



**RUSSIAN  
ARBITRATION  
ASSOCIATION**

**State of play of arbitration in  
Russian Federation: recent  
legislative development and  
activities of Russian  
Arbitration Association**

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### **Regulation:**

Laws of 29 December 2015 (entered into force on 1 September 2016 ):

- the Federal Law on Arbitration in the Russian Federation (Arbitration Law)
- Federal Law on Amendments to Certain Legislative Acts of the Russian Federation (Amendment Law and ICA Law as amended)

### **Key Aims of the Russian Arbitration Reform:**

- eliminating “pocket” arbitration institutions
- improving the overall quality of arbitration in Russia, *inter alia* in order to meet the lack of unified qualification pre-requisites for arbitrators, lack of a legal framework for arbitration, to fill in the gaps in the legal regulation of procedural issues in the context of arbitral proceedings and precise regulation in relation to “arbitrability” issue
- return disputes to the Russian Federation

### Scope of International Arbitration Law:

- The fact that one of the parties to a dispute is a subsidiary of a foreign company will no longer be sufficient to submit any disputes of such party to international arbitration

*Art. 1 of the Arbitration Law*

- Exception is made for disputes based on arbitration agreements entered into before 1 September 2016

### **Art.1 of the Arbitration Law - Scope of application**

“ ...

3. The parties may agree to refer to international commercial arbitration the disputes between the parties arising out of civil law relationships in the course of carrying out foreign trade and other types of international economic relations, if the place of business of at least one of the parties is abroad, or any place where a substantial part of the obligations out of the relationship of the parties is to be performed or the place with which the subject-matter of the dispute is most closely connected are located abroad, as well as disputes arisen in connection with making foreign investments in the territory of the Russian Federation or Russian investments abroad.

4. For the purposes of clause 3 of this article:

if a party has more than one place of business, the place of business is that which of most relevance to the arbitration agreement;

if a party does not have a place of business, reference is to be made to his permanent residence.

...”

### **Key areas of the Russian Arbitration Reform:**

- new rules on arbitration agreement
- arbitrability, including of corporate disputes
- special regulation on establishment and functioning of the permanent arbitration institutions
- different regimes for institutional arbitration and ad doc arbitration
- licensing requirements for foreign arbitration institutions
- challenging and enforcement of awards
- support from Russian state courts

### **New rules on arbitration agreement - 1:**

- An arbitration agreement shall be in writing
- This requirement is complied with *i.a.* when
  - an arbitration agreement is made in a form that enables the information contained in the arbitration agreement to be recorded or to be available for subsequent use
- An arbitration agreement is in writing in the form of an electronic message, where
  - the information it contains is available for subsequent use
  - the requirements of the law applicable to a contract entered into by exchange of counterparts via electronic means have been complied with

*Art. 7 of the ICA Law (in effect after 1 September 2016)*



### **New rules on arbitration agreement - 2:**

Expressly provided that an arbitration agreement may be:

- concluded in electronic form
- included in the rules of a trading platform or clearing rules
- included in the company's charters and corporate (shareholders') agreements, with a number of exceptions

*Article 13 (3) of the Arbitration Law*

Issues to be agreed only by way of “*express agreement*” of the parties to be valid and as such to be expressly set out in the text of the parties' arbitration clause:

- excluding the possibility of referring to the state courts for assistance with formation of a tribunal and challenging the tribunal's ruling on jurisdiction in the state courts
- conducting arbitration without an oral hearing
- excluding the possibility of setting aside the final award

*Article 2 (13) & Article 7 (12) of the Arbitration Law*

### **Arbitrability – General Rules:**

List of non-arbitrable disputes:

- bankruptcy cases
- disputes over state registration of companies and individual entrepreneurs
- certain disputes over intellectual property rights
- public law disputes, including challenging decisions of state authorities
- class actions *and*
- disputes over privatisation and public procurement contracts

*Article 33 (2) of the Commercial PC, Article 22.1 (2) of the Civil PC*



### **Arbitrability – Corporate Disputes - 1:**

- Non-arbitrable corporate disputes
- Conditionally arbitrable corporate disputes type 1 - corporate disputes arbitrable in institutional arbitration seated in Russia and administered under special arbitration rules for corporate disputes
- Conditionally arbitrable corporate disputes type 2 - corporate disputes arbitrable in institutional arbitration not necessarily seated in Russia and in the absence of special rules for corporate disputes

### **Arbitrability – Corporate Disputes - 2:**

#### ***Non-arbitrable corporate disputes:***

- convening general shareholders' meetings
- exclusion of shareholders
- challenging resolutions and actions of state authorities with respect to issuance of stock *and*
- strategic legal entities (except where the amount of shares in dispute does not exceed the threshold which triggers the need to obtain approval from the Government Commission on Monitoring Foreign Investment)

*Article 225.1 (2) of the Commercial PC*

### **Arbitrability – Corporate Disputes - 3:**

#### ***Conditionally arbitrable corporate disputes - First type***

of corporate disputes are the civil-law disputes between contractual parties with no impact on third parties or the legal entity itself (like *share-purchase agreements* with regard to the shares in a Russian company) – subject to conditions imposed on arbitrability:

- Arbitration agreements are to be entered into on or after 1 February 2017
  - those entered into before 1 February 2017 are considered incapable of being performed
- Shall be resolved in institutional (not *ad hoc*) arbitration
  - arbitral institutions that have obtained the “license” from the Russian Government

### **Arbitrability – Corporate Disputes - 4:**

***Conditionally arbitrable corporate disputes - Second type*** of corporate disputes are all other corporate disputes that may affect third parties or the legal entity itself (like *shareholders agreements* with regard to the Russian company) – subject to further conditions imposed on arbitrability:

- A legal entity, all participants of the legal entity, all other claimants or respondents have entered into an arbitration agreement
- Such disputes are resolved under special rules for resolving corporate disputes
- The seat of arbitration shall be in Russia

### **Special regulation on establishment and functioning of the permanent arbitration institutions - 1:**

- Permanent arbitral institutions may be established only by noncommercial organizations
- Non-commercial organization is to obtain the right to perform the functions of a permanent arbitral institution (“license”)
  - issued by the Russian government (MoJ)
  - upon recommendation of Council for Improvement of Arbitration
- ICAC and MAC at the Russian Chamber of Commerce and Industry are exempt from this requirement
- Must deposit arbitration rules with an authorized executive body
- Shall have a recommended list of arbitrators

### **Special regulation on establishment and functioning of the permanent arbitration institutions - 2:**

List of Arbitration:

- Not mandatory when the parties are appointing arbitrators
- Could be made mandatory in the rules when arbitrators are appointed directly by an arbitral institution
- One list or separate lists for domestic/ international arbitration and/or arbitrating of the corporate disputes (ex., ICAC)
- At least 30 arbitrators and thereof:
  - at least 1/3 – a Russian (or recognised in Russia) degree in certain areas of law
  - at least 1/2 – experience of resolving civil law disputes as arbitrators or court judges of at least 10 years before the inclusion into the list
- Consent to be included into the list
- A restriction on the number of arbitral institutions where one can be included into such lists (no more than 3 institutions)

### **Different regimes for institutional arbitration and *ad doc* arbitration - 1:**

- Institutional arbitrations clearly favoured over *ad doc* arbitration
- Restrictions applicable to *ad hoc* arbitration:
  - parties and tribunals in *ad hoc* arbitrations do not have the right to apply to the Russian state courts for assistance in obtaining evidence
  - corporate disputes cannot be heard in *ad hoc* arbitrations *and*
  - parties to *ad hoc* arbitrations are not entitled to exclude:
    - (i) the application of the provisions of the Laws on the assistance of the Russian state courts with respect to the appointment and removal of arbitrators *and*
    - (ii) the possibility of challenging the awards



### **Different regimes for institutional arbitration and ad hoc arbitration - 2:**

Direct agreement of the parties Institutional arbitration v. *ad hoc* arbitration:

- Available only in institutional arbitration
- Is to be expressly included into the arbitration agreement (a provision to this effect in the arbitration rules is not enough)
- The parties will be able to exclude the referral to a state court in order to
  - challenge an award on jurisdiction
  - challenge a final arbitral award

### Licensing requirements for foreign arbitration institutions - 1:

- Need to obtain the license for administering cases in Russia  
*The deadline for obtaining permits is 1 November 2017*
- License issued if a foreign arbitral institution has a “widely recognized international reputation”
- If no license has been obtained
  - an arbitral award issued by a foreign arbitral institution in Russia will be considered as issued in *ad hoc* arbitration

### **Licensing requirements for foreign arbitration institutions - 2:**

List of documents to be filed in order to obtain a permit:

- an application for a permit signed by an authorised representative
- a note on the history and activities of the institution
- an extract from the register of companies or another official document confirming the legal status of the institution or organisation under the auspices of which the institution has been established *and*
- rules for corporate disputes certified by the institution (in case it intends to administer corporate disputes which in accordance with the Laws require special rules for corporate disputes)

### **Challenging and enforcement of awards:**

The parties may agree that the award is final and, thus, may waive explicitly their right to challenge the award issued in an arbitration administered by a permanent arbitration institution

Recognition of foreign awards that require no enforcement:

- Applicable to foreign arbitral awards and foreign court judgments
- Where recognition is provided for by an international treaty of RF or a federal law
- Automatic recognition without additional proceedings UNLESS
  - A concerned party files objections to the recognition within 1 month of having learnt of the respective award/decision
- The application is to substantiate the violation of the concerned party's rights and legitimate interests

*Article 245.1 of the Commercial PC*

### **Support from Russian state courts:**

Before the support from the Russian courts to both domestic and international arbitration was largely limited to granting interim measures and recognising and enforcing awards (leaving aside challenging rulings on jurisdiction and awards)

New mechanisms designed by the Laws to make Russia more arbitration-friendly, empowering the Russian state courts to assist tribunals and parties with:

- obtaining evidence *and*
- appointing and challenging arbitrators

### **The most important recent developments - 1:**

- The ICAC has adopted revised institutional arbitration rules, as required under the Russian Reform Legislation. These include separate rules for international and domestic arbitrations as well as Corporate Arbitration Rules. With this new set of rules, the ICAC now provides the necessary infrastructure for corporate arbitrations (with the seat of arbitration in Russia).

## II – Activity of Arbitration Institutions - RAA

### **The most important recent developments - 2:**

- The RAA (established in 2013 by Moscow’s leading law firms), provides an alternative arbitration venue for “ordinary” as well as for complex commercial and corporate disputes.

RAA has filed the documents to be granted with the government arbitration permit.

RAA has adopted its UNCITRAL-based arbitration rules applicable both to for international and domestic arbitrations.

RAA has adopted also its own Corporate Arbitration Rules (a viable alternative venue to the ICAC arbitration of corporate disputes ) and unique Rules for the arbitration of venture disputes (including corporate and non-corporate).

RAA is now developing other special /sectoral arbitration rules



## II – Activity of Arbitration Institutions - Others

### **The most important recent developments - 3:**

- Other new arbitration centres and rules developing domestically
- Some foreign institutions have applied for the Russian governmental permit in order to become eligible to administer Russian corporate disputes

**Thank you for your kind attention!**

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