AMCA Arbitration and Mediation Center of Armenia

ARBITRATION IN 60 QUESTIONS

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ARBITRATION

in

60 QUESTIONS

(MANUAL)

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The "Arbitration in 60 Questions" manual is designed as a comprehensive guide to understanding the most frequently encountered issues in the field of arbitration. In recent decades, arbitration has gained popularity as an effective method for resolving disputes outside of traditional courtrooms, offering flexibility, confidentiality, efficiency, and other significant advantages. However, the growing use of arbitration in the Republic of Armenia and several other jurisdictions has highlighted the need for an in-depth exploration of this innovative alternative dispute resolution method, which this manual aims to provide.

This publication thoroughly examines key topics such as the nature of arbitration, its benefits, procedural features, arbitrability, and essential resources related to the field. The manual is organized in a question-and-answer format, making the material accessible and allowing for quick reference. Each question delves into a specific aspect of arbitration, ranging from fundamental concepts to the latest developments in the area. This guide is intended for arbitration professionals, lawyers, advocates, students, and others interested in alternative dispute resolution methods.

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CONTENT

INTRODUCTION

The Arbitration and Mediation Center of Armenia (hereinafter also referred to as the "Center" or "AMCA"), aiming to become one of the leading arbitration institutions not only in Armenia but also in the region, places significant importance on raising public awareness about arbitration and mediation alongside its primary activities. This is achieved by providing quality, accurate, well-founded, and accessible information.

This manual aims to present arbitration and mediation to a non-profesional audience as alternative methods for dispute resolution. It highlights their advantages and provides basic information in accessible language, enabling enterperneurs and other interested individuals to gain a general understanding of arbitration, the requirements for arbitration agreements, the main features and principles of arbitration, the scope of disputes handled by the Center, the enforcement of decisions made by the arbitral tribunal, the role of courts during arbitration, the key documents used in arbitration proceedings, and other relevant topics. Additionally, this menual briefly addresses mediation by answering the fundamental questions necessary for a comprehensive understanding of this method of dispute resolution.

Historically, it has been proven that economic growth and increased investment volumes are directly linked to factors such as the accessibility and speed of justice in a given country, the availability and effectiveness of alternative dispute resolution methods, the flexibility of these methods, and the feasibility and speed of enforcing decisions. It is noteworthy that a legal system with effective mechanisms for protecting rights creates a secure and predictable environment for both foreign investors and domestic businesses, thereby promoting a higher level of business activity. The economic stability and development in Armenia necessitate the application and development of flexible and prompt mechanisms for dispute resolution, specifically alternative dispute resolution methods.

At the same time, the overload of the judicial system in Armenia often makes the resolution of disputes and the administration of justice untimely. One of the best solutions to this problem is the establishment and development of institutional arbitration, which in the future will become a desirable and widely used method for dispute resolution due to its speed, specialization, simplified and convenient procedures, extensive use of electronic tools, and various other advantages. This manual is aimed at presenting these advantages.

PREFACE

The development of alternative dispute resolution methods is one of the key tools for enhancing the efficiency of justice, as highlighted in the Strategies of Judicial Reforms of the Republic of Armenia[1]. Arbitration, as one of these alternative methods with international applicability, has proven its effectiveness and importance in resolving disputes.

Arbitration is a method of dispute resolution in which an arbitral tribunal is tasked with fairly resolving disputes without undue delays and any expenses, in accordance with the legislation, applicable rules, and procedures chosen by the parties. Arbitration can be conducted either by permanent institutions (institutional arbitration) or by an arbitral tribunal created specifically for a particular dispute (ad hoc arbitration).

Among the permanent arbitration institutions is the Arbitration and Mediation Center for Armenia. The Center handling both local and international disputes across various sectors. These may include commercial, corporate, information technology, telecommunications, energy, construction, mining, financial and banking, sports, labor, intellectual property, and others.

To submit a dispute to either a permanent institution or ad hoc arbitration, an arbitration agreement is required. This agreement can be made in advance, for example, as a clause in a contract (arbitration clause), or after the dispute has arisen (arbitration agreement). The law, the rules of arbitration institutions, and international legal instruments set certain requirements for such agreements, which will be discussed in detail in this manual.

In Armenia, relationships related to arbitration are regulated by the "Law on Commercial Arbitration" and other legal acts. The "Law on Commercial Arbitration" is based on the Model Law on International Commercial Arbitration developed by the United Nations Commission on International Trade Law (UNCITRAL), ensuring harmonization of the legislation with the national regulations of other UN member states. This alignment reduces obstacles related to differences in national regulations when recognizing and enforcing arbitral awards.

Since 1997, Armenia has been a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Under this convention, arbitral awards from member countries are recognized in Armenia, and Armenian arbitral awards are recognized and enforced in the other 172 member states.

[1] Government of the Republic of Armenia's 2021-2026 Program, approved by the Government Decision No. 1363-A of August 18, 2021; Judicial and Legal Reforms 2022-2026 Program; Asian Development Bank's 2024-2028 Country Partnership Strategy draft; EU "Support to Justice Sector Reforms in Armenia" budget support program.

GLOSSARY OF TERMS AND ABBREVIATIONS USED IN THIS MANUAL

ICCA - International Council for Commercial Arbitration. Is an international non-governmental organisation. Was established in the year of 1961. The activity of the Council is devoted to promoting the imporvment of the arbitration and the other methods of alternative dispute resolution.

ARBITRATION – the process of resolving the dispute outside the court system in which the Arbitral Tribunal is responsible for adjudicating disputes without undue delays and any costs.

ARBITRATION RULES or RULES – the rules approved by the decision of the Board of Trustees of the Arbitration and Mediation Center of Armenia on November 27, 2023.

ARBITRAL TRIBUNAL – a sole arbitrator or an odd number of arbitrators (a panel of three, in exceptional cases, a panel of five).

ARBITRATION AND MEDIATION CENTER OF ARMENIA – Arbitration Center permanently functioning in the Rebulic of Armenia. Founded in 2023. Offers arbitration and mediation services for domestic and international cases.

AD HOC ARBITRATION – non-permanent arbitration conducted for a specific procedure and purpose.

SECRETARY GENERAL – the head of the permanent arbitration center. At AMCA, this position is held by the Head of the Arbitration and Mediation Center of Armenia, who also coordinates the work of the secretariat.

COURT – a body or court that is of the national court system.

ADDITIONAL PARTY – besides the claimant and the respondent, any other person (or persons) involved in the arbitration case whose rights or obligations are affected by the arbitration proceedings.

PARTY or PARTIES – in the arbitration case, the involved parties are the claimant, the respondent, and the additional party.

CLAIMANT – an individual(s) or legal entity(ies) who files a claim against the respondent, initiating the arbitration process.

CES – Compulsory Enforcement Service of the Ministry of Justice of the Republic of Armenia.

UN – United Nations.

UNCITRAL – United Nations Commission on International Trade Law.

DECISION – the decision made by Arbitral Tribunal.

RESPONDENT – an individual (s) or legal entity (entities) against whom the claimant files a request for arbitration.

AWARD – an interim, partial, final or additional award made by the Arbitral Tribunal.

SECRETARIAT – the staff of the Arbitration and Mediation Center of Armenia, which, under the leadership of the Chief Secretary, conducts the arbitration or mediation proceedings.

DAY- in the manual and Arbitration Rules, refers to a calendar day unless explicitly stated otherwise as a banking day, business day, or any other specific type of day

1. What is Alternative Dispute Resolution (ADR)?

Alternative Dispute Resolution (ADR) refers to the resolution of disputes outside of the court system. The internationally recognized methods of ADR, chosen by the parties involved, include arbitration, mediation, conciliation, and negotiation. These methods are characterized by the free expression of the parties' will, flexibility of the process, the involvement of trained professionals in conflict management, the speed of resolution, and the specialized nature of the dispute.

The use of ADR methods is increasing year by year worldwide. To understand the role of arbitration as an ADR method, let's look at the dynamics of the number of arbitration cases in some prominent international arbitration centers.

The International Chamber of Commerce (ICC) Arbitration Court handled over 300 arbitration cases annually in the 1990s. This number reached over 600 in the next decade and 946 in 2020. It is important to note that most of these arbitration cases are international disputes involving large claims.

The Singapore International Arbitration Centre (SIAC), established in 1991 to handle disputes in construction, supply, banking, and insurance, has significantly expanded the scope of disputes it handles due to increasing demand over the years. The growth of SIAC as a rapidly developing arbitration center can be seen in the following figures: 271 cases in 2015, 343 in 2016, 452 in 2017, and 1080 in 2020.

The London Court of International Arbitration (LCIA) registered around 300 cases annually between 2008 and 2018, and over 400 cases annually in 2019-2020.

The American Arbitration Association (AAA) recorded 11,130 cases in 1997 and 17,620 cases in 2018.

Each of these centers has significantly contributed to raising public awareness of ADR methods, providing quality services, and increasing the applicability of ADR methods in their respective countries.

The Arbitration and Mediation Center of Armenia, established in 2023, aims to develop the applicability of ADR mechanisms in Armenia and the region. The Center's charter goals are aimed at implementing arbitration and mediation for both domestic and international dispute resolution.

Thus, negotiation, conciliation, mediation, and arbitration are internationally recognized ADR methods whose applicability and form are evolving and changing in response to the development of various legal relationships.

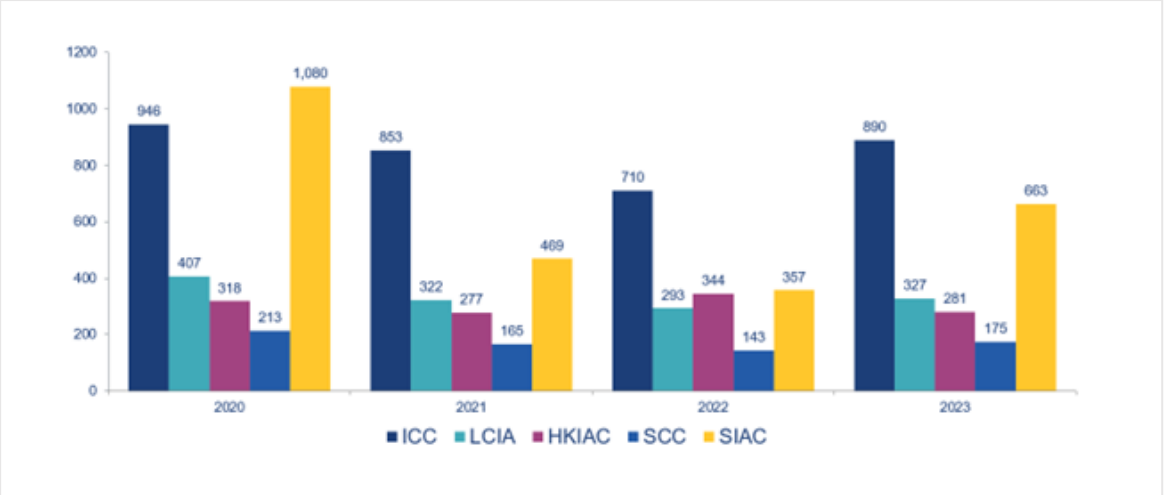


FIGURE 1
A diagram illustrating the number of new arbitration cases registered at prominent arbitration centers during the period of 2020-2023

Source - https://www.herbertsmithfreehills.com/notes/arbitration/2024-posts/ICC-Arbitration-Statistics-Confirm-Its-Continued-Popularity

2. What is Mediation?

In recent years, alongside arbitration, mediation has rapidly developed and gained widespread acceptance as an alternative method of dispute resolution. Mediation is a process aimed at resolving a dispute between parties amicably with the help of an impartial third party, the mediator.

Mediation can rightly be considered one of the fastest-growing alternative dispute resolution methods. Research shows that the number of registered mediation cases annually now exceeds 170,000[2]. This trend is also evidenced by the statistics of individual mediation service providers. In 2022 alone, the Centre for Effective Dispute Resolution (CEDR) in London registered over 17,000 mediation cases, which is approximately 3% higher than CEDR's pre-pandemic figures. It is also notable that 64% of the mediation cases registered at the center were conducted online[3].

Mediation can be used to resolve disputes arising from civil, family, labor, and in legally stipulated cases, other legal relationships such as corporate, NGO, healthcare, environmental, sports, and commercial sectors. It is important to note that mediation is based on the principles of voluntariness, confidentiality, equality of parties, and the independence and impartiality of the mediator.

[2] Tang Houzhi, Worldwide Use of Mediation, link: https://www.cityu.edu.hk/slw/adr_moot/doc/worldwide_use_of_mediation_(by_prof_tang_houzhi).pdf.

[3] The Tenth Mediation Audit, CEDR, 1 February 2023, link: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.cedr.com/wp-content/uploads/2023/02/Tenth-CEDR-Mediation-Audit-2023.pdf.

Mediation can be conducted either by involving a mediator or a permanent mediation institution in the resolution of the dispute. If there is an agreement between the parties regarding mediation, the dispute can be submitted to court for examination after the mediation process is concluded.

3. What is Mandatory Mediation?

As part of various programs aimed at establishing and developing the institution of mediation, the mandatory mediation institution was introduced in Armenia in 2022. This implies an obligation to resolve the dispute through mediation before taking the matter to court, and only if the conflicts are not resolved through this method can the parties then proceed to court. Thus, if the law stipulates the requirement for mandatory mediation before applying to court, the participants in the mediation process are obligated to attempt to resolve the dispute through mediation.

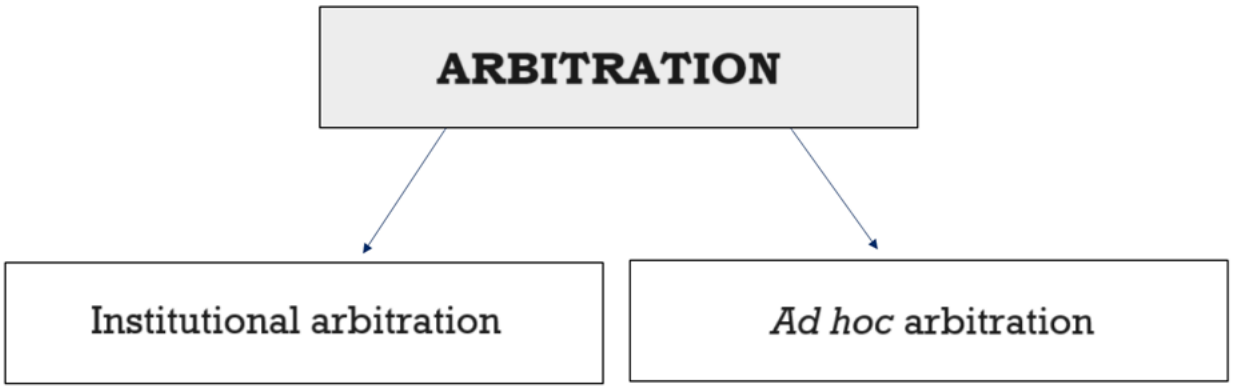
In cases where the law requires mandatory mediation before going to court, and there is no mutual agreement between the parties on the mediator's candidacy, the mediator is appointed by the competent authority based on the application of one of the parties.

In Armenia the mediation is mandatory before applying to court in the following cases:

- Divorce;
- Determination of the child's place of residence, collection of alimony (maintenance payments);
- Division of property considered as common property of the spouses;
- Exercise of parental rights regarding issues related to the child's upbringing and education;
- Establishment of visitation arrangements with the child;
- Modification or termination of a marital agreement.

4. What is Arbitration?

Arbitration is an alternative dispute resolution method in which the parties agree to submit their dispute to one or more independent and impartial individuals, called arbitrators. The duty of the Arbitral Tribunal is to resolve the dispute between the parties without undue delay, providing equal opportunity to the parties and making a final and binding decision.



There are two different types of arbitration**, institutional arbitration** and ***ad hoc* arbitration.**

Ad hoc arbitration is created by the parties to resolve a specific dispute. In this case, the parties can decide not to involve an arbitration center, instead establishing their own procedural rules for the arbitration or using internationally accepted arbitration rules (*e.g.*, UNCITRAL rules). Today, ad hoc arbitration is largely conducted worldwide in accordance with the UNCITRAL rules. In institutional arbitration, the arbitration case is managed by an arbitration center according to its rules, unless the parties have chosen other rules.

Arbitration, as a method of dispute resolution, has a long history. In its initial phase, it was an informal process that did not involve lawyers. People would turn to an impartial person trusted by both parties to resolve their disputes and conflicts. For example, merchants would refer a dispute over the price or quality of goods to a third merchant, whose independence, impartiality, and fairness they trusted, and they would abide by his decision. This is why it is often said that arbitration is a system of justice created by merchants, combining law with respect for commerce.

In its modern sense, arbitration is primarily used for resolving commercial disputes, although, depending on the legislative regulations of a given country, arbitration can also be applied to disputes arising from non-commercial legal relationships.

Today, arbitration is considered the main alternative to litigation due to its efficiency, flexibility, specialization, and confidentiality in dispute resolution. In the era globalization, arbitration holds significant importance as a method for resolving disputes arising from cross-border transactions and international commercial relationships.

5. What is the Importance of Arbitration?

Arbitration, as an alternative dispute resolution method, ensures the quick, specialized, and efficient resolution of disputes. The legislative regulations regarding arbitration vary from country to country. Depending on the legislation of a particular country, it may be considered **arbitration friendly** or **not**. It is important to highlight that the presence of effective arbitration has a positive impact on the economy.

In the context of business development and the presence of active international economic relationships, various legal disputes are inevitable. The presence of an arbitration friendly legal environment in a country allows businesses to avoid an overburdened judicial system and prefer quick, specialized, and independent arbitration.

Moreover, in international practice, it is widely accepted that effective legal regulation of arbitration and proper implementation of arbitration directly contribute to increasing international investments in that country. Today, foreign investors are more inclined to invest in countries with arbitration friendly legislation. Among other reasons, this is because the parties to the dispute, in this case, the foreign investor, trust arbitration. A transparent and efficient arbitration process gives investors confidence that their contractual rights and capital will be protected without hindrance in the host country, and any disputes will be resolved quickly, reliably, and effectively by an independent and impartial arbitrator.

The application of arbitration and other alternative dispute resolution methods helps reduce the burden on courts, ensuring quicker and more efficient judicial protection for those who prefer to protect their rights and legitimate interests through the courts.

In a globalized world, arbitration is an essential tool that facilitates the conclusion of international commercial transactions by providing an effective mechanism for resolving cross-border disputes. It is a crucial prerequisite for foreign businesses in planning their operations. Therefore, the presence of effective arbitration regulations also contributes to increased trade volumes and economic cooperation.

6. How is Arbitration Related to the Improvment of Country's Investment Enviroment?

Foreign direct investments (FDI) constitute a significant portion of the global economy. In 2019, the volume of cross-border investments exceeded $1.54 trillion USD annually. Regardless of the form, FDI entails certain risks for the investor, primarily due to the political instability, and legal and economic systems of the host country.

One of the critical components of an investment-friendly environment is the availability of effective and accessible (not just financially) mechanisms for dispute resolution. This is typically considered among the assessable risks, and investors always consider what actions to take if their local partners in the host country do not fulfill their obligations. Local courts are usually seen as unattractive and time-consuming options for resolving disputes. Additionally, there is the risk of

public disclosure of information. Therefore, foreign investors often seek reliable and alternative dispute resolution options, with international arbitration being the most preferred[4].

From the perspective of foreign direct investors, having an impartial, truly independent platform for resolving disputes between the host country and the investor is crucial. Arbitration, as such a method, provides the necessary tools. For example, it allows the parties to choose the language of arbitration, the applicable law, and the arbitrators, and it ensures the confidentiality of the proceedings. Providing the opportunity for arbitration in a country is a significant advantage for attracting foreign investors and thus developing the economy, as investors will have an operational mechanism for protecting their rights, which substantially reduces their risks.

Many studies show that as arbitration institutions develop, there is a steady increase in investments (including foreign investments), an increase in GDP levels, and a boost in trade in the countries where they are located. Notably, a World Bank study published in 2012 on the economies of 100 countries found that the lack of developed alternative dispute resolution mechanisms is a serious obstacle to FDI. Foreign investors view arbitration as a means of mitigating risks, providing them with legal certainty[5]. Similar studies are numerous and indicate that steps aimed at establishing and developing arbitration are of key importance for the economic growth of countries.

Here, the role of institutional arbitration is also crucial, as it helps raise the level of knowledge about ADR among the public and businesses and contributes to the development of the sector. In countries with developing commercial relations, there are many institutional arbitration centers authorized to resolve both domestic and international disputes. In China alone, their number exceeds 250.

[4] Walter Mattli, 2001. “Private Justice in a Global Economy: from Litigation to Arbitration.” Cambridge University Press.

[5] Pouget, Sophie. “Arbitrating and mediating disputes: Benchmarking arbitration and mediation regimes for commercial disputes related to foreign direct investment.” World Bank Policy Research Working Paper 6632 2013,: https://documents1.worldbank.org/curated/en/554271468340163221/pdf/WPS6632.pdf.

7. What are the Advantages of Arbitration?

Arbitration, as an alternative dispute resolution method, has several characteristics that shape its inherent advantages:

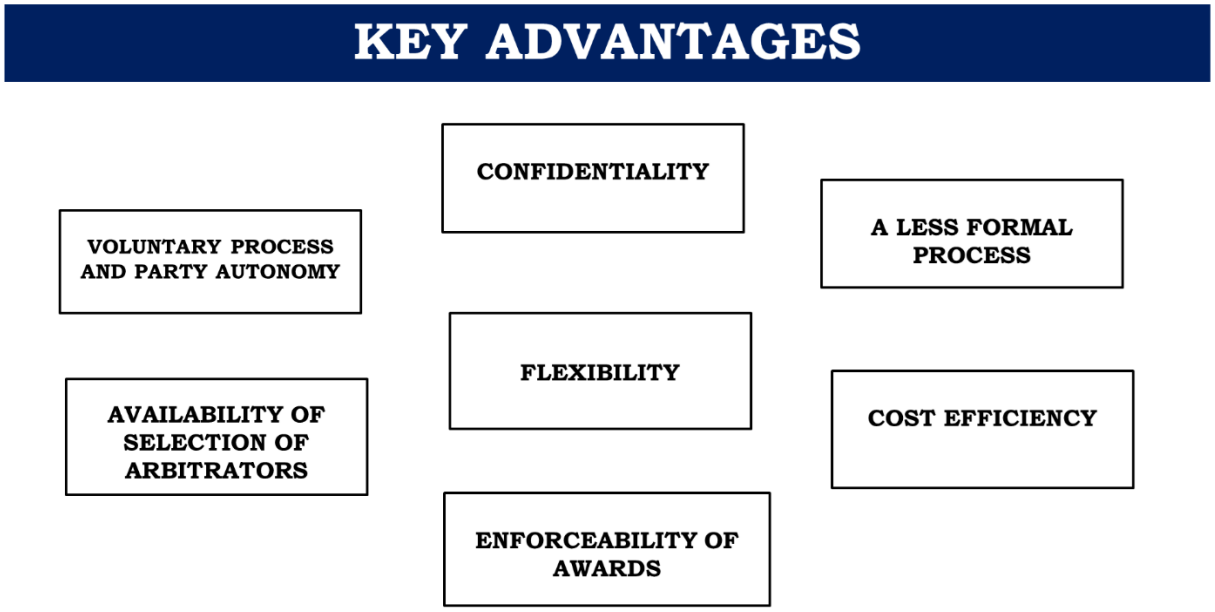


FIGURE 2

A graph illustrating the key advantages of arbitration

One of the most important characteristics of arbitration is the high level of party autonomy. This means that the parties themselves determine the method and procedure for resolving their existing or potential disputes. They are involved in almost all stages of the dispute resolution process, particularly choosing the procedural rules, language, applicable law, and arbitrators. They also have the right to set requirements for the arbitrators who will resolve the dispute. At the same time, arbitration offers participants in civil transactions more flexible tools for dispute resolution compared to judicial proceedings, which entail more rigid, immutable, and formal regulations.

