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Arbitration News

Publication of the International Bar Association Legal Practice Division

VOL 20 NO 2 SEPTEMBER 2015

their respective jurisdictions.

The government has sought to amend the Act by way of the Arbitration and Conciliation (Amendment) Bill 2015, which has been listed for introduction before the Indian Parliament. The 2015 Amendment Bill is understood to be largely based on 246th Report of the Law Commission of India, which proposed many far-reaching amendments to the Act.

One of the amendments proposed by the Law Commission of India is to undo the consequences of the Supreme Court of India's ruling in *BALCO* by making interim measures of protection and court assistance in taking evidence available to parties, even in foreign seated arbitrations. It will be interesting to see how the Indian Parliament addresses the issue.

Until the law is changed to allow Indian courts to grant or enforce interim relief that may be necessary to preserve assets and ensure the effectiveness of the foreign-seated arbitral process, the party intending to seek injunctive relief can fashion their main request for relief in a manner that allows the foreign arbitral tribunal to grant partial awards for mandatory or prohibitory injunctive relief. These are then enforceable through the Indian court process. Such partial awards for mandatory or prohibitory injunctive relief could also be sought through an expedited arbitration procedure, if agreed, to enhance the efficacy of the process.

Another somewhat circuitous approach that can be taken under the current system is for a party to obtain an interim order from a foreign court and, if the interim order is violated by the other party, initiate proceedings for contempt in the foreign court. A foreign court's adjudication holding the other party in contempt of its order would be enforceable in India.

International investors or other contracting parties who anticipate the possibility of requiring interim conservatory measures from Indian courts also have the option to stipulate in their contracts that the proceedings will be conducted before an international panel or a neutral country panel of arbitrators, while still seating their arbitration in India.

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Recent positive developments of the arbitration regime in Georgia

Overview of Georgia as an arbitration-friendly country

In an analysis published in 2009, the Georgian authors Mgaloblishvili and Kiknavelidze concluded that 'there is no doubt that Georgia needs a lot of time and effort in order to be finally established as a country friendly towards arbitration'.

They identified measures that, in their opinion, should have been taken by Georgia in order to accomplish this goal. Among these measures was the adoption of legislation based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law.

Later that year, the Parliament of Georgia passed a new arbitration law which came into force on 1 January 2010 (the Law on Arbitration). The Law on Arbitration was considered to be the first step towards improving the arbitral legal framework of Georgia and establishing an arbitration-friendly system in the country.

The content and structure of the Law on Arbitration followed the UNCITRAL Model Law, covering both domestic and international arbitration. Importantly, the Law on Arbitration brought the national legal framework in line with the UNCITRAL Model Law by providing grounds on which an arbitral award could be set aside or refused recognition and enforcement, thereby. At the time, the Law on Arbitration was considered to be an example of modernising legislation that marked a significant step forward for international commercial arbitration in Georgia and the Caucasus region. However, despite the improvements, the initial version of the Law on Arbitration still left much to be desired.

In March 2015, the Parliament of Georgia introduced important amendments to the Law on Arbitration. The changes aim at further harmonisation of the Law with the UNCITRAL Model Law by eliminating certain shortcomings, supporting arbitration as an alternative mechanism for dispute resolution and bringing the Georgian statute closer to the best international practice. As a result of recent developments, the Georgian legal system now offers the best available alternative dispute resolution services in the Caucasus region.

There are a number of reasons to consider Georgia as a favorable place for arbitration and for enforcement of foreign arbitration awards:

- the Georgian legal system is modern and arbitration-friendly with its Law on Arbitration, as amended, based on the UNCITRAL Model Law;
- Georgia is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- Georgian legislation permits parties the freedom to choose counsel and arbitrators;
- Georgia has an open economy, a low level of corruption and a pro-business environment;
- Georgia is advantageously located in a region at the crossroads of Europe and Asia;
- Georgia is a multi-cultural society with good legal and technological expertise and fluency in the major languages used in business in the region;
- Georgian legislation permits foreign law firms to operate in the country;
- Georgian legislation permits foreign residents to carry out arbitration without work permits or any other formal requirements; and
- the costs related to arbitration are substantially lower than in other European countries.

Framework for the recognition and enforcement of foreign arbitral awards

Georgia has been a contracting state to the New York Convention since 1958. Georgia has made neither reciprocity nor commercial reservations to the Convention. The Supreme Court of Georgia (the Court) deals with petitions for the recognition and enforcement of foreign arbitral awards. The process is initiated by an interested party holding an arbitral award. The Court does not scrutinise the award on its merits and does not review the legal reasoning of the award; it only verifies whether there are grounds for refusing recognition and enforcement, as exhaustively set out in the Law on Arbitration, as amended.

