DISPUTE RESOLUTION

Armenia

LEXOLOGY
Getting The Deal Through

Consulting editor
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Dispute Resolution

Consulting editors

Oliver Browne, Anna James

Latham & Watkins LLP

Quick reference guide enabling side-by-side comparison of local insights into litigation, arbitration and alternative dispute resolution (ADR) worldwide, including court systems; judges and juries; limitation issues; pre-action behaviour, starting proceedings and timetable for proceedings; case management; evidence; remedies; enforcement; public access; costs; funding arrangements; insurance; class action; appeals; foreign judgments and proceedings; the role of the UNCITRAL Model Law on International Commercial Arbitration; choice of arbitrator; arbitration agreements and arbitral procedure; court interventions in arbitrations; awards; types of ADR; requirements for ADR; other interesting local features; and recent trends.

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Contributors

Armenia

Aram Orbelyan
aram.orbelyan@dialog.am
Concern Dialog Law Firm

Lilit Karapetyan
lilit.karapetyan@dialog.am
Concern Dialog Law Firm

Ani Hambartsumyan
ani.hambardzumyan@dialog.am
Concern Dialog Law Firm

LITIGATION

Court system

What is the structure of the civil court system?

The civil court system in Armenia is three-tiered. Particularly, the court of general jurisdiction of the first instance is the lowest tier, followed by the court of appeal and, finally, the court of cassation, which is the supreme instance of the system.

Generally speaking, there are no subdivisions of the courts depending on the nature, subject matter or the size of the courts. Yet, there are specialised courts in Armenia each of which, particularly, hear cases that related to bankruptcy issues. Further, it is noteworthy that there are administrative courts in Armenia that hear administrative cases only.

The hierarchy of courts within the said three-tier structure is as follows: Decisions of the court of first instance are appealed before the court of appeal, and the decisions of the court of appeal respectively before the court of cassation.

The number of judges that hear the case on each level are as follows: in the first instance, the case is heard by one judge. In the appeal court depending on whether the appealed decision is interim or on the merits of the case, the number of judges is one and three respectively. The Court of Cassation hears the case with nine judges.

Law stated - 13 June 2023

Judges and juries

What is the role of the judge and the jury in civil proceedings?

The institute of jury is not used in the court proceedings of Armenia irrespective of the subject matter and the nature of the case.

The judge presides over the question, hears and examines the case, evaluates the evidence in the case and issues interim or final (on merits) judicial acts. In civil court cases, the judge has a passive rather than inquisitional role (as opposed to administrative law proceedings where the judge hears the case in an ex officio manner).

Law stated - 13 June 2023

Limitation issues

What are the time limits for bringing civil claims?

The general period of statute of limitations is three years in Armenia. The law in certain instances further indicates longer or shorter periods for bringing claims. The Civil Code of Armenia explicitly prohibits the parties to change any of the statute of limitation periods and the instances of suspension thereof can solely be determined by law (and not the agreement of parties).

Law stated - 13 June 2023

Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

Overall, the party's right to bring action before the court is not specifically conditioned by any pre-action obligations. Yet, in case the agreement between the parties indicates pre-judicial negotiations, the parties must comply with this. In

the opposite case, the court may return the claim and request pre-judicial settlement negotiations. In the opposite case, no such requirement is determined.

Furthermore, the parties are entitled to bring applications of exercising preliminary security of claim before bringing the claim itself (Preliminary Security), whereunder the applicant may request the court to exercise certain measures to secure the claim to be brought in future. Besides, when it comes to securing evidence, although there is no process to secure the evidence through the court (before the claim has been initiated), the evidence can also be secured through the notaries in Armenia.

In the meantime, when it comes to pre-action disclosure or document exchange orders, such processes are not established under the law.

Law stated - 13 June 2023

Starting proceedings

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

Civil proceedings begin with the filing of a lawsuit (claim) or application by the claimant before the court of first instance of the respective jurisdiction. The claimant is obliged to send a copy of the claim to the respondent and provide proof of sending the claim along with the submitted claim. After the court has accepted the case into its jurisdiction, it must notify the parties engaged of the court's decision within three days of adoption thereof. Thus, at this point, the parties are notified of the commencement of the proceedings before the court.

