

NJORD Estonia: Conclusion of arbitration agreements with consumers restricted under Estonian law

On 1 April 2019, amendments to the Estonian Code of Civil Procedure entered into force, which, among other things, restrict the possibilities to agree on arbitration for settlement of disputes with consumers.

Under the said amendments, an arbitration agreement with a consumer can be validly concluded only once the claim in question has fallen due. Thus, it is no longer possible to include a prospective arbitration clause in a contract already at the time of the conclusion of the contract. Besides, a document that contains an arbitration agreement with a consumer must be either signed by hand or signed with the official digital signature by the consumer.

Before entering into an arbitration agreement, the consumer should be notified of the differences between a court litigation and arbitration. Among other things, the information to be provided to the consumer should include the procedure for the constitution of arbitral tribunal, the principles of the arbitration process and applicable arbitration rules, the possibilities of challenging an arbitral award, including the fact that in setting aside proceedings, the court would not assess the substantive issues of the dispute, and the fact that, as a rule, an arbitral award needs to be recognised and rendered enforceable by a court, except for the awards of two Estonian arbitration institutions that are directly enforceable. Such information must be presented in a format that can be reproduced in writing.

Furthermore, the place of arbitration to be agreed upon with a consumer should coincide with the consumer's place of residence or work. It cannot be reflected more broadly than the respective county.

If the said requirements are not met, the arbitration agreement concluded with a consumer is invalid. However, the arbitration agreement is still considered valid if the breach concerns the signing requirements or the place of arbitration, and the consumer is relying on the arbitration agreement. Hence, the consumer still retains the right to bring its claims to arbitration, even if the arbitration agreement has not been duly signed by the consumer or the place of arbitration does not meet the statutory criteria.

The amendments do not affect the general non-arbitrability of certain types of disputes with consumers. In order to conclude an arbitration agreement that is valid and can be relied upon, we recommend discussing the matter with your lawyers.



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