreement, that means that they did not directly agree on the arbitration agreement, however they are automatically subject to the terms of the existing arbitration agreement.⁹⁸

As, for other instances, it should be noted that from case-law and arbitration practice the issue of whether third parties may be bound by an arbitral award is specific and must be decided on the basis of a detailed analysis of circumstances of each particular case.⁹⁹

The rights and obligations set forth in the arbitration agreement may be transferred, or in extreme cases may be extended to a person who has assumed only a part of the obligations under the main contract.¹⁰⁰

One ruling of the Tbilisi Court of Appeals is interesting, as the court in this case set the precedent of the dissemination of the legal consequences of the arbitration agreement to third parties. The court considered "renewal" and the complaint of "Kh. K". It is clear from the factual circumstances that "Kh. K." was neither a party to the arbitration agreement nor participated in the arbitration proceedings. Nevertheless, the legal consequences of the arbitration agreement were applied to him. The disputed area was registered as the property right of the author of the appeal, in compliance with all the rules; He was not a party to the arbitration agreement; He did not participate in the arbitration proceedings as a third party; The arbitral award unequivocally violated his right to property. This action of the court does not fit into any of the famous doctrines, thus proving once again that each particular case requires an individual approach.¹⁰¹

Regarding to what extent might a third party challenge the recognition of an award, it should be emphasized, that Georgian legislation on arbitration does not specify the subject who can file an appeal and hence the legislation is not limited to the claimant or respondent. Depending on the content of the norm, the right to appeal may also be exercised by a third party whose interests are directly related to the specific arbitral award and the purpose of the judicial review is to eliminate such a violation.¹⁰² It should be noted that the courts of Georgia have a practice according to which it is considered permissible for an interested person to file an appeal against the setting aside of the arbitral award, even though that person is not a party to the arbitration agreement or proceedings. The practice regarding this matter is quite limited, The Law of Georgia on Arbitration lacks an express provision on third party or multiparty claims.¹⁰³ The Kutaisi Court of Appeals ruled that the local self-government body was entitled to request the

setting aside of the arbitral award, on the basis of which the arbitration assigned the state-owned land plot to one of the two disputed private persons. The Court noted the following circumstances: The arbitral tribunal was aware that the land was state-owned at the time of its decision.¹⁰⁴

⁹⁸ Group of Authors, Sophie Tkemaladze (Editor-in-Chief), *A Guide to Arbitration for Judges of the Courts of Appeal of Georgia*, Arbitration Initiative Georgia, EU4Justice, UNDP Georgia (2018), p.151

⁹⁵ *Kazhashvili, Guliko*, Extension of the Legal Consequence of the Arbitration Agreement to the Third Parties, *Georgian Commercial Law Review*, II Issue, Tbilisi, 2013, p.93 ⁹⁸ *Tsertsvadze, Giorgi*, Brief Commentary to The Georgian Arbitration Law 2009, Publishing House "UNIVERSAL", Tbilisi 2011, p.71 ⁹⁹ *Ibid.*, pp. 35-36 ¹⁰⁰ *Tsertsvadze, Giorgi*, Prerequisites for International Arbitration Process (Comparative Analysis), 2008, p. 176 ¹⁰¹ *Ibid.*, p. 178 ¹⁰² *Kazhashvili, Guliko*, Extension of the Legal Consequence of the Arbitration Agreement to the Third Parties, *Georgian Commercial Law Review*, II Issue, Tbilisi, 2013, p.93 ¹⁰³ *Titberidze, Giorgi*, The Law of Georgia on Arbitration, Commentary, Second Edition, 2020, Tbilisi, p. 202 ¹⁰⁴ *Tsertsvadze, Giorgi*, Brief Commentary to The Georgian Arbitration Law 2009, Publishing House "UNIVERSAL", Tbilisi 2011, p.72 ¹⁰⁷ Kutaisi Court of Appeals, Case №20-772-12, November 21, 2012

48. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

No, there have not been any decisions in Georgia considering third party funding in connection with arbitration proceedings.

49. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Emergency arbitrator relief is available in Georgia, in some arbitral institutions. For Instance, According to Dispute Resolution Center (DRC) Rules "As per request of the party, the Tribunal, and before its composition – president of DRC Court, acting as an emergency arbitrator, in the shortest time possible, may, in writing, request from a party: (a) Maintenance and reestablishment of initial conditions before final award is made; (b) Taking measures to prevent any harm to another party, or arbitration itself; (c) Taking actions to

maintain actives, to be used for execution of arbitration award; (d) Preserving and maintaining evidence, which could be used for arbitration and its decision."¹⁰⁵ Arbitrator may change, cancel, or terminate application of interim measures identified by emergency arbitrator.¹⁰⁶ This clearly demonstrates that emergency arbitrator relief is available in Georgia.