Regarding the court's capacity to handle the cases, since the distribution of court cases is done through an automatic system, the human factor in the distribution of cases is absent, therefore judges or their capacity issues cannot influence the said process. In the meantime, when it comes to the overload of the judges to hear the case, indeed, Armenian courts do face certain capacity issues, which may, in some instances create obstacles for hearing the disputes in a timely manner.

The state has various proposals which are indirectly aimed at easing the capacity issues of the courts. One such initiative was illustrated in the change of the Law on Arbitration. In a nutshell, it was recently adopted that Arbitral Institutions can refer their arbitral awards directly to enforcement (for cases with the value of up to 5,000,000 Armenian dram), without the need for the courts to issue an enforcement act. Considering the very large number of local arbitration award enforcement-related cases, this is supposed to ease the capacity of courts.

Law stated - 13 June 2023

Timetable

What is the typical procedure and timetable for a civil claim?

The procedure before the courts commences with the submission of the claim by the claimant. The claim then is added to the official court system (within 24 hours of submission) and thereafter distributed to a certain judge (via an automatic system). Within seven working days, upon the date when a certain judge is appointed to hear the case, the court shall adopt a decision on either accepting the claim into its jurisdiction, returning the claim or refusing hearing of the claim.

The documents submitted to the claim or the evidence supporting the claim can be attached to the claim itself, or submitted by the claimant to the court at a later stage. Similarly, the respondent may attach documents supporting their arguments to their response or submit it to the court within judicial proceedings. In either case, the general rule

allows parties to submit documents throughout the hearings of the court of first instance. Subsequently, when the court adopts a decision on the distribution of the burden of proof, it provides the parties with time to provide further evidence. This is the last point where the parties may submit new documents to the court. Past this point, the parties may submit new evidence in very exclusive cases only.

Law stated - 13 June 2023

Case management

Can the parties control the procedure and the timetable?

Generally, the judicial process and the deadlines for each of the steps are regulated under the law in detail. The approach is that the courts should comply with these timetables and carry out the process in the manner prescribed by the law.

Regarding the party's ability to control the process and timetables, the parties may bring motions asking the court to adopt alternative timing or procedural steps. Yet, the judge's authority with respect to such motions is merely dispositive and they do not have to accept such motions. As to the ability of the party to ensure that the courts comply with specified procedures and timetables, they again may motion the court to comply with the established processes and in case there is a gross breach, bring disciplinary actions against the judge.

Law stated - 13 June 2023

Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

The person participating in the case is obliged to disclose to the court of first instance and other persons participating in the case and, if possible, provide the evidence known to him or her at the moment, to which he or she refers as a basis for proving his claims and objections, before the end of the period established by the decision on the distribution of the burden of proof.

Furthermore, the Civil Procedure Code of the Republic of Armenia explicitly determines that a party to the case does not have the right to destroy or disguise any evidence or in other manner create obstacles for acquiring or observing such evidence. In the presence of such facts, the negative consequences of the fact to be proved being disputed shall be borne by the obstructing person.

Law stated - 13 June 2023

Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

When it comes to the content of legal advice itself it cannot be considered as evidence. However, if certain evidence necessary for the case includes legal advice, it still can be requested.

Overall, in case the court requests the parties to submit evidence, they must comply with such request. In the alternative case, the court (in the existence of the other party's motion) may issue an enforcement act to acquire the evidence or change the burden of proof to the detriment of the party who fails to provide the evidence. This is

applicable irrespective of the type of secrecy of such evidence. In the meantime, the court shall hear the case in closed (confidential) hearings.

