Russia

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Laws and institutions

1 Multilateral conventions relating to arbitration

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

The New York Convention has been in force in Russia (as a legal successor to the Soviet Union) since 22 November 1960. The only reservation was with regard to awards made in the territory of non-contracting states (reciprocal treatment). Russia is also a party to the:

- European Convention on International Commercial Arbitration of 1961;
- Moscow Convention on the Settlement by Arbitration of Civil Law Disputes Arising from Relations of Economic, Scientific and Technical Cooperation of 1972;
- Kiev Convention on the Procedure for Resolving Disputes Relating to Business Activities of 1992;
- Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993; and
- Kishinev Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002.

In 1991 Russia signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965, but has not yet ratified it.

Regional cooperation treaties with neighbouring nations include provisions pertaining to arbitration and the enforcement of arbitral awards.

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Russia has entered in 73 (as of 1 December 2014) bilateral investment treaties with developed and developing countries. Most Russian bilateral investment treaties provide for ad hoc arbitration with an option of administration by the Stockholm Arbitration Institute or other international arbitration institutions.

Russia is the successor to the Soviet Union and assumed its international obligations. Thus, bilateral investment treaties concluded by the Soviet Union are binding for Russia and are successfully invoked by investors on several occasions. For a full list of bilateral investment treaties in effect, please refer to www.unctad.org.

Russia is also a party to the Convention on the Rights of the Investor 1997 (Moscow) entered into with the post-Soviet states. Despite the fact that this Convention was rarely applied, there are already two pending cases under it.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary laws relating to domestic and foreign arbitral proceedings in Russia are:

- Federal Law No.102-FZ On arbitral tribunals in the Russian Federation governs domestic arbitration. It does not apply to cases involving foreign parties, their subsidiaries or joint ventures (hereinafter – the Domestic Arbitration Law);
- Law No.5338-1 On International Commercial Arbitration governs international arbitration (hereinafter – the Arbitration Law); and
- The Code of Arbitrazh (Commercial) Procedure and the Code of Civil Procedure both establish the procedural rules governing proceedings that are ancillary to arbitration, including enforcement of awards.

Each permanent arbitral institution also has a set of procedural rules.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The Arbitration Law follows the UNCITRAL Model Law almost verbatim with only a few minor differences – mainly that the arbitral award should always indicate the reasons on which it is based and exclusion of ex aequo et bono as a modality of arbitration. The Domestic Arbitration Law does not follow the UNCITRAL Model Law.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

Russian arbitration laws contain the following mandatory provisions:

- an arbitration agreement must be in writing (article 7 of the Domestic Arbitration Law);
- an arbitral tribunal can rule on its own jurisdiction (article 17 of the Domestic Arbitration Law);
- the parties shall be treated equally and each party shall be given a full opportunity of presenting its case (article 27 of the Domestic Arbitration Law);
- the arbitration proceedings shall be conducted on the basis of the principles of legality, privacy, independence and impartiality of arbitrators, optionality, adversariality and equality of the parties (article 18 of the Domestic Arbitration Law); and
- in domestic arbitration parties must appoint an arbitrator who meets the established criteria and there must be an uneven number of arbitrators (articles 8 and 9 of the Domestic Arbitration Law).

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Pursuant to article 28 of the Arbitration Law, the arbitral tribunal shall decide the dispute in accordance with such rules of law chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given state shall be construed as directly referring to the substantive law of that state and not to its conflict of laws rules. Failing any designation by the parties, the arbitral tribunal shall apply the substantive law determined by the conflict of laws rules which it considers applicable.

If a Russian international agreement or international convention, ratified by Russia, establishes rules different than those contained in the Russian arbitration laws, the provisions of the international instrument prevail. International agreements with CIS countries follow the rule of applying the law of the place where a transaction physically took place.

Local conflict of law rules are contained in Part III of the Civil Code of the Russian Federation.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

The most prominent arbitration institutions in Russia are:

The International Commercial Arbitration Court (ICAC) at the Chamber of Commerce and Industry (CCI) of the Russian Federation (Iliynka str., 6, 109012, Moscow, Russian Federation);
http://mkas.tpprf.ru/en/
The Maritime Arbitration Commission at CCI (Iliynka str., 6/1, building 1, 109012, Moscow, Russian Federation);
http://mac.tpprf.ru/

The Russian Arbitration Association (RAA) (str. 8 Marta, 1, building 12, office XXV 3, 127083, Moscow, Russian Federation) – a welcome new facility that essentially administers disputes under the UNCITRAL Arbitration Rules and acts as an appointing authority. The RAA is headquartered in Moscow. More information can be found at www.arbitrations.ru/en/.