However, no practice in the regard of enforcement matter is available. There has been one decision concerning this matter. Emergency Arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce rendered an Emergency Award on Interim Measures regarding the case of Zaza Okuashvili VS Republic of Georgia in 2019. However, the award was not submitted for enforcement in Georgia and thus, there is no practice regarding this matter.

¹⁰⁵ Dispute Resolution Center (DRC) Arbitration Rules, Article 32(2) ¹⁰⁶ Dispute Resolution Center (DRC) Arbitration Rules, Article 32(8)

50. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Indeed, there are some arbitration institutional rules in Georgia, which provide expedited procedures. For instance, according to EBA Mediation and Arbitration Center (EBA MAC) Arbitration Rules, Party may offer another party through Arbitration to resolve dispute without oral hearings. Arbitration is authorized to resolve dispute without oral hearings if another party submits written consent.¹⁰⁷ The arbitral tribunal reviews the case and takes a decision without an oral hearing in accordance with the documentary evidence presented by the parties if the parties agree on it in a special form (Documents only arbitration). Within 3 days after accepting to review the claim, the claim and enclosed documents shall be sent to the defendant and it shall submit the statement of the defence and evidence within 5 up to 10 days. The arbitral tribunal shall send the statement of the defence and enclosed evidence to the claimant within 3 days after receiving them from the defendant and suggest the claimant to submit the position on the statement of the defence within 5 working days. The arbitral tribunal shall review the case and make the grounded award within 10 days after the time limit of submission of the statement of the defence.¹⁰⁸ These norms clearly indicate that this can be considered as simplified and expedited procedures. Similar norms are inscribed in the Tbilisi Arbitration Institute Rules.¹⁰⁹

Besides EBA-MAC and Tbilisi Arbitration Institute, rules of Georgian International Arbitration Centre (GIAC) provide for Fast Track Arbitration Procedures. The Fast Track Arbitration Procedures shall apply to all disputes where amount in dispute does not exceed 100 000 (one hundred thousand) USD on the day the statement of claim has been filed. However, The Fast Track Arbitration Procedures shall not be applicable if parties explicitly excluded their applicability by the arbitration agreement.¹¹⁰

¹⁰⁷ EBA Mediation and Arbitration Center (EBA MAC) Arbitration Rules, Article 9 (3) ¹⁰⁸ EBA Mediation and Arbitration Center (EBA MAC) Arbitration Rules, Article 36 ¹⁰⁹ Tbilisi Arbitration Institute Arbitration Rules 8(3), 36³ ¹¹⁰ Georgian International Arbitration Centre (GIAC) Arbitration Rules, Article 34

51. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

There is no expressed codified law regarding that matter, however there are some promotions in this regard in the arbitration community of Georgia. Efforts are being undertaken at various levels to promote diversity in the choice of arbitrators and statistics regarding the appointed arbitrators show a continued increase in the number of women appointed by the arbitral institutions. Some efforts have been taken in order to empower female arbitrators, for instance, on 8-13 December 2019, within the framework of the joint project of the European Union and the United Nations Development Program (UNDP) "Mediation and Arbitration – Effective Dispute Resolution", study visit of female arbitrators has been arranged to European arbitration institutions and international law firms. Participants for the study visit were selected from the female participants of the basic course on Commercial Arbitration of the Georgian Arbitrators Association (GAA). The purpose of the visit was to strengthen the capacity of Georgian female arbitrators in reviewing arbitration cases. Also, nowadays there is an obvious increase in female arbitrators, which is also reflected in the Georgian Arbitrators Association's list of arbitrators. For instance, out of 47 members of the Association 25 is female, and out of 20 accredited members 7 is female.¹¹¹

¹¹¹Source: <https://gaa.ge/>

52. Have there been any recent court decisions in your country considering the

setting aside of an award that has been enforced in another jurisdiction or vice versa?

No, there have not been any decisions in Georgia considering the setting aside of an award that has been enforced in another jurisdiction or vice versa.

53. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

There has not been any recent court decision in Georgia considering the issue of corruption. The issue is not commonly addressed in Georgian courts, however, according to scholarly opinion, The Supreme Court of Georgia uses the minimum standard of judicial intervention in resolving issues related to the recognition and enforcement of foreign arbitral awards. There is no doubt that the minimum standard of judicial intervention covers fundamental principles of public order, such as contracts concluded as a result of corruption agreements.¹¹²

¹¹² *Kvirikashvili, Teo*, Examples of Corruption in International Arbitration: Permissible Limits for Judicial Review of Arbitral Tribunal Awards at Stages of Setting Aside and Enforcement, 2017, p.60

54. Have there been any recent court decisions in your country considering the judgment of the Court of Justice of the European Union in *Slovak Republic v Achmea BV (Case C-284/16)* with respect to intra-European Union bilateral investment treaties or the Energy Charter Treaty? Are there any pending decisions?