Regarding the advantages of arbitration, it should be noted that the decision made within the framework of arbitration proceedings is final and binding for the parties. The laws of the Republic of Armenia provide exhaustive cases in which an arbitration award can be annulled. The finality of the arbitration award provides certainty and predictability for the parties.

Another advantage is the existence of effective mechanisms for the international enforcement of arbitration awards. This has been greatly facilitated by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which has been ratified by around 170 countries, including Armenia. In addition to the ratification of the New York Convention, Armenian domestic legislation addresses this issue through the Civil Procedure Code of the Republic of Armenia and the Law on Commercial Arbitration.

Regarding domestic arbitration awards, Armenian legislation provides for simple enforcement procedures. For example, according to Article 35, Part 4 of the Law on Commercial Arbitration, a permanent arbitration institution can submit an arbitration award for compulsory enforcement via electronic communication to the Compulsory Enforcement Service if the amount to be recovered does not exceed 5 million AMD.

One of the most significant advantages of arbitration is the confidentiality of the proceedings. Arbitration is private by nature, and it is internationally accepted that if the parties to a contract wish to keep the contract and the legal relations arising from it confidential, then the dispute arising from them should also have the same possibility of confidentiality. The confidentiality of dispute resolution is particularly important in several relationships, especially when it is necessary not to disclose the fact of the dispute's existence, the subject matter of the dispute itself is not subject to publication (*e.g.*, "know-how" in intellectual property relations), and it is necessary to maintain business or other relationships after resolving the dispute.

Unlike judicial proceedings, arbitration is significantly faster and often more affordable. This is evidenced by the fact that resolving disputes through judicial proceedings can often take years, creating several additional costs for the parties.

Now let's summarize the advantages of arbitration:

- The right to choose arbitrators,
- Speed and predictability of dispute resolution,
- Limited formal procedures,
- Freedom to choose the applicable law,
- The right to choose the language of the proceedings,
- Confidentiality of the proceedings,
- Finality of arbitration awards,
- Effective mechanisms for the international recognition and enforcement of arbitration awards,
- Predictability and certainty of costs,
- The possibility of involving sectoral specialists in the dispute resolution process.

In the case of institutional arbitration, several new advantages are added. For example, the Arbitration and Mediation Center of Armenia offers the following benefits when handling arbitration cases:

- Free consultations,
- Provision of templates for documents related to arbitration,
- Opportunities for electronic communication and notifications,
- A high-quality and competitive team supporting arbitration activities,
- The possibility of conducting arbitration hearings online,
- An electronic case management system,
- Submission of Arbitral Tribunal awards for compulsory enforcement to the Compulsory Enforcement Service for claims not exceeding 5 million AMD,
- Support at all stages of the arbitration process.

8. How is Arbitration Different from Court Proceedings?


FIGURE 3, 4
Comperative example: "Arbitration hearings and litigation"

Reaching a resolution through the judicial system can often become complex due to several characteristic features, such as:

- The lengthy examination of cases and the impossibility of predicting their duration,
- The circuitous journey of cases through the three-tier judicial system, where higher courts can send a case back to the first instance court for re-examination even after several years,
- The absence of specialized judges,
- Paper-based procedures in trials and strict formal requirements for them,
- The exclusion of individual approaches,
- The mandatory requirement for proceedings to be conducted in Armenian, as well as the proper translation of all documents submitted to the court into Armenian,
- The publicity of proceedings (unless there are grounds for a closed court session as defined by law), which poses a high risk for commercial disputes,
- The unpredictability of court costs, and so on.

Thus, by studying arbitration and national courts as methods of dispute resolution, we can highlight several differences. The main difference of arbitration proceedings from judicial ones is the flexibility of the former. That is, while the legislation governing judicial proceedings has clear regulations (for example, the language of the trial, applicable law, deadlines) that are not subject to change, in arbitration, the parties can determine and set the entire procedure for examining the case. This significant difference is particularly evident in ad hoc arbitration, where the parties to the dispute can regulate the procedure for resolving their dispute in great detail.

In judicial proceedings, the general rule is openness, whereas in arbitration, confidentiality is the norm, which can only be altered by mutual agreement of the parties.

When discussing the differences in procedures, it is important to emphasize that in arbitration, the parties have the right to participate in the selection of the arbitrators who will examine their dispute. This implies the involvement of individuals with sector-specific expertise, who enjoy the trust of the parties. In contrast, in national courts (such as in Armenia), an automated system can randomly select a judge. This ensures impartiality but does not always guarantee expertise in specialized knowledge. In arbitration, the parties can choose experienced arbitrators with specific expertise who have the necessary skills to examine the dispute.

The final difference concerns the appeal of decisions. Arbitration awards are subject to appeal only in limited cases defined by law, whereas the right to appeal court decisions (mostly) through a three-tier system is the rule in judicial proceedings.

9. What is *ad hoc* Arbitration?

As previously mentioned, arbitration has two main types: ad hoc and institutional. The ***ad hoc* arbitration mechanism** is created specifically for resolving a dispute. When the parties do not choose institutional arbitration, the arbitration is ad hoc. In ad hoc arbitration, the parties agree on the process for initiating arbitration, appointing arbitrators, and other procedural matters. If the parties choose ad hoc arbitration and do not regulate procedural issues, they are usually governed by the laws of the place where the arbitration is held.

Ad hoc arbitration is initiated when a dispute arises between the parties and operates until the purpose of its creation—resolving the specific dispute—is achieved. In ad hoc arbitration, the disputing parties choose both the arbitrator(s) and the rules under which the dispute will be resolved. At the same time, ad hoc arbitrations typically do not have a specific location, secretariat, or supporting team for conducting proceedings. There is no clear statistic on how many ad hoc arbitration cases are heard annually, but according to data published by the International Federation of Commercial Arbitration Institutions (IFCAI), more than 2,000 arbitration cases are heard annually.

In summary, in ad hoc arbitration, the disputing parties become the creators and regulators of the arbitration first, and then they are obligated to comply with the decisions made by the arbitration. For example, if the parties decide to refer a dispute arising from a transportation contract to ad hoc arbitration, they will need to discuss and answer a number of questions: *Who will be the arbitrator(s)? What procedures and rules will govern the dispute? What law will apply to the dispute? Where and how will the hearings take place?* etc.

10. What is Institutional Arbitration, and What are the Differences Between Institutional and *Ad Hoc* Arbitration?

The next of the two main types of arbitration is **institutional arbitration**, which is more widely practiced. It involves the conduct of arbitration through permanent institutions. Institutional arbitration has a permanent location, may have open or closed lists of arbitrators, published arbitration rules and regulations, a secretariat, supporting staff, and other tools necessary for case management. Structurally, institutional arbitration is similar to a court.

When choosing an arbitration center in a contract or arbitration agreement after a dispute arises, the parties should review the center's arbitration rules, technical equipment, offered support, and other issues.

It is worth noting that there are arbitration centers that handle disputes in specific fields, such as the International Centre for Settlement of Investment Disputes (ICSID) for investment disputes, and the Court of Arbitration for Sport (CAS) for sports-related disputes.

FIGURE 5,6

The left image shows the headquarters of the International Centre for Settlement of Investment Disputes (ICSID) in Washington, D.C. The right image features the Court of Arbitration for Sport (CAS), located in Lausanne, Switzerland.

The number of institutional arbitration centers is growing at an unprecedented rate worldwide. Alongside the existing older centers, new ones are being established (for example, the Arbitration and Mediation Center of Armenia, created in 2023), offering a range of ADR (Alternative Dispute Resolution) services.

EXAMPLES OF INSTITUTIONAL ARBITRATION INCLUDE:

The International Chamber of Commerce (ICC) Court of Arbitration, established in 1923, which has handled over 10,000 arbitration cases. Today, the ICC is one of the most well-known arbitration centers.

The London Court of International Arbitration (LCIA) is the oldest registered arbitration center, founded in 1893.

The Singapore International Arbitration Centre (SIAC), which is one of the fastest-growing arbitration centers in the world.

The American Arbitration Association (AAA), which undoubtedly handles the largest number of arbitration cases, with approximately 200,000 arbitration cases annually, 640 of which involve international elements.

11. What are the Advantages of Institutional Arbitration?

Arbitration conducted by institutional arbitration institutions has several significant advantages. First and foremost is the presence of a physical location, which facilitates participation in hearings, ensures the completion of technical and preparatory work, and manages correspondence. As an institutional arbitration, AMCA has a hall equipped with the necessary technical and supportive facilities for dispute resolution, a soundproof room for confidential meetings, and a permanent staff whose functions include ensuring the necessary conditions on-site for the work of arbitrators and parties to the dispute.

The next advantage is the process of selecting arbitrators and the presence of necessary rules and procedures for dispute resolution, which first relieves the parties of the obligation to agree on them in the event of a dispute and second guarantees that the parties will not hinder the proceedings by failing to choose an arbitrator or delaying the agreement on procedures. There are few cases where the parties pre-regulate all issues related to ad hoc arbitration, such as the detailed procedure for selecting arbitrators, procedural rules, and mechanisms for overcoming disputes or disagreements. In such cases, participants in ad hoc arbitration may be forced to apply to the courts, for example. In contrast, institutional arbitration institutions, with their structural frameworks and regulations, can overcome these obstacles with their own means and procedures, minimizing or completely eliminating cases of seeking court assistance within the support proceedings.

A prime example of this is the disagreement between the parties on the selection of arbitrators. For instance, the Arbitration Rules clearly define the parties' ability to choose arbitrators, and if they cannot independently select the arbitrators, the Arbitration Council, composed of respected foreign and local experts, appoints the arbitrator(s) within the stipulated time frames and procedures defined by the Rules. In the case of ad hoc arbitration, if a dispute arises regarding the appointment of arbitrators, the parties will need to apply to the court for arbitration support unless they have pre-defined detailed procedures for appointing arbitrators in the arbitration agreement. Considering the requirements set by the RA Civil Procedure Code regarding the scope of documents to be submitted to the court with such applications, submitting such an application may also imply the necessity of using specialized legal services for the parties. Therefore, it raises the question of whether the goal justifies the means invested to achieve it.

It is notable that in institutional arbitration, parties are not forced to seek judicial support but can exercise this right or seek judicial support when all procedural issues are not detailed in the agreement.

The next important advantage is the clarity of the communication conducted by the arbitration institution, including the sending of notifications and decisions and the regulations for their enforcement. Such issues are generally formulated by law, which does not regulate all possible cases.

Another important advantage of institutional arbitration is the predictability of costs, with fixed arbitration fees and the ability to calculate their total sum. For example, Appendix 1 of the Arbitration Rules clearly defines all the expenses and fees that the parties must incur, such as administrative costs, advance payments, and arbitrator fees, which allow for a complete calculation and prediction of the budget required to submit the dispute to the Center. In the case of ad hoc arbitration, parties cannot have such predictability of costs. A prominent example is the rental of space for hearings, which cannot be predicted at the time of concluding the arbitration agreement. Additionally, unlike ad hoc arbitrations, the Center, as an institutional arbitration, having bank

accounts and payment procedures, relieves the parties from opening special bank accounts or devising other mechanisms for making payments for arbitration costs.

Another advantage of institutional arbitration is the confidentiality of hearings. Although approaches to this issue are not uniform among institutional arbitrations, most provide minimum guarantees for maintaining confidentiality. For example, Article 41 of the Arbitration Rules of the Arbitration and Mediation Center of Armenia stipulates that all issues and documents related to the arbitration proceedings and award must be kept confidential. In the case of ad hoc arbitrations, parties must pre-regulate all these issues to ensure guarantees, personally ensure that arbitrators maintain confidentiality, and address the problem in case of disclosure.

One of the advantages of institutional arbitration is that when submitting cases to the court for the annulment of the arbitration award, enforcing the arbitration award, recognizing and enforcing foreign arbitration awards, or seeking judicial support for arbitration, the arbitration institution should certify the copies of arbitration-related documents (arbitration decision, arbitration agreement, etc.) submitted to the court, which can be organized quickly and informally in institutional arbitration. In contrast, in ad hoc arbitration, notarization of document copies is required, which is not always feasible without additional obstacles. For example, according to Part 5 of Article 65 of the RA Law on Notaries, the notary certifies the authenticity of a document copy issued by an individual if the notary has authenticated the signature of the individual on the document. Therefore, the notarization of the arbitration decision signed by an individual arbitrator or the arbitration agreement of individual parties in an ad hoc arbitration created by one arbitrator, and consequently the fulfillment of the requirements of the RA Civil Procedure Code, becomes technically impossible.

In conclusion, institutional arbitration is more systematic, as arbitration centers have specialized staff, established arbitration rules, guides and procedures related to arbitration proceedings, and technical tools, making the conduct of arbitration cases transparent, predictable, and efficient.

12. What is the Historical Global Development of Institutional Arbitration, and which are the Most Well-known Arbitration Centers?

Arbitration, as a method of dispute resolution, has significantly evolved throughout history. The foundations of institutional arbitration were laid in ancient times when merchants entrusted the fair resolution of their disputes to trusted and reputable individuals. However, it was only with the advent of modern commerce that arbitration began to take on a more structured and institutionalized form.

The earliest forms of institutional arbitration appeared in the late Middle Ages, when commercial courts were established in trade centers such as Venice and Bruges. These courts, overseen by merchant guilds or city councils, provided a platform for resolving disputes among merchants according to established commercial customs and rules.

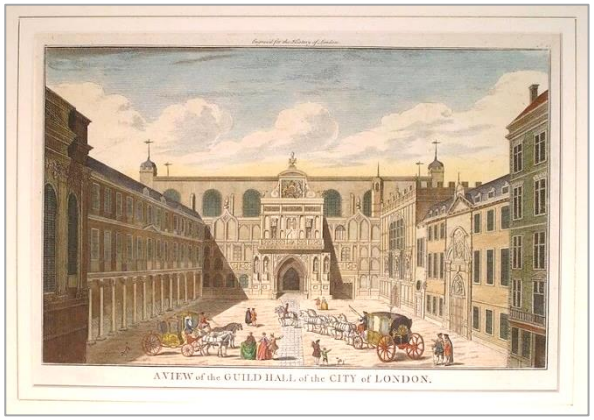


FIGURE 7
The Central Guild of London, an association of craftsmen and merchants, became a center for resolving commercial disputes in the 1750s.

The industrial revolutions of the 18th and 19th centuries stimulated the development of institutional arbitration, as the expansion of trade required the creation of more efficient and reliable mechanisms for dispute resolution. To meet the growing demand for arbitration services, several commercial associations and chambers of commerce initiated the establishment of permanent arbitration institutions. Among these, notable centers include the London Court of Arbitration (now known as the London Court of International Arbitration) and the International Chamber of Commerce Arbitration Court (ICC Arbitration Court) [6].

Research conducted in 2011 showed that 20% of the world's existing institutional arbitration institutions at that time had been established in the last ten years, 50% in the last twenty years, and 70% in the last thirty years. Only 10% of the arbitration institutions formed before the start of World War II (1939-1945) still exist today[7].

Thus, today there are numerous institutional arbitration centers around the world with many years of operation, established reputation, and recognition. Among them are the International Chamber of Commerce (ICC) International Court of Arbitration (Paris), created in 1923; the

[6] History. London Court of International Arbitration. Accessed 29.04.2024, https://www.lcia.org/LCIA/history.aspx.
[7] Guy Pendell, 2011, “The Rise and Rise of the Arbitration Institution.”

London Court of International Arbitration (LCIA), founded in 1892; the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), established in 1917; the Hong Kong International Arbitration Centre (HKIAC), established in 1985; and the Singapore International Arbitration Centre (SIAC), established in 1991.

Emphasizing the role of institutional arbitration institutions, in recent years, countries have begun to create and develop major arbitration centers with state participation or support. This development is particularly characteristic of post-Soviet countries (**the Russian Arbitration Center, the Kazakhstan International Arbitration Center, the Georgian International Arbitration Center, the Vilnius Court of Commercial Arbitration, the Arbitration Court of the Latvian Chamber of Commerce and Industry, the Tashkent International Arbitration Center**, etc.) and countries and regions experiencing rapid economic growth (**the Dubai International Arbitration Centre, the Swiss Arbitration Centre, the Vienna International Arbitral Centre, the China International Economic and Trade Arbitration Commission**, etc.).

NOTABLE ARBITRATION HEADQUARTERS BUILDINGS

London Court of International Arbitration

LONDON, THE UNITED KINGDOM

Hong Kong International Arbitration Centre

KONG

Dubai International Arbitration Centre

DUBAI, UNITED ARAB EMIRATES (UAE)

American Arbitration Association

SINGAPORE

NEW YORK, USA

13. Which Arbitration Cases are Considered International?

As previously mentioned, arbitration can handle both local and international cases. Due to the globalization of the economy, and the resulting increase in the speed and volume of the movement of goods, services, technologies, and capital, international arbitration cases have come to hold a significant proportion among the cases handled by institutional arbitration institutions in recent years.

An arbitration case is generally considered international if:

1. One of the parties is not an Armenian citizen or a legal entity registered in Armenia, or
2. The commercial relationship between the parties involves the performance of a substantial part of the obligation outside the country of the parties' places of business, or
3. According to the arbitration agreement, the arbitration is to be conducted in a country other than the parties' places of business[8].

It is important to emphasize that the classification of arbitration cases as local or international is of significant importance, as it determines various aspects such as the applicable procedural and substantive law, the selection of the arbitrator, the language of arbitration, the enforcement of the arbitration award, the complexity of the arbitration case, and other issues. Particularly in cases where the parties have not regulated the issues of the arbitration procedure, the applicable law, and the language of arbitration, it is crucial to understand whether the arbitration is international or local, as this affects how these issues are resolved.

Specifically, in the case of domestic arbitration, the entire arbitration procedure is governed by the law of a single country, including the applicable substantive and procedural law. Generally, the parties are citizens or residents of the same country, and the factual circumstances and the place of performance of the contract are also within the same country. In contrast, international arbitration involves the laws of more than one country. Moreover, in the absence of an agreement between the parties on the applicable law, the Arbitral Tribunal applies the law determined by its conflict of laws rules. However, in domestic arbitration, the applicable law is typically determined differently. For example, if the seat of arbitration is Armenia and the parties are Armenian citizens or legal entities registered in Armenia, the Arbitral Tribunal will apply Armenian law to resolve the dispute.

Today, several countries provide reliable conditions and environments for the examination of international arbitration cases. Armenia can also be considered one of the countries that offer a dependable haven for resolving disputes involving international elements.

[8] Compare UNCITRAL Model law on International Commercial Arbitration, Article 1(3):

14. Which Disputes Can be Resolved through Arbitration?

The nature of disputes that can be resolved through arbitration depends on the specific country's legislation. Some countries allow a wide range of disputes to be resolved through arbitration, while others restrict the scope of such disputes. The possibility of resolving a specific dispute through arbitration is commonly referred to as "**arbitrability,**" and disputes that are legally permitted to be resolved through arbitration are known as "arbitrable disputes."

The "Law on Commercial Arbitration" defines the scope of arbitrable disputes in Armenia, distinguishing disputes arising from commercial relationships, as well as those whose resolution through arbitration is directly provided by law. According to the legislative definition, all disputes of a commercial nature arising from civil relations are considered commercial, including issues related to the conclusion or invalidity of transactions related to these relations. The law specifies that commercial nature includes, but is not limited to:

-***Disputes arising from or related to transactions concluded between banks or other financial organizations and their clients,***

-***Disputes related to the supply and exchange of goods,***

-***Provision of services,***

-***Commercial representation or agency,***

-***Factoring,***

-***Leasing,***

-***Execution of works,***

-***Consulting,***

-***Design,***

-***Licensing,***

-***Investment, financing,***

-***Insurance,***

-***Operation or concession,***

-***Joint ventures or other forms of industrial and entrepreneurial cooperation,***

-***Legal relations related to maritime, air, rail, and road transport.***

The most objective and common examples of the aforementioned disputes include disputes arising from construction contracts, disputes related to the supply of goods and transportation, including international supply and transportation, commercial investments, and online services such as the sale of goods and provision of services through online platforms.

The "Law on Commercial Arbitration" also allows for the arbitration of non-commercial disputes, provided that such an opportunity is directly provided by law. Since its establishment, the Center has taken all possible steps to expand the scope of cases it handles. Consequently, the Center's rules, charter, or other acts do not impose restrictions that would prevent participants in civil circulation from applying to the Center, regardless of the nature of the dispute. Therefore, any local or international dispute is subject to arbitration by the Center if the parties submit a proper arbitration agreement, and such a dispute does not conflict with the applicable legal requirements for the Center.

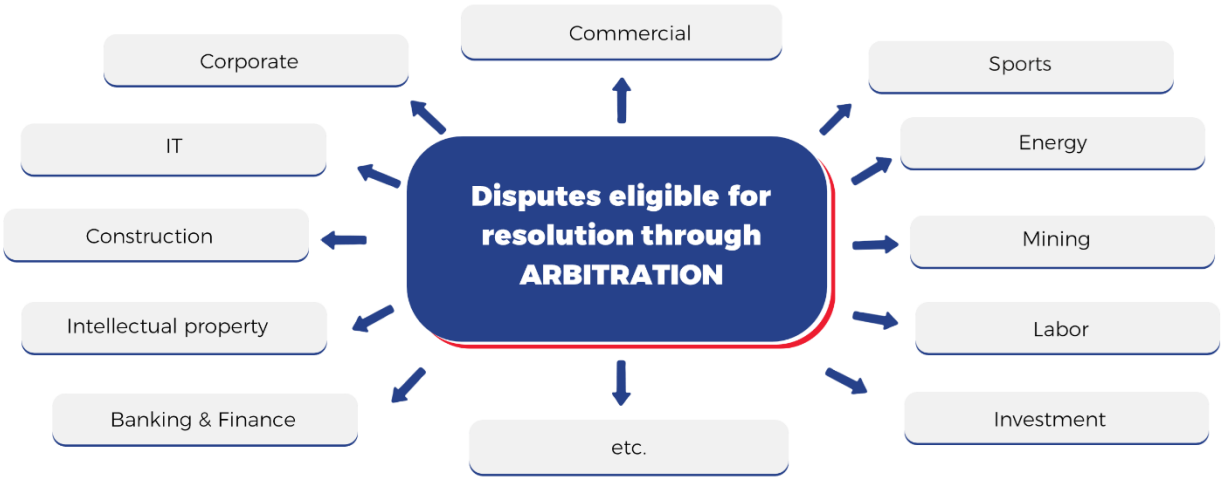


FIGURE 8

A chart reflecting, among other things, the fields in which disputes can be resolved through arbitration.

15. Who Can Apply for Arbitration to Resolve a Dispute?

Individuals and legal entities who have the right to enter into transactions (contracts) also have the right to be parties to an arbitration agreement. The parties to a dispute in arbitration can include individuals, sole proprietors, organizations, states, and state bodies, which have disputes arising from commercial (and in legally provided cases, non-commercial) relationships, both contractual and non-contractual.

According to the New York Convention, individuals can be parties to an arbitration agreement if they are legally competent. Legal entities can be parties to a contract if such a possibility is provided by the company's charter and/or the legislation of the state where the company is registered. These can include disputes arising from transactions such as: transactions concluded between banks or other financial organizations and their clients, supply or exchange of goods and services, commercial representation or agency, factoring, leasing, execution of works, consulting, design, licensing, investment and financing, insurance, operation or concession, joint ventures or other forms of industrial or entrepreneurial cooperation, maritime, air, rail, and road transportation.

