GAR Global Arbitration Review

The European Arbitration Review

2019

Georgia

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The European Arbitration Review provides an unparalleled annual update – written by the experts – on key developments in the region. The 2019 edition includes new chapters on Limits to the Principle of 'Full Compensation', as well as country overviews on 17 jurisdictions. In addition the rest of the review has been revised in light of recent developments in arbitration, including analysis of the Court of Justice of the European Union's judgment in Slovak Republic v Achmea in Energy Arbitrations, the impact of Brexit in England & Wales and the protection of investments in international armed conflicts in Ukraine.

Georgia

Helene Gogadze

Summary

INTRODUCTION

The current arbitration legislation in Georgia is the Law on Arbitration (the Law on Arbitration or LGA). The Parliament of Georgia passed the Law in 2009, and it went into force on 1 January 2010. The Law replaced the previous 1997 Law on Private Arbitration.

The Law on Arbitration, unlike its predecessor,[1] is based on the language and spirit of the UNCITRAL Model Law on International Commercial Arbitration, as amended in 2006 (the Model Law).[2] The new legislation represents an important step forward in implementing a modern and effective arbitration system in Georgia. The Law on Arbitration establishes rules to govern arbitration proceedings, including the making of awards, and the recognition and enforcement of arbitration awards. It applies to both domestic and international arbitrations.

Since 2010, the Law on Arbitration has been amended, with most of the amendments adopted in March 2015. The amendments brought the legislation further in harmony with international standards. The arbitration legislation in Georgia now principally follows the Model Law, but with certain peculiarities and differences. Georgia is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the NewYork Convention).[3]

In addition to the legislative revamping, in December 2013 the first international arbitration institution in the region opened its doors in Tbilisi. The Georgian International Arbitration Centre (GIAC) aspires to serve as the premier international arbitration institution in Georgia and, indeed, for the entire Caucasus and Black Sea-Caspian region. The institution's mission also includes the development and promotion of arbitration as the dispute resolution method of choice for domestic and international disputes. If the parties have agreed to apply the GIAC Arbitration Rules, GIAC is the institution that will administer the arbitration. Likewise, if the parties have agreed to GIAC arbitration, this means that the arbitration will be conducted pursuant to the GIAC Arbitration Rules.[4]

The recent developments in Georgia are good reasons for parties to be confident that Georgia now has an arbitration-friendly legal framework. With its new arbitration legislation and new international arbitration centre, Georgia is well positioned to promote arbitration and serve as a hub of international arbitration in the region. Building its reputation and attracting international arbitration market players will take time for Georgia and GIAC to realise their full potential.

With a continued commitment to establishing and maintaining an effective pro-arbitration legal framework and a high-quality international arbitration institution based on the best modern practices, the potential to serve as the regional arbitration hub is Georgia's to realise.

APPLICATION OF THE LAW ON ARBITRATION

Georgia has a single legislative scheme governing domestic and international arbitrations. The Law on Arbitration applies to both international and domestic disputes – that is, to arbitrations conducted in Georgia, as well as to the recognition and enforcement of arbitration awards rendered outside of Georgia. See LGA, article 1(1).[5]

The scope of arbitrable subject matter is defined to include 'property disputes of a private character' that are 'based on an equal treatment of the parties' and that the disputing parties are able to settle between themselves. See LGA, article 1(2). The outer limit of arbitrable subject matter is not entirely clear from this definition. The language does not necessarily

suggest a scope that is less restrictive than the Model Law's formulation, which applies to 'commercial arbitration' covering 'matters arising from all relationships of a commercial nature, whether contractual or not'.[6] Nevertheless, any uncertainty in scope is potentially problematic because one of the few bases for refusing recognition and enforcement of an arbitration award includes the situation where the subject matter of the dispute is not arbitrable under Georgian law. See LGA, article 45(1)(b)(a). Therefore, further clarification of the scope of arbitrable subject matter by the legislature or the courts would be a welcome development.[7]

ARBITRATION AGREEMENT

The definition of an 'arbitration agreement' closely tracks the Model Law language. 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 a contractual or other legal relationship. See LGA, article 8(1).[8]

An arbitration agreement must be in writing. See LGA, article 8(3). However, the writing requirement can be satisfied by various means. See LGA, article 8. For example, an agreement is considered to be in writing if its content is recorded 'in any form', regardless of the form of the parties' underlying business agreement, whether established orally, by conduct, or by other means.[9] See LGA, article 8(4). An electronic notification also complies with the writing requirement (as long as the information presented in the notification is accessible for future use). See LGA, article 8(5). Further, an agreement is deemed to be in writing if the existence of an agreement is alleged by one party and not denied by the other in an exchange of statements of a claim and a defence. See LGA, article 8(6). An arbitration agreement can also be incorporated into a contract by sufficient reference to a document containing an arbitration clause. See LGA, article 8(7).

With respect to such flexibility on the form of the arbitration agreement, the provisions are based on the definition of the arbitration agreement in option I of article 7 of the Model Law. However, Georgian legislation adds one peculiarity. The relaxed means of satisfying the writing requirement do not apply in cases where one of the contracting parties is a natural person or an administrative body. In such cases, the agreement must be made in writing in a traditional way – in the form of a document signed by all the contracting parties. See LGA, article 8(8). This provision is intended to protect consumers (and the government).[10]

In addition, until recently, the enforceability of agreements providing for ad hoc arbitration was in question. Before recent amendments, the Law on Arbitration required that the agreement include a reference to the specific arbitration rules of a specific permanent arbitration institution that the parties designated to administer their disputes.[11] Now the parties 'may' agree on the rules of arbitration proceedings. Thus, the parties do not have to choose in their agreement an arbitration institution to administer an arbitration of their disputes, and can submit disputes to an ad hoc arbitration governed by the rules as specifically chosen or later agreed to by the parties. Further, if the agreement refers to a specific arbitration institution (without a specific reference to its arbitration rules), the parties are deemed to have agreed to the rules of that arbitration institution. This change enhances the enforceability of arbitration agreements. See LGA, article 2(2).

If a party brings in court a dispute that is subject to an arbitration agreement, the court is 'obliged' to terminate the proceedings and direct the parties to arbitration, unless the court finds that the arbitration agreement is void, invalid or incapable of being performed. See LGA,

article 9(1).[12] Further, the arbitration proceedings can be commenced or continued to the final award while this issue is pending in court – the party does not have to wait for the court's determination to direct the parties to arbitration. See LGA, article 9(3). These provisions also promote enforceability of arbitration agreements, and are based on similar provisions in the Model Law.[13]

ARBITRATION TRIBUNAL

The parties are free to agree on the number of arbitrators, as well as the method for appointing arbitrators. See LGA, articles 10, 11; GIAC Rules, articles 12, 13.