Georgian courts have not issued any decision that considers the judgment in *Slovak Republic v Achmea BV (Case C-284/16)* which found the arbitration clause in bilateral investment treaty as incompatible with European law.

55. Have there are been any recent decisions in your country considering the General Court of the European Union's

decision Micula & Ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?

The judgment of the General Court of the European Union Micula & Ors (Joined Cases T-624/15, T-694/15 and T-694.15) has, thus far, neither expressly nor otherwise been considered by Georgian courts.

56. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

A number of measures have been taken in response to the COVID-19 pandemic by arbitration institutions and organizations that are based in Georgia. Mostly virtual hearings were the right response to Covid - 19. Everything has become more or less electronized.

For instance, EBA Mediation and Arbitration Center (EBA-MAC) offers the parties arbitration through the electronic case management system, which makes arbitration proceedings even more comfortable and convenient for them. Through the electronic case management system, the parties are able to submit (upload), get acquainted with, and download any document related to arbitration proceedings. During arbitration proceedings, the parties will immediately be informed about any document that was uploaded in electronic case management system. Web page of electronic case management system is posted on EBA Mediation and Arbitration Center web page: <https://eba-mac.com/>, where parties can register and use electronic case management system. Relevant changes that regulate use of electronic case management system have already been made in arbitration rules of EBA Mediation and Arbitration Center and any person can submit any document related to arbitration proceedings through electronic case management system. The rules of the EBA-MAC allow for fully virtual hearings, almost 80% of the hearings are held virtually, which have become increasingly crucial around the world, including in Georgia, as a result of the Covid - 19 outbreak, when remote arbitration is important.¹¹³

¹¹³ Source: <https://eba-mac.com/>

57. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have

there been any recent developments regarding virtual hearings?

Nowadays, more and more arbitral institutions are trying to implement reforms, that will have big advantage of using technologies. For instance, the rules of the EBA Mediation and Arbitration Center (EBA-MAC) provide for the possibility of virtual hearings. According to the information, almost more than 80% of the proceedings have been held online successfully. Moreover, EBA-MAC offers the parties arbitration through the electronic case management system, which makes arbitration proceedings even more comfortable and convenient for them. Through the electronic case management system, the parties are able to submit (upload), get acquainted with, and download any document related to arbitration proceedings. During arbitration proceedings, the parties will immediately be informed about any document that was uploaded in electronic case management system. Web page of electronic case management system is posted on EBA Mediation and Arbitration Center web page: <https://eba-mac.com/>, where parties can register and use electronic case management system. Relevant changes that regulate use of electronic case management system have already been made in arbitration rules of EBA Mediation and Arbitration Center and any person can submit any document related to arbitration proceedings through electronic case management system.¹¹⁴

¹¹⁴ Source: <https://eba-mac.com/>

58. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

The insolvency of a party indeed affects the enforceability of an arbitration agreement in Georgia. The Law of Georgia on Rehabilitation and the Collective Satisfaction of Creditors' Claims concerns this issue. According to Article 55 (1) of the law, in arbitration the review of disputes against insolvency estates, which had been initiated before the commencement of insolvency proceedings, shall be ceased, and no new disputes shall be initiated, unless the dispute involves the separation of a thing from the insolvency estate, or except in a case directly provided for by this Law. However, according to Article 58 (3) this measure can be cancelled by the court, if the case is reviewed in accordance with the procedural norms of arbitration, and retaining the measure prejudices the legal interests of the applicant, *inter alia*, the measure adversely affects the procedural rights of the applicant, or there is a risk that such rights will not be exercised due to the expiry of the period of limitation in respect thereof.

59. Is your country a Contracting Party to the Energy Charter Treaty? If so, has it expressed any specific views as to the current negotiations on the modernization of the Treaty?

Georgia is indeed a Contracting Party to the Energy Charter Treaty, however it still has not expressed any specific views to the current negotiations on the modernization of the Treaty.

60. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

No, there have not been any recent developments in Georgia with regard to disputes on climate change and/or human rights.

61. Has your country expressed any specific views concerning the work of the UNCITRAL Working Group III on the future of ISDS?

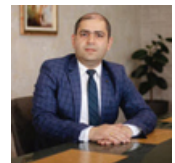
Georgia has not expressed any specific views in this regard. However, the 38th Session of the UNCITRAL Working Group III was attended by Georgian International Arbitration Centre (GIAC). The Investor-State Dispute Settlement Reforms are currently being considered by the Working Group. GIAC is currently the only organization in the region that has been granted observer status in UNCITRAL working groups. The United Nations Commission on International Trade Law (UNCITRAL) granted GIAC observer status in 2018.¹¹⁴

¹¹⁴ Source: <<https://giac.ge/georgian-international-arbitration-centre-participated-in-38th-session-of-the-uncitral-working-group-iii/>>

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