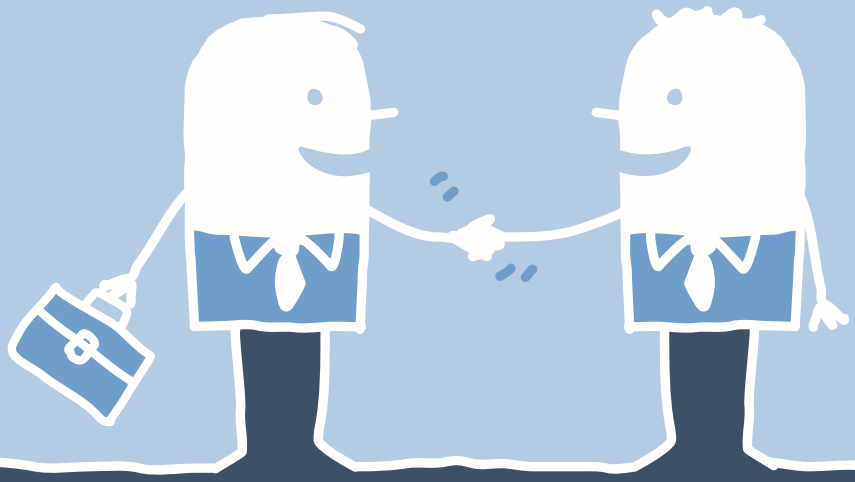

LATVIA CAN TAKE A LEADING ROLE IN COMMERCIAL ARBITRATION IN THE BALTICS

The success of commercial arbitration – the resolution of disputes outside the courts – is changing the way companies view litigation in the Baltics, explains Theis Klauberg

Over the past 20 years trade barriers have come down and international commerce has opened up new opportunities. Enterprises of all sizes have recognised international commercial arbitration as the most efficient way to solve disagreements.

A 2013 study conducted by consultants PwC found a marked increase in arbitration cases in the Baltic states, with international companies of all sorts confirming the benefits.

At the recent annual Baltic arbitration conference at the Riga Graduate School of Law, a record number of particpants from over 20 countries attended, affirming the relevance of arbitration in international commercial legal practice. The development of this alternative to litigation in state courts has created considerable advantages for businesses, not least because it saves companies time and money.

An efficient system of dispute resolution incentivises foreign investment, and improves the reputation of the justice system in general. The fact must be faced, however, that companies doing business in Latvia currently tend to avoid arbitration and litigation in the country. Where they have the choice, they tend to conduct high-profile commercial arbitration proceedings in Stockholm, London or Vienna.

When it comes to arbitration proceedings, however, the legal framework is only part of the issue. Another is the level of knowledge of commercial practices and languages, an area in which Riga offers excellent conditions. Many professionals here work in several languages, in particular English and Russian, making proceedings easy and quick to set up and conduct. Being de facto commercial capital of the Baltics provides Riga with access to a vast network of international expertise across industries. Excellent transport connections, a wide choice of locations for meetings and the city's ancient traditions of trade and commerce contribute to its attractiveness as a location for legal proceedings. In fact, although London, Stockholm and Vienna are preferred over other locations due to "soft" cultural factors, this advantage cannot really be justified in terms of the actual advantages they possess from a "hard" professional legal perspective.

There is clearly an opportunity here that Riga is missing and must seize. As international commerce in this region increases, international investors and businesses need a more efficient and reliable system to resolve their disputes. We have seen this in the Baltics ever since the first overseas investors arrived in the 1990s, assuming that the court systems of Latvia, Lithuania and Estonia were not yet up to international standards, they demanded that their own domestic laws were applied to contracts.

After accession to the European Union, the

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opportunities in international commerce for companies based here have increased as much as the competition for further trade and foreign investment.

Reliable commercial arbitration is now part of the legal framework that international investors take for granted. Baltic companies do of course already resort to this route themselves, particular where small and medium sums are in dispute. The efficiencies of strict timeframes, the availability of expert arbitrators, and decisions without the risk of appeal constitute an advantage over State court procedures. Recourse to arbitration allows companies to better plan dispute resolution processes in terms of time and costs. Time savings are typically up to 75%, and cost advantages can be equally high. Where disputes involve sophisticated industry knowledge to solve legal issues – for example in construction or information technology – only the decision of such an expert arbitrator will meet the standard the parties expect.

Latvia must take the necessary steps to overhaul its commercial arbitration system to advance as an international commercial hub. We need three things: a legal framework, institutional control, and a network of experts. Global standards should be implemented. The model law on arbitration developed by the UN Commission on International Trade Law (1985) has been tabled by many countries in Europe. Following suit would render arbitration in Latvia more credible.

Arbitration practice requires institutional control. Where it takes place in registered courts, the respective State administration will have to have the legal powers and proficiency to avoid situations like the one we now have. There are currently 213 registered courts of arbitration, but their choice of names is baffling and prone to misunderstandings and errors. Where different courts have almost identical names such as "Pirma tirdzniecibas škirejtiesa", "Pirma starptautiska škirejtiesa", "Pirma Latvijas neatkariga škirejtiesa", or simply "Pirma škirejtiesa", not knowing what court one is actually faced with confuses everyone.Distinguishing between institutions is impossible for foreigners. The arbitration court named "Baltijas škirejtiesa" exists alongside a (different) "Baltic škirejtiesa" (as well as the "Baltijas Starptautiska škirejtiesa", "Baltijas komercškirejtiesa" – a staggering 22 arbitration courts utilise the prefix Baltic). The institutions "Latvijas škirejtiesa" and "Latvijas Republikas škirejtiesa" (based in Valmiera) are no more state institutions than the remaining 22 courts which feature Latvia in its name.

Who can be be expected to differentiate between "ES komercškirejtiesa" (ES being the Latvian abbreviation of the European Union) and "Eiropas Kopienas škirejtiesa" (referencing the "European Community")? Institutions called the "Arbitration court of Livonia" or "Arbitration court of Mitau" reference historical maps suggesting a bogus historical continuity. Such name choices are almost comically, and perhaps intentionally, misleading and should therefore be illegal.

More importantly some arbitration courts do not appear to work properly, casting doubt over their independence.

We need strict control by the relevant professional and state institutions. The activities of many legal practitioners are controlled by the Bar Association and already subject to conduct rules, with breaches resulting in a ban from practice. However, arbitration works best if parties choose their arbitrator for their industry knowledge, experience, or even nationality and language skills, rather than status as a lawyer. It is international best practice that flawed arbitration awards – involving breach of rules, conflict of interest, or violations of the law – cannot be enforced. As a last resort, such illegally rendered arbitration awards can be set aside by a State court judge. Making state courts the final backstop of arbitrations means that their actual caseload will decrease, in that it will help improve confidence in arbitration. The result will be that more commercial cases are diverted, resulting in more commercial cases being diverted away from state courts.

Some countries have managed to divert more than 90% of their commercial cases to arbitration, meaning that valuable court time is not wasted as much.

All of these reform measures require long-term fixes to improve perceptions of commercial arbitration and of Riga as one of the preferred places of international arbitration in Central- and Eastern Europe, with arbitration playing its proper role in boosting trade and investment in the region. ■

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