Absent the parties' agreement, a three-member tribunal is the default rule under the Law on Arbitration. LGA, article 10(4). In arbitrations conducted under the GIAC Arbitration Rules, if parties have not agreed on the number of arbitrators, the default rule provides for a sole arbitrator, save where due to the complexity of the dispute, it appears to the GIAC Arbitration Council that the case warrants a three-member tribunal. See GIAC Rules, article 12(2).[14]

If the parties agreed on a three-member tribunal but not on a method for appointing arbitrators (or the rules that provide for the method of appointment), then the Law on Arbitration provides that the three-member tribunal will be constituted by each party appointing one arbitrator, and the two party-appointed arbitrators selecting the presiding arbitrator. If the parties or the party-appointed arbitrators fail to follow this (or another agreed procedure, including designation of arbitrators by an institution, where the parties have agreed to institutional arbitration), the court is empowered to make the required appointments upon the request of one of the parties. See LGA, article 11(3)(a). Likewise, absent the parties' agreement on the appointment of a sole arbitrator, the court will make the appointment upon any party's request. See LGA, article 11(3)(b). The court's decisions on the appointment of the arbitrators are final and not subject to appeal. See LGA, article 11(4).[15] However, the court must take into consideration any qualifications or other requirements agreed upon by the parties and must ensure the appointment of independent and impartial arbitrators. See LGA, article 11(6).[16]

Where the parties have agreed to submit their dispute to an arbitration institution, and thereby adopt the arbitration rules of that institution, those rules govern the appointment of the tribunal members (as they form part of the parties' agreement) unless the parties specifically agree to a different appointment method and procedure. Thus, in arbitrations administered by GIAC and governed by the GIAC Arbitration Rules, the Arbitration Council of GIAC would be the appointing authority should the parties or party-appointed arbitrators fail to make the necessary appointments. See GIAC Rules, article 13.[17]

The Law on Arbitration does not contain provisions or restrictions regarding the nationality of candidates that may be considered for appointment as an arbitrator. This lack of specificity is understandable, given that the legislation applies to domestic as well as international arbitrations. Nothing in the arbitration legislation precludes a party from arguing in a particular case that the nationality of an arbitrator should be considered by the court as a relevant factor in ensuring the appointment of an independent and impartial arbitrator.[18]

The GIAC Arbitration Rules, on the other hand, do provide that where the parties are of different nationalities, the sole arbitrator or the presiding arbitrator 'shall be' of a nationality other than those of the parties (absent the parties' agreement to the contrary). See GIAC Rules, article 16(1). However, the Rules also provide that the Arbitration Council 'may', if it deems appropriate, appoint a sole or a presiding arbitrator of the same nationality as one

of the parties, provided that none of the parties objects to such appointment within the time limit fixed by the Arbitration Council. See GIAC Rules, article 16(1). Further, the rules specify that when serving as an appointing authority, the Arbitration Council 'shall' take into consideration the nature of the dispute, the applicable law, and the seat and the language of the arbitration, as well as the availability of the candidate to conduct proceedings according to the GIAC Arbitration Rules. See GIAC Rules, article 16(2).

The arbitration legislation also sets forth the grounds and the procedures for challenging an arbitrator. Under the Law on Arbitration, a party may challenge an arbitrator if she or he does not meet the qualifications agreed upon by the parties, or if circumstances exist giving rise to justifiable doubts as to the arbitrator's impartiality or independence. See LGA, article 12(1). The arbitrator is obligated at the time of appointment, as well as during the arbitration, to notify the parties and the tribunal about any circumstances that create doubts about her or his impartiality and independence. See LGA, article 12(3). Further, if a ground for challenge exists, the arbitrator is obligated to step down. See LGA, article 13(5).

Likewise, pursuant to the GIAC Arbitration Rules, the arbitrators must be and remain at all times impartial and independent. See GIAC Rules, article 15(1). Each arbitrator has to sign a statement of impartiality and independence and disclose any facts or circumstances that could give rise to justifiable doubts as to his or her impartiality or independence. See GIAC Rules, article 15(2), (3).

The arbitration legislation provides that a party challenging an arbitrator must first submit a written statement setting forth the grounds for challenge to the arbitral tribunal.[19] See LGA, article 13(2). If the tribunal denies the challenge, the challenging party may petition a court to remove the arbitrator. See LGA, article 13(2)1.[20] Unlike the Model Law, the Georgian arbitration legislation further provides that when arbitration is conducted by a sole arbitrator, a party may seek removal directly in court. See LGA, article 12(3). This exception is potentially helpful, considering that having the sole arbitrator decide on her or his own challenge may turn out to be futile. The court's decision on the removal of an arbitrator is final and not subject to an appeal. The arbitration proceedings may continue while the court is considering the arbitrator challenge. LGA, article 13(4). The courts' authority to assist in arbitrator challenges is an important new feature that was not available under the previous legislation.[21]

Arbitrator impartiality and independence are a subject of special sensitivity in Georgia. To foster trust and promote arbitration as a reliable method of dispute resolution, it is imperative for Georgia to overcome scepticism about the integrity and independence of arbitrators. Georgia has embarked on that road. The current legislative provisions on the appointment and challenge of arbitrators, are largely based on the Model Law, and provide a distinct improvement over the previous legislation. In addition, the Georgian Association of Arbitrators, the first professional body of arbitrators in Georgia established in 2013, has developed and adopted a Code of Ethics for Arbitrators. This initiative could be further supported and promoted by the arbitration institutions and the legal community. Nevertheless, faithful and consistent application and enforcement of the independence and impartiality requirements by the courts and the arbitration institutions over time will be imperative to building and maintaining confidence in potential users of arbitration and displacing any lingering scepticism of the arbitration process in Georgia. Consistent application of agreed-upon ethical standards is also a must. Gaining such trust and confidence is an uphill battle that will not be won overnight in a country where everyone

knows everyone and the belief that arbitrators (as well as the domestic private arbitration institutions) are partial seems to be common for the moment. Likewise, gaining trust and confidence from the international commercial community may be an uphill and time-consuming battle for a nation that is not perceived to have a long tradition of impartial and independent administration of dispute resolution mechanisms.

JURISDICTION OF THE TRIBUNAL

The Law on Arbitration also follows the Model Law in incorporating the competence-competence and separability doctrines. Thus, an arbitration tribunal has the authority to determine its own jurisdiction, including any challenge to the existence or validity of an arbitration agreement. The arbitration agreement is independent and separate from the parties' contract in which it is contained. Therefore, the tribunal's decision that the contract is void does not affect the validity of the arbitration clause, which maintains independent vitality. See LGA, article 16(1).

Any challenge to the tribunal's jurisdiction may be made before the statement of defence is filed. See LGA, article 16(2).[22] Furthermore, any challenge that the tribunal has exceeded or is exceeding the scope of its authority must be made within seven days after the circumstances giving rise to the challenge become known. See LGA, article 16(3).[23] The tribunal may make a determination on its jurisdiction either before the final award or in the final award. When the tribunal determines as a preliminary matter that it has jurisdiction, either party may within 30 days challenge that jurisdictional determination in court. See LGA, article 16(5).[24] The court shall decide on the challenge within 14 days, and the court's determination is final and not appealable. See LGA, article 16(5). The arbitration proceedings may be commenced or continued during the court's consideration of the tribunal's decision on jurisdiction. LGA, article 16(5).

INTERIM MEASURES

Another important improvement brought about by the Law on Arbitration is with respect to the parties' ability to seek and enforce interim measures. The availability of interim measures was not addressed in the previous legislation. The current legislative provisions on interim measures closely track those in the Model Law.

Specifically, interim relief may be requested from the tribunal at any time before the final award is rendered.[25] See LGA, article 17(1). The tribunal may order the following types of interim measures:

- to maintain or restore the status quo before the final award is rendered;
- to take measures that could prevent damage to the other party or the arbitration proceeding;
- to provide means of preserving assets out of which the ultimate award may be satisfied; or
- to preserve and maintain evidence that may be relevant in the resolution of the dispute. See LGA, article 17(2).

The grounds for granting interim measures are also similar to those set forth in the Model Law. The party seeking interim relief must demonstrate that:

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if the interim relief is not granted, the resulting harm would not be adequately compensated for by an award of monetary damages;

- the harm caused by refusing to order an interim measure substantially outweighs the harm that is likely to result to the opposing party if the measure is granted; and
- there are reasonable grounds to believe that the requesting party would prevail in the arbitration. See LGA, article 18(1).[26]

The party seeking interim relief may be required to post appropriate security. See LGA, article 18(3).[27]

Importantly, Georgian courts (specifically, the courts of appeals)[28] are also empowered to grant interim measures in relation to arbitration, as well as enforce interim measures ordered by arbitration tribunals. See LGA, articles 21, 23. The courts have the authority to issue interim measures in aid of arbitration, irrespective of the place of arbitration. See LGA, article 23(2).-[29] Likewise, the courts can enforce interim measures ordered by a tribunal, irrespective of the country in which the tribunal's order was made. See LGA, article 21(1).[30] Further, the court may refuse the recognition and enforcement of the tribunal's interim measure only in limited circumstances. See LGA, article 22(1).[31]

The GIAC Arbitration Rules also provide that before the commencement of arbitration or at any time thereafter, a party may apply to the court to issue an interim measure or to enforce the arbitrator's interim measure. See GIAC Rules, article 32(2).

