

RECOGNITION AND  
ENFORCEMENT OF FOREIGN  
ARBITRAL AWARDS IN  
LITHUANIA

2023

- Foreign arbitral awards in Lithuania may be enforced only after having been recognised and allowed to be enforced by the Court of Appeal of Lithuania (**Court of Appeal**).
- The Court of Appeal does not review the foreign arbitral awards on their merits. The court only verifies whether certain conditions, that may constitute the grounds for non-recognition of a particular foreign arbitral award, exist.
- The conditions for recognition, refusal to recognise and allowing to enforce foreign arbitral awards are set forth in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (**New York Convention**), which entered into force in respect of Lithuania on 12 June 1995, whereas the recognition procedure is set forth in the Law on Commercial Arbitration of the Republic of Lithuania and the Code of Civil Procedure of the Republic of Lithuania (**CCP**).

## Proceedings in Lithuania

- An application regarding recognition and enforcement<sup>1</sup> of the foreign arbitral award can be submitted by a party to the arbitration proceedings (the applicant).
- Such applications are not subject to a stamp duty. They must satisfy general requirements set out in the CCP for the preparation of procedural documents.
- If the applicant does not reside in Lithuania and has not appointed a Lithuanian representative or an authorised person for receiving the case documents, the applicant may indicate their e-mail address, telephone number, facsimile number, and/or addresses of other available electronic means of communication for the purposes of service of procedural documents.
- An application for recognition and enforcement of a foreign arbitral award must be submitted with (i) the original or a duly certified true copy of the arbitral award and (ii) the arbitration agreement sought to be recognised and enforced. If the arbitral award or arbitration agreement is not in the Lithuanian language, the applicant shall also provide duly certified translations of those documents into Lithuanian.
- An application regarding the recognition and enforcement of the foreign arbitral award is considered by a panel of three judges of the Court of Appeal. The application is usually considered during a written hearing.
- The court's ruling regarding the recognition and enforcement of the foreign arbitral award becomes effective from the date of its adoption. Within the period of 30 days, an appeal may be lodged against such ruling to the Supreme Court of Lithuania, which has a right to accept for review such appeals that comply with the requirements for cassation appeals set out in the CCP.
- If the court's ruling on the recognition and enforcement of a foreign arbitral award is not complied with in good faith, it may be submitted to a bailiff for enforcement within 5 years from the date of its adoption.

<sup>1</sup> The question of enforcement of the foreign arbitral award may be adjudicated together with the question of recognition of such award.

## Grounds for Refusal to Recognise and Enforce a Foreign Arbitral Award

- When deciding on the recognition of a foreign arbitral award, the court's legal assessment starts from the presumption that the award is enforceable. That presumption may be rebutted only on the grounds set out in the New York Convention.<sup>2</sup>
- The Court of Appeal may refuse to recognise a foreign arbitral award if the party interested in non recognition proves the existence of at least one of the following circumstances:
  - the parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; and/or
  - the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present their case; and/or
  - the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; and/or
  - the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; and/or
  - the award has not yet become binding to the parties or has been set aside or suspended by a competent authority of the country in which, or under the laws of which, that award was made.<sup>3</sup>
- According to the Lithuanian praxis, even if the respondent proves one of the aforementioned grounds, the court is not obliged to refuse recognition and enforcement of the foreign arbitral award.<sup>4</sup>
- The Court of Appeal, whether by request of a party or on its own initiative, shall refuse to recognise a foreign arbitral award if at least one of the following circumstances is proved:
  - the subject matter of the dispute is not capable of settlement by arbitration under the laws of the Republic of Lithuania; and/or
  - the recognition or enforcement of the award would be contrary to the public policy of the Republic of Lithuania.<sup>5</sup>
- The public policy referred to in the New York Convention should be understood as international public order. The recent praxis of Lithuanian courts suggests that it should be refused to recognise and enforce an award if the recognition and enforcement contradicts the basic legal principles and moral norms established in the Lithuanian Constitution and recognised internationally, as well as when the award or arbitration agreement was obtained by coercion, fraud, based on threats, or under other circumstances of similar gravity.<sup>6</sup>

<sup>2</sup> Ruling of the Supreme Court of Lithuania of 15 June 2017 in civil case No 3K-3-267-611/2017.

<sup>3</sup> Ruling of the Court of Appeal of Lithuania of 20 December 2022 in civil case No e2T-91-881/2022.

<sup>4</sup> Ruling of the Court of Appeal of Lithuania of 9 February 2010 in civil case No 2T-5/2010.

<sup>5</sup> Ruling of the Supreme Court of Lithuania of 23 October 2015 in civil case No 3K-7-458-701/2015.

<sup>6</sup> Ruling of the Supreme Court of Lithuania of 13 June 2019 in civil case No e3K-3-182-969/2019.

## Interim Measures

- When deciding on the recognition and enforcement of an award, the court may, at the request of a party, apply interim measures to secure the future enforcement of the award (for example, seize the other party's property or rights, prohibit performance of certain acts, etc.). Request for application of interim measures may be submitted either before<sup>7</sup>, together with, or after the submission of the request for recognition and enforcement of an award. Interim measures may also be applied at the enforcement stage, i.e., after the court's ruling on the recognition and enforcement of the award is issued.
- Interim measures can be applied by a court when the applicant establishes that: (i) the request for recognition and enforcement of the award is provisionally (*prima facie*) well-founded; and (ii) there is a risk that, in the absence of interim measures, the execution of the court's ruling for recognition and enforcement of the arbitral award may be rendered more difficult or impossible; and (iii) the requested interim measures are proportional.
- The question of whether interim measures should be applied may be decided by the court without informing the other party (against whom they are sought). However, the court has the discretion, if it considers it necessary, to inform the other party about the application for interim measures and to give that party a right to reply to such application.
- The court's ruling on interim measures becomes final and enforceable from the date of its adoption.

## Stay of Proceedings and Provision of a Security

- Where an application to set aside an arbitral award is made in the State of origin, the Court of Appeals may, at the request of the party, suspend the proceedings for recognition and enforcement of such an award in Lithuania. The need for a stay of proceedings is assessed by the court on a case-by-case basis, but it is emphasised in the Lithuanian praxis that the court should, among other factual circumstances, assess the likelihood of the annulment of the award and the likely duration of the annulment proceedings.<sup>8</sup>
- When deciding on the stay of proceedings for recognition and enforcement of an arbitral award, the court may, at the request of a party, order the other party to give suitable security. In such cases the court shall apply by analogy the rules of law applicable to the applications for interim measures.

<sup>7</sup> In the referred case, the request for recognition and enforcement of the award must be submitted within a time limit set by the court, which shall not exceed 14 days from the date on which interim measures were applied.

<sup>8</sup> Ruling of the Supreme Court of Lithuania of 8 June 2023 in civil case No e3K-3-177-381/2023.

<sup>9</sup> Ruling of the Supreme Court of Lithuania of 27 September 2019 in civil case No e3K-3-336-611/2018.

The information contained in this document is for general information purposes only and should not be considered as legal advice. Should you have any questions or need further clarifications, **do not hesitate to contact us.**



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