

# ADR in Belarus: Recent Developments and Future Trends



**Oksana Kotel**

Partner, advocate

[kotel@gip-partners.com](mailto:kotel@gip-partners.com)

# Main features (1)

- Arbitration-friendly legislation and environment
- Favourable attitude of state courts (interim measures, recognition and enforcement, absence of any interference)
- 2 major permanently operating international arbitration institutions located in Minsk
- Growing annual number of arbitration cases
- More expensive and slower than state courts, but much cheaper and generally faster than foreign alternatives
- Online arbitral proceedings adopted and accepted
- 4 pending investment arbitration proceedings (UNCITRAL Arbitration Rules, ICSID and ICSID AF)

## Main features (2)

- Other ADR means (mediation, conciliation, etc.) not developed
- In addition to international arbitration courts, there is also a separate system of domestic arbitration, or third-party, courts. Their jurisdiction is formally wider than the jurisdiction of international arbitration courts, but they mostly consider internal commercial disputes between Belarusian entities, as well as the labour and family disputes.
- Another arbitral institution operating in Belarus is the arbitration commission of the Belarusian Universal Commodity Exchange. It is an institution specialised in disputes from stock trades. It operates outside of the system of international arbitration courts, and its activities are governed by field-specific legislation.

# Relevant legislation

The main acts of arbitration-related legislation applied in Belarus:

- New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958
- European Convention on International Commercial Arbitration, 1961
- Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), 1965
- Law on International Arbitration, 1999 (2014 edition), based on UNCITRAL Model Law
- Commercial Procedural Code, 1998 (2021 edition)
- Resolution of the Plenum of the Supreme Court of the Republic of Belarus “On the application of the legislation related to recognition and enforcement of foreign court decisions and foreign arbitral awards”, 2014 (2017 edition)

# Arbitrability

+

Arbitrable are any civil disputes of "economic nature", including corporate and IP disputes.

-

Non-arbitrable are any tax, administrative or other disputes of public nature, as well as all the disputes involving an insolvent party, whether as a claimant or as a respondent.

**NB!**

Bifurcation of the proceedings is mandatory if any jurisdictional objection is raised. The arbitral tribunal shall issue the decision on jurisdiction before any award on the merits. The Presidium of the Chamber of Arbitrators makes a final ruling on the issue of jurisdiction.

# Interim measures

There are 2 possible ways to introduce interim measures in international arbitration in Belarus:

- The arbitral tribunal itself can issue a ruling on application of interim measures. However, there is currently no valid mechanism to enforce such a ruling upon the party, as the applicable procedural law only allows the enforcement of final arbitral awards.
- The arbitral tribunal or a party, upon authorisation of the tribunal, may refer to a state economic court with a petition to apply interim measures. In this case, the relevant court will render a decision on such a petition which will be enforceable in a regular way.

# Major international arbitration institutions



International Arbitration Court  
at the Belarusian Chamber of  
Commerce and Industry

founded in 1994

**NB!** Ad hoc arbitration and mediation have not gained popularity as ADR means and are not used in practice.



Chamber of Arbitrators at the  
Union of Lawyers

founded in 2010

Международный арбитражный суд  
при БелТПП



The International Arbitration Court  
at the BelCCI

- ❖ The International Arbitration Court at the BelCCI is an institution with well-established reputation which operates since 1994.
- ❖ In the period of 2014-2019, each year it receives around 100 cases involving parties from various jurisdictions, mainly from Russia, Ukraine, Poland, Latvia, Lithuania, Austria, Germany and China. These are the countries which Belarusian companies most actively cooperate with.
- ❖ The IAC is oriented to settling disputes in which at least one of the parties is a Belarusian company.
- ❖ Disputes settled by IAC are frequently arise from contracts on international sale of goods, works and lease contracts, software development contracts, loan agreements, services and other international commercial contracts.

# Chamber of Arbitrators



- The Chamber of Arbitrators at the Union of Lawyers is a young arbitral institution established in 2010 and currently receiving its first cases.
- Last year, the Union of Lawyers appointed the new Presidium of the Chamber of Arbitrators, which includes experienced arbitration practitioners from Belarus, Ukraine, Russia, Kazakhstan and Switzerland.
- The newly appointed Presidium has recently adopted the new edition of the Arbitration Rules which entered into force on 1 January 2021.
- The Presidium has also updated the Advisory List of Arbitrators which now includes arbitration practitioners from more than 15 jurisdictions.

# Main features of the new Arbitration Rules of the Chamber of arbitrators

- Entirely based on the UNCITRAL Arbitration Rules (2010 edition).
- Implementation of the best world standards for effective conduct of arbitral proceedings, taking into account the specifics of the arbitration institution and the mandatory provisions of national legislation.
- Time efficiency of arbitral proceedings (6 months as a general rule).
- Moderate arbitration fees and the possibility of the parties to pay it in equal shares.
- Broad powers of the arbitral tribunal to conduct the arbitral proceedings effectively (to hold organisational conference and establish the provisional timetable of the arbitration, to decide on any other issue).
- The possibility of online hearings (using video-calls or other technical means in lifetime mode).

# Recognition and Enforcement (1)

State courts of Belarus recognise and enforce foreign arbitral awards based on the provisions of the New York Convention on Recognition and Enforcement of Foreign Arbitration Awards, 1958.

There is only a minor 2%-3% proportion of awards that are refused to be enforced.

National arbitral awards issued by permanently operating arbitral institutions do not require recognition and can be enforced in the same manner as state court decisions.

# Recognition and Enforcement (2)

The most common grounds for refusals of the enforcement are:

- The recognition or enforcement of the award would be contrary to the public policy;
- The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings;
- The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration;
- The arbitration agreement is invalid or not properly concluded.

# Minsk as a seat of arbitration

Minsk is to be considered an attractive seat of arbitration for many foreign counterparties, especially from Eastern Europe and CIS region, for the following reasons:

- living, travel, food, accommodation and other costs are significantly lower than in other CIS jurisdictions (Moscow, Kyiv, Astana) or major arbitration-oriented cities (London, Geneva, Vienna);
- no recognition is required in Belarus, the arbitral award can be enforced immediately;
- Belarus is a “neutral” jurisdiction (e.g., in a dispute between a Russian and a Ukrainian company);
- two permanent international arbitration institutions are available.

# Useful information

Belarusian internet resources with arbitration-related information:

- Chamber of Arbitrators at the Union of Lawyers ([arbchamber.by](http://arbchamber.by))
- International Arbitration Court at the BelCCI ([iac.by](http://iac.by))
- National Legal Internet Portal (legal acts publication) ([pravo.by](http://pravo.by))
- Court System Internet Portal ([court.gov.by](http://court.gov.by))
- Chambers Global Guide (Belarus): Dispute Resolution ([chambers.com](http://chambers.com))
- Journal “Litigation and Arbitration Practice” ([sudpraktika.by](http://sudpraktika.by))

# Contacts

## Goretsky & Partners

Law Firm

220030

ul. Internacionalnaya, 20A-50, office 305

Minsk, Belarus

+375 (17) 215 01 10

+375 (17) 215 01 20

[info@gip-partners.com](mailto:info@gip-partners.com)

**GIP**  
dispute resolution  
Goretsky & Partners