The provisions in the Law on Arbitration on interim measures are important for the development of an arbitration-friendly system in Georgia. However, it is largely up to the judiciary to fulfil the spirit of the legislation.[32]

ARBITRATION PROCEEDINGS

The parties are free to determine the rules of procedure to be applied by the tribunal in conducting the arbitration proceedings.[33] Absent the parties' agreement, the tribunal may conduct the proceeding in the manner it considers appropriate. See LGA, article 24. Equality of the parties must be preserved, and each party must be given a full opportunity to present its case. See LGA, article 3.[34]

Unless the parties agree on the form of the arbitration proceedings, the tribunal may determine to hold an oral hearing or decide the case solely on the basis of the documents and other evidence submitted by the parties. See LGA, article 32(1).[35] Arbitration proceedings are closed, and documents, evidence, and written and oral statements shall not be published or used in other judicial or administrative proceedings. See LGA, article 32(4).[36]

The tribunal is authorised to determine the admissibility and weight of any evidence. See LGA, article 35(1). The tribunal may (subject to contrary agreement of the parties) require a party to submit or to provide to the other party any documentation or evidence related to the dispute. LGA, article 35(2)(a), (c). Moreover, the tribunal (subject to contrary agreement of the parties) may summon and, if necessary, require the examination of the party's witness before the hearing, and use the testimony in arbitration proceedings. See LGA, article 35(2)(b).

Judicial assistance may also be sought in obtaining evidence. Specifically, at any stage of the arbitration proceeding, a tribunal may request the court's assistance in the taking of evidence. A party can also seek assistance from the courts, but only with the prior consent of the tribunal. See LGA, article 35(3). This provision is in line with the Model Law.[37] However,

under the Georgian arbitration legislation, the tribunal may also ask the court to ensure the attendance of witnesses – there is no such provision in the Model Law. See Id.[38]

The provision in the Law on Arbitration on the substantive law governing the dispute is similar to the one in the Model Law. The parties have a right to determine the rules of law applicable to the substance of their dispute. Absent the parties' agreement, the tribunal makes the determination. See LGA, article 36(2).[39] Also in line with the Model Law, the Law on Arbitration provides that in all cases, the tribunal takes into account the terms of the contract and the trade usages and practices that are applicable to the type of transaction at issue. See LGA, article 36(4).[40] The Law on Arbitration does not contain the provision found in the Model Law that the tribunal has the authority to decide ex aequo et bono or as amiable compositeur in cases where the parties have expressly authorised it to do so.[41] Likewise, the GIAC Arbitration Rules also do not contain a provision empowering a tribunal to assume the powers of an amiable compositeur or to decide ex aequo et bono.

ARBITRATION AWARD

The Law on Arbitration provisions on the tribunal's decision-making, the rendering of an award, and the form and content of the award also closely track the Model Law provisions. When the tribunal is composed of more than one arbitrator, any decision of the tribunal shall be made by a simple majority. See LGA, article 37(1). The legislation further provides that an arbitrator is not allowed to abstain from voting. See LGA, article 37(2).

The award must be in writing and must be signed by all or by a majority of the arbitrators. The award must state the place and date of the award, and must also identify the decision-making arbitrators and the parties.[42] If an arbitrator refuses to sign an award or has a dissenting opinion, a statement to that effect must also be made. See LGA, article 39(2).[43] The Law on Arbitration requires a reasoned award, unless the parties have agreed to an unreasoned award or the award itself is in the nature of a settlement (or consent) award. See LGA, article 39(3).[44]

The Model Law does not set forth a time limit for rendering an award. However, a number of jurisdictions impose time limits – Georgia is one of them. The Law on Arbitration specifies that unless the parties agree otherwise, the award must be rendered within 180 days following the commencement of the arbitral proceedings – this is the date on which a request for arbitration is received by the respondent. See LGA, articles 39(1), 26.[45] The tribunal may extend the 180-day limit by no more than an additional 180 days, if necessary. See LGA, article 39(1).

Alternatively, time limits could be imposed by the arbitration institution's rules applicable to the proceedings. In arbitrations conducted under the GIAC Arbitration Rules, the award shall be rendered within six months from the date of the signing of the terms of reference, unless the time limit is extended by the GIAC Arbitration Council upon the tribunal's reasoned request or its own initiative. See GIAC Rules, article 35.[46]

In arbitrations administered by GIAC and governed by the GIAC Arbitration Rules, before signing the award, the tribunal must submit the draft award to the Arbitration Council for review. The GIAC Arbitration Council may modify the award as to the form (without affecting the tribunal's 'liberty of decision'). The Council may also draw the tribunal's attention to points of omissions or errors in the substantive part of the award. The tribunal can render the award only after it has been approved by the Council as to its form. See GIAC Rules, article 40. Thus, this award scrutiny procedure is similar to the one adopted under the Arbitration

Rules of the International Chamber of Commerce, and is designed to promote reliability and enforceability of GIAC awards.

RECOGNITION AND ENFORCEMENT OF ARBITRATION AWARDS; SETTING ASIDE AWARDS

The LGA makes breakthrough improvements with regard to recognition and enforcement of arbitration awards. The framework set forth in the Law on Arbitration on the recognition and enforcement of awards is applicable to both domestic and foreign awards, and is based on the language and the spirit of the New York Convention and the Model Law.

Pursuant to the Georgian arbitration legislation, the award, regardless of the country where it was rendered, shall be binding, and the Georgian courts may refuse to recognise and enforce the award only on the basis of specific limited grounds. Those grounds largely track the grounds set forth in the New York Convention and the Model Law. See LGA, articles 39(2), 44, 45.[47] Courts of appeals have jurisdiction to enforce the awards rendered in Georgia, and the Supreme Court of Georgia has jurisdiction to enforce the awards rendered outside of Georgia. See LGA, article 44(1).[48] No statute of limitations is provided for seeking recognition and enforcement of an award.

The Law on Arbitration states that once an application to set aside an award is made, any pending enforcement proceedings can only be suspended as set forth in article 45(3).[49] Specifically, article 45(3) mirrors the Model Law provision on the suspension of enforcement proceedings, and provides that if an application to set aside an award has been made to the court of the country in which, or under the law of which, the award was made, the recognition and enforcement court in Georgia may adjourn its decision (for no longer than 30 days) if the court considers it proper to do so.[50] The court may also, upon the request of the party seeking enforcement, order the other party to provide appropriate security. See Id.[51]

The Georgian courts 'may' refuse to enforce an award only in the following circumstances set forth in article 45(1) of the Law on Arbitration:

- if the party resisting enforcement applies to the court and establishes one of the following grounds:
    - the party lacked the legal capacity (or a guardian was appointed, but the support was not obtained) when executing the arbitration agreement; or the arbitration agreement is not valid or is null and void under the law to which the parties have subjected it or, failing such indication, under the law of the country where the award was rendered;
    - the party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case (to present its position and defend its interests);
    - the arbitration award deals with a dispute that was not submitted to the arbitral tribunal by the parties, or it contains decisions on matters that go beyond the scope of the submission to the arbitration;the composition of the arbitral tribunal or the arbitral procedure did not comply with the agreement of the parties, or, in the absence of such an agreement, did not comply with the law of the country where the arbitration took place;
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the arbitration award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the award was made;[52] or

- if the court finds that:
    - under the laws of Georgia, the subject matter of the dispute may not be settled by arbitration; or
    - the recognition and enforcement of the award is in conflict with public order.

