

CHIEF EDITOR'S NOTE ON ARBITRATION REFORM IN RUSSIA

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Russia is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The USSR was one of the original Member States to sign the Convention in 1958. There is a distinction between international and domestic arbitration. Arbitration in Russia was regulated by the Federal Law on Arbitral Tribunals in the Russian Federation (2003) (domestic arbitration) and the Federal Law on International Commercial Arbitration (1993) (international arbitration). This law was drafted on the basis of the UNCITRAL Model Law on International Commercial Arbitration.

The general rule of arbitrability states that any dispute is arbitrable unless otherwise directly stated by the law. The arbitrators cannot be state court judges; if the panel consists of three members, then at least one of them should be a lawyer. It is possible to appoint foreign nationals as arbitrators in international arbitral proceedings. A court cannot intervene in the selection of arbitrators. An arbitral tribunal can decide on its own jurisdiction. The parties have the right to agree on the procedure to be followed by the arbitral tribunal in conducting proceedings. Parties are free to agree on a language other than Russian being used in the proceedings. An arbitration award cannot be appealed. A party shall make an application to the competent court for enforcement of the award that should be heard within three months.

The following disputes could not be resolved by arbitration, but only by state commercial courts: corporate disputes (before 2016); intellectual property disputes; bankruptcy; public law disputes; etc. There is also a risk of non-arbitrability of other types of disputes due to the lack of legal regulation and different courts'

interpretations. For example, the Russian courts recently confirmed that disputes arising from government-related contracts are not arbitrable.

Most arbitration in Russia is institutional. *Ad hoc* procedures are not popular in Russia. There are around 500 arbitral institutions in Russia and only 7–10 of them could be considered important, with their own set of rules and the option of cross-border disputes. The leading such institution is the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in Moscow [hereinafter ICAC]. Its history dates back in 1932 when the USSR founded the Foreign Trade Arbitration Commission. It is the most frequently used court for international arbitration in Russia and handles an average of 200 to 250 cases per year. In 2013, the national Russian Arbitration Association was created as an independent arbitration institution and an alternative to ICAC.

The previous system of arbitration had several disadvantages. One of them was the dramatic increase the number of arbitral institutions over the last 15 years. Many arbitral institutions were established by major corporations and are influenced by them; this is known as a 'pocket' arbitration.

The most recent reform of arbitration in Russia started in 2014. The first draft law on arbitration was introduced by the Russian Ministry of Justice in January 2014, but it was returned by the Government for revision. In May 2015, the Government introduced a revised draft law in parliament. Finally, the President signed the Federal Law on Arbitration in the Russian Federation and the Federal Law on Changes to Related Laws of the Russian Federation. The first law regulates domestic arbitration, while the second concerns international arbitration.

There are three important aspects to the recent reform: first, the arbitrability of corporate disputes; second, the more detailed regulation of the arbitral proceedings; third, the licensing of the arbitral institutions.

Corporate disputes were non-arbitrable before the reform. This rule was stipulated not by the legislation but by court practice. The new laws determine the arbitrability of this category of disputes. However, there are some limitations. For example, the seat of arbitration of corporate disputes must be only in Russia.

The new laws establish a number of administrative requirements for arbitral institutions. They introduce very strict rules of arbitration. The new laws are similar to procedural codes. State courts have more influence over arbitration which could eventually lose its effectiveness as an alternative form of state litigation. Many details are now stipulated in the legislation (*e.g.*, the duty of an arbitral institution to publish information about its cases on the Internet).

Most of the institutions must obtain the licences provided by the Government. All foreign arbitral institutions should also get certification from the Government. The new Council of Arbitral Development is established under the supervision of the Ministry of Justice. It gives preliminary approval in the licensing proceedings. In general, the new laws make *ad hoc* arbitration less preferable than institutional arbitration due to

the increasing control by the state courts over them as well as a number of restrictive rules (*e.g.*, by excluding *ad hoc* in corporate dispute resolution).

There are other novelties in the laws. They allow retired judges to act as arbitrators. There is also a very important regulation that clarifies that a foreign arbitral award, which does not require enforcement, is recognized in Russia automatically without any recognition proceedings.

It could be concluded that the general trend of the reform is the increasing state control over arbitration. However, the new regulation is very important, it makes huge changes and could be qualified as the start of a new era of the arbitration in Russia.