In all mentioned institutions the fee structure for arbitrators is based on the amount in dispute according to applicable schedules of cost which can be found via specified above links.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

There is no single source of law codifying non-arbitrable matters. The subject matter is developed through court practice and ancillary legislation. Recent cases confirmed that disputes of a public character (regulatory, administrative, fiscal, etc), disputes over state property and shareholder disputes are non-arbitrable. Some matters that fall within the category of exclusive jurisdiction of Russian Arbitrazh (commercial) courts also cannot be submitted to arbitration.

In addition to the above, the following disputes cannot be arbitrable by virtue of law:

- disputes over immoveable property located in Russia;
- disputes out of government procurement contracts;
- insolvency disputes;
- disputes in respect of the registration or issuance of patents, trademark certificates, industrial designs and utility models certificates and other intellectual property rights that require registration in Russia;
- disputes in relation to the cancellation of entries in Russian state registers;
- disputes in respect of the incorporation, registration or liquidation of legal entities or individual entrepreneurs in Russia;
- disputes on the protection of business reputation in the field of entrepreneurial and other economic activities; or
- family, employment and inheritance law disputes.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

An arbitration agreement must be in writing. It may also be concluded by way of an exchange of correspondence (fax, telex, telegram or other electronic means of communication) that provides a record of such agreement.

A reference in a contract to a document (eg, standard terms and conditions) containing an arbitration clause should be such as to make that clause part of the contract. At the same time, it is not enough to simply use the words 'arbitration', 'arbitral tribunal' or 'arbitrator' in dispute resolution clauses to state that such clauses constitute an arbitration agreement. The reason is that domestic commercial state courts are named 'arbitrazh' courts, as in Russian pronunciation this is almost identical to 'arbitration'. Thus, in order to be sure whether the contract provides for dispute resolution by Russian state courts or by arbitral tribunals, one has to be careful when reviewing the text of the arbitration clause.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

The arbitration agreement is independent of the underlying contract (article 16 of the Arbitration Law). It means that the invalidity of the underlying contract does not automatically render the arbitration clause invalid. Consequently, the avoidance, rescission or termination of the underlying contract has no immediate effect on the arbitration agreement.

In certain specific circumstances a court will not uphold an arbitration agreement if it finds that it is invalid due to incapacity of the parties, non-compliance with the written form, fraud or the subject matter of the dispute is not arbitrable.

An arbitration agreement referring a dispute to an arbitral institution which relates to one of the parties may be enforced provided that arbitrator(s) meet the requirements of independence and impartiality (see Decision of the Constitutional Court of the Russian Federation No. 30-II dd. 18 November 2014). The court may also refuse to dismiss a civil claim and refuse to refer the parties to arbitration if it finds that the parties to the civil proceedings are different from the parties to the arbitration agreement, or if the subject matter of the arbitration agreement is not the same as the subject matter of the civil claim.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

An arbitration agreement binds only its signatories. Pursuant to article 7(2) of the Arbitration Law, reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make that clause part of the contract. Thus, if a contract governed by Russian law is assigned, the most frequent position of the Russian courts is that the reference to the original contract does not automatically extend the arbitration clause on the third person, unless such assignment clearly duplicates the arbitration clause, or indicates that the arbitration clause is part of the assignment. However, there is no unambiguous position (see, for example, the Decision of the Maritime Arbitration Commission at the CCI dd. 16 May 1996 in case No. 40/1994).

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

Both the Arbitration Law and the Domestic Arbitration Law do not make any provisions regarding participation of third parties in arbitration. Usually third parties may join the arbitration upon the written consent of such third party and the parties to the arbitration agreement. No compulsory joinder of a third party is possible (see, for example, RAA Rules). Many Rules further restrict joinder – for example, the application for joinder of a third party may only be filed within the term allowed for presentation of a statement of defence (see ICAC Rules).

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

Russian laws do not recognise the 'group of companies' doctrine. Thus any non-signatory parent or subsidiary company will be treated as a separate entity. In practice there are nuances, when parent or subsidiary company for various reasons becomes privy to the instrument containing an arbitration clause and accordingly, becomes a subject of arbitration agreement of a signatory entity.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

Russian law (like the original UNCITRAL Model Law) does not contain an explicit provision on multiparty arbitrations, however, in practice, multiparty arbitrations take place and some institutions such as the RAA have incorporated provisions in their Rules accommodating the specifics of such disputes – for example, the appointment of arbitrators (in situation where the parties on one side fail to agree on an arbitrator, the arbitrator shall be appointed by the nominating committee of the RAA).