The New York Convention, as well as the Model Law, provide that public policy may be a ground for refusing the recognition and enforcement of awards where the recognition and enforcement of the award would be contrary to the public policy of the enforcing country. This formulation of the public policy ground is widely used. However, the arbitration legislation in Georgia uses the term 'public order' rather than the term 'public policy' and further, does not specify that the recognition and enforcement of awards has to be in conflict with Georgia's public order, but rather more generally, in conflict with public order.[53]

The Georgian courts (specifically courts of appeals)[54] may set aside an award rendered in Georgia upon a party's request, but may do so only on the basis of the same limited grounds that are provided for refusing the recognition and enforcement of the award. See LGA, article 42.[55] The statute of limitations for seeking the set aside of an award is 90 days after the award is served on a party. See LGA, article 42(3).[56]

A party applying to a court in Georgia to recognise and enforce an award shall provide a duly authenticated original award or a duly certified copy, and the original arbitration agreement or a duly certified copy (if any). If the award or the agreement is not in the Georgian language, the applicant shall provide a duly certified translation of both. See LGA, article 44(2); Civil Procedure Code, article 35621(1).[57] These requirements are in line with the requirements set forth in the New York Convention, article IV. In addition, however, Georgian courts have asked award creditors to produce evidence that the award has not yet been enforced in the country where it was rendered. It is not clear what the basis is for requiring such evidence, but it does appear to have been a prerequisite for the courts' determinations on the recognition and enforcement of foreign awards.[58] Georgian courts have also required that the 90-day statute of limitations for seeking to set aside an award rendered in the territory of Georgia must pass before the award creditor can seek recognition and enforcement of the award.[59] Such application of the legislation is out of line with the text and the purpose of the legislation. The law strives to ensure that in those instances where the 90-day period has in fact expired or where a court has refused to set aside an award, the same grounds are not reargued in another court in an application seeking refusal to recognise and enforce an award.

Once an award debtor is notified of the recognition and enforcement proceedings, it will have an opportunity within seven days to provide the court with proof of one of the grounds for refusing recognition and enforcement of awards. See Civil Procedure Code, article 35621(2)1. Georgian courts have to make a ruling on recognition and enforcement within 30 days after the award debtor makes its submission or after the seven-day period expires. See Id., article 35621(3). There is no requirement to hold an oral hearing, and generally, the decision is made without any oral hearing. See Id., article 35621(2).[60] The 30-day period may only be extended by the court in the circumstances contemplated under article 45(3) of the Law on Arbitration – that is, when the court suspends the proceedings on the basis that

an application to set aside or suspend an award has been made to a court in the jurisdiction where the award was rendered. See Id., article 35621(3).

The court makes the determination on the application to set aside an award also within 30 days. The court may extend the 30-day period by an additional 30 days to provide the tribunal with an opportunity to resume the consideration of the case or to take any other measures that the tribunal considers necessary to avoid the grounds for setting aside an award. See Civil Procedure Code, article 35624(3); LGA, article 43.

The court fee for seeking recognition and enforcement or set aside of arbitration awards has been decreased and currently is set at 150 lari.[61] See Civil Procedure Code, article 39. The award creditor who brings a successful recognition and enforcement proceeding can recover its costs, as well as reasonable attorneys' fees, from the unsuccessful award debtor. See Id., article 53.[62] Once the court rules on the recognition and enforcement of an award, the court will issue an enforcement writ, and the award can be executed pursuant to the procedural rules and laws applicable to execution of Georgian court judgments. See Civil Procedure Code, article 35621(4), (5).[63]

There may be no better way to demonstrate the jurisdiction's pro-arbitration orientation than in the area of award enforcement, and specifically, in view of the track record of enforcement of arbitration awards. Georgia has come a long way in this respect.[64] However, the judiciary continues to be criticised for relatively broad application of the grounds for refusing enforcement, specifically, on the basis of public order violations.[65] One recent study analysed court decisions from Tbilisi, Batumi and Kutaisi City Courts, Tbilisi and Kutaisi Courts of Appeal and the Supreme Court, and observed that the most common grounds for refusing recognition and enforcement or setting aside arbitral awards are public policy and inappropriate notification of a party of arbitration proceedings. The study also highlights the inconsistencies in the courts' application of the arbitration legislation and discusses the areas in need of improvement.[66]

The cases that attract criticism appear to represent exceptions rather than trends in Georgia. Nonetheless, the judiciary has work to do in this respect to bring Georgia in line with other arbitration-friendly jurisdictions, so that it reliably follows the letter of the law and consistently and predictably implements the provisions and the spirit of the Law on Arbitration.

THE GEORGIAN INTERNATIONAL ARBITRATION CENTRE

As noted above, GIAC is an international arbitration institution located in Tbilisi, the capital of Georgia. GIAC was established in 2013. The first GIAC Arbitration Rules were approved in September 2014. The new revised GIAC Arbitration Rules were adopted by the GIAC Board and took effect on 10 March 2017. The structure of GIAC, as well the GIAC Arbitration Rules, are modelled after the prominent international arbitration institutions, and primarily on the International Chamber of Commerce and its Arbitration Rules.[67] GIAC offers arbitration rules that are designed with international disputes in mind, but can also be utilised by parties in domestic disputes. As a non- profit entity, GIAC promotes its independence and neutrality in all of its activities.[68] GIAC can administer arbitrations seated in or outside of Georgia. The case management is handled by the GIAC Secretariat and the GIAC Arbitration Council.[69] The Board of Directors leads the corporate management of GIAC.

The GIAC Arbitration Rules reflect the best modern international practices and innovations.-[70] The Rules are based on party autonomy, flexibility, impartiality and independence of the tribunal, detailed mechanisms for the appointment and challenge of arbitrators, efficient

time frames for conduct of the proceedings, fairness and equality of the parties and fairness and integrity of the proceedings, availability of interim measures, and confidentially of the proceedings. As is the case under other well-established international arbitration rules, in arbitrations conducted under the GIAC Arbitration Rules, the parties may determine many aspects of the arbitration proceedings, including the number of arbitrators and the method of their selection, applicable law, and the place and the language of the arbitration. GIAC serves as an appointing authority when parties fail to agree on the appointment of arbitrators or fail to appoint arbitrators. See GIAC Rules, articles 13, 14. The new rules include shorter time limits for appointment of arbitrators to prevent delays. The GIAC Arbitration Rules also address recent developments with respect to multi-party and multi-contract arbitrations and include rules on the joinder of third parties and consolidation of proceedings. See GIAC Rules, article 11.

GIAC promotes efficient resolution of disputes, and sets prompt time frames for various aspects of the proceedings. The final award is expected within six months from the date of signing of the terms of reference, unless the time limit is extended by the GIAC Arbitration Council upon the tribunal's reasoned request or its own initiative. See GIAC Rules, article 35.[71] The GIAC Arbitration Rules also provide that the tribunal shall ensure that the proceedings are conducted in an expeditious and cost-effective manner. For the effective management of the proceedings, the tribunal may adopt any procedural measures considered necessary (in accordance with the GIAC Arbitration Rules and upon consultation with the parties). See GIAC Rules, article 21(1), (2).

The GIAC Arbitration Rules expressly provide for confidentiality of the proceedings. Unless otherwise agreed by the parties, the parties, the tribunal, GIAC and any other person involved in the arbitration proceedings shall at all times treat all matters and all documents related to the proceedings and the award as confidential. GIAC awards may be made public only with the consent of all parties, or to the extent disclosure is required by legal duty, to protect or pursue one's rights, or in relation to legal proceedings. See GIAC Rules, article 44.

Similar to the system established under the ICC Arbitration Rules, to enhance the enforceability of awards, the GIAC Arbitration Council scrutinises the tribunal's draft award and approves it before the award is rendered. This award scrutiny process is designed to enhance the fairness, quality and reliability of the GIAC arbitration process and GIAC awards. See GIAC Rules, article 40.