16. What is an Arbitration Agreement?

An arbitration agreement is the cornerstone of arbitration. It is often said *that arbitration is born out of agreement.* An arbitration agreement establishes the parties' willingness to submit their disputes to arbitration in the event of a disagreement. This is a prerequisite when resorting to alternative dispute resolution methods. Therefore, the presence of an arbitration agreement is necessary to apply for arbitration.

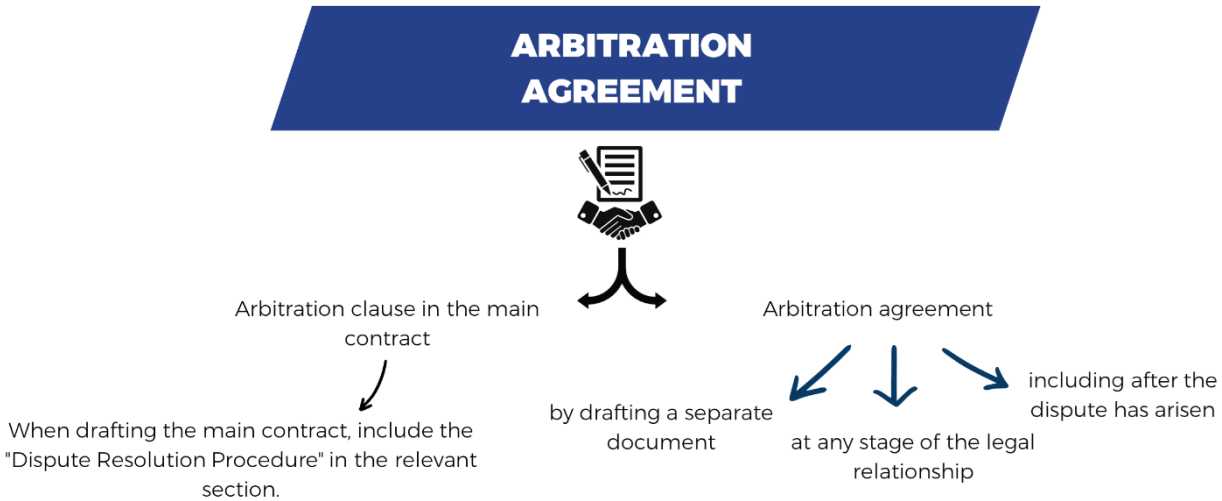


FIGURE 9
The essence of arbitration agreement.

Thus, an arbitration agreement is an agreement concluded between parties regarding a specific contractual or non-contractual legal relationship, to submit all or certain disputes to

arbitration. The arbitration agreement can be included as an arbitration clause in a contract or as a separate agreement (arbitration agreement). The agreement can pertain to contractual or non-contractual relationships between the parties or be a general agreement to submit any disputes arising between the parties to arbitration.

A key feature of arbitration in general, and arbitration agreements in particular, is the principle of separability of the arbitration clause. According to this principle, the arbitration clause is viewed as a separate agreement, independent of the main contract of which it is a part. This means that the validity of the main contract does not depend on the validity of the arbitration agreement and vice versa. The purpose of the doctrine of separability is to ensure the parties' intention to submit any possible disputes between them to arbitration.

17. How Should an Arbitration Agreement be Concluded?

All international acts related to arbitration require that an arbitration agreement be concluded in writing. Article 2(2) of the New York Convention provides that the term "agreement in writing" includes an arbitration clause signed by the parties or contained in an exchange of letters or telegrams.

Today, international regulations and national legislation have relaxed the prerequisites related to agreements. In many countries, an arbitration agreement is considered to exist when it is established that there is an agreement between the parties. For example, Article 7(2) of the "Law on Commercial Arbitration" states that an arbitration agreement is considered concluded in writing if it is contained in a document signed by the parties, or in an exchange of letters, telexes, telegrams, or other means of communication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by the other. A reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that clause part of the contract. An arbitration agreement is also considered concluded in writing if one party accepts in writing an offer to arbitrate made by the other party in a manner consistent with this provision.

It should be noted that the parties can agree on several issues in advance through the arbitration agreement, before mutually signing it. These issues can include choosing the arbitration institution, determining the number of arbitrators, selecting specific arbitrators, deciding on the language of arbitration, the applicable law, the seat of arbitration, the rules, and procedures.

Thus, arbitration agreements can be:

- A part of a transaction (contract) concluded between the parties, for example, by including an arbitration clause in the "Dispute Resolution" section of the contract, or as a separate agreement or other written document whereby the parties express their intention and agreement to resolve any disputes arising between them through arbitration,
- Written correspondence, for example, an offer to submit the dispute to arbitration and a response agreeing to such an offer,
- Any written document aimed at joining an existing arbitration agreement, such as a written application, agreement, or any other written document confirming a person's intention to

join the arbitration agreement provided for members of an association through membership in that association.

It is also important to note that the death of a party to the arbitration agreement or the dissolution of a legal entity does not terminate the agreement if the disputable legal relationship implies succession. In such cases, the successor assumes the obligations undertaken by the arbitration agreement.

18. What Can a Simple Arbitration Agreement Look Like?

An arbitration agreement must be in writing and should clearly reflect the parties' intention to resolve all disputes arising between them through arbitration. It is advisable that, in addition to maintaining the written form, the parties agree on several important issues (for example, the type of arbitration—ad hoc or institutional arbitration, the law governing the arbitration agreement, or the seat of arbitration, the applicable law to the dispute).

At the same time, the parties can agree on other issues (for example, the language of arbitration, the place, the number of arbitrators). The absence of the parties' position on mandatory issues can serve as a basis for disputing the arbitration agreement. For this reason, international arbitration centers have developed model forms of arbitration agreements and arbitration clauses for parties to use. For example, the Arbitration and Mediation Center of Armenia offers the following model arbitration clause:

"*All disputes arising out of or in connection with this contract shall be resolved based on the Arbitration Rules of the Arbitration and Mediation Center of Armenia. The dispute shall be resolved by [the parties can choose one or three arbitrators]. The seat of arbitration is Yerevan (Armenia) [the parties can choose another place], and the language of arbitration is Armenian [the parties can choose another language]. The law applicable to the dispute is the law of the Republic of Armenia [the parties can choose another law].*"

Such clauses include all necessary issues that the parties should discuss and agree upon. This eliminates the possibility of disputing the validity of the arbitration agreement in the future.

19. Validity of an Arbitration Agreement

In the context of understanding the importance of an arbitration agreement, it is necessary to address the consequences of not maintaining the written form and other requirements of the agreement.

An arbitration agreement inherently excludes the possibility of the dispute being heard in courts. If, despite the existence of such an agreement, one party still applies to the court, the court, based on a motion by the other party, will dismiss the case if the opportunity to apply to arbitration based on the parties' arbitration agreement has not been lost.

This rule has one exception: the law may establish cases where, regardless of the existence of an arbitration agreement, a party always has the right to file a lawsuit in court. One such

exceptional case is an arbitration agreement concluded with a consumer before the dispute arises[9]. This does not deprive the consumer of the right to submit a dispute arising from or related to the contract to the court, except in cases where the arbitration agreement was concluded after the dispute arose, and the parties unconditionally agreed to submit the dispute to arbitration.

At the same time, the parties to the dispute can raise the issue of the validity of the arbitration agreement within the framework of the arbitration proceedings. According to Article 16(1) of the "Law on Commercial Arbitration," the Arbitral Tribunal has the authority and, in case of a challenge to the arbitration agreement, is obliged to examine and decide on its jurisdiction, including the existence or validity of the arbitration agreement, as a preliminary issue. Thus, if a party is presented with a demand for arbitration but believes that there is no arbitration agreement between them, or that it is invalid, or that such an agreement does not extend to the dispute presented, the party has the right to raise such an objection to the Arbitral Tribunal. Therefore, if one of the parties to the dispute raises the issue of the validity of the arbitration agreement, the Arbitral Tribunal is obliged to examine and decide on this issue as a priority.

It should also be noted that failure to present such an objection before submitting a response to the claim will be regarded as consent to the existence or validity of the arbitration agreement, and subsequently, that party cannot exploit the issue of the absence or invalidity of the arbitration agreement or use it as a basis for challenging the decisions of the Arbitral Tribunal. However, the Arbitral Tribunal may accept a delayed statement in exceptional cases if it considers the delay justified.

A party to the dispute can subsequently challenge the Arbitral Tribunal's decision on its own jurisdiction in the national court. According to Article 16(3) of the "Law on Commercial Arbitration," if the Arbitral Tribunal makes a decision on its jurisdiction as a preliminary issue, either party may, within 30 days after being notified of the decision, request the court to decide on the matter, and the court's decision is not subject to appeal. The Arbitral Tribunal's authority to decide on its own jurisdiction is known in theory as the "Kompetenz-Kompetenz" doctrine. It is also important to emphasize that such a challenge does not suspend the arbitration proceedings, and the Arbitral Tribunal has the right to continue the proceedings and make an award if it considers that there is a valid arbitration agreement.

When the parties to the dispute have submitted the dispute for examination to an arbitration center, the issue of the validity of the arbitration agreement is resolved according to national legislation and the rules of the arbitration center. For example, if the parties have submitted the dispute to AMCA, the issue of the validity of the arbitration agreement is resolved as follows: if a participant in the arbitration proceedings submits a statement about the absence, invalidity, or inapplicability of the existing arbitration agreement to the given dispute, the issue is decided by the Arbitral Tribunal, or the Chief Secretary submits the matter to the Arbitration Council if the Arbitral Tribunal has not been formed. The Arbitration Council may decide to consider the case fully or partially within the framework of the arbitration proceedings or determine that there is no arbitration agreement between the parties.

[9] "Law on Commercial Arbitration", Article 8(3).

20. How to Apply to AMCA for Dispute Resolution through Arbitration?

The procedure for applying to the Arbitration and Mediation Center of Armenia (AMCA) to resolve a dispute through arbitration is defined by the Center's Arbitration Rules.

To initiate arbitration with the Center, the party seeking arbitration must submit a written application, the Request for Arbitration, to the Secretariat of the Center. This request can be submitted electronically, for example, through the Center's website, or, if that is not possible, in paper form. When the Request for Arbitration is submitted in a non-electronic manner (in person, by postal mail, or by courier), the claimant must also provide copies of all submitted documents in sufficient quantity to ensure that one copy can be delivered to the other party or parties involved in the arbitration, all arbitrators, and the Secretariat.

According to the Arbitration Rules, the Request for Arbitration must meet certain mandatory requirements. If these requirements are not met, the Secretariat will set a deadline for the claimant to correct the deficiencies. If the deficiencies are not corrected within the specified period, the proceedings will be considered terminated without prejudice to the claimant's right to reapply to the Center.

Upon receiving a Request for Arbitration that meets the requirements of the Rules, the Secretariat immediately notifies the claimant and the respondent specified by the claimant about the receipt of the request and the date of its receipt. The Secretariat provides the respondent with copies of the Request for Arbitration and the accompanying documents (if the request was not submitted electronically) after receiving the document verifying the payment of the administrative fee.

Thus, to initiate arbitration proceedings at the Center, it is necessary to submit a Request for Arbitration based on the arbitration agreement, outlining the factual and legal circumstances relevant to the resolution of the dispute.

21. What Criteria Must a Request for Arbitration Meet When Applying to AMCA?

According to the Center's rules, a Request for Arbitration must contain at least the following information:

1. The claimant's name (or company name), identification details if an individual, state registration details if a legal entity, and the claimant's contact details, including address, email address, and preferred method of notification.
2. The name, address, email address, and other contact details of the claimant's representative.
3. The name (or company name), physical address, and other contact details of the respondent, including email address, if available to the claimant.
4. A description of the facts underlying the claim and the nature of the dispute, as well as the basis on which the claims are made.

5. The claim being presented, and in the case of a monetary claim, the amount being claimed, and, if possible, an estimate of the monetary value of other claims.
6. The arbitration agreement and any other relevant agreements.
7. Considerations or suggestions regarding the number and selection of arbitrators in accordance with Articles 13 and 14 of the Rules, and the proposed arbitrator, if applicable.
8. Considerations or suggestions regarding the seat of arbitration, the applicable law, and the language of arbitration.

When submitting the Request for Arbitration to the Secretariat, the administrative fee stipulated by the Rules must also be paid, and a document verifying this payment must be attached. The amount of administrative fees is defined in Appendix 1 of the Arbitration Rules.

In addition to the mandatory information mentioned above, the claimant may, at their discretion, provide other relevant information or documents.

It is important to note that the start of the arbitration proceedings is considered to be the date the Request for Arbitration is submitted to the Secretariat.

22. How is the Arbitral Tribunal Formed When Applying to AMCA?

According to the principle of party autonomy, the parties in an arbitration proceeding are free to decide on the number of arbitrators, any requirements for the arbitrators, and the procedure for forming the Arbitral Tribunal. The answers to these questions largely depend on the type of arbitration chosen by the parties. In institutional arbitration, the arbitration institution plays a significant role in forming the Arbitral Tribunal, especially when the parties do not agree on the number of arbitrators and other conditions.

According to the Arbitration Rules, disputes are examined by an Arbitral Tribunal composed of either one or three arbitrators. The number of arbitrators is determined by mutual agreement of the parties. This can be initially set in the arbitration agreement or after submitting the Request for Arbitration to the arbitration institution. In expedited procedures, a single arbitrator is appointed. A single-arbitrator tribunal can also hear cases when there is no agreement between the parties, and the Arbitration Council, considering the complexity of the case, does not decide that the case should be heard by a tribunal of three arbitrators.

The parties' will and mutual agreement are of primary importance in the selection of arbitrators. In the absence of such agreements, the selection and appointment procedure defined by the Center's Arbitration Rules applies. It is important to note that the parties are not limited to the list of arbitrators published by the Center and are free to define the requirements for the arbitrator to hear their dispute and propose other individuals with experience and knowledge in the relevant field.

In cases where the dispute is to be heard by a single arbitrator based on the grounds of the case or mutual agreement of the parties, the parties must appoint the arbitrator by mutual

agreement within 30 days[10] from the date the respondent receives the Request for Arbitration if the arbitrator has not been initially appointed by the arbitration agreement. If the parties do not reach an agreement within the specified period, the arbitrator is appointed by the Arbitration Council of the Arbitration and Mediation Center of Armenia.

If the case is to be heard by a three-arbitrator tribunal and there is no other agreement between the parties, each party selects one arbitrator. In this case, the claimant appoints an arbitrator upon submitting the Request for Arbitration to the arbitration institution, and the respondent appoints an arbitrator concurrently with submitting the response to the request. In the absence of a response, the respondent must appoint an arbitrator within the 30-day period set for submitting the response. If an arbitrator is not appointed within the specified period or any additional period provided by the Secretariat at the parties' request, the Arbitration Council appoints the arbitrator(s) on behalf of the party(ies).

The third arbitrator, who becomes the presiding arbitrator of the tribunal, is selected by the two already appointed arbitrators within 10 days, unless the parties agree otherwise. The candidate for the third arbitrator must be confirmed by the Arbitration Council. If the third arbitrator is not selected in this manner, the Arbitration Council appoints the third arbitrator. The tribunal is considered formed from the moment the presiding arbitrator is appointed.

Regardless of the circumstances mentioned above and any agreements reached by the parties regarding the selection of arbitrators, the Arbitration Council has the authority to appoint the arbitrator(s) and/or all members of the tribunal in exceptional cases to avoid the risk of unequal treatment and unfairness, which may lead to the annulment of the arbitration award.

In cases where there are multiple claimants and/or multiple respondents, the arbitrator (if the tribunal consists of one arbitrator) or the two arbitrators of the Arbitral Tribunal (if the tribunal consists of three arbitrators) are selected by mutual agreement of the parties within the specified period. The third arbitrator (who is also appointed as the presiding arbitrator) is appointed by the selected arbitrators and confirmed by the Arbitration Council. If the arbitrators do not propose a candidate for the third arbitrator (presiding arbitrator) within 10 days, the third arbitrator (presiding arbitrator) is appointed by the Arbitration Council. In this case, the Arbitration Council retains the exceptional right to appoint all or some of the arbitrators at its initiative.

Thus, summarizing, we can say that in the general procedure for case examination according to the Center's rules, the candidates for arbitrators proposed by the parties must be confirmed by the Arbitration Council for the Arbitral Tribunal to be considered formed. If the parties do not propose candidates, the Arbitration Council appoints the arbitrator(s) from the candidates presented by the Secretariat or proposed by the council members.

It should be noted that both the procedure for forming the tribunal and several other procedural regulations are largely determined by the applicable procedural rules and may differ in the arbitration rules of other permanent arbitration institutions.

The principles of impartiality and independence of arbitrators apply to the nomination, selection, and entire tenure of arbitrators, with a procedure for challenging them if necessary.

[10] In the case of expedited proceedings, the procedure and deadlines differ, as addressed in another section of the manual.

23. Who Can be an Arbitrator?

The requirements for arbitrators and the formation of an Arbitral Tribunal differ significantly from the requirements for judges and their selection process.

Judges are appointed through a specific procedure and operate within a legal framework where their requirements, rights, and duties are clearly defined. In contrast, the requirements for arbitrators, their rights, and duties are predetermined by the will of the parties, the law governing the arbitration agreement, and other applicable laws of the country where the award is to be enforced. The role and preferences of the disputing parties are significant in the selection of arbitrators, which means that the arbitrator should be trustworthy and acceptable to the parties in terms of both professional and personal qualities.

According to Armenian law, the following requirements are presented to arbitrators: An arbitrator can be any competent individual over the age of 25 with higher education. A person declared incompetent or partially incompetent by a court, convicted of a crime, or under criminal prosecution cannot be an arbitrator. The parties are free to establish additional requirements for the arbitrator in the arbitration agreement, which may relate to the arbitrator's qualifications, work experience, nationality, language proficiency, and other factors. Such requirements can also be set as exclusions. For example, the parties can agree that the arbitrator should never have worked for any company affiliated with or collaborating with them. The requirements for arbitrators defined in the arbitration agreement must be considered in institutional arbitration when appointing an arbitrator and in court if the matter of appointing an arbitrator is referred to the court. Additionally, the law stipulates that no one can be deprived of the right to be appointed as an arbitrator based on their citizenship.

One might wonder where arbitrators are sought for case hearings. Many arbitration centers have open lists of arbitrators. For example, the official website of the Arbitration and Center of Armenia lists the Center's arbitrators, including their contact details, professional experience, working languages, and other skills. The parties can review these lists when selecting an arbitration center.

24. How is the Independence and Impartiality of Arbitrators Guaranteed?

The independence and impartiality of arbitrators are cornerstones of arbitration proceedings, ensuring the credibility of arbitration as an alternative dispute resolution method and guaranteeing the enforceability of arbitration awards.

Accordingly, an arbitrator candidate and the arbitrator must disclose any circumstances that might reasonably raise doubts about their impartiality or independence. For instance, this includes cases where a related person has been or is involved in the arbitration or if the arbitrator has a predisposition towards one of the parties.

To ensure this principle, Arbitration Rules of the Arbitration and Mediation Center of Armenia require that a prospective arbitrator, before their appointment or confirmation, must sign a statement of acceptance, availability, impartiality, and independence. This statement must

disclose all facts that might be grounds for doubting the arbitrator's independence from the perspective of the parties, as well as any circumstances that might reasonably raise doubts about their impartiality.

If such circumstances arise after the arbitrator's appointment or confirmation, the arbitrator has a duty to disclose them. There may be cases where, during the appointment stage, the arbitrator, not having complete information about the parties and the nature of the dispute, does not identify or is unaware of information that could hinder the proper fulfillment of their duties and affect their mission to be an impartial and unbiased "judge."

In the event of doubts about an arbitrator's independence or impartiality, the parties involved in the arbitration proceedings may raise concerns by challenging the arbitrator.

25. In What Cases and How Can an Arbitrator Be Challenged?

As previously mentioned, the independence and impartiality of an arbitrator are crucial prerequisites for their participation in the proceedings. Therefore, if the parties to the arbitration or one of the parties believes that there are circumstances that cast doubt on the arbitrator's impartiality or independence, or the arbitrator does not possess the qualifications agreed upon by the parties, they can challenge the arbitrator.

The "Law on Commercial Arbitration" specifies the following grounds for challenging an arbitrator, without limiting them to these:

1. The arbitrator has a biased attitude towards a party or participant in the arbitration (including representatives of the parties, witnesses, experts, or specialists involved in the arbitration proceedings).
2. The arbitrator previously participated in the resolution of a dispute with the same subject matter but on different factual grounds involving the same parties.
3. A person related to the arbitrator has been or is currently a party or participant in the arbitration.
4. The arbitrator knows or should reasonably know that they or a related person have an economic interest related to the essence of the dispute or with one of the parties.

A person related to the arbitrator is considered to be any individual who is a member of the arbitrator's family (parent, child, adopter, adoptee, sibling, grandparent, grandchild, parent-in-law, child’s spouse, or cohabitant) or with whom the arbitrator runs a common household or joint entrepreneurial activities. A legal entity is considered related to the arbitrator if the arbitrator or a related person to the arbitrator acts in connection with the arbitration proceedings in a coordinated manner based on common economic interests, or if:

1. The arbitrator or the related person has a participation in the charter capital of the legal entity.
2. The arbitrator or the related person can predetermine the decisions of the legal entity in ways not prohibited by law or can give mandatory instructions for execution.
3. The arbitrator or the related person is a member of the management body of the legal entity.

In addition to the grounds mentioned above, arbitration institutions are free to establish other cases through their rules, including codes of conduct for arbitrators. AMCA Arbitration Rules do not limit the parties and arbitrators by enumerating the grounds for challenge, giving the decision-making body discretionary power to ensure the substantive and thorough examination and resolution of the issue whenever the independence, impartiality, and neutrality of the arbitrator are questioned.

In practice, it is accepted that to challenge the impartiality of an arbitrator, it is not enough to make a declaration; clear facts, evidence, and/or justifications must be provided. For instance, a social media connection between an arbitrator and a participant in the arbitration proceedings (such as being in the same group or on each other's friends' list) alone is not sufficient to claim that the arbitrator cannot be impartial and unbiased. The party citing the fact must also justify that such interactions have directly affected the arbitrator's impartiality and neutrality or pose a significant risk of doing so.

It is important to note that a party can challenge an arbitrator appointed by or with the participation of that party within a specific period after becoming aware of the grounds for the challenge. According to the Center's rules, a challenge application can be submitted within 15 days from the notification of the arbitrator's confirmation or appointment, or if the grounds for the challenge are discovered later, within 15 days from the moment of discovery. Challenge applications are reviewed by the Arbitration Council. The Arbitration Council makes a decision on the challenge after giving the Secretariat, the arbitrator, the parties, and/or other members of the Arbitral Tribunal an opportunity to express their views.

If the challenge is accepted, the arbitrator is replaced, and the arbitration case can proceed under all the initial rules for forming the Arbitral Tribunal. If the party's challenge is rejected or the party disagrees with the decision on the challenge, they can apply to the court for a decision on the challenge.

26. What is Arbitration Proceedings and What is the Procedure for Case Examination

> Arbitration proceedings are a procedure initiated based on an arbitration agreement, whereby the case is substantively examined and resolved by an Arbitral Tribunal within the scope of its jurisdiction, based on the applicable law and procedural rules.

Arbitration proceedings are typically initiated by the submission of a Request for Arbitration. This is followed by the appointment of the arbitrator(s) who will examine the dispute, along with several other procedural actions. Traditionally, the proceedings are conducted through formal hearings, and the expected outcome is a documented arbitration award. Thus, arbitration proceedings serve as an effective alternative to court litigation, ensuring complete confidentiality for the parties involved and offering various other advantages directly tied to the flexibility characteristic of arbitration.