Constitution of arbitral tribunal

15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

The Arbitration Law does not require an arbitrator to possess any special qualifications, and subject to the parties' agreement and the requirements of independence and impartiality, parties are free to select any person as the arbitrator. It is expressly stated in the Arbitration Law that a person of any nationality may be an arbitrator, unless the parties agreed otherwise (see article 11). As long as there is a valid reason for any contractually stipulated requirement for arbitrators based on nationality, religion or gender, it is highly likely that such requirements will be recognised by Russian courts.

The Domestic Arbitration Law requirements are stricter and certain additional qualifications apply – for example, the arbitrator shall not have a criminal record. Additionally, a sole arbitrator or the chairman of an arbitral tribunal shall have a degree in law.

Certain limitations on someone's capacity to serve as an arbitrator may be found in other laws. For instance, the Federal Law No.3132-I On the Status of Judges in the Russian Federation prohibits current and retired judges from acting as arbitrators. The qualification requirements may be also established by the rules of a particular institutional arbitration tribunal.

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

Failing parties' determination, the number of arbitrators shall be three. In the absence of bespoke agreement the default mechanism with respect to a sole arbitrator or three arbitrators for international arbitration is as follows:

- in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon the request of a party, by the president of the CCI of the Russian Federation; or
- in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he or she shall be appointed by the president of the CCI of the Russian Federation, upon the request of a party.

Domestic arbitration: the deadline for an arbitrator appointment is 15 days, and when the parties or arbitrators fail to appoint an arbitrator, the arbitration is terminated and the dispute may be referred for settlement to the competent state court.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his or her independence or impartiality, or if the arbitrator does not possess the qualifications required by the agreement of the parties, or prescribed by the law. Arbitrators are obliged to disclose any circumstances likely to give rise to justifiable doubts as to their independence or impartiality as soon as they become aware of such circumstances.

A procedure of challenging an arbitrator can be determined by the parties or prescribed in the Rules of permanent arbitral institution. In the absence of such determination, any challenge shall be made within 15 days (in domestic arbitration – within five days) after the date when the party becomes aware of the composition of the arbitral tribunal or any circumstances that might result in justifiable doubts as to the independence or impartiality of such arbitrator. If the challenged arbitrator does not withdraw voluntarily, or the other party does not agree with the challenge, the arbitral tribunal shall decide on the challenge. If a challenge is not successful, the challenging party may, within 30 days, request that the president of the CCI of the Russian Federation resolves the matter.

An arbitrator's mandate also shall be terminated in the event of voluntary withdrawal; by agreement of the parties; where the arbitrator becomes unable to perform his or her duties (death, illness, etc) or fails to act without unreasonable delay. Another arbitrator shall be appointed in accordance with the rules that were applicable to the appointment of the arbitrator being replaced.

The IBA Guidelines on Conflicts of Interest in International Arbitration (2004 version) were translated into Russian in 2009 and are gaining weight among arbitration practitioners in Russia. In 2010 the CCI of the Russian Federation implemented rules on the independence and impartiality of arbitrators. These rules apply to all arbitrations under the auspices of the CCI (including ICAC) and are a source of guidance for other domestic bodies. These rules largely follow the IBA Guidelines, however, there are differences in the scope of disclosure and waivable or not waivable conflicts.

Russian high courts have quoted the IBA Guidelines in ratio decidendi with approval in some cases.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

Russian law is silent on the contractual relationship between parties and arbitrators. Neutrality is the main requirement that arbitrators must strictly observe. Lack of independence or impartiality of an arbitrator is an express ground for challenge. Arbitrator's remuneration and expenses are a function of the arbitration agreement or the applicable Rules of arbitral institution.

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

Under Russian law, arbitrators will not be liable for their decisions unless intentional wrongdoing or intentional breach of duty is established. Arbitrators have a duty to act neutrally and may be liable for negligence under the general rules of applicable law, unless this liability is excluded altogether by the arbitrator's contract or according to the applicable Rules of arbitral institution (see, for example, Item 47 of ICAC Rules, article 16 of the RAA Rules).