GIAC administrative costs and arbitrator fees are also based on the ICC model, with a view to promoting cost-effectiveness and predictability.[72] The Secretariat fixes administrative costs and arbitrator fees in accordance with a set fee schedule. The administrative costs, as well as arbitrator fees, are calculated based on the amount in dispute. See GIAC Rules, Annex I, articles 2, 3.[73]

Among the revisions in the new GIAC Arbitration Rules the most significant one is the adaptation of Fast Track Arbitration Procedures for matters where the amount in dispute does not exceed US$100,000 on the day the statement of claim is filed. See GIAC article 34(1), GIAC Annex IV, article 1(1). However, upon the parties' request at any time during the proceedings, the Arbitral Tribunal (or Arbitration Council before composition of the Arbitral Tribunal) shall continue the conduct of the arbitration proceedings under the GIAC Arbitration Rules. See GIAC Annex IV, article 1(2). The parties may also explicitly exclude Fast Track Arbitration Procedures in their arbitration agreement. Further, the fast track procedure does

not apply if the arbitration agreement was concluded before the Fast Track Arbitration Procedures entered into force (unless the parties agree otherwise). See GIAC article 34(2).

The fast-track rules incorporate various forms of expedited procedures. Any party wishing to commence arbitration under the Fast Track Arbitration Procedures must file a statement of claim with the Secretariat. See GIAC Annex IV article 2. The Respondent has ten days after the receipt of the Statement of Claim from the Secretariat to submit the Statement of Defense. See GIAC Annex IV, article 3. The rules provide that apart from the Statement of Claim and Statement of Defense, the parties may not submit more than one additional written submission. See GIAC Annex IV, article 5(2). The Arbitral Tribunal will decide whether to accept any new claims presented. See Id.

The Fast Track registration fee is set at US$150, and arbitrators' fees and administrative fees will be fixed in accordance with a schedule of fees set for fast track arbitration procedures. See GIAC Annex I.

Under the Fast Track Arbitration Procedures, a sole arbitrator will conduct the proceedings regardless of any contrary arrangement in the parties' arbitration agreement. See GIAC Annex IV, article 4(1). The parties may jointly nominate the sole arbitrator; any failure to do so within 10 days after respondent's receipt of the Statement of Claim will result in the Arbitration Council appointing the sole arbitrator 'within the shortest time possible.' See GIAC Annex IV, article 4(2).

The Arbitral tribunal may, after consultation with the parties, decide a dispute based solely on the submitted documents, without examination of witnesses or experts. See Annex IV, article 5(4). If a hearing is to be held, the arbitrator may decide to conduct the hearing in person or via electronic telecommunication. See Id.

The Tribunal must render its award within three months from the date the case was transferred to the Arbitral Tribunal. See GIAC Annex IV, article 6. The Arbitration Council may extend this time limit on the basis of a reasoned request. See Id.

The new rules also include an amended standard arbitration clause, and new rules on advance on costs. Specifically, if both parties fail to pay the advance on costs, the case shall be dismissed, with the claimant retaining the right to assert the same claims in a new proceeding. See GIAC Rules, article 42(7).

The central objective of GIAC is to establish neutral, efficient and reputable forum for the settlement of the domestic and international disputes by arbitration and mediation. GIAC is also determined to develop and promote the alternative dispute resolution mechanism in Georgia and the region. GIAC's constitutive bodies are comprised of both local and international experts and practitioners. GIAC's list of arbitrators includes practitioners and experts from across the globe. GIAC has been chosen as a forum for dispute resolution in various investments agreements between foreign investors and the government of Georgia.

Most recently, GIAC was granted an observer status by UNCITRAL and has been included in the list of non-governmental organisations eligible for invitation to UNCITRAL Working Groups II and III sessions on dispute settlement and investor–state dispute settlement reform. Alongside GIAC, the observer organisations for these Working Groups include:

- the American Arbitration Association/International Centre for Dispute Resolution), American Bar Association;

- the American Society of International Law;
- the China International Economic and Trade Arbitration Commission, International Bar Association;
- the Institute for Transnational Arbitration; and
- the International Chamber of Commerce.

In addition, GIAC regularly hosts educational events and workshops. For example, in June 2017, GIAC headed a Regional Arbitration Campaign across Georgia in cooperation with the Georgian Chamber of Commerce and Industry, with assistance from the European Union and United Nations Development Programme. The campaign focused on raising awareness about arbitration as an alternative dispute resolution mechanism and introduced the newly adopted Fast Track Arbitration Rules. GIAC also held sector-specific arbitration workshops with business representatives to encourage the use of arbitration in construction, infrastructure and energy sectors. Continued and consistent exposure, outreach and activities will be important to help achieve the institution's success.

In sum, GIAC has attracted attention from the international arbitration community. The institution has been featured in ***Global Arbitration Review***'s news and publications. GIAC has held arbitration conferences, and plans to continue to hold them in the future. One of the main events of the institution is GIAC Arbitration Days – an annual international arbitration conference, the largest in the region, held in Tbilisi. Every year GIAC Arbitration Days hosts local and international arbitration experts, practitioners, industry representatives, government officials and judges. The conference helps promote Georgia's and GIAC's place on the international arbitration map. GIAC is also continuously cooperating with other well-known institutions, and has most recently signed the cooperation agreements with the Permanent Court of Arbitration and the Vienna International Arbitration Centre, designed, among others, to exchange the services and facilities.

GIAC can take advantage of the revamped arbitration-friendly legal system in Georgia, Georgia's location in the region at the crossroads of Europe and Asia, Georgia's investment- and business-friendly environment and the government's commitment to promotion of a liberal economy and a modern arbitration system. At the same time, GIAC can be expected to continue to work together with the local legal community to promote the development of arbitration in Georgia and in the region, while offering a regional forum for resolution of cross-border disputes. GIAC can also be expected to continue to support legal reforms as needed and to promote the development and application of ethical standards in international arbitration.

At the opening of the GIAC Arbitration Days in Tbilisi 2018, the Minister of Justice of Georgia Ms Tea Tsulukiani welcomed the participants and expressed her belief that, for business-to-business disputes, it is the court that should be the alternative forum and indeed the last resort for dispute resolution. She also explained the government's vision and the steps undertaken to make Georgia the arbitration hub in the region. The Supreme Court Justice Nino Bakakuri echoed these views and noted the judiciary's readiness and support for arbitration in Georgia.

An effective legal framework, together with an effective international arbitration institution, and supporting government and judiciary provide Georgia with the opportunity to become

an important partner in the international arbitration community and the arbitration hub in the region.

Notes

[1] The 1997 Law on Private Arbitration was Georgia's first attempt at adopting a workable arbitration law. However, it was widely criticised. Due to many gaps and flaws, the legislation did not measure up to the expectations of an effective arbitration-friendly jurisdiction.

[2] The UNCITRAL Secretariat recognises Georgia as a Model Law country whose legislation is based on the UNCITRAL Model Law, as amended in 2006. See www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html.

[3] Georgia is also a contracting state to the ICSID Convention. Georgia's investment treaty regime and the local legislation on the promotion of foreign investment is beyond the scope of this chapter.

[4] However, GIAC will administer arbitrations in accordance with other rules, such as the UNCITRAL Rules, as may be agreed by the parties. See GIAC Rules, article 2.

[5] The Model Law as drafted applies only to international commercial arbitrations (as defined in article 1(1) of the Model Law). However, the Model Law contemplates that countries may consider extending their enactment of the Model Law to also cover domestic disputes, as a number of Model Law states already have done. Explanatory Note by the UNCITRAL Secretariat, at paragraph 10.

[6] Model Law, article 1(1), n. 2.