There are no mandatory procedural rules in arbitration proceedings. The rules governing arbitration proceedings include:

- The mandatory provisions of the law of the seat of arbitration (lex loci arbitri),
- The arbitration rules chosen by the parties (e.g., UNCITRAL Rules, AMCA Rules, ICC Rules).

Within the framework of any applicable rules, the parties to the arbitration proceedings are authorized to develop or select a procedure tailored to the nature of their dispute. This flexibility is one of the defining features of arbitration proceedings.

In institutional arbitration, the proceedings typically consist of the following main sequential stages:

1. Submission of Request for Arbitration
2. Submission of Response and/or Counterclaim
3. Formation of the Arbitral Tribunal
4. Hearing of the Case
5. Issuance of the Award

These stages can vary depending on the procedure followed for the case examination. For instance, according to AMCA Arbitration Rules, cases can be heard either under the general procedure defined by the Rules or through an expedited procedure. The differences between these procedures pertain to the deadlines for submitting responses and other motions or documents, the method of appointing the arbitrator(s), the mode of proceedings, and the timelines for case hearings.

27. What is the General Procedure for Arbitration Proceedings

The general procedure for arbitration proceedings typically includes all the procedural stages characteristic of arbitration. The specific features of the general procedure largely depend on the applicable rules governing the arbitration proceedings.

While the legislation regulating the arbitration sector mostly allows the parties to determine the procedure of arbitration, the study of international practice shows that parties generally prefer the arbitration rules of arbitration centers, which have clearly defined procedures for dispute resolution. For instance, the Arbitration and Mediation Center of Armenia offers two procedures for dispute resolution: general and expedited. When applying the Arbitration Rules to a case, the general procedure for arbitration proceedings follows this structure:

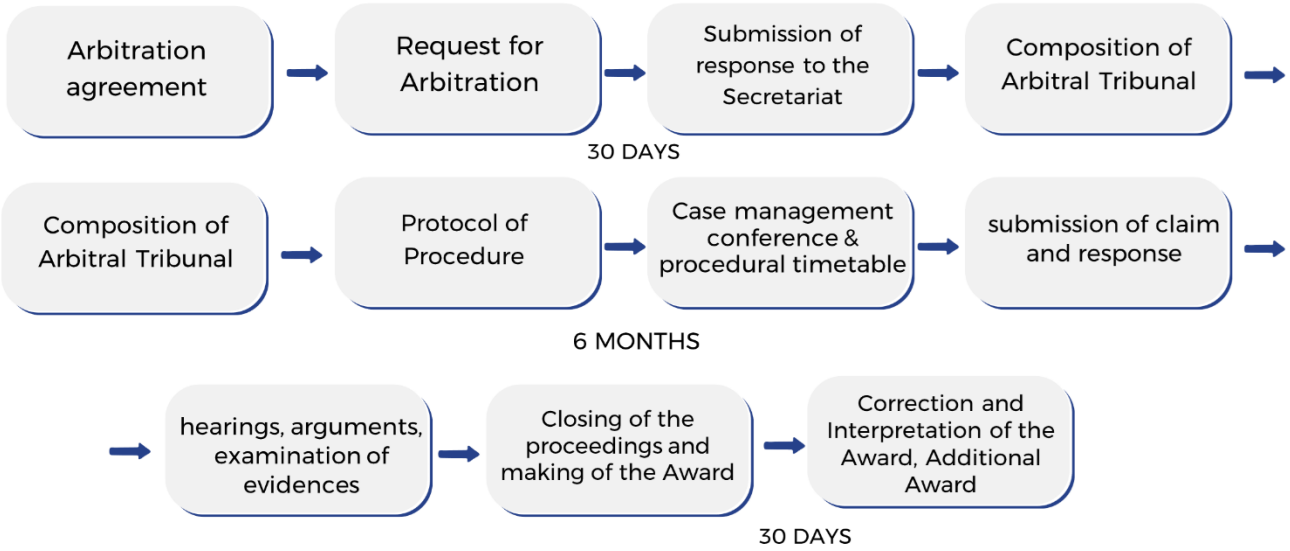


FIGURE 10 Stages of Arbitration Proceedings according to AMCA Rules

28. How Are Cases Examined Under the General Procedure at AMCA?

Under the general procedure, the examination of cases may vary depending on the applicable law and Arbitration Rules. Nevertheless, regardless of the specifics of the procedure, it is accepted that the Arbitral Tribunal must conduct the examination of the case without undue delays and expenses.

To better understand the general procedure for arbitration proceedings, let's discuss the process as outlined by the Arbitration and Mediation Center of Armenia (AMCA), which is based on the ICC Arbitration Rules.

In disputes handled by the Center, Yerevan is recognized as the seat of arbitration unless the parties agree otherwise or the Arbitral Tribunal decides differently. The Arbitral Tribunal, in consultation with the parties, has the authority to hold hearings, sessions, and deliberations at any location it deems appropriate. However, regardless of the venue of the hearings, the place where the tribunal makes its decision will be considered the seat of arbitration.

To initiate an arbitration case, the party wishing to start the proceedings must submit a Request for Arbitration to the Center's Secretariat. Upon receipt, the Secretariat sends the request to the respondent, and the receipt of the request by the respondent is considered the start of the arbitration proceedings.

Next, according to the Arbitration Rules, a sole arbitrator or a three-member Arbitral Tribunal is appointed, after which the Secretariat forwards the case to the Arbitral Tribunal.

The parties to the arbitration case can participate in the proceedings either personally or through representatives. The Secretariat and the Arbitral Tribunal may request additional evidence of the representatives' authority at any time during the proceedings. A party is not limited in the number of representatives and can replace their representative. However, in the event of such a change, the party must immediately notify the Secretariat, the Arbitral Tribunal, and the other

party in writing. If the tribunal deems the change unacceptable and sees a potential conflict of interest, it has the authority to take necessary measures, including partial or complete removal of the new representative from the proceedings.

Disputes at the Center are conducted according to the Arbitration Rules, and issues not covered by the Rules are regulated by the parties' agreed-upon rules. In the absence of such an agreement, the issues are regulated by the laws of Armenia. The same principle applies to the selection of the language of arbitration; in the absence of the parties' agreement, the Arbitral Tribunal has the authority to choose the language of the proceedings, considering the circumstances of the case, the parties, the language of the contract, and other factors.

The applicable law for resolving the dispute is of great importance, and the parties follow the principle of freedom of contract in its selection. In the absence of an agreement, the applicable law is chosen by the Arbitral Tribunal. According to the Rules, Armenian law applies to local disputes. The parties may choose another applicable law in cases and procedures allowed by Armenian law.

The procedural rules for examining the dispute are established by the parties' agreement and, in the absence of such an agreement, according to the Arbitration Rules. Throughout the proceedings, the Arbitral Tribunal has the authority to take additional measures and give binding instructions to maintain confidentiality, trade secrets, or other types of secrecy.

During the entire examination of the case, the Arbitral Tribunal is expected to act fairly and impartially, ensuring that all parties have a reasonable opportunity to present their positions on any issue. The Arbitral Tribunal should take all possible measures to establish the facts of the case as quickly as possible, which may include hearing witnesses, experts appointed by the parties or the tribunal, and requesting additional evidence at any time during the proceedings.

After the hearings, the Arbitral Tribunal declares the examination of the case closed and proceeds to the decision-making phase. Under the general procedure, the tribunal must issue a final award within six months from the date of signing the protocol of procedure unless otherwise agreed by the parties. If the tribunal consists of more than one arbitrator, the award is made by a majority vote. In the absence of a majority, the presiding arbitrator makes the award.

29. What is the Significance of the Protocol of Procedure in General Arbitration Proceedings?

The protocol of procedure in general arbitration proceedings is a crucial procedural document created by the Arbitral Tribunal after its formation. It serves to outline the case details, the positions of the parties, the scope of issues to be resolved, and other relevant matters.

For many permanent arbitration centers, such as those following the ICC Arbitration Rules, the creation of this protocol plays a key role as the official commencement of the arbitration proceedings.

According to AMCA Arbitration Rules, upon receiving the case (and in the absence of any jurisdictional objections), the Arbitral Tribunal drafts the protocol of procedure (not applicable in expedited procedures), which must include the following information:

- The full names (or company names) of the parties and their representatives, including contact details.

- The names of the arbitrator(s) and their contact details necessary for conducting the proceedings.
- A brief description of the parties' claims and their monetary value, if assessable.
- The issues to be determined during the proceedings.
- The seat of arbitration.
- Specific procedural rules applicable to the proceedings.
- Any other procedural issues deemed necessary by the tribunal.

The protocol of procedure must be signed by all participants in the proceedings and the arbitrators within 30 days of the tribunal receiving the case. If one party does not sign, the protocol will come into effect once it is signed by all other participants and arbitrators and after the expiration of the 30-day period.

The protocol of procedure is significant for moving the case to the next sub-phase of examination, as from this point onward, parties are generally prevented from introducing new claims, except in cases where the tribunal permits such delays.

After discussing and resolving these issues with the parties through the procedural record, or concurrently, the Arbitral Tribunal establishes a timetable for procedural actions. This timetable is not final and may be modified or supplemented by the tribunal based on necessity and the parties' opinions.

Consultations and hearings for discussing the above and other matters can be conducted either in person with the parties' participation or via audiovisual, telephone, or similar communication means. If necessary, the tribunal has the right to require the parties' presence, either personally or through representatives.

30. What is the Expedited Procedure, and How and When is it Applied?

The expedited procedure is a simplified type of arbitration proceeding, primarily conducted in writing. Disputes under this procedure can be resolved solely based on the documents submitted by the parties, without witness or expert testimony and hearings, culminating in a final arbitration award. Expedited procedures have become a hallmark of institutional arbitrations, aimed at ensuring the swift resolution of cases and the issuance of awards within a short timeframe.

The grounds for applying the expedited procedure are defined by the arbitration rules and are intended to guarantee the examination of the case and the issuance of the award within compressed timeframes.

For instance, according to AMCA Arbitration Rules, if the maximum period for examining and issuing an award under the general procedure is six months from the date of signing the protocol of procedure, then under the expedited procedure, it is reduced to up to three months from the date the Arbitral Tribunal is formed.

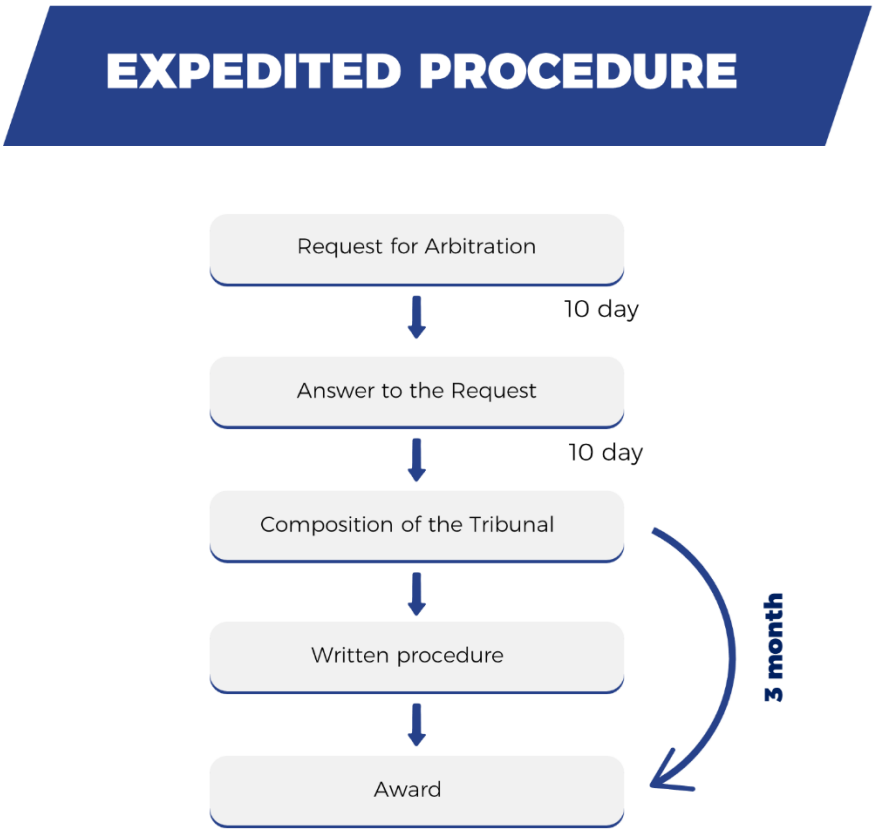


FIGURE 11
Description of the Expedited Procedure According to AMCA Arbitration Rules

THEREFORE

Expedited Procedure is Applied in Two Specific Cases:

1. for a case to be examined under the expedited procedure at the Center, two conditions must be simultaneously met:

⇒ The dispute must be local;

⇒ The claimant's monetary claim must be of a proprietary nature and must not exceed 10 million AMD.

2. When the above conditions are not met, but there is written agreement from both parties to use the expedited procedure.

Regardless of the above grounds, according to the Arbitration Rules, the expedited procedure will not be applied if:

- The parties have agreed to waive the expedited procedure, or
- The Arbitration Council, either on its initiative or at the request of the parties, has determined that it is not appropriate to conduct the arbitration under the expedited procedure for the specific dispute.

31. What are the Differences Between Expedited and General Procedures?

AMCA Arbitration Rules outline several notable differences between general and expedited procedures.

THEREFORE

- According to the Arbitration Rules, the expedited procedure rules apply only to local disputes where the claim amount does not exceed 10 million AMD.
- Unlike the general procedure, where parties can agree on a tribunal composed of one or three arbitrators, under the expedited procedure, the Arbitral Tribunal must consist of a sole arbitrator, even if the parties have stipulated otherwise in their arbitration agreement.
- In contrast to the general procedure, according to Article 3(1) of Appendix 2 of the Arbitration Rules, no protocol of procedure is drawn up under the expedited procedure, as stipulated in Article 26 of the same rules.
- Under the expedited procedure, the deadline for submitting a response to Request for Arbitration is 10 days, whereas, under the general procedure, it is 30 days.
- The confirmation or appointment of the arbitrator under the expedited procedure occurs within 15 days after receiving the response to Request for Arbitration or the expiration of the deadline for its submission. In the general procedure, this period is 30 days.
- Under the expedited procedure, the tribunal must issue a final award within three months from the formation of the tribunal. In the general procedure, this period is six months.
- Arbitration fees also differ, as outlined in point 33.

Moreover, after the appointment of the arbitrator, unlike the general procedure, the Arbitral Tribunal does not prepare a protocol of procedure in the expedited procedure. Furthermore, from the formation of the Arbitral Tribunal, the parties are precluded from submitting new claims unless the tribunal, considering the nature of the claim, the stage of the proceedings, potential financial consequences, and other significant circumstances, allows an exception.

According to the Arbitration Rules, the Arbitration Council has the exclusive right to terminate the expedited procedure and set the case for further examination under the general procedure. The Arbitration Council can exercise this authority either on its initiative or based on a request from one of the parties, after consulting with the Arbitral Tribunal and the parties. In such a decision, the Arbitration Council has the authority to retain the appointed arbitrator or to form a new tribunal composed of one or three arbitrators.

To summarize the above, the Center has all the prerequisites to provide a quick, fair, and professional resolution for local cases with claims up to 10 million AMD, and for other types of disputes if the parties agree. Although the first instance courts of general jurisdiction in Armenia have similar deadlines for examining cases under simplified and expedited procedures, they are usually unable to resolve disputes within these deadlines due to heavy workloads. When adding the timeframes for appeals and cassation reviews, the case examination can take years.

32. How is Confidentiality Ensured in Arbitration Proceedings?

One of the most significant advantages of arbitration is confidentiality. Accordingly, various arbitration institutions have clearly established this principle in their rules, along with the corresponding obligations of the parties, arbitrators, and other individuals involved. Moreover, some institutions ensure the implementation of confidentiality agreements through notices or by requiring the signing of confidentiality agreements.

According to the Rules of the Arbitration and Mediation Center of Armenia, the entire arbitration process, including all information, personal data of the parties, decisions (made by arbitrators, the Arbitration Council, or the Secretariat), and hearings, is confidential and must not be disclosed or provided to third parties in any manner unless an exception is specified in the Rules for particular cases.

Furthermore, the requirement for confidentiality applies equally not only to the arbitrators and the Secretariat but also to the parties, their representatives, witnesses, experts, and anyone else who, by virtue of their involvement, has access to such information. The Rules exhaustively list the cases where confidential information may be disclosed.

33. Can Interim and Emergency Measures Be Applied in Arbitration Proceedings?

Interim and emergency measures serve as legal guarantees for protecting individuals' rights, safeguarding the claimant's legitimate interests in cases where the respondent might act in bad faith, or where the absence of such measures could render the enforcement of a decision impossible. This institution is designed to protect the rights and legitimate interests of the claimant (future potential creditor) from possible negative consequences through certain preemptive actions taken by the Arbitral Tribunal. Thus, it aims to fully restore the violated rights of individuals.

The possibility of applying measures during arbitration proceedings is guaranteed by Armenian law. Notably, parties can also apply to the court at the seat of arbitration for judicial assistance in applying interim measures. Such applications can be submitted both before the dispute is referred to arbitration and during the arbitration proceedings. The specific features of submitting and examining these applications will be discussed in detail in the next subsection. It is important to emphasize that submitting such an application to the court cannot be interpreted as a waiver of the arbitration agreement or the arbitration proceedings by the party.

According to AMCA Rules as an institutional center, not only the possibility of applying interim measures but also emergency measures is guaranteed.

For example, according to the Arbitration Rules, at any stage of the arbitration proceedings, upon the request of a party or on its own initiative (proprio motu), the Arbitral Tribunal is authorized to apply interim measures that are binding on the participants of the proceedings. No specific list of such measures is provided, which allows the Arbitral Tribunal to take specific actions against any circumstance, action, or inaction that may hinder the fair resolution of the dispute. Such measures may include, for instance, ordering a party to refrain from certain actions (not to use or dispose of specific property, not to engage in certain types of activities, not to enter

into civil transactions or negotiate such transactions within the scope set by the tribunal or with specific individuals named by the tribunal), or conversely, to perform certain actions (to entrust the property to a person designated by the tribunal, to take additional measures to ensure the preservation of specific property, to change the conditions for storing the property in dispute to prevent its deterioration or destruction, to cease providing access to certain information to third parties).

There may be cases where the necessity of applying the aforementioned interim measures arises before the dispute is referred to the arbitration institution. In such cases, the parties to the arbitration agreement have the right to submit an application for emergency measures to the Center. To ensure the process, the President of the Arbitration Council appoints an arbitrator as quickly as possible (the indicative period is two days if there are no obstructing circumstances). Any emergency measure applied by the arbitrator is binding on the parties. An application for emergency measures will be rejected if the parties have previously (through the arbitration agreement or other means) waived the possibility of submitting such an application to the Center. Appendix 3 of the Arbitration Rules provides detailed regulations on the procedural issues of the emergency measures procedure.

By allowing the application of these measures, the arbitration process under AMCA's Rules ensures that the parties' rights and interests are effectively protected throughout the arbitration proceedings.

34. Under What Circumstances Can Arbitration Proceedings be Terminated?

Arbitration proceedings usually conclude with the issuance of an arbitral award. However, there are cases when the Arbitral Tribunal decides to terminate the proceedings before the award is rendered.

International practice highlights the following grounds for terminating arbitration proceedings:

1. The claimant withdraws the claim.
2. Failure to pay arbitration fees.
3. The arbitration proceedings are deemed impossible or inappropriate.
4. The parties reach a settlement agreement during the arbitration process or engage in mediation.
5. The parties mutually agree to terminate the proceedings.

Modern arbitration centers include provisions in their rules for the termination and suspension of proceedings. For instance, AMCA, following international best practices, has included grounds for both the termination and suspension of proceedings in its rules. Specifically, Article 38, Part 1 of the Arbitration Rules provides one ground for suspending proceedings, which is if the parties agree to engage in mediation. Article 38, Part 4 provides the grounds for the tribunal to terminate arbitration proceedings. Accordingly, the Arbitral Tribunal, considering the parties' opinions, may decide to terminate the proceedings if:

1. The claimant withdraws the claim, except when the respondent objects to the termination, and the Arbitral Tribunal recognizes the respondent's legitimate interest in having the dispute finally resolved.
2. The parties agree to terminate the proceedings.
3. The Arbitral Tribunal considers that continuing the proceedings is unnecessary, has become impossible, or
4. The Secretariat deems the claim, counterclaim, or cross-claim to have been withdrawn due to non-payment of the advance on costs.

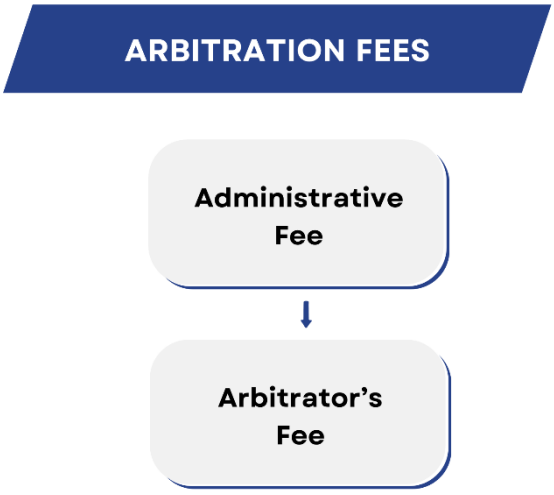
35. What Do Arbitration Costs Include?

Choosing arbitration as a method for resolving disputes involves certain costs. These generally include:

- Arbitral Tribunal costs: These include the fees of the arbitrators and the reimbursement of their other expenses.
- Parties' expenses: These include the reasonable expenses incurred by the parties for participating in or in connection with the arbitration proceedings, including the fees for legal representation.
- Arbitration administrative fees: These are the expenses of the arbitration institution, including administrative fees. These costs are not present in ad hoc arbitration proceedings.
- Other expenses: These can include fees for experts and specialists involved in the proceedings and other necessary expenses.

The final amount and the allocation of arbitration costs are determined by the Arbitral Tribunal at the end of the proceedings. The tribunal decides which party or parties should bear the costs and in what proportion, and if the costs have already been paid, which party should reimburse the other. When making this decision, the Arbitral Tribunal considers various factors, including the outcome of the case, the conduct of the participants, the extent of their involvement, and the overall scope of actions undertaken during the proceedings.

In institutional arbitration, these costs also include the fees set by the arbitration center, such as registration and administrative fees. For example, in the case of AMCA, only an administrative fee is required.



36. How Are Arbitration Costs Calculated According to AMCA Arbitration Rules?

AMCA Arbitration Rules provide a clear scale for determining arbitration fees. This scale is based on the amount of the claim. In cases where the amount of the claim is not specified or the claim is of a non-monetary nature, the Secretariat determines the fees for arbitrators and administrative fees. When determining the arbitrators' fees, the Secretariat considers various factors, including the complexity of the dispute and the experience of the arbitrators.

In certain exceptional cases, taking into account specific circumstances, the Secretariat may deviate from the administrative fees set by the scale, provided that the amount determined does not exceed the maximum amount stipulated by the scale. In the presence of exceptional circumstances, the Arbitration Council is authorized to adjust the arbitrators' fees in individual cases.