Jurisdiction and competence of arbitral tribunal

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Russian procedural codes (rules of the state courts) and arbitration laws provide that where a claim that is subject of an arbitration agreement is brought before a court, the court shall dismiss the claim and refer the parties to arbitration (unless the court finds that the arbitration agreement is null and void, inoperative, or incapable of being performed) provided that a timely objection is brought by the respondent. The respondent must raise such an objection no later than filing its first statement on the substance of the dispute, otherwise it is precluded from raising such objection in the particular dispute. It should be noted, that the arbitration agreement does

not cease to have effect by its very nature and may be appealed to in further disputes arising out of the same relationship.

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

An arbitral tribunal may rule on its own jurisdiction including on any objections with respect to the existence or validity of the arbitration agreement. A jurisdictional challenge must be raised before the submission of the statement of defence. A statement that the arbitral tribunal is exceeding the scope of its authority should be submitted as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

If the arbitral tribunal rules in favour of its own jurisdiction at this stage, any party within 30 days from receipt of the arbitral tribunal's ruling may request the state court to decide the matter (such a decision of the state court cannot be appealed). If a party does not raise the objection in a timely manner and continues to participate in the arbitral proceedings, it will be precluded from raising such objection at a later point in time.

Arbitral proceedings

22 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

If the parties fail to agree on the place of arbitration, the arbitral tribunal determines the venue, having regard to the circumstances of the case, including the convenience of the parties. In any event, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any other place it considers appropriate. If the parties fail to agree on the language of arbitration, it shall be determined by the arbitral tribunal.

Under ICAC Rules the default place of arbitration is Moscow, and the default language is Russian. Nevertheless, under ICAC Rules, written evidence shall be presented in original language, though the arbitral tribunal, on its own discretion or at request of the other party, may ask the presenting party to provide a translation of such evidence.

23 Commencement of arbitration

How are arbitral proceedings initiated?

According to the Arbitration Law, if otherwise is not agreed on by the parties, arbitral proceedings on a concrete dispute are commenced when request for arbitration is received by the respondent. There are no specific requirements as to the content of the request for arbitration set forth by the Arbitration Law.

According to RAA Rules, which are representative of most domestic institutions, arbitral proceedings are commenced by receiving a notice of arbitration (which is close to the request of arbitration) by the respondent, which should include the following:

- a demand that the dispute be referred to arbitration;
- the names and contact details of the parties;
- identification of the arbitration agreement that is invoked;
- identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
- a brief description of the claim and an indication of the amount involved (if any);
- the relief or remedy sought; and
- a proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

It may also include a proposal for the designation of a sole arbitrator or an appointing authority for purposes of appointing arbitrators, as well as notification of the appointment of an arbitrator in case if parties agreed to three arbitrators panel. The notification, as well as any other documents related to the dispute, may be transmitted to RAA by any means of communication that provide or allow for a record of its transmission.

By contrast, ICAC Rules skip the request or notice stage and state that the arbitral proceedings are commenced by submitting a statement of claim to ICAC. However, there is a strict rule that such claim and all supportive documents shall be handled directly (or sent by registered mail) to ICAC in five copies (in three copies when dispute is settled by a sole arbitrator), provided that additional copies are required if there are more than two parties to the dispute. Also, the claim under ICAC Rules will not be considered as submitted until payment of the registration fee. The registration fee is fixed and further shall be counted as a part of the arbitration fee to be paid.

24 Hearing

Is a hearing required and what rules apply?

If the parties haven't agreed on whether they wanted a hearing to be held, it is up to the tribunal to decide if the hearing is needed. In any event, except to the case when there is an agreement between the parties not to have the hearings, the tribunal is obliged to hold a hearing, if one of the parties asks to do so.

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Each party may present evidence it is relying on together with its statement on the merits of the dispute. However, it is also allowed to make reference to a document or other evidence which will be presented later in due course. If a party fails to present the evidence, arbitral tribunal is entitled to make an award on the basis of evidence which has been already produced. Though, the failure to provide evidence does not formally prejudice position pleaded by such party.

Although there is no explicit regulation for each type of evidence in arbitration, written evidence (documents), witnesses, experts and inspection are practically admissible as evidence.

A Russian translation of the IBA Rules on the Taking of Evidence in International Arbitration was produced in 2011 and is now available on the IBA website. However, Russian arbitrators rarely refer to the IBA Rules. In practice, both the parties and the tribunal tend to derive general principles of evidence production and assessment from procedural codes applicable to domestic state courts. For instance, the arbitral tribunal, similar to a state court, shall decide upon admissibility, relevance, credibility and weight of any evidence.