[7] The concepts 'property', 'private nature' and 'based on an equal treatment of the parties' are referenced in the Civil Code of Georgia, which regulates 'property, family and personal relations of a private nature, based on the equality of persons'. Civil Code of Georgia, article 1. Therefore, the arbitration law appears to cover disputes arising from property (and not family or personal relations) of a private nature under the Civil Code of Georgia. 'Property', according to the Civil Code, is 'every thing, as well as any intangible property benefit, which may be possessed, used and disposed of by natural and legal persons, and which may be acquired without restriction, unless this is prohibited by law or contravenes moral standards', and includes moveable and immoveable property. Id, articles 147, 148. The Civil Code also states that an object of private legal relationship may be a material or non-material good, of property or non-property value, which has not been excluded from commercial circulation by law. Any natural or legal person may be a subject of private law. Id, articles 7, 8.

[8] Model Law, article 7(1) (disputes 'in respect of a defined legal relationship, whether contractual or not'). An arbitration agreement can be a provision in a contract or can be executed as a separate agreement. LGA, article 8(2).

[9] How the contract can be made is set forth in the Civil Code of Georgia.

[10] For example, in a dispute involving an electronically executed loan agreement, Tbilisi Court of Appeals concluded that a consumer's review of an arbitration agreement in an electronic loan application form and electronic confirmation of the loan agreement did not result in an arbitration agreement in accordance with article 8. Matter No. 2□/3594-15 (30 March 2016) (Tbilisi Court of Appeals).

The new legislation contained another restriction. Specifically, for arbitration agreements between natural persons, the agreement had to be countersigned by the parties' attorneys or certified by a notary. LGA, former article 8(9); Law No. 4046, dated 15 December 2010. This provision was removed as part of the recent amendments, thereby making the execution of arbitration agreements less burdensome and costly. Law No. 3218, dated 18 March 2015.

[11] LGA, former article 2(2), replaced by Law No. 3218, dated 18 March 2015.

[12] The party seeking the termination of judicial proceedings must request the dismissal no later than the time when the party's responsive papers are due. LGA, article 9(1). Before the recent amendments, the party had to notify the court about the commencement of the arbitration. To the extent that provision may have required the commencement of arbitration before the termination of the court proceeding, this is no longer required – the existence of a valid arbitration agreement should be sufficient. LGA, former article 9(2), removed by Law No. 3218, dated 18 March 2015. One recent study of court practices on this matter confirms that the courts indeed follow the legislative mandate by terminating the proceedings and notifying the parties that the dispute is subject to arbitration as provided in the parties'

relevant agreements. See , Report by Caucasus Research Resource Center, Georgia (February 2018).

Model Law, article 8.

[13] Under the Law on Arbitration, if the parties' agreement calls for an even number of arbitrators and the parties have not agreed otherwise, the party-appointed arbitrators shall appoint one more arbitrator. LGA, article 10(3). This provision suggests that, if the parties so agree, the tribunal composed of an even number of arbitrators is in principle allowed, although not very likely in practice, and may not have been intended by the legislature. The GIAC Arbitration Rules do not contemplate an even number of arbitrators. Under the GIAC Arbitration Rules, disputes 'shall be decided by a sole arbitrator or by a tribunal of three arbitrators'. GIAC Rules, article 12(1).

[14]

[15] The courts that are competent for arbitrator appointments are the 'district (city)' courts. LGA, article 2(1)(a).

[16] The Law on Arbitration states that no person can be appointed as an arbitrator without the arbitrator's written consent. LGA, article 11(1). The Law also provides that upon the request of the parties and the arbitral tribunal, the arbitrator must provide written information about her or his educational background and any experience as an arbitrator. LGA, article 11(5).

[17] Further, the sole arbitrator nominated by the parties, or the presiding arbitrator nominated by the party-appointed arbitrators, is subject to confirmation by the Arbitration Council. See GIAC Rules, article 13(2), (4). There is no similar provision for party-appointed arbitrators sitting on a three-member tribunal. See GIAC Rules, article 13(2). The GIAC Arbitration Rules provide that arbitrators may be appointed from outside the GIAC list of arbitrators. See GIAC Rules, article 13(5). However, it is not clear whether this provision applies only to party-appointed arbitrators or also pertains to arbitrators appointed by the Arbitration Council. In any event, this is a useful provision considering that the list of GIAC arbitrators is not extensive. GIAC has noted that negotiations are under way for the addition of new arbitrators to the list. GIAC Report on Formation of the Georgian International Arbitration Centre (2014).

[18] Unlike the Model Law, the Georgian legislation sets forth the circumstances that serve as the basis for refusing an arbitrator's appointment. Specifically, an arbitrator shall not be denied appointment unless she or he (i) has limited legal capacity or is a beneficiary of support, unless otherwise established by court judgment; (ii) is a state employee, a state political official, a political official, or a public servant; or (iii) has been convicted of a crime where the conviction has not been vacated or dismissed. LGA, article 11(7)(a-c). Thus, the Georgian legislation does not expressly state that no person shall be precluded from serving as an arbitrator by reason of her nationality unless otherwise agreed to by the parties, which is the formulation adopted in the Model Law, article 11(1). However this is implied in the legislation, as nationality is not included as one of the grounds for refusing an arbitrator's appointment.

[19] The tribunal makes the determination on the challenge unless the challenged arbitrator steps down or the other party consents to the challenge. LGA, article 13(2).

[20] The courts that are competent for arbitrator challenges are the local regional courts. LGA, article 2(1)(a).

[21] The parties are free to agree on a procedure for challenging an arbitrator. The procedure set forth in the legislation is applicable in the absence of such an agreement. LGA, article 13(1), (2).In arbitrations administered by GIAC and governed by the GIAC Arbitration Rules, the challenge is submitted to the GIAC Secretariat. The Secretariat transmits the party's statement of challenge to the other parties and the members of the tribunal, including the arbitrator being challenged, and gives them an opportunity to submit written comments within a period of time established by the Secretariat. If the challenged arbitrator does not resign or the other parties in the arbitration do not agree with the challenge, the Arbitration Council makes the determination on the arbitrator challenge. The rules do not set forth a time limit for making the determination. GIAC Rules, article 17. Further, the arbitration legislation does not specify whether or not a party can turn to the court after an arbitration institution (ie, the GIAC Arbitration Council) makes the decision on the arbitrator challenge. The GIAC Arbitration Rules do state that the decisions made by the Arbitration Council with regard to the appointment and challenge of an arbitrator shall be final. GIAC Rules, article 19.

[22] The Model Law uses 'shall'. Model Law, article 16(2) ('A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense.').

[23] The tribunal may also consider late challenges if the delay is found to be justified. LGA, article 16(4).

[24] The courts that are competent for this purpose are the courts of appeals. LGA, article 2(1)(a).

While there have been instances of courts interfering with the tribunal's competence to decide on its jurisdiction, some courts have demonstrated that they will not accept the application of a party regarding the competence of the arbitral tribunal before such an application is decided by the tribunal. See *Legal and Practical Aspects of Arbitration in Georgia*, Report by Caucasus Research Resource Center, Georgia (February 2018).

[25] The Law on Arbitration states that a party may seek interim measures 'before commencement of the arbitration'. LGA, article 17(1). However, this likely means that the party may seek such measures from a court in aid of arbitration or from an emergency arbitrator where the arbitration is being administered under institutional rules that provide for such option or a similar mechanism. The GIAC Arbitration Rules do not provide for an emergency arbitrator.

[26] The tribunal may decide not to apply these requirements when a party is seeking an interim measure for the preservation and maintenance of evidence. LGA, article 18(2).

[27] Further, if the interim relief is later determined to be unjustified, the requesting party will be liable for any damages caused. LGA, article 18(4). The tribunal may, as it considers necessary, modify, suspend or terminate an interim measure upon a party's request or on its own initiative. LGA, article 19.