According to the Arbitration rules, the administrative fees and the remuneration of arbitrators for local arbitration disputes are determined by the following scale:

The value of the claim (AMD)	**Administrative fee**	**Remuneration of one arbitrator[11]**
	(AMD)	**(AMD)**
Up to 5.000.000	150.000	170.000
5.000.001 – 10.000.000	150,000 + 2.5% of the amount exceeding 5,000,000	170,000 + 5% of the amount exceeding 5,000,000
10.000.001 – 20.000.000	250,000 + 2% of the amount exceeding 10,000,000	370,000 + 3% of the amount exceeding 10,000,000
20.000.001 – 40.000.000	490,000 + 1.5% of the amount exceeding 20,000,000	710,000 + 2.5% of the amount exceeding 20,000,000
40.000.001 – 80.000.000	790,000 + 1% of the amount exceeding 40,000,000	1,210,000 + 2% of the amount exceeding 40,000,000
80.000.001 – 200.000.000	1,190,000 + 0.5% of the amount exceeding 80,000,000	2,010,000 + 1.5% of the amount exceeding 80,000,000
200.000.001 – 400.000.000	1,790,000 + 0.4% of the amount exceeding 200,000,000	3,810,000 + 1.2% of the amount exceeding 200,000,000
400.000.001 – 1.000.000.000	2,590,000 + 0.3% of the amount exceeding 400,000,000	6,210,000 + 0.7% of the amount exceeding 400,000,000
1.000.000.001 – 4.000.000.000	4,390,000 + 0.1% of the amount exceeding 1,000,000,000	10,410,000 + 0.2% of the amount exceeding 1,000,000,000
4.000.000.001 and above	7,390,000 + 0.05% of the amount exceeding 4,000,000,000	16,410,000 + 0.1% of the amount exceeding 4,000,000,000

[11] The established rates for arbitrators' remuneration do not include taxes and other mandatory charges that are subject to calculation and payment.

The costs of expedited arbitration are determined according to the following scale:

The value of the claim (AMD)	**Administrative fees for expedited procedures (AMD)**	**Remuneration of arbitrators for expedited procedures (AMD)**
Up to 5.000.000	100.000	120.000
5.000.001 – 10.000.000	100.000 + 2% of the amount exceeding 5.000.000	120.000 + 2% of the amount exceeding 5.000.000
10.000.001 – 20.000.000	200.000 + 1,5% of the amount exceeding 10.000.000	220.000 + 1,5% of the amount exceeding 10.000.000
20.000.001 – 40.000.000	390.000 + 1% of the amount exceeding 20.000.000	4.100.000 + 1% of the amount exceeding 20.000.000
40.000.001 – 80.000.000	590.000 + 0,5% of the amount exceeding 40.000.000	610.000 + 0,5% of the amount exceeding 40.000.000
80.000.001 – 200.000.000	790.000 + 0,4% of the amount exceeding 80.000.000	810.000 + 0,4% of the amount exceeding 80.000.000
200.000.001 – 400.000.000	1.190.000 + 0,3% of the amount exceeding 200.000.000	1.300.000 + 0,3% of the amount exceeding 200.000.000
400.000.001 – 1.000.000.000	1.590.000 + 0,2% of the amount exceeding 400.000.000	1.700.000 + 0,2% of the amount exceeding 400.000.000
1.000.000.001 – 4.000.000.000	2.190.000 + 0,1% of the amount exceeding 1.000.000.000	2.300.000 + 0,1% of the amount exceeding 1.000.000.000
More than 4.000.000.001	3.390.000 + 0,05% of the amount exceeding 4.000.000.000	3.500.000 + 0,05% of the amount exceeding 4.000.000.000

In cases of international arbitration disputes, the administrative fees and arbitrators' remuneration specified in the scale may be increased by up to 300% by the Secretariat, taking into account the complexity of the case, the time required to resolve the dispute, the number of parties and individuals involved, the scope of organizational functions, and other circumstances.

The arbitrator's remuneration amount specified in the scale is for one arbitrator. Therefore, in the case of forming a tribunal with three arbitrators, the remuneration amount specified in the scale is tripled.

The rules of the Center provide for the reimbursement of costs in cases of withdrawal of the claim or termination of the proceedings in other ways.

Since the party to the dispute is obliged to submit a receipt confirming the payment of the administrative fee when applying to the Center, the party can independently calculate the initial amount of the administrative fee based on the scale set out in the Rules, or request assistance from the Secretariat of the Center for this calculation.

In addition to administrative fees, for the reimbursement of other costs of arbitration, the parties to the arbitration are required to pay an advance on costs of arbitration within 15 days from the formation of the Arbitral Tribunal. The amount of this advance is determined by the Secretariat in accordance with the Rules, and the claimant and respondent must pay it equally. In the case of a counterclaim, the Secretariat calculates the costs of arbitration based on the claims of the parties and presents them accordingly. In such cases, each party pays the advance corresponding to the costs calculated for their claim. If one party does not pay their share of the calculated costs, the Secretariat offers the other party to make the payment. If the payment is still not made after such notification, the Secretariat, in consultation with the Arbitral Tribunal, has the right to suspend the arbitration proceedings, setting a new deadline for the parties to pay the advance on costs of arbitration. If the payments are still not made within this period, the arbitration proceedings are terminated. This does not prevent the claimant from initiating new proceedings with the same claims later, provided that they have not missed the deadlines for filing the claim or exhausted their right to do so in another way.

It is important to note that the Secretariat has the right to accept a bank guarantee or other means of security instead of the advance on costs of arbitration.

The aforementioned payments are taken into account by the Arbitral Tribunal when making the final decision, including them in the costs to be recovered from the losing party upon the request of the party.

All types of payments during the arbitration proceedings are made by non-cash means through the bank account of the Center provided by the Secretariat.

37. How is an arbitration award formed?

The logical conclusion of the arbitration process is the arbitration award. The sole arbitrator or the Arbitral Tribunal completes the examination of the case by rendering an award. The award is a written document drafted and signed by the tribunal, determining the outcome of the case. The Arbitral Tribunal may also issue interim, partial, and additional awards.

The Law "On Commercial Arbitration" contains regulations regarding the issuance of arbitration awards, the form, and the content requirements of the award. However, the law does not specify a deadline for rendering the award, which may be provided by the Arbitration rules adopted by arbitration institutions.

According to the rules of AMCA, in the general procedure, if the case is examined under such, the Arbitral Tribunal renders the award within six months from the date of the preparation of the protocol of procedure, unless the parties have agreed otherwise. This period may be extended by the decision of the Arbitration Council, either on its initiative or based on a justified request from the Arbitral Tribunal.

In the case of an Arbitral Tribunal composed of three arbitrators, the award is rendered by a majority vote, meaning at least two arbitrators' "yes" votes are required. The Arbitral Tribunal's award must state the underlying reasons, except when the parties have agreed that such reasons should not be mentioned in the award. The seat of the award's issuance is the location of the arbitration, and the date is the date specified in the award. The award is usually signed by all arbitrators of the tribunal. If there are circumstances preventing the signing, this must be explicitly mentioned in the award. An arbitrator who disagrees with the award has the right to submit a written dissenting opinion, which forms an integral part of the award.

According to AMCA rules, if one of the arbitrators does not sign the award in cases involving more than one arbitrator, the reason for the absence of the signature is stated in the award. Arbitrators who wholly or partially disagree with the majority's decision may provide a separate or dissenting opinion regarding the award.

38. What are the requirements for an arbitration award?

The general requirements for an arbitration award include maintaining a written form and providing reasoned justification. Although there are no formal requirements for the award and its structure, the Arbitral Tribunal is obligated to justify the resolutions of all disputed issues, the applicability of the chosen law, and any other matters deemed important.

The Arbitral Tribunal may issue an award based on agreed terms regarding a settlement agreement, if the parties reach a settlement and request such an award. The tribunal is not required to justify the award regarding the settlement agreement or include the terms of the settlement.

If the parties do not request an award concerning the settlement agreement, they must assure the Arbitral Tribunal and the Secretariat that a settlement has been reached. In this case, the Arbitral Tribunal issues a decision to terminate the arbitration.

At the request of the parties, the Center provides additional copies of the Arbitral Tribunal’s award/decision, certified by the Secretary-General. Unless otherwise agreed in advance between the parties and the tribunal or the Secretariat, the award is notified electronically, and the original paper copies of the award are deposited with the Secretariat.

The decision/award of the Arbitral Tribunal is binding on the parties and is not subject to appeal unless there are grounds for its annulment under applicable law. Corrections of technical, numerical, typographical, or similar errors in the award can be made by the Arbitral Tribunal on its initiative when such errors are discovered, or at the request of a party. However, this opportunity is available to the tribunal and the parties within 30 days from the notification of the award by the Secretariat. This period equally applies to the interpretation of the award and the issuance of an additional decision.

Unlike corrections and interpretations, an additional decision regarding the arbitration award can directly change the impact of the award on the parties. Such a decision is necessary

when not all issues related to the subject matter of the dispute have been resolved in the award. Considering this, the Secretariat provides the parties with a certain period, not exceeding 30 days, to express their opinions on the raised issues for the issuance of an additional decision. Within 30 days from the end of this period, the Arbitral Tribunal issues the additional decision. If necessary, the tribunal has the authority to extend this period by its decision.

Corrections of errors, interpretations of the award, or additional decisions are integral parts of the award.

Like the entire arbitration proceedings, the award is confidential and cannot be published or provided to third parties in any way. The content of the award may be disclosed partially or fully with the consent of all parties, or in cases and to the extent required by law for a party to protect its rights and legitimate interests, to obtain an enforcement order, to appeal the award, or for other reasons to apply to the court or as required by law and the competent state authority's request, or by court order.

39. How are arbitration awards enforced?

Arbitration awards are mandatory for enforcement by the participants of the arbitration proceedings. In international cases, they are also subject to recognition and enforcement in all member countries of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, provided that the legislative requirements for the Arbitral Tribunal and the arbitration proceedings have been met.

The winning party expects that the other party will voluntarily comply with the award, and this is a reasonable expectation. According to AMCA rules, by submitting the dispute to arbitration, the parties agree to promptly comply with all awards and are considered to have waived any other form of recourse, except where such waiver may be justified. On the other hand, the rules stipulate that the Arbitral Tribunal must make every effort to ensure that the award is enforceable under the law.

However, as we know, in civil-law relations and any other type of legal relationship, there are cases where parties refuse to voluntarily fulfill certain obligations imposed on them by law, court, or Arbitral Tribunal decisions. In such cases, as with court decisions, there is an institution of compulsory enforcement.

The enforcement of arbitration awards can be conditionally divided into three groups:

1. Awards rendered by a permanently operating arbitration institution, where the seat of arbitration was within the territory of the Republic of Armenia, the parties were only citizens of Armenia or legal entities registered in Armenia, and the amount subject to enforcement does not exceed AMD 5 million.
2. Local arbitration awards that do not meet any of the requirements of the first point.
3. Awards of foreign Arbitral Tribunals.

40. Which arbitration awards can be directly submitted to the Compulsory Enforcement Service for enforcement?

With the amendment to the Law "On Commercial Arbitration" in 2022, permanently operating arbitration institutions have been given the opportunity to apply to the Compulsory Enforcement Service for the enforcement of Arbitral Tribunal awards for local cases not exceeding AMD 5 million via electronic communication.

According to Article 35, Part 4 of the law, a permanently operating arbitration institution submits the Arbitral Tribunal's award for compulsory enforcement to the Compulsory Enforcement Service via electronic communication if:

1. The arbitration was conducted by a permanently operating arbitration institution,
2. The seat of arbitration is within the territory of the Republic of Armenia,
3. The parties to the arbitration are only citizens of Armenia or legal entities registered in Armenia, and
4. The amount subject to enforcement by the arbitration award does not exceed five thousand times the minimum wage.

This amendment encourages organizations to include an arbitration clause in their contracts or to enter into an arbitration agreement after a dispute arises, as they will no longer need to apply to the court for the enforcement of an arbitration award[12].

Interestingly, the number of writs of execution issued by the Compulsory Enforcement Service of Armenia based on arbitration awards has increased from 2020 to 2022, with a trend of further growth. (In 2021, the number of enforcement proceedings increased by 151% compared to 2020, and in the first ten months of 2022, there was an 11.5% increase compared to 2021). In a letter addressed to the Minister of Justice of Armenia on November 11, 2022, the Chief Compulsory Enforcement Officer of Armenia stated that, according to the electronic database of the Compulsory Enforcement Service, from January 1, 2020, to October 31, 2022, around 50,100 enforcement proceedings were initiated based on writs of execution issued for arbitration awards, with a total amount subject to enforcement of AMD 90,532,040,487. Of these:

- In 2020: 7,939 enforcement proceedings with an amount of AMD 24,860,437,563,
- In 2021: 19,934 enforcement proceedings with an amount of AMD 29,618,565,279,
- In 2022 (01.01.2022–31.10.2022): 22,227 enforcement proceedings with an amount of AMD 36,053,037,645.

Granting the authority to permanently operating arbitration institutions to apply to the Compulsory Enforcement Service for the enforcement of arbitration awards via electronic communication makes resolving disputes through arbitration institutions more attractive. This, in general, relieves the parties from the obligation to apply to the court for any issue.

[12] This is possible if the amount subject to enforcement does not exceed AMD 5 million, the seat of arbitration is within the territory of Armenia, and the parties to the arbitration are only citizens of Armenia or legal entities registered in Armenia. Ad hoc arbitrations do not have this option.

41. How are arbitration awards for local cases not exceeding AMD 5 million enforced?

To enforce an arbitration award for local cases not exceeding AMD 5 million, the party applies to the arbitration institution, in the case of AMCA, to the Secretariat, based on which the Center submits the Arbitral Tribunal's award to the Compulsory Enforcement Service via electronic communication.

According to Article 4 of the Law "On Compulsory Enforcement of Judicial Acts," this communication serves as the basis for the Compulsory Enforcement Service to apply enforcement measures. The right to submit an application for compulsory enforcement in this manner is available to the party not sooner than three months and not later than one year from the date of receiving the Arbitral Tribunal's award.

This limitation is also intended to ensure the parties' right to challenge the Arbitral Tribunal's award before it is submitted for compulsory enforcement, providing a reasonable period for the participant in the proceedings to voluntarily fulfill the obligation set by the award. The higher threshold of one year is set to ensure the predictability of the parties' behavior and applies equally to both arbitration awards and court decisions.

Thus, within the above time limits, to send the Arbitral Tribunal's award for compulsory enforcement, the party must submit a written application to the Secretariat of the Center, which must include the following information:

1. The name of the Center, the seat of arbitration, and the composition of the Arbitral Tribunal,
2. The names, surnames, patronymics of the participants in the arbitration proceedings, the name of the legal entity in the case of a legal entity, the registration address, the address of the location of the legal entity, the details of the identity document of the applicant natural person, the state registration number of the applicant legal entity,
3. The year, month, date, place, and number of the arbitration award,
4. The demand for compulsory enforcement of the arbitration award.

In addition to the above, the application must be accompanied by:

1. The Arbitral Tribunal's award,
2. A document confirming that a copy of the application for compulsory enforcement of the Arbitral Tribunal's award has been handed over or sent to the other party in the arbitration proceedings.

The above are the minimum requirements for the application. In certain cases, the Secretariat of the Center may request additional information from the party. Additionally, in all cases where the application is submitted by a representative of the party who was not involved in the proceedings or whose authorization document has expired (e.g., the power of attorney's term has expired), they must also present their authorization and the relevant identification documents of the authorized person.

The Secretariat of the Center reviews the application for compulsory enforcement within one month from the date of receiving the application, based on the submitted documents and other materials. If during the review it is found that the arbitration award has not yet become mandatory for the parties (e.g., the specified three-month period has not expired), or there is a pending

application in the first instance court to annul the arbitration award, the application for compulsory enforcement is left without consideration.

An application submitted in violation of the requirements is returned to the submitting party by the Secretariat. The return or leaving without consideration of the application does not deprive the party of the possibility to reapply, provided the time limits prescribed by law for submitting the application are observed.

If the requirements related to the form and content of the application are met, the Secretariat sends the arbitration award to the Compulsory Enforcement Service for enforcement, after which it is prohibited to apply to the court with an application to annul the arbitration award. An exception to this may only be if the person applying to annul the award justifies the impossibility of submitting such an application during the proceedings for compulsory enforcement of the award due to reasons beyond their control.

42. How are other local and foreign arbitration awards enforced?

This group includes arbitration awards rendered by the Arbitral Tribunal for local cases exceeding 5 million AMD that do not meet the requirements of the first group, in other words, all other awards in local arbitration disputes, provided that the Arbitral Tribunal has not submitted the award to the Compulsory Enforcement Service via electronic communication as previously mentioned. It also includes arbitration awards rendered in international disputes. In this case, the party in whose favor the arbitration award has been made must apply to the Civil Court of First Instance of Yerevan City to obtain compulsory enforcement.

Unlike foreign arbitration awards included in the third group, local arbitration awards do not require additional recognition by the court; the court exclusively considers the issuance of a writ of execution. However, given that the procedures for applying to the court are almost identical for these two groups, they will be discussed together.

As we know, Armenia has joined the New York Convention, under which it has committed to recognizing and enforcing arbitration awards made by Arbitral Tribunals of member countries (hereafter referred to as foreign arbitration awards). This means that arbitration awards rendered by the Center in international disputes will be subject to recognition and enforcement outside Armenia. In such cases, the party to the arbitration award must submit an application to the relevant country's court according to the procedures established by national law. While acknowledging the procedural differences established by national laws, it should be noted that the New York Convention sets the fundamental guarantees that each country must follow in establishing its procedural rules. Thus, by familiarizing ourselves with the procedure for recognizing and enforcing foreign arbitration awards in Armenia, we can get a general idea of the general outlines of the same procedure in other member countries of the Convention.

Applications for compulsory enforcement of domestic arbitration awards, recognition, and enforcement of foreign arbitration awards are submitted to the Civil Court of First Instance of Yerevan City in Armenia. The party in whose favor the arbitration award has been made has the right to submit the application. For domestic disputes, such an application can be submitted within

one year from the date of receiving the arbitration award, and for recognition and enforcement of international arbitration awards, within three years.

The requirements for the application and the accompanying documents submitted to the court are the same as those submitted to the arbitration institution, with some differences that will be discussed below.

Unlike the previous case, the original or a properly certified copy of the arbitration award and the original or properly certified copy of the arbitration agreement between the parties must also be submitted to the court. If the award or agreement is not in Armenian, the party must also submit a properly certified Armenian translation. As we know, the awards and other documents, including copies of arbitration agreements, issued by permanently operating arbitration institutions, including the Center, are certified by the institutions themselves. In the case of ad hoc arbitrations, the authenticity of the signatures on the award, the certification of the copy of the award, and the certification of the copy of the arbitration agreement must be done by a notary (the problematic issues have already been discussed). Regarding translations, the requirements for their form are defined by procedural law; translations must be certified by a person authorized to do so.

An application for recognition and enforcement of a foreign arbitration award must also include proof of payment of the state duty, which is determined by the Law "On State Duty" and currently amounts to AMD 50,000.

If the requirements for the application and the accompanying documents are not met, the court will return the application within seven days from the date of receipt, suggesting that the party corrects the deficiencies within three days. If there are no grounds for return, the application is accepted for proceedings within the same period.

The court is obligated to consider the application for compulsory enforcement of the arbitration award within 15 working days from the date of acceptance for proceedings, without a hearing, or, in the case of recognition and enforcement of a foreign arbitration award, within two months. However, the court has the right to hold a hearing if it deems necessary, for example, to obtain additional clarifications from the parties regarding the submitted evidence or other information essential for resolving the dispute. In such cases, the period for considering the case and making a decision may extend to two months.

If, during the consideration of the application for the issuance of a writ of execution, the court finds that there is also a pending application to annul the arbitration award, these two applications are consolidated, and the judge examining the application to annul the arbitration award considers them within one proceeding. In this case, the court is obligated to consider the applications and make a decision within one month from the date of acceptance of the application to annul the arbitration award, and if a hearing is held to obtain additional clarifications or evidence, within two months.

After issuing the writ of execution for compulsory enforcement of the arbitration award, it is prohibited to apply to the court to annul the arbitration award, except when the person applying to annul the award justifies the impossibility of submitting such an application during the proceedings for obtaining the writ of execution for reasons beyond their control.

An application for compulsory enforcement of an arbitration award or recognition and enforcement of a foreign arbitration award may be rejected at the request of a party or at the court's initiative if there are legal grounds for it. Given that these grounds coincide with the legal grounds for annulling the Arbitral Tribunal's award, they will be discussed next.

In the absence of the above grounds, the court satisfies the application for enforcement or recognition and enforcement of the international arbitration award and issues a reasoned decision. According to the law, the court's decision is subject to publication in the manner prescribed for the publication of judgments in cases examined by courts under the general procedure. Regarding this regulation, there is a problem in judicial practice due to the confidentiality of arbitration proceedings. Therefore, currently, there is no access to decisions made based on applications submitted under the Law "On Commercial Arbitration" on the official website of the judiciary, which is why the courts continue to send decisions to the participants in the proceedings in paper form, and the publication date of the decision is practically interpreted as the date of providing the hard copy to the party or the date the party receives it.

The court's decisions on applications discussed above, in the case of local disputes, come into force from the moment of publication, and in the case of applications for recognition and enforcement of international arbitration awards, seven days after publication if no appeal is filed against the decision.

It is important to emphasize that the court's refusal to issue a writ of execution for the enforcement of the arbitration award does not prevent the parties from referring the dispute to arbitration again if this possibility is not exhausted, for example, due to the expiration of deadlines or the absence of an arbitration agreement. The parties have the right to refer their dispute to the court to resolve it according to the general rules established by Armenian law if the court wholly or partially rejects the application for issuing a writ of execution for the enforcement of the arbitration award on any of the following grounds:

- As a result of declaring the arbitration agreement invalid,
- The Arbitral Tribunal made an award on a dispute not covered by the arbitration agreement or not corresponding to the terms of the arbitration agreement, or decided on issues beyond the scope of the arbitration agreement.

43. In what cases can arbitration awards be annulled?

One of the key advantages of arbitration proceedings is the non-appealable and final nature of arbitration awards. Therefore, when discussing the annulment of arbitration awards, it is important to emphasize that it does not involve appeals or judicial reviews of the awards but rather the annulment of awards due to procedural violations committed by the Arbitral Tribunal during the initiation, conduct, or conclusion of the arbitration proceedings, which directly affect the outcome of the case and pertain to:

- The existence or validity of the arbitration agreement,
- The jurisdiction of the Arbitral Tribunal to hear the case (in whole or in part),
- The impartiality and independence of the Arbitral Tribunal,
- The opportunity given to a party to present their case during the proceedings,
- Public policy of the Republic of Armenia.

The issue of annulment of arbitration awards can be considered in two cases:

1. When a request for compulsory enforcement of the award has been submitted, the court addresses the grounds for annulment either at the party's request or on its own initiative.

2. When a participant in the arbitration proceedings has applied to the court for annulment of the award before its enforcement.

44. What is the procedure for annulment of arbitration awards?

The issue of annulment of an Arbitral Tribunal's award is reviewed by the Civil Court of First Instance of Yerevan City. If a party submits an application for annulment, they must provide evidence substantiating the presence of one or more of the following grounds:

- One of the parties to the arbitration agreement was incapacitated according to the applicable law;
- The arbitration agreement is invalid under the law chosen by the parties for their dispute, or in the absence of such a choice, under Armenian law;
- The disputing party was not properly informed about the appointment of an arbitrator or the arbitration proceedings, or was otherwise unable to present their case to the Arbitral Tribunal due to other reasons;
- The composition of the Arbitral Tribunal or the arbitration procedure did not comply with the arbitration agreement, provided that such agreement does not contradict the law, or in the absence of such an agreement, did not comply with the law;
- The Arbitral Tribunal made an award on a matter that was not contemplated by the arbitration agreement or that does not fall within the terms of the arbitration agreement, or made a decision on matters beyond the scope of the arbitration agreement. In this case, only the part of the Arbitral Tribunal's award that includes matters not contemplated by the arbitration agreement may be annulled, provided that the decisions on matters contemplated by the arbitration agreement can be separated from those that are beyond its scope.