Law stated - 13 June 2023

Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

The party may collect written evidence (including preserve those through the notary) or acquire expert examinations prior to initiation of judicial proceedings. Further, the attorney may inquire about persons who have information on the case and provide the written minutes of such communication to the court at a later stage. The list of tactics of 'preserving' or acquiring written evidence is not exhaustive here, however, the parties do not have a specific obligation to exchange this with the opposite parties prior to the commencement of judicial proceedings.

Law stated - 13 June 2023

Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

The types of evidence are:

- the testimony of the witness;
- written evidence;
- material evidence;
- photographs (films), recordings and videos;
- expert's conclusion; and
- the specialist's explanation.

Therefore, the law allows the witnesses can give their testimony orally and may enforce such witnesses to appear before the court. As for the experts, they must provide a written report if requested by the decision of the court and may further be questioned by the court on the conclusions of the expert opinion if needed.

Law stated - 13 June 2023

Interim remedies

What interim remedies are available?

The law indicates certain interim measures for the parties to the case. Particularly:

- the parties to a case are entitled to bring a motion before the court on preserving evidence if they are convinced that the provision of certain evidence may become difficult or impossible at a later stage;
- the claimant is entitled to bring a motion to exercise a measure of security of the claim, if the failure to exercise such measures may render or complicate enforcement of the decision of the court at a later stage, or lead to a change in the actual or legal status of the property that is the subject of the dispute or cause significant damage to the claimant; or
- the respondent, if a security measure against it has been exercised, can submit a motion to request security

(counter security) for their possible damages.

Law stated - 13 June 2023

Remedies

What substantive remedies are available?

The remedies under Armenian law, as determined under the Civil Code, are:

- recognition of the right;
- restoring the situation that existed before the violation of the right;
- preventing actions that violate the right or create a danger for its violation;
- applying the consequences of invalidity of a void transaction;
- declaring the disputable transaction invalid and applying the consequences of its invalidity;
- declaring the act of the state or local self-government body invalid;
- by the court not applying the act of the state and local self-government body that contradicts the law;
- forcing to fulfil the duty in kind;
- compensating damages;
- confiscation of penalty;
- terminating or changing the legal relationship; and
- in other ways provided by law.

Broadly speaking, although punitive damages are not explicitly determined under the law, contractual and in certain specific instances (eg, labour law) statutory punitive damages may be available for the party who has suffered damage due to the actions of the opposing party. Furthermore, the Civil Code of the Republic of Armenia defines a default interest rate that will be charged upon a party who has failed to comply with their payment obligations and the court will exercise such penalty in a 'money judgement' if requested by the claimant.

Law stated - 13 June 2023

Enforcement

What means of enforcement are available?

In case of failure of the party to voluntarily comply with the judgment, the court may issue an enforcement act based on the motion of the other party. In such a case, the expenses of the compulsory enforcement are borne by the debtor.

Law stated - 13 June 2023

Public access

Are court hearings held in public? Are court documents available to the public?

As a general rule, the judicial process in Armenia is public. This includes the publicity of the hearings and access of third parties to the case files once the case has been completed.

In the meantime, in order to protect the private life of the trial participants, including the minors, commercial secrets or the interests of justice, as well as state security, public order or morals, the court may examine the case or a part of it in

a closed confidential hearing. This may occur at the initiative of the court or based on the request of the parties to the case. The use of video and audio telecommunication means is prohibited in a closed court session.

In case the case is heard in closed hearings, the decision of the court is not published, but the final part thereof shall be published on the official judicial information website (datalex.am), except for the cases when it contains a secret protected by law. The final part of the final judicial act, containing the secret protected by law, is published in a closed session.

Law stated - 13 June 2023

Costs

Does the court have power to order costs?

Judicial costs consist of state fees and other costs related to the examination (eg, attorney fees, fees of expert examination) of the case. Claims related to court costs are submitted exclusively within the given case. Along with the final judgment rendered by the court, the court shall also address the costs and distribute those among the parties (which depends on the outcome of the case).

When assessing the costs, the court looks either at the expense actually borne by the other party (eg, state fee) or evaluates the reasonableness of the cost (eg, attorney costs).