[28] The courts that are competent with respect to interim measures are the courts of appeals. LGA, article 2(1)(a). A recent study of judicial practice in Georgia notes that courts of appeals have issued interim relief, including injunction, in relation to arbitrations. See *Legal and Practical Aspects of Arbitration in Georgia*, Report by Caucasus Research Resource Center, Georgia (February 2018).

[29] The courts have the same authority with respect to the issuance of interim measures in relation to an arbitration as in relation to proceedings in court. LGA, article 23(2).

[30] An interim measure issued by a tribunal is binding and enforceable. LGA, article 21(1).

[31] The opposing party has the burden of demonstrating one of the grounds for refusing the recognition and enforcement of an interim measure. LGA, article 22(1). And, those grounds include the grounds for refusing to recognise and enforce arbitration awards. See id. Further, in ruling on the recognition and enforcement of the tribunal's interim measures, the courts must not review the merits of the tribunal's decisions. LGA, article 22(3).

[32] Currently, the Law does not contain specific provisions that would allow a party to seek from the tribunal an ex parte preliminary order that would direct a party not to take any action that would frustrate the interim measure sought. See Model Law, article 17. This does not mean that a party would not be able to use local civil procedural laws to obtain a similar remedy from the competent courts in Georgia.

[33] The parties in the arbitration have the right to be represented by an attorney or other representative. LGA, article 28.

[34] The GIAC Arbitration Rules provide that the tribunal 'shall ensure' that the proceedings are conducted in an expeditious and cost-effective manner, and that in all cases, the parties are given an equal and reasonable opportunity to present their case. GIAC Rules, article 21(1), (3). The tribunals may adopt procedural measures considered necessary for the effective management of the proceedings. GIAC Rules, article 21(2).

[35] However, a party may request an oral hearing at any stage of the proceeding, and the tribunal shall hold the hearing unless the parties have agreed that no hearing shall be held. Id. Under the GIAC Arbitration Rules, the tribunal 'shall hold a hearing if it considers appropriate or either party requests it to do so'. GIAC Rules, article 30(1).

[36] The GIAC Arbitration Rules also provide that unless the parties agree otherwise, hearings shall be held in private and any information, documentation, recordings or transcripts relating to the hearings shall be confidential. GIAC Rules, article 30(4).

[37] Model Law, article 27. In arbitrations under the GIAC Arbitration Rules, the tribunal determines the admissibility and weight of the evidence. The tribunal may order a party to

provide any additional evidence, on its own motion or at the request of another party. The tribunal may, after consultations with the parties, appoint one or more experts on a specific issue. GIAC Rules, article 29.

[38] The rights and duties of a witness summoned by the court would be determined in accordance with the Civil Procedure Code of Georgia. Id.

[39] However, the Model Law specifies that the tribunal's determination is made by applying the conflict of laws rules which the tribunal considers applicable. Model Law, article 28(2). The GIAC Arbitration Rules provide that the tribunal shall apply to the merits of the dispute any law or rules of law agreed upon by the parties. In the absence of such agreement, the tribunal shall apply any law or rules of law that it considers most appropriate for the purposes of the dispute. GIAC Rules, article 24(1).

[40] The Georgian version of 'takes into account' appears to be less obligatory than the Model Law's 'decide in accordance', although no material difference may have been intended. Model Law, article 28(4).

Model Law, article 28(3).

[41] Unlike the Model Law, the Georgian legislation does not expressly state that the award

[42] shall be deemed to have been made at the place of the arbitration indicated in the award. Model Law, article 31(3). The GIAC Arbitration Rules state that the award shall be deemed to have been rendered at the seat of arbitration. GIAC Rules, article 22(3).

[43] To make a respective note regarding any omitted signature likely means that a reason for the absence of the signature shall be stated. The GIAC Arbitration Rules provide the same. GIAC Rules, article 37(2).

The GIAC Arbitration Rules require a reasoned award. GIAC Rules, article 37(1).

[44] Pursuant to the GIAC Arbitration Rules, the arbitration is deemed to commence on the

[45] date the request for arbitration is received by the GIAC Secretariat. GIAC Rules, article 6(2). The award is deemed to be rendered on the date stated in the award. Id, article 36(2).

[46] Under the Law on Arbitration, if the parties settle the dispute, the tribunal shall terminate the proceedings, and upon the parties' request, the tribunal has the authority to record the settlement in the form of an award. LGA, article 38(1). The GIAC Arbitration Rules expressly provide that the tribunal has full discretion whether to accept the parties' request regarding the settlement award. GIAC Rules, article 38. The Law on Arbitration notes that the settlement award has the same legal force as any other award. LGA, article 38(3). It also provides the time limitation for rendering settlement awards – the tribunal shall render an award based on the settlement within 30 days after the parties' request. LGA, article 38(2).

[47] Georgian legislation also specifies the date of entry into force of the award. Unless otherwise agreed by the parties or provided by law, the award enters into force on the date it is rendered. LGA, article 39(5).

[48] Georgia adopts a territorial approach. All awards rendered in Georgia are treated as domestic awards. Provisions on the correction and interpretation of the award, and on rendering additional awards, follow the Model Law provisions. LGA, article 41; Model Law, article 33.

[49] Before the latest legislative amendments, the court had the authority to suspend enforcement (for no longer than 30 days) if the party resisting enforcement sought such suspension and provided appropriate security. That provision has been withdrawn, and now the suspension of enforcement proceedings can only be obtained pursuant to article 45(3) as noted above. Law No. 3218, dated 18 March 2015 (withdrawing former article 44(3)).

See Model Law, article 36(2).

[50] The LGA Article 45(3) suggests that the court may suspend enforcement if the court

[51] considers it proper to do so, even without a request from the party. However, in practice, the party resisting enforcement would likely have to alert the court in Georgia about the other set-aside proceedings, and hence, there would likely be a request from the award debtor.

[52] Although the language in the Georgian legislation is similar to the New York Convention and grants courts discretion ('may refuse') to recognise an award set aside in the country in which it was made, commentators have noted that there is no such practice established in Georgia and that Georgian courts generally would refuse recognition in such circumstances.

[53] Before the recent legislative amendments, the public order ground for refusing enforcement and recognition, as well as for setting aside of an award, required a showing that the award (rather than the enforcement of the award) was in conflict with public order.

The current provisions indicate that the enforcement of the award must be in conflict with public order.

[54] The courts of appeals have jurisdiction to set aside awards rendered in Georgia. LGA, article 2(1)(a).

[55] One distinction in the list of set-aside grounds is the formulation of the public policy ground. The court may set aside an award if it is contrary to the public order of Georgia. LGA, article 42(2)(b.b).

[56] If a court has rendered a decision to recognise and enforce an arbitration award rendered in Georgia, that award cannot be set aside on the same grounds that the award debtor has already raised unsuccessfully in the recognition and enforcement proceedings. LGA, article 42(5). In such an event, the request to set aside the award would be inadmissible, or if already accepted, the proceedings would be terminated. Id. Likewise, a party may not object to the recognition and enforcement of an award rendered in Georgia on the same grounds the party advanced to set aside the award, or where the party did not seek to set aside an award within the applicable time limitations – 90 days after the date on which the award was served on the party. LGA, articles 45(2), 42(3).

[57] The LGA suggests that if the award was not rendered in Georgia, a duly certified original is required. The Civil Procedure Code indicates that either a duly certified original or a copy is sufficient. Translations would need to be notarised. If the certification is done outside of Georgia, it would need to be apostilled. Georgia is a signatory to the Hague Apostille Convention, which entered into force in Georgia in May 2007. Convention Abolishing the Requirement of Legalization for Foreign Public Documents concluded 5 October 1961.