The court may annul the arbitration award on its initiative if it finds that, according to Armenian law, the subject matter of the dispute was not capable of resolution by arbitration or if the award contradicts the public policy of Armenia. It is important to note that no other grounds for annulment are provided besides those mentioned above. According to the New York Convention, the recognition and enforcement of foreign arbitration awards can be refused on the same grounds.

It is important to remember that an application for annulment of an arbitration award must be submitted to the court within three months from the date of receipt of the arbitration award or the decision of the Arbitral Tribunal correcting, explaining, or issuing an additional award. The court to which the application for annulment is submitted may, at the request of one of the parties or on its initiative, suspend the review of the case for a certain period to allow the Arbitral Tribunal to resume the arbitration proceedings or to take other actions that, in the opinion of the Arbitral Tribunal, may eliminate the grounds for annulment of the arbitration award.

If, during the consideration of the application for annulment of the arbitration award, it is found that there is also an application for issuing a writ of execution for the enforcement of the arbitration award pending before the court, these applications are combined, and the judge reviewing the application for issuing a writ of execution for the enforcement of the arbitration award will review them within one proceeding.

45. What are the judicial support procedures for arbitration proceedings?

The relationship between courts and Arbitral Tribunals may initially seem paradoxical. Although arbitration is an alternative to court proceedings, the law provides parties with the opportunity to seek court assistance at various stages: prior to the initiation of arbitration proceedings, during the proceedings, or after the conclusion of the proceedings. Court assistance is necessary because courts have coercive power, which is often required to effectively conduct arbitration proceedings.

Court assistance can be sought for the following:

♦ An application for the appointment of an arbitrator(s) in case of disagreement on the appointment.

♦ An application for a decision on the challenge of an arbitrator.

♦ An application to resolve the issue of terminating the authority of an arbitrator.

♦ An application for a decision on the jurisdiction of the Arbitral Tribunal.

♦ An application for interim measures of protection.

♦ An application to obtain evidence with the assistance of the court.

In all these cases, the application is submitted to the court where the arbitration is located, except for matters related to the jurisdiction of the Arbitral Tribunal, in which case the application is submitted to the Civil Court of First Instance of General Jurisdiction of Yerevan city.

Applications for the above matters must be submitted to the court within one month from the day the applicant became aware or could have become aware of the circumstances serving as the basis for the application, unless otherwise provided by the Law "On Commercial Arbitration". This period is general and may be modified by law or by the arbitration agreement in certain cases.

The law sets minimum requirements for such applications, and failure to meet these requirements will result in the application being returned. The application must include:

1. The name of the court to which the application is submitted.

2. The name, location, and composition of the arbitration examining the dispute.

3. The names (titles) of the participants in the arbitration proceedings, their registration (location) addresses, the applicant citizen's passport details, and the state registration number of the applicant legal entity.

4. The circumstances that served as the basis for the application to the court, citing the provisions of the Law "On Commercial Arbitration" of Armenia that provide for the requested functions of the court.

5. The applicant's request.

Additional requirements are specified for certain applications. For example, if the application seeks the application of interim measures of protection, it must also include arguments justifying the necessity of applying such measures and specify the measure requested (e.g., placing a seizure on the property of the respondent equivalent to the claim amount, prohibiting the respondent from performing certain actions, obliging the respondent or other persons to perform certain actions related to the subject of the dispute, suspending the sale of the subject property). If the application seeks the challenge of an arbitrator, the applicant must cite all circumstances that, in their opinion, justify the challenge. If the application seeks to compel the provision of documents or evidence related to the arbitration proceedings or the parties to the arbitration

proceedings, the application must include a detailed list and other identifying details of the documents requested. The same applies to applications for assistance in obtaining evidence; the applicant must specify the evidence to be obtained and the method of obtaining it (e.g., taking property or samples, questioning a person, etc.).

The following documents must be attached to the application:

1. A document evidencing that the case is at the appropriate stage of arbitration at the time of submitting the application for court assistance, except when the application seeks the application of preliminary interim measures of protection.

2. The original or properly certified copy of the arbitration agreement or other evidence proving the conclusion of the agreement; for disputes examined by or subject to submission to the Center, proper certification of documents is performed by the Center (organized by the Secretariat).

3. The receipt of the state duty payment[13].

4. A document confirming that a copy of the application has been handed over or sent to the other party in the arbitration proceedings, except for applications seeking the application of interim measures of protection, compelling the provision of documents or evidence related to the arbitration proceedings or the parties to the arbitration proceedings, or assistance in obtaining evidence.

In all cases where applications seek to compel the provision of documents or evidence related to the arbitration proceedings or the parties to the arbitration proceedings or assistance in obtaining evidence, the Arbitral Tribunal's consent to apply to the court must also be attached. The court does not hold a hearing on these applications and must provide a decision no later than the next working day after receiving the application. For all other applications, the court conducts the proceedings with a hearing and must conclude the case and provide a decision within one month from the day of accepting the application for proceedings.

During the review of applications, the court issues a decision, which comes into force upon publication and is not subject to appeal. According to the law, these decisions must be published according to the rules established for judgments, which implies publication on the official website of the judiciary, and for decisions requiring enforcement, a writ of execution is issued.

[13] According to the Law "On State Duty," the state duty for the mentioned applications is AMD 4,000.

SOURCES REGULATING THE FIELD OF ARBITRATION

46. What relationship are regulated by the Law "On Commercial Arbitration"?

The relationships associated with the establishment and operation of arbitration institutions, as well as the recognition and enforcement of their awards and other decisions, are legally regulated by national legislation and international treaties ratified by the state. Since international treaties will be addressed in the following subsection, it is important to note that international treaties are an integral part of Armenia's legal system and operate directly unless they stipulate different rules of operation. The legal basis for this rule is defined by the Constitution of Armenia, which allows us to assert that the primary legal act related to arbitration proceedings is the Constitution of Armenia.

A significant portion of the legal regulation of these relationships belongs to the Law "On Commercial Arbitration," [14] which has been in effect since February 10, 2007. With its adoption, the Law "On Mediation Courts and Mediation Procedure" was repealed (this law was in effect from January 1, 1999, until the Law "On Commercial Arbitration" came into force). It is interesting to note that the latter addressed ad hoc courts, defining their distinction from permanently operating mediation courts, a distinction that is absent in the Law "On Commercial Arbitration." Considering the purpose of this manual and the fact that more than 16 years have passed since the Law "On Mediation Courts and Mediation Procedure" lost its effect, during which the cases pending in mediation courts and any subsequent disputes were concluded, we will not address this and other repealed legal acts.

Thus, the Law "On Commercial Arbitration" is the main legal act that broadly defines the fundamental principles of arbitration proceedings, the requirements for arbitration agreements, the rules related to the formation and jurisdiction of Arbitral Tribunals, the legislative guarantees for the impartiality and independence of arbitrators, the principles and conduct rules for arbitrators, the grounds and procedure for challenges, the main regulations for preliminary orders and interim measures applied before or during the proceedings, the guidelines for selecting the language of the proceedings and the applicable law, the procedures for submitting statement of claims and statement of responses, the conduct of hearings, the main requirements for the form and content of the Arbitral Tribunal's award, the issues of correction, supplementation, and interpretation of the award, the grounds and general procedure for challenging the award, and the issues of enforcing arbitration awards and recognizing international arbitration awards.

It is notable that the law primarily provides guiding regulations for all these issues, allowing the participants in the arbitration proceedings and arbitration institutions to establish different regulations through mutual agreement or internal rules, while preserving the fundamental guarantees or mandatory rules set by law. For example, regarding the selection of arbitrators, the

[14] ՀՕ-55-Ն, adopted on 25.12.2006, came into force on 10.02.2007:

law mandates a minimum age threshold of 25 years and the requirement of higher education. In other respects, the law grants freedom to the parties and arbitration institutions to operate.

The Law "On Commercial Arbitration" mainly establishes the substantive grounds and time limits for conducting arbitration, leaving procedural regulations to the discretion of the parties or the tribunal. Specifically, according to Article 19 of the law, the parties may agree at their discretion on the procedure for conducting the arbitration proceedings. In the absence of such agreement, the Arbitral Tribunal conducts the proceedings according to the relevant procedural rules of the Civil Procedure Code of Armenia.

This is the main legal act that directly regulates arbitration relationships. In the case of a permanently operating arbitration institution, its internal acts also apply, such as the Arbitration rules of the Center and other acts adopted by its governing bodies, which become binding for the parties by virtue of the arbitration agreement and the submission of the dispute to the Center, unless there is an agreement on specific issues between the parties. The norms and procedures agreed upon by the participants in the arbitration proceedings through the arbitration agreement or otherwise are also mandatory for the Arbitral Tribunals, provided they do not contradict the law.

47. What legislation governs the judicial and enforcement proceedings related to arbitration?

In RA, issues related to judicial proceedings concerning arbitration are regulated by the Civil Procedure Code of the Republic of Armenia. Subdivision 5 of the Code regulates the procedural norms for proceedings on applications for annulment of arbitration awards, issuance of writs of execution for the enforcement of arbitration awards, recognition and enforcement of foreign arbitration awards, and judicial assistance to arbitration. It also sets the time limits for filing and reviewing applications, as well as the requirements for procedural documents and judicial acts. When necessary, the norms of this subdivision frequently refer to articles in other sections of the Civil Procedure Code of the Republic of Armenia, making the entire Code applicable to the discussed legal relationships.

Submitting applications to the court for annulment of arbitration awards, issuance of writs of execution for the enforcement of arbitration awards, recognition and enforcement of foreign arbitration awards, and judicial assistance to arbitration, as well as appealing judicial acts, require the payment of state duty, the amounts of which are determined by the Law "On State Duty."

The compulsory enforcement of arbitration awards, interim measures of protection (established by the court and arbitration institution) is carried out by the Compulsory Enforcement Service of the Ministry of Justice of the Republic of Armenia (CES), which defines the grounds and procedures for enforcement actions in the Law "On Compulsory Enforcement of Judicial Acts."

48. What widely applied national precedents exist in the field of arbitration?

In addition to legal acts, decisions by the Constitutional Court of Armenia and the Court of Cassation of Armenia can also hold significant guiding importance if they address the applicability criteria and interpretation of legal acts relevant to the field. Although the positions expressed in these decisions are not directly binding on the participants in arbitration proceedings and Arbitral Tribunals, failing to adhere to them increases the likelihood that courts will apply the law in accordance with those positions during subsequent judicial reviews.

In 2018, in light of the legal positions expressed by the European Court of Human Rights, the Court of Cassation of Armenia adopted the view that the right of a physical person using the services of financial organizations to submit a dispute arising from or related to a contract to the court cannot be restricted. Such a dispute, if submitted to the court by the party, must be examined on its merits, contrary to the arbitration agreement provided in the concluded contract, except in cases where the arbitration agreement was concluded after the dispute arose and the parties unconditionally agreed to submit the dispute to the Arbitral Tribunal for resolution.[15]

In another case in 2023, addressing the issue of the possibility of protecting civil rights by a general jurisdiction court in the presence of an arbitration agreement, the Court of Cassation recorded that cases submitted to arbitration by law are to be examined and resolved by arbitration if there is an agreement between the parties. Furthermore, the examination and resolution of cases submitted to the jurisdiction of arbitration are, as a general rule, excluded from judicial or other proceedings, provided there is a valid arbitration agreement, the opportunity to apply to the arbitration court has not been lost, and the party refers to the mentioned agreement.[16]

A decision particularly noteworthy is the one regarding the jurisdiction over a dispute on declaring a transaction invalid in the presence of an arbitration agreement. In 2014, the Court of Cassation of Armenia established that a claim to declare a disputed transaction invalid is subject to examination exclusively by the court.[17] Despite that decision, the Law "On Commercial Arbitration" currently allows for the demand to invalidate the disputed transaction to be examined through arbitration as well.

The Court of Cassation of Armenia has also addressed the issue of terminating arbitration proceedings for claims filed against a debtor who has been declared bankrupt. Specifically, in a 2024 decision, the Court of Cassation recorded that from the date the judgment declaring the debtor bankrupt comes into legal force, the proceedings in civil, administrative, or Arbitral Tribunals that involve claims for the recovery of money or property from the bankrupt debtor are subject to termination, provided that creditors have the opportunity to present these claims within the framework of the bankruptcy proceedings as separate claims under the Law "On Bankruptcy." However, in all cases where the claims presented are not subject to Article 39, Part 2, Point 4 of

[15] Svetlana Gevorgyan v. "ARMSHINBANK" CJSC, civil case No. EKD/3817/02/16, Decision of the Court of Cassation of Armenia, 07.04.2018.

[16] In the case of Yevgeni Priymak v. "Football Federation of Armenia" NGO, concerning the demands to invalidate the decision, refute defamatory information, apologize for insult, and compensate for damage to honor and dignity, business reputation, and material damages due to insult and defamation, case No. ԵԴ/23193/02/20, the Court of Cassation's decision of 2023: https://datalex.am:443/?app=AppCaseSearch&case_id=13229323905402990.

[17] Seyran Mantashyan and others v. "Prometey Bank" LLC, civil case No. EKD/1910/02/13, Decision of the Court of Cassation of Armenia, 18.07.2014.

the Law "On Bankruptcy," but arise in connection with property and rights included in the debtor's estate in the bankruptcy case, and the debtor is involved in the dispute as a respondent or a third party on the respondent's side, those proceedings are not subject to termination but should be transferred according to subject-matter jurisdiction to the Bankruptcy Court for examination within the same bankruptcy case as a separate civil case.[18]

49. What is the judicial practice in Armenia regarding arbitration?

Reflecting on the judicial practice in Armenia, we can highlight that court proceedings for judicial assistance in arbitration are not widespread in Armenian judicial practice. Studies have shown that courts sometimes apply different approaches under similar factual circumstances. Given this, we deem it necessary to address a few fundamental issues derived from Armenian judicial practice.

Firstly, we should note that proceedings involving applications for interim measures of protection carry significant weight in judicial assistance proceedings. It is interesting to note that in some cases, courts have rejected applications for interim measures of protection, reasoning that the case is already under the jurisdiction of an arbitration institution, and the applicant has not provided adequate justifications for why the respective application was not submitted to the Arbitral Tribunal. The further development of such judicial practice, regardless of the content of the Arbitration rules applied by the Arbitral Tribunal, could enhance the role of arbitration institutions and reduce instances of court interference in arbitration proceedings. In addition to the above, many court rejections of applications for interim measures of protection (filed both before the dispute was referred to arbitration and during the arbitration proceedings) are due to a lack of justification in the applications. In other words, by rejecting the party's request for an interim measure of protection, courts have emphasized that the applicant did not justify how the lack of such a measure could render the future arbitration award unenforceable or affect the claimant's interests.

Applications for the annulment of arbitration awards also have a significant share in judicial assistance proceedings. The study of these cases shows that they mainly involve disputes arising from credit relationships, where arbitration institutions did not properly involve the respondent party in the arbitration proceedings, and the individual learned about the arbitration award during the enforcement phase. This indicates two groups of problems:

1. When concluding arbitration agreements, individuals often do not realize that they are signing such an agreement. Banks and credit organizations do not clarify the nature of arbitration and the specifics of the proceedings, leading individuals to expect court notifications while ignoring or not understanding the nature of letters or notices sent by the arbitration institution. It is important to note that the professional terminology used in credit contracts, the volume of the contracts, and the often-used small font size minimize the likelihood that a person without the

[18] "VTB-Armenia Bank" CJSC v. Hakob Safaryan and Elena Harutyunyan, case No. ED/1846/02/20, Decision of the Court of Cassation of Armenia, 2024.

relevant specialized knowledge will thoroughly study and understand the true meaning of all the contract's provisions before signing it.

2. The logical continuation of the first group's problems is the conduct of arbitration proceedings by arbitration institutions, where the formal criteria for notification as defined by the rules are maintained, but the substantive aspect of whether the respondent party is truly informed about the existence of the arbitration agreement and proceedings is not revealed.

Ultimately, banks, by failing to properly inform the party about the essence and specifics of the arbitration agreements they propose, spend material (costs of arbitration) and non-material (time, labor) resources to obtain an award that, due to the above reasons, is annulled. As a result, parties are forced to initiate new proceedings in courts to protect their interests. This circumstance not only harms the legitimate interests of the parties but also leads to a loss of public trust in arbitration institutions, creating a perception of their activities as unreliable and unserious.

50. What is the role of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards?

International treaties ratified by the Republic of Armenia are an integral part of Armenia's legal system, and the legal regulations established by these treaties are mandatory for every person located in and conducting activities within the territory of Armenia. One of the significant steps taken by Armenia in the field of arbitration is the ratification of the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards," commonly known as the New York Convention, which has 172 member countries.[19] There is a widely accepted view that the 1958 New York Convention is the most successful multilateral document in the field of international commercial law, and member countries have directly applied and interpreted it since its adoption to this day.

The New York Convention has two main objectives: (a) the recognition and enforcement of arbitration agreements, and (b) the recognition and enforcement of foreign arbitral awards. Therefore, it pertains only to the recognition and enforcement of foreign arbitral awards and does not apply to the recognition and enforcement of domestic arbitral awards.

The Convention grants member countries the right to establish more lenient regulations under their national laws and enshrines an important principle: the Convention should be interpreted and applied in a manner that favors the presumption of recognition and enforcement of arbitral awards. In line with the policy aimed at enforcement, the principle of maximum efficiency is applied: if more than one international treaty is applicable, courts should apply the international treaty that ensures the enforcement of the arbitral award.

The International Council for Commercial Arbitration (ICCA)[20] has been publishing the Yearbook Commercial Arbitration since 1976. The Yearbooks include around two thousand

[19] The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, https://www.newyorkconvention.org/countries.

[20] The International Council for Commercial Arbitration (ICCA) was founded in May 1961 through the initiative of a group of experts and colleagues in the field of international commercial arbitration. It is a global public organization aimed at promoting and developing arbitration, mediation, and other methods of resolving international disputes.

judicial decisions from member countries' courts related to the application and interpretation of the convention's norms. This significantly contributes to the uniform interpretation and application of the convention's provisions by member countries, thereby making arbitration more attractive and predictable. Judges, arbitrators, lawyers, parties to commercial transactions, arbitration institutions, and other interested parties have the opportunity to access legal interpretations and national court positions from different countries in an accessible and organized manner. When drafting and interpreting arbitration agreements, issuing awards, and conducting arbitration proceedings, they take into account the experiences and approaches of the countries where the arbitration award might be enforced. Ultimately, participants in arbitration proceedings have reasonable expectations when presenting international arbitration awards for recognition and enforcement in countries different from where the arbitration took place, minimizing the likelihood of annulment or refusal of recognition and enforcement of arbitration awards due to differences in national legislation.

For the recognition and enforcement of arbitration awards, it is not necessary for the state where the award was made to be a member of the convention (principle of reciprocity). This regulation does not apply when the state where the recognition and enforcement of the arbitration award are sought has made a reciprocity reservation. The New York Convention allows a ratifying country to make two types of reservations:

1. **Reciprocity Reservation:** In this case, the member state declares that it will apply the convention only to the recognition and enforcement of arbitration awards made in the territory of another member state. Interestingly, about two-thirds of member states have made this reservation. A court in a state that has made a reciprocity reservation will apply the convention only when the arbitration award was made in the territory of another member state or when the arbitration award is not of a domestic nature and reflects connections with another member state.

2. **Commercial Reservation:** In this case, the member state declares that it will apply the convention only to disputes arising from contractual or non-contractual legal relationships that are considered commercial under the national law of the state making the declaration. About one-third of member states have made this reservation.

Although the convention provides for reservations only regarding the recognition and enforcement of arbitration awards, the reservations are generally applied to the recognition of arbitration agreements as well.

Upon joining the Convention, the Republic of Armenia made the following two reservations, joining with the following declaration:

"1. The Republic of Armenia will apply the Convention only to the recognition and enforcement of arbitration awards made in the territory of another Contracting Party.

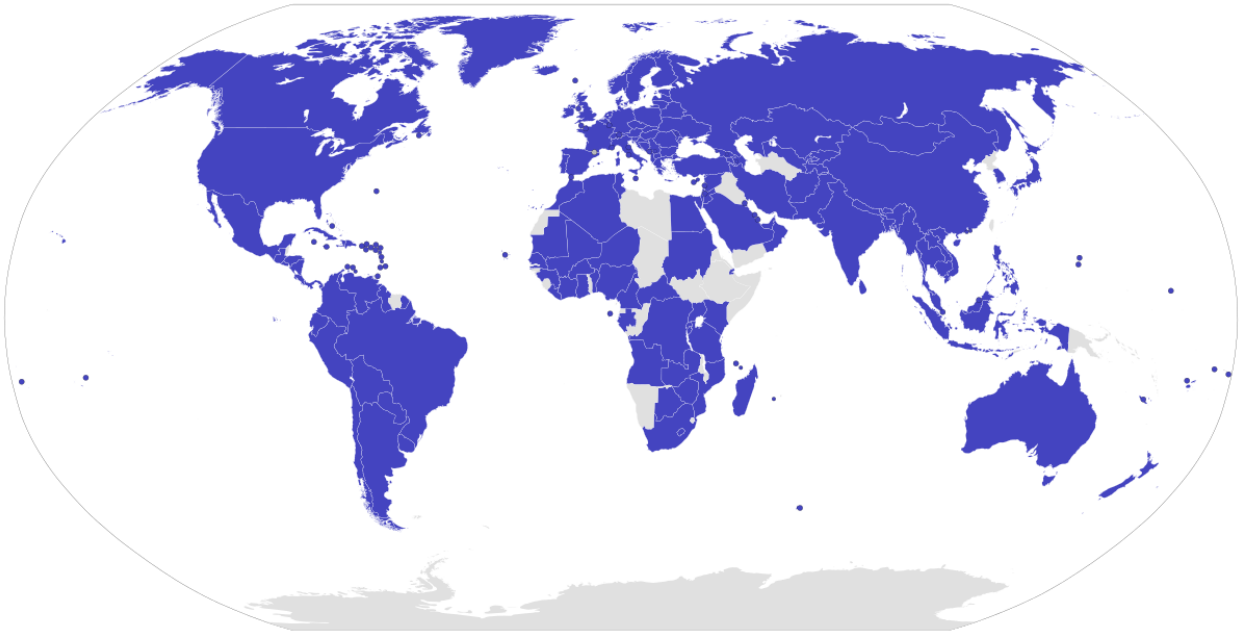
2. The Republic of Armenia will apply the Convention only to discrepancies arising from contractual or non-contractual legal relationships that are considered commercial under the laws of the Republic of Armenia."[21]

Since the New York Convention is an international treaty, the national courts applying it should interpret it not according to the rules of interpretation defined by national legislation but according to the rules of interpretation of international law, which are codified in Articles 31 and

ICCA's members come from various judicial systems and are actively involved in international arbitration as lawyers, arbitrators, scholars, and members of the judiciary.

[21] The Republic of Armenia's Reservations to the New York Convention, https://www.arlis.am/DocumentView.aspx?docID=77867.

32 of the 1969 Vienna Convention on the Law of Treaties. The Republic of Armenia has also joined to the Vienna Convention.



Parties to the Convention

51. What is UNCITRAL?

Since we have discussed international law and the norms adopted by international organizations in the field of arbitration, let's also address the United Nations Commission on International Trade Law (UNCITRAL). The various model laws and rules adopted by UNCITRAL play a significant role for member countries in developing their national legislation and aligning it with the standards set by international treaties. These model laws and rules are not mandatory but are advisory in nature. However, legal practitioners, including Arbitral Tribunals and courts, often use them when there is a need for interpretation of norms or when there is a regulatory gap. In 1985, UNCITRAL adopted (and amended in 2006) the Model Law on International Commercial Arbitration (UNCITRAL Model Law). Over eighty countries, members of the convention, have based their national laws entirely on the text of the Model Law or have adopted its main regulations. The Law "On Commercial Arbitration" of Armenia is also based on the UNCITRAL Model Law.