Regarding the security provided to the respondent for their costs, if a security measure against it has been exercised, can submit a motion to request security (counter security) for their possible damages.

Law stated - 13 June 2023

Funding arrangements

Are ‘no win, no fee’ agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Generally speaking, the law does not prohibit success fee arrangements with the attorneys representing their clients before the case. This is not an unusual arrangement, and in certain instances, the attorneys opt-in for success fees. Regarding third-party funding and sub-types thereof, there is no explicit prohibition under the law to engage third-party funding, therefore, the parties are free to do so.

Law stated - 13 June 2023

Insurance

Is insurance available to cover all or part of a party’s legal costs?

The law does not prohibit the provision of insurance for the party’s legal costs. However, we do not have any information on whether there are such insurance coverages offered by insurance companies in Armenia.

Law stated - 13 June 2023

Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

In Armenian law, the criteria for collective suits are defined. When a claim is filed by a minimum of 20 individuals, it is considered a collective suit. In such cases, the claim is jointly submitted by at least 20 co-claimants against the same respondent or co-respondents. The collective suit focuses on a common subject matter and grounds for the claim. However, it's important to note that this differs from a class action lawsuit, as the specific claimants are always identified and the case does not involve the rights of other parties as a class. While the law does not explicitly specify an opt-in or opt-out mechanism, the regulations indicate that these claims are typically submitted through a power of attorney signed by all co-claimants, suggesting an opt-in mechanism.

It is worth mentioning that representatives in collective suits can include not only the claimants themselves but also non-governmental organisations that are concerned with protecting rights in a particular field. Co-claimants also have certain rights regarding the termination of representation, although it should be noted that their case will still be heard even if they choose to terminate representation. If one of the claimants wishes to terminate or replace their representative, the court will separate their claim and hear it as a separate case.

Law stated - 13 June 2023

Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

The decisions of the court of first instance (the final judgements always and the interim judgements if specified by law) may be appealed before the Court of Appeal. The grounds for appeal are as follows:

- violation or incorrect application of material law norms;
- violation or incorrect application of procedural law norms; and
- newly appeared or new circumstances.

The decisions of the Court of Appeal can be appealed further before the Court of Cassation. The grounds for bringing a Cassation appeal are the same. In the meantime, the Court of Cassation shall accept the appeal into consideration exclusively in the cases where the court finds that (1) the decision of the Cassation Court on the issue raised in the appeal may be essential for the uniform application of the law and other regulatory legal acts; or (2) there is a fundamental violation of human rights and freedoms.

Law stated - 13 June 2023

Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

The Civil Procedure Code of the Republic of Armenia defines the process of recognition of Foreign Judgements. Particularly, Judicial acts made in civil cases by the courts of foreign countries are recognised, and judicial acts requiring execution are also executed in the Republic of Armenia.

The court may recognise and enforce such judgements if there is an international agreement of the Republic of Armenia or on the basis of reciprocity.

The law indicates the presumption of the existence of reciprocity unless proven otherwise by the motion of the party against whom the decision has been made.

Law stated - 13 June 2023

Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

The law allows obtaining oral and documentary evidence in foreign countries for the cases heard in Armenia and vice versa. This is conducted based on various two- and multi-party international agreements concluded by the Republic of Armenia.

Law stated - 13 June 2023

ARBITRATION

UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

The Republic of Armenia Law on Commercial Arbitration has been drafted based on the UNCITRAL Model law.

Law stated - 13 June 2023

Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement shall be in writing. The law further allows the parties to conclude Arbitration agreements by executing one document or via sending letters, emails or other communication means, provided that one part, where one party invokes the existence of an arbitration agreement and the other party does not object to it.

Further, a reference in a contract to a document containing an arbitration clause shall be deemed to be an agreement to arbitrate provided that the contract is in writing and the reference is such as to make the said clause a part of the contract. The arbitration agreement is considered to have been concluded in writing also if the written proposal of one party about the arbitration agreement has been accepted by the other party in any form.