According to the recent amendments to the Law on Arbitration, the list of grounds for refusing to recognise or enforce foreign arbitral awards has changed. The grounds are similar to the ones provided by Article V of the New York Convention. As a result, the Court shall only refuse to recognise or enforce an award if the party against whom it is invoked applies to the Court and proves that the award fails to comply with one of the enumerated grounds that closely correspond with the New York Convention.

In Georgia, the Court determines recognition and enforcement applications without an oral hearing, unless the responding party submits a defence within the time limit prescribed by the Court and indicates grounds for holding an oral hearing.

Before introducing the recent changes, the law was quite vague about the time limit for rendering a decision on recognition and enforcement applications. According to the practice applied by the Court, foreign arbitral awards were recognised and enforced within six months from the filing of the application. Under the recent amendments to the Law on Arbitration, which also affected the Civil Procedure Code, there is now a fixed term of 30 days for ruling on recognition and enforcement applications.

A decision of the Court on a recognition and enforcement application is final and cannot be appealed, except (very rarely) by requesting reconsideration of the decision by pointing to newly emerged circumstances as provided by the Civil Procedure Code.

If the Court enforces an award, it issues an enforcement writ. This is sent to the National Bureau of Enforcement within the Ministry of Justice. The enforcement is carried out by the same means and according to the same rules applied to the enforcement of decisions of the Georgian Courts and local arbitration institutions. The respondent is given seven days to comply with the award voluntarily.

Unfortunately, Georgian law does not set time limits for the National Bureau of Enforcement to enforce awards/decisions. Importantly, the enforcement fee amounts to 7 per cent of the amount subject to enforcement, which is paid by the debtor; however, when the enforcement concerns the payment of money, the creditor is requested to pay 2 per cent of the total sum

for enforcement services in advance. The remaining 5 per cent is recovered by the Enforcement Bureau from the debtor.

Once the enforcement is successfully completed, the creditor recovers the 2 per cent paid in advance. However, if the debtor has no property, the creditor risks losing the advance payment. While the Law on Enforcement Proceedings sets an upper limit of approximately US$2,000 as the enforcement fee for natural persons, there is no maximum threshold for creditors who are legal entities.

Thus, the enforcement service fee of 2 per cent of the total recoverable amount can be very large indeed. For this reason, creditors holding arbitral awards sometimes attempt to enforce only part of the amount awarded in the first instance in order to reduce the enforcement fee, before they are certain that there is property against which the award can be enforced.

It is noteworthy that for the last three years the number of Court rulings upholding the enforceability of arbitral awards has increased from 81 per cent to 95 per cent (69 per cent have been fully enforced while 26 per cent have been partially enforced).

Positive developments and shortcomings that still need to be addressed

The amendments introduced by the package of changes enacted in March 2015 should provide an important stimulus for development of commercial arbitration in Georgia. The changes include the following:

- the Law on Arbitration now allows ad hoc arbitration while the earlier version provided only for institutional arbitration;
- arbitration agreements no longer need to be notarised;
- courts are requested to terminate litigation not only when the dispute is already before an arbitral tribunal but whenever the parties have a binding arbitration agreement;
- The court fee has been reduced as described above;
- The new version of the Law on Arbitration removes the ban on interlocutory measures before filing an arbitration claim which now means that claimants can secure the enforcement of a future arbitration award; and
- the grounds for refusal of recognition and enforcement and for setting aside awards are set out in clear terms and have been brought into full compliance with the Model Law.

Nevertheless, there is still scope for improving the legal framework and practice related to the recognition and enforcement of arbitral awards.

Unlike many jurisdictions, the Georgian legal system allows for the recognition and enforcement of interim measures granted by foreign arbitral tribunals. However, there are considerable practical obstacles as the law is still vague regarding the time limits and fees relating to consideration of such applications. The law should clearly provide reasonably short time limits for considering recognition and enforcement of interim measures.

Further, the Court frequently mistakes the nature of the institution whose decision is brought for recognition and enforcement. For example, the decisions of the arbitration courts of the Russian Federation are often considered as arbitration institutions, although arbitration courts in fact form part of the general judicial system in Russia.

Conclusion

Despite certain improvements that could be made, Georgia has demonstrated a genuine willingness to explore the potential of the country as a regional centre for commercial arbitration. It hopes to become a regional hub in the Caucasus-Black Sea-Caspian Region.

Nowadays, the Georgian legal system has much to offer both to foreign investors and local businesses preferring resolution of disputes through alternative mechanisms to litigation. Moreover, the legal framework in Georgia is favourable for parties holding arbitral awards who wish to enforce against property in Georgia or goods transiting through the seaports, highways and railroads of the Caucasian gateway between Europe and Asia.