It is important to note that the 2006 amendments to the Law "On Commercial Arbitration" of Armenia addressed significant developments in arbitration practice since 1985. The first amendment concerns the form of the arbitration agreement, stipulating that the agreement can also be concluded using modern means of communication, such as electronic correspondence. Another amendment grants the Arbitral Tribunal the authority to make decisions on the application of interim measures. These significant innovations are reflected in Articles 7 and 17 of the Law "On Commercial Arbitration" of Armenia.

In the field of arbitration justice, it is also important to refer to the Arbitration rules, the first version of which was adopted by UNCITRAL in 1976. They have been supplemented and amended three times since, with the latest version being approved in 2021. Numerous arbitration institutions and, predominantly, ad hoc Arbitral Tribunals widely use these rules. They regulate all stages and issues of arbitration proceedings, including the selection of arbitrators, the procedures for conducting arbitration proceedings, the requirements for the form and content of arbitration awards, and the rules for their interpretation, providing a simple model form for an arbitration agreement. The latest amendments in 2021 also provided regulations for expedited proceedings. Due to their systematic approach and periodic updates, the UNCITRAL Arbitration rules are often used by several permanent arbitration institutions to develop and adopt their own Arbitration rules.

52. What other fundamental international documents exist in the field of arbitration, and what is their importance?

Several international guidelines or summaries of international best practices serve as advisory sources for Arbitral Tribunals and disputing parties. These documents contribute to making the arbitration process more transparent and predictable. Speaking of advisory documents, we should also mention the rules adopted by the International Bar Association (IBA), which has been in operation since 1947.

The IBA rules include several important documents, such as:

→ The 2004 IBA Guidelines on Conflicts of Interest in International Arbitration, which establish important rules for ensuring the independence and impartiality of arbitrators. These guidelines have become a reference for participants in arbitration proceedings, arbitrators, and national courts in various countries around the world in situations and disputes related to the disclosure of information and the challanges of arbitrators due to conflicts of interest.

→ The IBA Guidelines on Party Representation in International Arbitration, adopted in 2013, pertain to the conduct of the legal and other representatives of the parties involved.

→ In addition to the rules adopted by the International Bar Association, the 2018 Prague Rules on the Efficient Conduct of Proceedings in International Arbitration stand out. These rules encourage Arbitral Tribunals to take a more proactive role during arbitration proceedings. Unlike the rules of the International Bar Association, the Prague Rules do not encourage extensive document exchange during the arbitration process.

→ The 2020 revised IBA Rules on the Taking of Evidence in International Arbitration establish efficient and fair procedures for the collection of evidence in international arbitration. These rules set forth mechanisms for the presentation of documents, witnesses, experts, inspections, and evidentiary hearings. The drafting of these rules took into account the procedural rules applied in different legal systems, which is particularly important when the parties involved in the arbitration proceedings come from or represent different legal systems—a common issue in international arbitration proceedings.

In addition to national legislation, bilateral international treaties and various acts adopted by international organizations, which have an advisory significance, are important for ensuring the uniform application of arbitration regulations. The importance of international documents increases in international arbitration proceedings, as arbitration awards made in such proceedings are often presented for recognition and enforcement in one or more countries outside the seat of arbitration, each of which has its own legal system, national legislative peculiarities, and often differing legal regulations. The aforementioned documents aim to minimize the risks associated with the recognition and enforcement of arbitration awards in such disputes, to support the selection of procedures that are unobstructed and acceptable to all parties, and to ensure fair, impartial, and predictable justice.

53. How applicable are international precedents in arbitration?

Arbitration in international arbitration disputes is unique in its geography and applicability. It is generally accepted that arbitration often transcends borders, differences in legal systems, and is not dependent on the national laws and domestic justice systems of the parties involved in disputes. As we know, national judicial systems have multi-tiered structures, with the highest level, whether it be the Court of Cassation, the Supreme Court, or another highest judicial authority, having the function of making precedent-setting decisions to ensure the uniform application of the law. The decisions made by these courts become mandatory for lower courts under similar factual circumstances. In contrast, the awards made by Arbitral Tribunals are final; there are no higher tribunals or national or supranational bodies that can review the content of arbitral awards to create precedential practice.

This is one of the advantages of arbitration: it allows the Arbitral Tribunal to adhere to principles of justice, impartiality, and fairness in each specific case, being free to apply and interpret the law without being bound by the positions expressed by other courts. At the same time, arbitration proceedings are generally confidential, which deprives any person not involved in the proceedings of the opportunity to obtain information about the proceedings or the rendered arbitration award. Although this confidentiality is important and preferable for the parties involved in the proceedings, it nevertheless deprives theorists, practitioners, and researchers of the field of the necessary information to conduct analyses, identify issues and practical patterns in arbitration proceedings, and publicize impactful arbitration awards to illustrate the significant influence that arbitration can have in resolving disputes in large business transactions and how professional Arbitral Tribunals can be in examining and resolving these disputes.

However, in practice, arbitration awards often have guiding importance for other Arbitral Tribunals. Although arbitration awards do not serve as precedents from the perspective of substantive law application, they have had significant influence on procedural issues, the jurisdiction of Arbitral Tribunals, and the choice of applicable law.

Taking all this into account, the manual will present examples of court cases related to decisions made by national courts on issues arising in arbitration proceedings, and their expressed positions concerning the validity of arbitration agreements, the impartiality of arbitrators, the choice of applicable law for disputes under arbitration agreements, and various other issues discussed during the recognition and enforcement of arbitration awards.

In some of the court case examples presented in the manual, the names of the companies will be given in Latin script to ensure their recognizability and to provide interested parties with the opportunity to easily familiarize themselves with the activities of the companies and the specifics of the cited case.

54. Important precedents related to the enforcement of arbitration awards

Thus, the case of "Costco Wholesale Corporation" (Costco) versus "TicketOps Corporation" (TicketOps) [22] is particularly interesting due to its geography and the interpretations provided by the court.

It concerns the digital ticket services provided by "TicketOps" to "Costco". "TicketOps" is a wholesaler of digital tickets, while "Costco" was supposed to receive payments to transfer to the ticket suppliers. Since the onset of the COVID-19 pandemic, "TicketOps" ceased transferring payments to the suppliers, thereby violating its agreement with "Costco". Given that the contract between the parties included an arbitration agreement specifying that the arbitration venue should be in Seattle (Washington State, USA), "Costco" initiated arbitration proceedings against "TicketOps", which concluded in "Costco"'s favor. "Costco" sought recognition and enforcement of the arbitration award in Ontario (Canada), which "TicketOps" contested.

In this case, "TicketOps" raised multiple defenses as to why the award should not be enforced in Ontario, including issues related to the applicable law for the arbitration proceedings, the duration of the arbitration hearings, and the impartiality of the arbitrator. The Ontario court rejected all these grounds and ordered "TicketOps" to comply with the award.

The Ontario Superior Court confirmed that the applicable law is Ontario's 2017 "International Commercial Arbitration Act," which incorporates the UNCITRAL Model Law and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The court held that the Convention and the Model Law stipulate that domestic courts should not interfere with the enforcement of arbitral awards except in special cases, and therefore, the grounds for refusing the enforcement of arbitral awards must be narrowly interpreted.

Addressing the counterargument that the hearings lasted only two days as per the arbitration agreement, the Ontario Superior Court noted that the two-day hearings did not "prejudice" natural justice in any way.

Particularly interesting is the court's stance on the issue of the arbitrator's impartiality, as it directly relates to the connections individuals have on the internet or, in other words, in virtual life, including their presence in each other's social networks. In this case, the court considered the fact that the arbitrator and a party to the proceedings were "friends" on the social network "Facebook". The court rejected the presumption that a Facebook "friendship" leads to a reasonable suspicion of bias. Specifically, citing previous precedents, the court noted that in the modern

[22] Costco Wholesale Corporation v. TicketOps Corporation, 2023 ONSC 573.

world, a reasonable and informed individual would generally pay no attention or very little attention to the fact that people are "friends" on Facebook.[23]

55. Important precedents related to arbitration agreements and the selection of the arbitrator

Regarding the discussion on arbitration agreements and the selection of arbitrators, the 2021 decision of the Supreme Court of Nepal in the case "Hanil Engineering & Construction Co., Ltd. v. Melamchi" is of interest. In its decision, the court addressed the following key issues:

1. Governing Law: In light of the principle of separability (which will be discussed in detail below when reviewing other cases), the arbitration clause is considered independent of the contract. Unless the parties have explicitly agreed otherwise, the law governing the contract will not apply to the appointment of the arbitrator(s), the arbitration agreements, or the arbitration proceedings. In other words, the law governing the contract will not automatically be considered the law governing the provisions of the arbitration agreement.

2. Appointing Authority: If the parties have not authorized an organization or individual to appoint the arbitrator(s), then the procedural law (rules) chosen by the parties will also apply to the appointment of the arbitrator(s).

3. Appointment of Arbitrator(s): The Supreme Court emphasized that the parties must agree on the procedure for appointing the arbitrators. In other words, the appointment of the arbitrator(s) should be carried out according to the laws and procedures explicitly specified in the agreement. Only if the parties fail to reach an agreement on this matter and turn to the court to appoint the arbitrator(s) will the court make the appointment in accordance with the applicable domestic law.

56. Important precedents related to the appointment of arbitrators

Speaking about the procedure for appointing arbitrators, let's address the judicial practice concerning the grounds for challenging arbitrators. An interesting case in this regard is the 2020 decision No. 23 by the Supreme Court of the Czech Republic in the case "Cdo 1337/2019". The Supreme Court concluded that the requirements for the independence and impartiality of arbitrators also apply to the impartiality and independence of the appointing authority. However, the court distinguished between the institution of disqualifying an arbitrator (provided for by national legislation) and the institution of annulling an arbitral award due to the arbitrator's lack of impartiality or independence. Summarizing precedent practice, the Supreme Court interpreted the two components related to the arbitrator's impartiality: independence and impartiality. Independence implies the absence of personal, professional, or economic connections between the

[23] The full court ruling can be accessed via the following link:
https://www.canlii.org/en/on/onsc/doc/2023/2023onsc573/2023onsc573.html

arbitrator and any of the parties to the proceedings. Impartiality implies the absence of subjective support by the arbitrator for any party to the proceedings.

The court held that the fact that one of the arbitrators of the Arbitral Tribunal did not disclose to the parties that the law firm where the arbitrator worked had provided legal assistance to one of the parties prior to the arbitration proceedings was insufficient to call the arbitrator's impartiality into question and annul the arbitral award. Such an act could be grounds for disqualifying the arbitrator, which does not directly affect the arbitral award. Regarding the argument of lack of impartiality or independence of the arbitrator, the party invoking such a lack must prove that the absence of impartiality directly affects the outcome of the case or creates a real risk of such an effect. Developing this idea, the Supreme Court noted that the fact that an arbitrator and a representative of one of the parties are members of the same professional or social organization cannot directly cast doubt on the arbitrator's impartiality. The court explained this stance by noting that in practice, it is expected that arbitrators, who are also engaged in legal practice, usually establish professional relationships with other lawyers. The mere existence of such relationships cannot be directly interpreted as reasonable doubt regarding the arbitrator's impartiality. However, the Supreme Court stated that there could be reasonable doubt about an arbitrator's impartiality towards a party's representative, for example, when there is a long-term cooperative relationship with economic interdependence between them, such as working in the same law firm. In this decision, the Supreme Court of the Czech Republic predominantly guided its position by the regulations of the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration.

57. Important precedents related to the validity of arbitration agreements

In judicial practice, disputes often arise concerning the validity of arbitration agreements in cases where the transactions underlying the dispute are invalid or there is a dispute regarding their validity. An interesting case to discuss in this context is the dispute between "Dell" and the Consumers' Association of Canada.[24]:

"Dell," with offices in Toronto and Montreal, Canada, mistakenly posted lower prices for products on its English-language website. One day later, upon discovering the error, they removed the prices. A consumer, Olivier Dumoulin, managed to take advantage of this error and bypass Dell's restrictions to purchase a computer at a significantly lower price than the market rate. When Dell refused to fulfill the order, the Consumers' Association of Canada filed a class action lawsuit against Dell. In court, Dell demanded that the case be referred to arbitration, arguing that the online sales terms posted on the website included an arbitration agreement and a waiver of the right to file a class action.

Canadian national courts rejected Dell's motion, based on national legislation stipulating that when a claim involves a foreign element, Canadian courts cannot refuse to hear the dispute if the consumer (buyer) resides in Quebec (Canada). However, contrary to the decisions of the lower courts, the Supreme Court of Canada ruled in 2008 that the case should be referred to arbitration.

[24] Dell Computer Corp. v. Union des Consommateurs, [2007] 2 SCR.

The court noted that with regard to arbitration agreements, Canada's domestic legislative regulations are aligned with the UNCITRAL Model Law and derive from the requirements of the New York Convention. Therefore, if a party refers to an existing arbitration agreement, the case cannot continue to be heard in national courts.

58. Important precedents related to the principle of separability of arbitration agreements

One of the landmark decisions regarding arbitration agreements is the "Prima Paint Corp. v. Flood & Conklin Mfg" case[25], in which the U.S. Supreme Court in 1967 addressed the principle of separability of arbitration agreements. The court emphasized that an arbitration clause (agreement) is "separable" from the contracts in which it is included, from the perspective of federal law. In cases where the main contract was entered into fraudulently, but the arbitration agreement as a separate contract was not entered into in the same manner as the main contract, the arbitration agreement will be interpreted broadly, providing the opportunity to resolve the dispute through arbitration. The court emphasized that an arbitration clause (agreement) is "separable" from the contracts in which it is included, from the perspective of federal law. In cases where the main contract was entered into fraudulently, but the arbitration agreement as a separate contract was not entered into in the same manner as the main contract, the arbitration agreement will be interpreted broadly, providing the opportunity to resolve the dispute through arbitration. Courts have repeatedly addressed the principle of the separability of arbitration agreements in subsequent years as well. Courts have repeatedly addressed the principle of the separability of arbitration agreements in subsequent years. For example, the House of Lords in England, affirming the decision of the Court of Appeal in the case "Fiona Trust & Holding Co. v. Privalov," [26] stated that the principle of separability means that the invalidity or termination of the main contract does not imply the invalidity or termination of the arbitration agreement. The arbitration agreement should be considered as a "separate agreement" and can only be declared invalid or void on grounds that directly relate to the arbitration agreement itself.

59. Important precedents related to the validity of contracts

The case of 'DHL Project & Chartering Ltd (hereinafter referred to as DHL) v. Gemini Ocean Shipping Co. Ltd (hereinafter referred to as Gemini)'27 is interesting, and the decision regarding it was made not long ago, in 2022. In the case in question, the appellate court considered the following issue: whether the arbitration agreement was mandatory for the parties under circumstances where the prerequisite for the contract's effectiveness was not met. A study of the case's circumstances shows that although the parties negotiated the freight contract to utilize DHL's services, Gemini never signed the said transaction. Despite the contractual disagreements relating

[25] Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967).

[26] Fiona Trust & Holding Co. v. Privalov [2007] UKHL 40.

[27] DHL Project & Chartering Ltd v. Gemini Ocean Shipping Co. Ltd [2022] EWCA 1555.

to the transaction's terms, and the discussions not reaching a consensus on the arbitration agreement, the text of the arbitration agreement was included in the very transaction that was not concluded.

During the examination of this case, the court addressed the distinction between two types of disputes: those related to the formation of the contract and those related to the validity of the contract. The court concluded that this case concerns the formation of the contract, and there is no valid arbitration agreement. Furthermore, the court clarified that in all cases where it is considered that there is no binding agreement between the parties, the arbitration agreement, as a rule, will also not be binding. In light of this decision, parties negotiating the terms of a contract should keep in mind that an arbitration clause cannot be binding until the parties have agreed to consider it as such before the main contract comes into force.

This case serves as a useful guide for matters concerning the validity of contracts that contain an arbitration clause. As we know, theory and judicial practice have developed in the direction that if there is a signed transaction, the validity of which is questioned by the parties, then the arbitration agreement contained in that transaction cannot automatically be considered invalid. However, the situation is different when we take a step back and deal with an unsigned transaction. In such a case, the English court noted that there can be no talk of a signed arbitration agreement.

Continuing with the issue of the validity of arbitration agreements, let us address why it is necessary to always emphasize the law underlying the arbitration agreement. In the case of 'Kabab-Ji SAL (Lebanon) v. Kout Group (Kuwait),' the English Supreme Court and the French Court of Cassation made different decisions regarding which law should underlie the arbitration agreement, leading to contradictory conclusions. The main issue in the dispute is whether the respondent is a party to the arbitration agreement. The English Supreme Court, in its 2021 decision, noted that the respondent is not a party to the arbitration agreement, and therefore there is no arbitration agreement that would be binding on the parties and based on which the tribunal would make a decision. As a result, the English Supreme Court refused to enforce the decision. In contrast, in its October 2022 decision, the French Court of Cassation noted that the arbitration agreement is binding on the respondent, and therefore the arbitration award is subject to enforcement. This disagreement arose from the different legislative regulations (English and French national laws) under which the courts interpreted the arbitration agreement.

Practically, this has a more instructive significance and underscores the importance of determining the applicable law for the arbitration agreement when drafting an arbitration clause. This will allow the parties to save time and resources by avoiding similar procedural disputes and will ensure the indisputability of the arbitration agreement, the chosen arbitration institution's authority to adjudicate the dispute, and the enforcement of the arbitration award both at the place of arbitration and at the place of enforcement (if they are different).

60. Important precedents related to the determination of applicable law

In the matter of determining the applicable law for arbitration agreements, the 2012 decision by the English court in the case 'Sulamerica CIA Nacional De Seguros SA and others v. Enesa

Engenharia SA and others'[28] is interesting. The importance of the decision is that it clarifies which law should be applied to an arbitration agreement in cases where there is no explicit mention of it in the text of the agreement. In such cases, the English Court of Appeal proposes a three-stage test:

a) the express choice of the parties,

b) in the absence of an express choice, the implied (indirect) choice, and

c) if the parties have made no choice, the law with which the arbitration agreement has the closest and most real connection.

In addition to the aforementioned, in the case of 'Enka v. Chubb,'[29] the Supreme Court of the United Kingdom, in its 2020 decision, clarified how the law governing the arbitration agreement should be determined when the law applicable to the contract differs from *Lex loci arbitri*. The Supreme Court of the United Kingdom clarified that if the parties have not specified the law applicable to the arbitration agreement but have designated the law applicable to the contract, then that choice will also apply to the arbitration agreement. This general rule promotes legal certainty and stability by avoiding complexities. Furthermore, in cases where the parties have not specified the law applicable to the arbitration agreement or have expressly chosen a law applicable to the contract, the court should select the law to which the arbitration agreement is most closely related. The general rule in such cases is that the law of the seat of arbitration is most closely connected to the arbitration agreement.

Due to the approaches of national courts, the same arbitration award may be enforced in one country while its enforcement is denied in another country. Although international organizations continue to work and make efforts to gradually reduce such differentiated approaches, there is still work to be done to achieve high success rates. Nevertheless, judicial practice has repeatedly recorded that the refusal of a national court of one country to recognize and enforce the same arbitration award does not limit the court of another country from recognizing and enforcing it. There are numerous such judicial cases. For example, in the case 'Omnium de Traitement et de Valorisation SA v. Hilmarton Ltd,'[30] the High Court of England and Wales held that the Swiss arbitration award was of an international nature, meaning it was not tied to the Swiss legal system, and therefore, it would continue to exist regardless of the fact that the court at the seat of arbitration had annulled the arbitration award.

In this regard, the case 'Société PT Putrabali Adyamulia v. Société Rena Holding et Société Moguntia Est Epices'[31] is interesting, where the Arbitral Tribunal issued two awards. The reason for the second award was the partial annulment of the first award by the court at the seat of arbitration in London, based on 'Putrabali's' application. Ultimately, the Arbitral Tribunal partially modified its first award with a second award concerning the annulled part. Despite the annulment, the first award of the Arbitral Tribunal was presented for recognition and enforcement in France, against which 'Putrabali' again objected in France, arguing that its procedural opponent was violating the principle of good faith *(bona fides)*. The award presented for enforcement had subsequently been modified by another award, as the English court had partially annulled it. However, the French Court of Cassation reaffirmed the principle established in the 'Hilmarton'

[28] Sulamerica CIA Nacional De Seguros SA and others v. Enesa Engenharia SA and others [2012] EWHC 42.

[29] Enka v. Chubb [2020] UKSC.

[30] Omnium de Traitement et de Valorisation SA v. Hilmarton Ltd / 1998 Folio No 1003.

[31] Société PT Putrabali Adyamulia v. Société Rena Holding et Société Moguntia Est Epices.

case, concluding that an international arbitration award is of an international nature, and therefore, the annulment by a national court cannot prevent another state from enforcing it.

In the case of 'Mr. Nikolay Maximov v. Novolipetsky Steel Mill,'[32] we have essentially the same position. In this case, the arbitration award annulled by the national courts of the Russian Federation was presented for recognition and enforcement in two European countries. The French court in the case confirmed its aforementioned positions and recognized the arbitration award, regardless of its annulment by the Russian Federation. In this case, the High Court of England and Wales reached an opposite position and stated that a party can generally invoke the annulment of an arbitration award by a foreign court unless it is established that the said decision contradicts the principles of fairness and the public policy of the given state. We have similar differentiated positions in the case 'Yukos Capital SARL v. OJSC Rosneft Oil Company,'[33] where the seat of arbitration was again in Russia, and the Russian national court annulled the arbitration award. In this case, the Amsterdam Court of Appeal considered that the fact that the Russian court annulled the Russian arbitration award was not sufficient to prevent its enforcement in the Netherlands. In this case, the English court adhered to its previous positions and supported the view that if the court at the seat of arbitration annulled the arbitration award, the English court cannot recognize and enforce it. Similar positions are also held by the German court in other cases. The analysis of the described precedents shows that the parties involved in international arbitration disputes must clearly anticipate in which countries the need for possible recognition and enforcement of the arbitration award will arise when concluding transactions, establishing arbitration agreements, and choosing arbitration. They should understand the approaches of those countries' courts regarding arbitration agreements, the applicable law to the agreements and disputes, and the positions they hold when the courts at the seat of arbitration have annulled the arbitration award.

[32] Mr Nikolay Maximov v. Novolipetsky Steel Mill (NLMK).

[33] Yukos Capital SARL v. OJSC Rosneft Oil Company [2014] EWHC 2188 (Comm).

CONCLUSION

As a conclusion to this manual, we present links to the informational systems and official websites that will allow individuals interested in arbitration to independently explore the field, find answers to their questions, and familiarize themselves with the regulatory legislation. These are:

www.arlis.am – The Armenian Legal Information System, where the legal acts of the Republic of Armenia (laws, decisions of the Government of the Republic of Armenia, decisions of the Prime Minister of the Republic of Armenia, decisions and orders of state bodies and officials, etc.), international treaties ratified by the Republic of Armenia, decisions of the European Court of Human Rights (ECHR), decisions of the Supreme Court of Armenia, acts of the Eurasian Economic Union (EAEU), acts of local self-government bodies, and other acts that are part of the legislation of the Republic of Armenia are published.

www.datalex.am – The Judicial Information System of the Republic of Armenia, where one can see the schedules of sessions of all courts of the Republic of Armenia, search for and find cases of interest by parties and other data, search for judicial cases and decisions related to the legal field of interest, follow the progress of proceedings in their own case, and search for ECHR decisions and precedent decisions of the Supreme Court of Armenia.

https://court.am – The official website of the judiciary of the Republic of Armenia, where one can find comprehensive information about the courts and judges of the Republic of Armenia, familiarize themselves with news related to the judiciary, etc.

https://uncitral.un.org – The official website of the United Nations Commission on International Trade Law (UNCITRAL), where one can find both the guidelines adopted by the organization and theoretical literature, research papers, analyses, and yearbooks related to commercial law.

https://www.legal500.com – A platform with information on various law firms worldwide, where analyses, articles by registered lawyers, and materials related to arbitration justice can also be found.

https://chambers.com – A platform with information on various law firms worldwide, where analyses, articles by registered lawyers, and materials related to arbitration justice can also be found.

https://www.globalarbitrationnews.com – The legal blog of "Baker McKenzie," a well-known law firm with representation in different countries, which is related to arbitration justice.

https://www.lexology.com – A platform where legal analyses related to various branches of law, including arbitration justice, can be found.

https://globalarbitrationreview.com – A subscription to the site provides access to news, analyses, and national court decisions related to arbitration justice.

www.kluwerarbitration.com – A subscription to the site provides access to news, analyses, and national court decisions related to arbitration justice.