Law stated - 13 June 2023

Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

In the case the parties have not agreed on the number of arbitrators, the tribunal shall consist of three arbitrators.

As regards the rules of appointment of the arbitrators, the following default rules shall apply:

1. In case of arbitration with three or more arbitrators, each party shall appoint an equal number of arbitrators, and the appointed arbitrators shall, by a majority vote, appoint the last arbitrator to act as chairman of the tribunal. If one party does not appoint an arbitrator within 30 days of receiving the request of the other party to appoint an arbitrator, or the arbitrators appointed by the parties do not reach an agreement on the appointment of the last arbitrator within 30 days after the date of their appointment, then at the request of the party, the appointment is made by the Court of General Jurisdiction of Armenia.
2. In the case of arbitration with a sole arbitrator, if the parties do not agree on the appointment of the arbitrator, the appointment shall be made by the Court of General Jurisdiction of Armenia.

The decision of the court on the appointment of an arbitrator is not subject to appeal. In the meantime, the parties do have a right to challenge specific arbitrators, particularly when there are circumstances that raise reasonable doubts about the impartiality or independence of the arbitrator, or they do not have the appropriate qualifications defined by the agreement of the parties.

Law stated - 13 June 2023

Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

The law defines only very few minimal requirements for a person to be qualified as an arbitrator. Particularly, the person shall be at least 25 years old and have higher education. A person who does not have capacity or has limited capacity, or is convicted for a crime, as well as is under investigation cannot be appointed as an arbitrator.

Law stated - 13 June 2023

Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The Republic of Armenia Law on Arbitration law contains substantive requirements with which the parties must comply if the law of Armenia is applicable to the process.

Law stated - 13 June 2023

Court intervention

On what grounds can the court intervene during an arbitration?

In a number of instances, the court may intervene during an arbitration:

- When appointing an arbitrator;
- When a party to an arbitration agreement applies to the court to produce documents or evidence or solicit the presence of a witness, with the support of the court;
- When an arbitral award is challenged before the court; or
- When the award is recognised and/or enforced by the court.

Law stated - 13 June 2023

Interim relief

Do arbitrators have powers to grant interim relief?

Unless otherwise stipulated by the agreement of the parties, the arbitral tribunal, upon the motion of each of the parties, may render an interim decision on security measures that it considers sufficient.

Law stated - 13 June 2023

Award

When and in what form must the award be delivered?

The law does not provide specific requirements as to the time of rendering the award by the tribunal. The majority of votes render the award in case of more than one arbitrator. The award shall be in writing and signed by the sole arbitrator or arbitrators. In the case of more than one arbitrator, the award may be signed by the majority of the arbitrators only, provided that the reasons for the absence of the other signatures are indicated in the award.

Once the award is rendered, an original copy thereof shall be sent to each party, signed by the arbitrators in accordance with the above procedure.

Law stated - 13 June 2023

Appeal

On what grounds can an award be appealed to the court?

An arbitral award may be set aside by the court only if:

- the party making the application furnishes proof that:
  - a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of Armenia, or
  - the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
  - the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;
  - the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with the law; or
- the court finds that:
  - the subject matter of the dispute is not capable of settlement by arbitration under the law of Armenia;
  - the award is in conflict with the public policy of this state; or
  - the decision adopted by a court on the matter of setting aside an arbitral award is not subject to appeal before courts of higher instance.

Law stated - 13 June 2023

Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Under the laws of Armenia, domestic awards are subject to enforcement and foreign awards are subject to recognition and enforcement. Particularly, the interested party may bring an application before the court to recognise and (or) enforce the arbitral award. The grounds for rejection of the application are the same as the grounds for setting aside an award.

It is noteworthy, that recently a major change was adopted with respect to the enforcement of domestic awards. Particularly, upon the change, the arbitral institutions are entitled to send their domestic awards straight to enforcement (to the Compulsory Enforcement Service) without the need to apply to the court for issuing writ of execution. The rule is applicable to the award of up to 5,000,000 Armenian dram. The change is a part of the state policy to use arbitration to alleviate the burden of courts.