[58] Matter No. -508-□-12-2015 (22 July 2015) (Supreme Court of Georgia) (noting that the evidence submitted by the award creditor demonstrated that the Ukrainian Chamber of Commerce and Industry, International Commercial Arbitration Court award has entered into force and has not been enforced); Matter No. -456-□-9-2015 (30 March 2015) (Supreme Court of Georgia) (noting that the award creditor was asked to produce within 10 days a document regarding the award's non-enforcement in the territory where it was rendered, and that the award creditor produced a letter to this effect from the Ukrainian Chamber of Commerce and Industry, International Commercial Arbitration Court, and thereafter the application for recognition and enforcement was received for consideration by the court). The courts have referred to similar evidence when enforcing foreign court judgments. Matter No. - 4982-□-99-2015 (23 May 2016) (Supreme Court of Georgia) (noting that the foreign judgment has entered into force and has not been enforced on the territory of the Russian Federation). If the enforcement, for this purpose, means execution and satisfaction of the award, requiring such proof from the award creditor may be an unnecessary burden, when the award debtor is a party more appropriately tasked to prove the opposite – that the award has been executed and satisfied, or that the award has not become binding. If enforcement is used in the sense of recognition and enforcement, requiring proof of no recognition and enforcement in the place of arbitration seems to serve no purpose when the pro-arbitration framework created by the New York Convention contemplates that an award can be recognised and enforced in more than one jurisdiction.

[59] Matter No. 2□/998-15 (3 April 2015) (Tbilisi Court of Appeals) (the court did not explain the rationale for this requirement, but did reference article 45(2) of the Law on Arbitration, pursuant to which the recognition and enforcement of the award will not be refused on the same ground that the award debtor unsuccessfully sought to set aside that award, or where it did not seek to set aside an award within the applicable 90-day period. The court also noted that the award creditor could not demonstrate that the final award was communicated to all the parties in the arbitration and refused to consider the application for recognition and enforcement as inadmissible. The court explained that the award creditor can reapply when the conditions for consideration of its application would be satisfied); Matter No. 2□/1101-15 (3 April 2015) (Tbilisi Court of Appeals) (refusing to consider application for recognition and enforcement of the domestic award where the 90-day period for seeking to set aside the award had not yet passed).

[60] The court may schedule an oral hearing when it considers such a hearing necessary and helpful for the court's decision, in which case the parties would be notified of the hearing, but their absence would not delay the proceedings. Id., article 35621(2).

[61] Before the recent legislative amendments, the fee was substantially higher – it was calculated at 3 per cent of the value of the award, with no upper limit, and no less than 300 lari.

[62] When the award creditor is partially successful, the order for costs and fees would be assessed in accordance with the relative success of the party. Matter No. -544-[illegible]-17-2014, *E-R Ltd v F-G Ltd* (9 July 2014) (Supreme Court of Georgia) (ordering the unsuccessful award debtor to pay the court fees in the amount of 8,000 lari, as well as the award creditor's attorneys' fees in the amount of 1,960 lari); Matter No. -3938-[illegible]-101-2013 (27 February 2014) (Supreme Court of Georgia) (ordering recognition and enforcement of the Ukrainian Chamber of Commerce and Industry, International Commercial Arbitration Court award; ordering the unsuccessful award debtor to pay the court fees in the amount of 8,000 lari, but not ordering payment of the award creditor's attorneys' fees as they were not substantiated by documentary evidence). Attorneys' fees are capped at 4 per cent of the value of the claim. Civil Procedure Code, article 53; Matter No. -456-[illegible]-9-2015 (30 March 2015) (Supreme Court of Georgia) (awarding only 875.30 lari in reasonable attorneys' fees, and not 1,000 lari requested as the amount sought was above the 4 per cent cap).

[63] The National Bureau of Enforcement assists with the execution process. The Law of Georgia on Enforcement Proceedings.

[64] Matter No. -544-[illegible]-17-2014, E-R Ltd v F-G Ltd (9 July 2014) (Supreme Court of Georgia) (enforcing the London Maritime Arbitration Association arbitration award) (noting that there is no procedure initiated in the United Kingdom with respect to the enforcement of the award); Matter No. -311-[illegible]-10-2014 (1 December 2014) (Supreme Court of Georgia) (refusing to entertain respondent's arguments that challenged the merits of the award, and recognising the Russian International Commercial Arbitration Court arbitration award). Matter No. 2[illegible]/5858-13 (25 March 2014) (Tbilisi Court of Appeals) (The court explained: with respect to public order, both theory and practice confirm that public order does not encompass substantive review of the arbitration award and an assessment of the correctness of the tribunal's reasoning, as this would be contrary to the Law on Arbitration. Therefore, the court cannot reconsider or reassess the documentary evidence submitted to the tribunal. Public order does not encompass any and all kinds of error, but rather a departure from fundamental principles of natural justice. To set aside an award as contrary to public order, the award must conflict with such fundamental values. Otherwise, the public order exception would be turned into a vehicle for appealing an arbitration award, and that would be contrary to the goal of achieving finality of arbitration awards except in very limited circumstances. Accordingly, an award debtor's argument that the arbitration award was based on false documents and the tribunal's incorrect assessment of the evidence would not be sufficient to refuse recognition and enforcement of an award).

[65] In this regard, commentators have reported on cases where the courts have refused enforcement of arbitration awards based on an excessively high penalty amount as against public order. In such circumstances, courts have adjusted the amount of the fee, and therefore, have in effect enforced the award only to the extent of the adjusted penalty fee. Thus, for example, in the Matter No. 2[illegible]/2220-11 (30 June 2011), the Tbilisi Court of Appeals approved in part the application for recognition and enforcement of the award. The court found that the tribunal's award of a penalty in the amount of 2,825.35 lari was inappropriately high, and was contrary to the established legal principles, and therefore, public order. The court enforced the penalty only in the amount of 500 lari. The court did not explain its reasoning behind the determination that the penalty amount in the award was high, or that 500 lari was the appropriate amount. More importantly, the court did not explain the rationale behind its declaration that the excessively high penalty amount contravenes public order. Similarly, in the Matter No. 2[illegible]/227-11 (28 February 2011), the Tbilisi Court of Appeals approved an application to recognise and enforce a domestic award, except with respect to the tribunal's determination of a penalty for non-payment. The court found that daily interest of 0.3 per cent was excessively high and thus contrary to public order. The court enforced a penalty only at a daily rate of 0.07 per cent.

[66] See *Legal and Practical Aspects of Arbitration in Georgia*, Report by Caucasus Research Resource Center, Georgia (February 2018).

[67] The GIAC Arbitration Rules were approved by the GIAC Board on 9 September 2014, with the Annexes, including the schedule of fees, effective as of 1 January 2016. The amended

Arbitration Rules were approve on 10 March 2017. For more information about GIAC, visit www.giac.ge.

[68] GIAC also notes that it is independent from its founder, the Georgian Chamber of Commerce and Industry.

[69] GIAC offers modern facilities for arbitration hearings or related meetings and proceedings (without charge). GIAC can also assist with other logistics, including with securing court reporters and interpreters.

[70] Working groups behind the project forming GIAC and its arbitration rules included international arbitration experts and practitioners, representatives of the Ministry of Justice, Finance, and Economy and Sustainable Development of Georgia, the Supreme Court of Georgia, non-governmental organisations, and other leaders in the area.

[71] The GIAC Arbitration Rules do not provide for an emergency arbitrator mechanism. GIAC also has not developed mediation rules.

[72] The filing fee is US$300 for disputes with values below US$20,000 and US$1,000 for disputes with values exceeding US$20,000.

[73] Separate fee arrangements between the parties and the tribunal members are not allowed. In fixing arbitrator fees, the Secretariat takes into account the complexity of the dispute, the experience of the arbitrators, and other relevant circumstances. If not otherwise determined by the tribunal, in cases with a three-member tribunal, the co-arbitrators' fee is 60 per cent of the fee of the presiding arbitrator. GIAC Rules, Annex I.