OVERVIEW

ABOUT THE STRUCTURE AND ACTIVITIES OF THE ARBITRATION AND MEDIATION CENTER OF ARMENIA

The founders, structure, and arbitrators of the Arbitration and Mediation Center of Armenia

The Arbitration and Mediation Center of Armenia was established on May 19, 2023. The founders of the Center are:

1) Center for Legislative Development Foundation
State registration number: 222.160.930235
Address: 3/8 V. Sargsyan Street, Yerevan, 0010, Republic of Armenia
2) Armenian Legal Association
Registration certificate number: 1472207
Address: 1762 Allen Avenue, Glendale, California, 91201, United States
3) Armenian General Benevolent Union
Registered in the State of Delaware, United States
Registration certificate number: 486313 (validated on March 11, 2020)
Address: 55 East 59th Street, New York, NY 10022-1112, United States

The governing bodies of the Center are:

1) The Board of Trustees
2) The Arbitration Council
3) The Director

If we try to schematically represent the roles and relationships of the founders and governing bodies of the Center, we would get the following:

The normal functioning of the Center is carried out through the staff, which operates as a secretariat, ensuring the administration of arbitration and mediation cases.

The Board of Trustees

The Board of Trustees of the Center consists of nine members appointed for a term of three years. The work of the Board of Trustees is coordinated by the chairperson, who is elected by a majority vote of all members of the Board of Trustees. In addition to performing a number of coordination functions reserved to the chairperson by the charter, the chairperson signs the board's decisions and enters into an employment contract with the director. The members of the Board of Trustees (including the chairperson) are not considered officials of the Center and perform their duties without remuneration, on a public basis.

The Board of Trustees represents the relevant business field, the Armenian diaspora, and professional associations, aiming to ensure the independence, diversity, and business environment of the Center.

The first composition of the Board of Trustees was formed by the founders. The detailed procedure for forming the second and subsequent compositions of the Board of Trustees is defined by the Center's charter. The first Board of Trustees of the Center includes representatives from the following organizations: the three co-founders of the Center, the Central Bank of Armenia, Armenian Public Television, the Union of Advanced Technology Enterprises, the Armenian Builders Association, the Union of Operators of Armenia, and the Academy of Lawyers of the Republic of Armenia.

A member of the Board of Trustees serves a three-year term unless their powers are terminated earlier for other reasons provided by law. Besides this case, the Center's charter allows for the early termination of a trustee's powers by at least a 3/4 vote of the Board of Trustees if the member fails to properly fulfill their duties.

The Center's charter also provides for the institute of honorary members of the Board of Trustees. The title of honorary member is granted by the Board of Trustees to individuals who enjoy high authority in the field of legal activity or science. Honorary members of the Board of Trustees may participate in the work of the Board of Trustees with an advisory vote.

Thus, the Board of Trustees carries all the powers reserved to the board of foundations by the laws of the Republic of Armenia, as well as powers directly derived from the specifics and nature of the Center, including *the approval of strategic programs, arbitration and mediation rules, the structure and staffing table of the Center, the formation of the Center's management bodies, and full authority over financial and economic management and control*.

Arbitration Council

The key role in the implementation of the Center's functions as an arbitration institution belongs to the Arbitration Council of the Center, whose quantitative composition is approved by the Board of Trustees according to the Center's charter. Currently, the Arbitration Council consists of ten members.

The members of the Arbitration Council are appointed by the Board of Trustees for a term of four years. The proposals regarding the quantitative composition of the Arbitration Council and the candidates for the first composition are submitted to the Board of Trustees by the founders or the director within three months after the formation of the Board of Trustees.

The first composition of the Arbitration Council of the Center includes:

1. Grant Hanessian (Chairman, New York, USA)
2. Rafik Grigoryan (Vice-Chairman, Yerevan, Armenia)
3. Thomas Snyder (Dubai, UAE)
4. Hayk Kupelyants (London, UK)
5. Andrea Carlevaris (Milan, Italy)
6. Galina Zukova (Riga, Latvia)
7. Aida Avanesyan (Yerevan, Armenia)
8. Artyom Gevorgyan (Yerevan, Armenia)
9. Ara Khzmalyan (Yerevan, Armenia)
10. Hayk Hovhannisyan (Yerevan, Armenia)

The Arbitration Council has the following powers:

1) Establishes the Code of Conduct for arbitrators and secretariat staff.
2) Adopts the operating procedures of the Arbitration Council.

3) Acts as the Appointing authority in cases and procedures specified by the Arbitration rules.

4) Reviews and decides on challenges against arbitrators and establishes the procedure for such reviews.

5) Determines, approves, or modifies the remuneration of arbitrators in specific cases as provided by the Arbitration rules of the Center.

6) Performs other functions provided by the Center's charter, Arbitration rules, the operating procedures of the Arbitration Council, or decisions of the Board of Trustees.

The Arbitration rules of the Center also vest the Arbitration Council with important functions such as the confirmation and appointment of arbitrators, decisions on challenges against arbitrators, consolidation of arbitration proceedings, and changes in the time limits of arbitration proceedings.

The Arbitration Council includes specialists from both Armenia and abroad. It operates in full composition, except for local disputes as defined by the Center's Arbitration rules, in which cases decisions are made by a national commission of the Arbitration Council.

The national commission of the Arbitration Council is formed by a decision of the chairman of the Arbitration Council in accordance with its operating procedures. The national commission of the Arbitration Council can include at least three members of the Arbitration Council. The meetings of the national commission are chaired by a member appointed by the chairman of the Arbitration Council, performing all functions reserved to the Arbitration Council regarding the national commission.

The term of office, grounds, and procedure for the termination of the chairman of the national commission of the Arbitration Council, and other regulations related to the operation of the Arbitration Council, are provided by the Center's charter.

Unless otherwise provided by the operating procedures of the Arbitration Council, a meeting of the Arbitration Council, including the national commission, is quorate if more than half of the members are present, and decisions are made by a majority vote of those present.

If we try to schematically represent the structure and distribution of powers of the Arbitration Council, we would get the following:

The activities of the Arbitration Council are coordinated by the Chairman and the Vice-Chairman of the Council. The Chairman and Vice-Chairman of the Arbitration Council are elected by the Board of Trustees after more than half of the members of the Arbitration Council have been appointed. The Chairman and Vice-Chairman serve until the termination of their powers as members of the Arbitration Council. The Board of Trustees may terminate the powers of the Chairman or Vice-Chairman of the Arbitration Council without removing the person from the Arbitration Council if they submit such a request to the Board of Trustees, or if the Chairman or Vice-Chairman of the Arbitration Council do not properly perform their functions.

Arbitrators of the Center

The Law "On Commercial Arbitration" sets minimum requirements for arbitrators. According to the law, an arbitrator can be any competent individual over the age of 25 with higher education. An arbitrator cannot be a person declared incompetent or partially competent by a court, a person

convicted of a crime, or a person under criminal prosecution. Today, the arbitrators listed with the Center, in addition to meeting these minimum requirements, generally have at least ten years of professional experience, represent various countries, are proficient in more than one working language, are listed as arbitrators in other arbitration institutions, and have experience in the field.

The list of the Center's arbitrators, their professional experience, biographical data, and contact information are available on the Center's official website at the following link: https://amca.am/arbitration/.

Director

The Director manages the day-to-day activities of the Center and exercises all the powers vested in the head of the executive body of a company under Armenian law. The Director organizes the implementation of the decisions of the Board of Trustees, performs the powers vested in the General Secretary of an arbitration institution by the Center's Arbitration rules (acting as the General Secretary), and organizes the work of the Secretariat. The Director provides the Board of Trustees and the Arbitration Council with the technical and other necessary means to organize their activities.

The Director is accountable to the Board of Trustees for their activities. The Director may hold paid positions in other organizations only with the consent of the Board of Trustees, except for scientific, creative, and pedagogical activities.

Mission, Goals, Activities, and Uniqueness of the Arbitration and Mediation Center of Armenia

The Arbitration and Mediation Center of Armenia, as a permanent arbitration institution, aims to ensure the implementation of domestic and international arbitration proceedings and mediation, as well as to develop alternative dispute resolution methods in the Republic of Armenia.

The goals of the Center's activities are defined by its charter. Alongside its chartered objectives, one of its tasks is to make arbitration the preferred alternative for dispute resolution in Armenia.

Throughout the history of independent Armenia, steps have been taken towards the formation and establishment of arbitration justice. However, these steps are quite small compared to the changes happening globally and the rapid development of this institution. Although certain legislative foundations have been created, and arbitration institutions have been established, there is insufficient awareness about arbitration and its advantages both among professionals and the general public. The development of the field seems to have been left to itself.

In practice, when lawyers, acting as legal advisors to transactions, propose the inclusion of an arbitration agreement, business operators usually respond with, "It's expensive; let's leave the dispute to the courts." Such responses rarely follow in-depth analyses of whether this is true or not, and they are seldom followed by explanations that the perception is incorrect. This approach indicates a low level of awareness about the institution among both lawyers and business operators. One of the primary goals of the Center is to raise awareness about the role, importance, efficiency, and advantages of arbitration as an alternative dispute resolution method among lawyers, business operators, students, interested individuals, and the general public. To achieve this goal, various events, training sessions, awareness campaigns, discussions, and the creation and dissemination of printed and media materials are being initiated and continuously conducted. The Center aims to support the introduction of educational programs in universities, the creation and dissemination of manuals, research materials, and guides, and

the organization of international and domestic conferences, workshops, moot courts, and professional training sessions, which will enhance the knowledge and skills of individuals involved in the field and generate interest in the field among a broader audience.

The Center aims to become not only a dispute resolution hub but also a leader in the development of the field. For this purpose, it will continuously monitor the field, conduct in-depth studies of existing issues, identify their causes, create materials at the scientific research and practical levels, study international best practices, and implement them in Armenia. Alongside these efforts, the Center has initiated and will continue to initiate steps aimed at improving the legislative framework through proposals, discussions, workshops, and campaigns in cooperation with public and private sectors, scholars, experts, and state bodies involved in regulating and supporting the field.

By using the above-mentioned tools, the Center aims to:

- Promote specialized dispute resolution in various fields,
- Ensure a more favorable investment environment,
- Enhance Armenia's reputation as a dispute resolution platform,
- Contribute to reducing the workload of the judicial system,
- Expand the use of electronic tools and digital technologies not only in arbitration proceedings but also in the justice system.

An important issue in the development of arbitration as an alternative to courts and in relieving the courts' workload is expanding the scope of cases reserved for arbitration institutions, which is one of the Center's tasks. Under the current legislative regulations, Arbitral Tribunals handle commercial disputes within the scope defined by law. Intellectual property, information technology, cryptocurrency, artificial intelligence application, personal data protection, protection of honor, dignity, and business reputation, consumer rights protection (especially in e-commerce), and environmental issues, including many mining-related disputes, are fully or partially excluded. The study of global practices shows that the number of arbitration agreements and disputes is particularly high in these fields. Globally recognized companies such as Netflix, Google, Meta, and Amazon, in their user agreements, include arbitration clauses, submitting all types of disputes arising from these agreements to arbitration. To give an idea of the scale, consider this example: In the dispute over Alexa recording customers without consent, around 75,000 arbitration claims were filed against Amazon, the global e-commerce platform.

To solve the tasks it has set, the Center has the right to engage in the following types of entrepreneurial activities, directing the obtained profit towards achieving its goals:

1. Legal activities (including, but not limited to, resolving disputes through arbitration and other alternative mechanisms, document preparation, consultation),
2. Consulting activities in the field of information technology,
3. Scientific research and experimental development in the field of social and humanitarian sciences,
4. Other professional, scientific, and technical activities not included in other categories,
5. Publishing books, newspapers, magazines, bulletins, periodicals, and other publishing activities,
6. Advertising activities,
7. Renting out own and leased real estate and other operations,
8. Leasing and rental of office machinery and equipment, including computers,
9. Organizing conferences,
10. Courses for acquiring specialized knowledge.

If we try to schematically represent the mission of the Center, we would get the following:

The study of the key objectives and main activities conducted by the Arbitration and Mediation Center of Armenia highlights the uniqueness of the Center's operations in the field of arbitration and mediation. Specifically:

1) The Center is the only arbitration institution in Armenia that includes founding organizations registered in the USA, which have continuously conducted various activities in the mentioned fields, supporting Armenia.

2) The Center is the only arbitration institution in Armenia whose governing bodies, the Board of Trustees and the Arbitration Council, include renowned international and local experts in the fields of arbitration and mediation, who will have a direct impact on the Center's activities.

3) Months after adopting the mediation rules, the Center has four completed mediation cases, including one international mediation case.

4) The Center is the only arbitration institution that participated in the "Arbitration Week" for the first time in Armenia in 2023, just months after its establishment, organizing an international conference within its framework, hosting around 200 participants and introducing them to the Center's activities.

5) Thanks to international visits, discussions, and meetings, the Center is perceived as a permanent arbitration institution in Armenia and a pioneer in the development of arbitration and mediation in the country, capable of involving and handling international cases.

6) Through educational, training, and similar activities, the Center has managed to target an unprecedented number of participants and sectors.

7) The Center is unique in its steps towards integrating digital solutions within alternative dispute resolution methods.

To fulfill its mission, the Center has created the necessary technical conditions and implemented a toolkit that meets current demands.

Thus, for the proper and efficient organization of the Center's work and arbitration proceedings, a new and modern electronic platform has been introduced. The "Online Application" and "Document Circulation" modules of this platform enable arbitration parties to communicate with the Center online, organizing case proceedings such as the submission of statements of claim, statements of response, other documents, or evidence.

The "Case Management" module of the electronic platform is designed to ensure the electronic administration of arbitration proceedings by the Center's staff, including reminders, appointments, and work distribution.

To make the use of the Center's services more convenient, the best building conditions have been provided, from modern meeting rooms to fully equipped technical facilities.

Summarizing the above, we can assert that the Center has all the prerequisites not only to become a regional leader in the field of arbitration justice but also to contribute to the development of law and legal thought. The Center targets sectors such as information technology, intellectual property, personal data protection, the regulation of the activities of electronic platforms, including

commercial platforms, consumer rights protection, issues related to cryptocurrency circulation, numerous legal issues arising from the application of artificial intelligence, and environmental problems, including contradictory approaches in the mining sector, etc. The legal regulation and judicial practice in these and many other fields are developing very slowly, lagging behind the rapid development pace, becoming outdated and delayed.

How can the Center contribute? Professional and swift work of the Arbitral Tribunal in the mentioned fields will lead to the creation of new practices of interpreting and applying legal principles, which will also incorporate the best foreign experiences and modern solutions. This will be a significant factor for the improvement of the legislative field and the formation of new legal practice in the courts.

The establishment and development of the Arbitration and Mediation Center of Armenia is also of great importance for Armenian businesses with foreign partners. They sometimes have to agree to dispute resolution through foreign arbitration institutions, which imposes a significantly higher financial burden on the Armenian business, often making their protection inaccessible. With trust in the Arbitration and Mediation Center of Armenia, Armenian businesses will have the opportunity to conclude arbitration agreements and negotiate on equal basis with foreign partners on transaction terms and dispute resolution mechanisms without fear and without "abandoning" the protection of their rights.

Annex 1.

Form Template for Request for Arbitration

ARBITRATION AND MEDIATION CENTER OF ARMENIA

ARBITRATION CASE

[NAME OF CLAIMANT]

(Claimant)

AND

[NAME OF RESPONDENT]

(Respondent)

BETWEEN

REQUEST FOR ARBITRATION

[Date of Request for Arbitration]

I. GENERAL PROVISIONS

1. This request for arbitration is submitted on behalf of [name/designation of claimant] (hereinafter referred to as "Claimant"), in accordance with Article 5 of the Arbitration rules of the Arbitration and Mediation Center of Armenia (hereinafter referred to as the "Arbitration rules"), against [name/designation of respondent] (hereinafter referred to as "Respondent", together referred to as the "Parties").

2. This request for arbitration contains information regarding:

i. The name/designation, contact details, and address of each party (II)

ii. A description of the nature of the dispute and the factual circumstances underlying the claims (III),

iii. The arbitration clause regarding the resolution of the dispute, the applicable law, and provisions related to the seat and language of arbitration (agreements between the parties and other relevant agreements) (IV)

iv. The procedure for the formation of the Arbitral Tribunal (V)

v. The Claimant’s claims (VI)

vi. The fees paid by the Claimant (VII)

II. THE PARTIES

A. Claimant

3. The Claimant's details are:

[Full name/designation of Claimant]
[Claimant's address/legal address]
[Passport details of the Claimant if an individual/Taxpayer Identification Number, state registration number if a legal entity]
[Name of the director of the Claimant's organization (only for legal entities)]
[Claimant's phone number]
[Claimant's email address]
[Preferred method of notification and the necessary information for notification]

4. The details of the Claimant’s representative (if any) are:

[Name of Claimant’s representative]
[Phone number of Claimant’s representative]
[Bar license number]
[Email address of Claimant’s representative]

[Other information]

[Additional information if necessary]

B. Respondent

5. The Respondent's details are:

[Full name/designation of Respondent]
[Respondent's address/legal address]
[Passport details of the Respondent if an individual/Taxpayer Identification Number, state registration number if a legal entity]

[Name of the director of the Respondent's organization (only for legal entities)]
[Respondent's phone number]
[Respondent's email address]

III. NATURE OF THE DISPUTE AND FACTUAL CIRCUMSTANCES UNDERLYING THE CLAIMS

A. Background and Factual Circumstances

6. [Describe the actions (or inactions) of the Respondent that have led to the claims presented in this request for arbitration]

B. Legal Basis for the Claim

7. [Present the basis of liability, whether contractual or otherwise]

C. Breach of Obligations by the Respondent

8. [Describe the breach of obligations by the Respondent]

[Describe the damages suffered by the Claimant as a result of the Respondent's breach of obligations]

The total amount of damages suffered by the Claimant is [insert amount of damages].

IV. ARBITRATION CLAUSE REGARDING THE RESOLUTION OF THE DISPUTE, APPLICABLE LAW, ARBITRATION LANGUAGE, AND SEAT

A. Arbitration Clause

9. The arbitration proceedings regarding this request for arbitration are initiated based on the arbitration agreement between the parties [attached], which provides for .... .

10. [OPTIONAL: In some cases, the arbitration proceedings can only be initiated after the Claimant has fulfilled certain obligations as agreed upon, for example, attempting to resolve the dispute through negotiations or other amicable means before submitting the request for arbitration. In such cases, provide the relevant evidence of compliance with the conditions.]

B. Seat of Arbitration

11. According to the arbitration agreement [specify the article of the arbitration agreement that provides for the seat of arbitration], the seat of arbitration is [specify city and country].

12. [NOTE: The Claimant may add any other considerations regarding the seat of arbitration]

C. Applicable Law

13. The arbitration agreement is governed by the laws of [specify the country whose law applies to the contract] according to [specify the article of the arbitration agreement where it is stated], which provides as follows:

[Specify in full the provisions where the applicable law is set out]

14. [NOTE: The Claimant may add any other considerations regarding the applicable law]

D. Language of Arbitration

15. According to the arbitration agreement [specify the article of the arbitration agreement where the language of arbitration is stated], the language of arbitration is [specify the language].

16. [NOTE: The Claimant may add any other considerations regarding the language of arbitration]

V. FORMATION OF THE ARBITRAL TRIBUNAL [NOTE: ARTICLE 14 OF THE ARBITRATION RULES]

17. According to the arbitration agreement [specify the article of the arbitration agreement that provides for the formation of the tribunal], [present the provisions in the agreement regarding the formation of the tribunal, including the number of arbitrators, if specified in the arbitration clause, and the procedure for their appointment].

[NOTE: If the parties have not previously agreed on the composition of the Arbitral Tribunal, the Claimant must propose the number of arbitrators, the appointment procedure, and selection criteria in accordance with Articles 13 and 14 of the Rules.]

18. [NOTE: In cases where the arbitration agreement provides for the formation of an Arbitral Tribunal consisting of one arbitrator]

According to [specify the provision of the arbitration agreement that provides for the formation of the tribunal] and Article 14 of the Arbitration rules, the Claimant nominates [name of proposed sole arbitrator] as the sole arbitrator for confirmation. To the Claimant's knowledge, [name of proposed arbitrator] is independent from the parties involved in this arbitration. The contact details of [name of proposed arbitrator] are as follows:

[Name of sole arbitrator]
[Address of sole arbitrator]
[Phone number of sole arbitrator]
[Email address of sole arbitrator]

19. [NOTE: In cases where the arbitration agreement provides for the formation of an Arbitral Tribunal consisting of three arbitrators]

20. According to [specify the provision of the arbitration agreement that provides for the formation of the tribunal] and Article 14 of the Arbitration rules, the Claimant nominates [names of proposed co-arbitrators] as arbitrators for confirmation. To the Claimant's knowledge, [names of proposed arbitrators] are independent from the parties involved in this arbitration. The contact details of [names of proposed arbitrators] are as follows.

[Name of arbitrator]
[Address of arbitrator]
[Phone number of arbitrator]
[Email address of arbitrator]

[Name of arbitrator]
[Address of arbitrator]
[Phone number of arbitrator]
[Email address of arbitrator]

[Name of arbitrator]
[Address of arbitrator]
[Phone number of arbitrator]
[Email address of arbitrator]

VI. CLAIM

21. Therefore, the Claimant requests the Arbitral Tribunal to render a decision on the following:

i. The Arbitral Tribunal has jurisdiction to resolve the present dispute between

the parties.

ii. The Respondent has breached its obligations, specifically [describe the basis of the Respondent's liability].

iii. The Respondent is ordered to compensate the Claimant for the damages and/or losses suffered as a result of the Respondent's breach of the contract. The estimated damages are [estimate of damages suffered by the Claimant].

iv. The Respondent is ordered to bear all costs related to the arbitration proceedings, including the Claimant’s representation costs

v. [Optional] The Respondent is ordered to pay [specify the contractual interest rate] from the time the obligation to pay arose until payment is made, in accordance with [specify the legal basis].

vi. The Claimant reserves the right to present any other claims arising from or related to the issues described in this request for arbitration, or that may arise between the parties.

vii. The Claimant reserves the right to amend or supplement the claims presented.

viii. The Claimant reserves the right to present any factual or legal arguments and/or evidence (including witness statements, expert reports, and other documents) necessary to present the case or to refute any case presented by the Respondent.

ix. To apply for interim measures to this Arbitral Tribunal or any competent national court.

VII. FEES

22. According to Appendix 1 of the Arbitration rules, the Claimant submits evidence of payment of arbitration fees in the amount of AMD .... .

Respectfully,

[Name of Claimant and/or representative]

[Signature of Claimant and/or representative]

[OPTIONAL] ATTACHMENTS

	Document Type/Details	Numb

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