Law stated - 13 June 2023

Costs

Can a successful party recover its costs?

A successful party in the arbitration will be entitled to recover their costs. The arbitral tribunal shall address the issue of recovery of costs in the final arbitral award. The costs can include arbitration costs, costs of engaging experts and attorney fees.

Law stated - 13 June 2023

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

The institute of mediation is regulated under the law (with respect to the certification of mediators). In certain instances, mediation is also a mandatory means that the parties shall go through before being able to apply to the court. In the meantime, it must be noted that mediation is still not too common and is not used by the parties in Armenia very commonly.

In Armenia, Financial System Mediator's office is established by the Central Bank of Armenia (CBA) which resolves disputes between financial institutions established by CBA and their clients. As such, it is not a mediation process (although the name says mediator) but rather a Financial Ombudsman. Still, in the financial sector, this is a very popular means of alternative dispute resolution aimed at the protection of the rights of customers.

Furthermore, although not a classical means of alternative dispute resolution (ADR), the parties in certain instances must lead amicable negotiations before applying to the court. Particularly, when the agreement of the parties indicates amicable negotiations, they must carry out these negotiations and only after that be able to apply to court.

Regarding adjudication, it is not established under the law but in certain sectors (especially in cases where construction contracts are concluded based on the International Federation of Consulting Engineers books, where processes include having a dispute adjudication board) adjudication is indeed used.

Law stated - 13 June 2023

Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

In certain instances, the parties do need to participate in ADR processes before they can bring claims before the courts. Particularly, in case mediation or amicable negotiations are established under the agreement between the parties, they must undergo the process before they have a right to apply to court. Furthermore, during judicial processes, the Court may require the parties to go to mandatory mediation. Finally, in certain instances (eg, in certain family law cases) mandatory mediation may also be applicable.

Law stated - 13 June 2023

MISCELLANEOUS

Interesting features

Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

No.

Law stated - 13 June 2023

UPDATE AND TRENDS

Recent developments and future reforms

What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

The change related to the domestic arbitral awards for small claims being submitted directly to Compulsory Enforcement Service by Arbitral Institutions is currently one of the most discussed topics with respect to dispute resolution. Further changes in the sector have included the change to the law of State Duty, whereunder new rates for state duties were established. The proposed changes currently still not adopted include regulations for applying to mandatory mediation in certain instances, as well as more use of electronic means within a procedure.

Law stated - 13 June 2023

Jurisdictions

Armenia	Concern Dialog Law Firm
Australia	Kalus Kenny Intelex
Austria	OBLIN Attorneys at Law
Bahrain	Newton Legal Group
Belgium	White & Case
Bulgaria	Georgiev Todorov & Co
Cayman Islands	Campbells
China	BUREN NV
Cyprus	AG Erotocritou LLC
Denmark	Lund Elmer Sandager
Egypt	Soliman, Hashish & Partners
Germany	Martens Rechtsanwälte
Greece	Bernitsas Law
Hong Kong	Hill Dickinson
India	Cyril Amarchand Mangaldas
Indonesia	SSEK Law Firm
Israel	Lipa Meir & Co
Japan	Anderson Mōri & Tomotsune
Liechtenstein	Niedermüller Rechtsanwälte | Attorneys at Law
Malaysia	Shearn Delamore & Co
Monaco	Donald Manasse Law Offices
Panama	Patton Moreno & Asvat
Philippines	Ocampo, Manalo, Valdez & Lim Law Firm
Romania	Zamfirescu Racoți Vasile & Partners
Serbia	Stankovic & Partners NSTLaw

South Korea	JIPYONG LLC
Spain	Ontier
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Thailand	Pisut & Partners
United Arab Emirates	Kennedys Law LLP
United Kingdom - England & Wales	Latham & Watkins LLP
USA - California	Ervin Cohen & Jessup LLP
USA - New York	Dewey Pegno & Kramarsky LLP