If otherwise is not agreed by the parties, the arbitral tribunal may appoint an expert to give an opinion on specific issues determined by the tribunal, and also require a party to provide to such expert documents and other items necessary for the expertise. However, in general, an arbitral tribunal would not call for an expert witness unless a party so requests or there are other compelling reasons to do so.

In cases where a party produces a witness, his testimony is usually oral and spontaneous because often there is no written statement provided in advance. Even if the written statement is provided, the questions asked during the oral testimony may go beyond the scope of the statement. Any person, including parties' executives, employees, consultants, etc may appear as a witness. The witness is typically instructed by the chairman of the tribunal that he is expected to provide truthful and honest testimony; however, the witness cannot be brought to an oath. Relationships between a witness and a party is per se not a reason for the witness' dismissal. Typically, the tribunal will carefully scrutinise the credibility of such witness.

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

Russian state courts may not intervene in arbitral proceedings, except for the following instances:

- granting interim relief;
- assisting the arbitral tribunal in taking evidence (however, in practice courts are rarely addressed to facilitate evidentiary matters);
- considering a jurisdictional challenge brought against interim arbitration ruling on competence of arbitral tribunal;
- setting aside arbitral awards on certain grounds; and
- enforcing arbitral awards.

27 Confidentiality

Is confidentiality ensured?

There are no specific rules on confidentiality in the Arbitration Law. Nonetheless, in practice, confidentiality is respected if the parties were taking it for granted. Confidentiality provisions can be often found in arbitration clauses (and as such they are enforceable as a contract) and are common for rules of most arbitral tribunals (eg, RAA, ICAC). However, initiating enforcement or challenging proceedings in state courts in relation to an arbitral award will effectively remove confidentiality regime with regard to the facts disclosed before state courts and reflected in state courts' documents which are open to public.

Interim measures and sanctioning powers

28 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Russian state courts are empowered to grant the following interim measures in aid of arbitration proceedings (before and after arbitration proceedings have been initiated):

- freezing the respondent's money and other assets;
- enjoining the respondent or third parties;
- an order prescribing the respondent to take specific actions to prevent deterioration of the property in dispute; and
- an order prescribing the respondent to hand over the property in dispute to be held in custody by the claimant or a third party.

An application for interim measures must be considered by a judge without a hearing, no later than one day after the application was filed. Interim measures should be granted if the seeking party manages to prove that without interim measures enforcement of a future award will be more difficult or impossible, and a greater damage could be caused to the claimant. If interim measures are granted, court may on its own discretion or at the request of the respondent rule the claimant to provide security for any losses that could be potentially caused to the respondent if the underlying claim is dismissed.

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

There is only one arbitration institution in Russia which may provide emergency interim measures – ICAC. Such opportunity is granted specifically to it by the Regulation on ICAC which is a part of the Arbitration Law. The Regulation provides a general description of ICAC's functions (as opposite to more detailed ICAC Rules), as well as indicates that the chairman of ICAC is entitled to grant interim relief under request of a party to a dispute. Therefore, the chairman being not an arbitrator of the dispute, nevertheless, may act as an emergency arbitrator while the panel of arbitrators is not composed yet.

As far as we know, there are currently no other arbitration institutions in Russia which may provide for an emergency arbitrator and emergency interim relief.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Arbitral tribunals are empowered to rule any of the parties to undertake interim measures asked by the other party in respect of the subject matter of the dispute. Arbitral tribunals may also require any party to provide appropriate security with regard to such interim measures. However, enforcement of such orders of the arbitral tribunal, whether foreign or domestic, through the state courts is not that straightforward. Unless such order is a part of a partial award it will not be enforced by state courts, because interim orders of arbitral tribunals are non-enforceable in Russia. To be subject to a compulsory enforcement, interim measures should be sought through a state court (see question 28). The only exception to that will be an order on interim relief issued by the chairman of ICAC, whether in emergency or ordinary procedure, because such opportunity is granted to him by the Arbitration Law (see question 29). The Arbitration Law does not provide for security for costs, whereas, some arbitration institutions, ICAC, for instance, do request from the parties security for additional costs.

31 Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration?

The Arbitration Law does not provide for any rules allowing arbitral tribunals to order sanctions against parties or their counsel which use 'guerrilla tactics'. As far as we know, rules of domestic arbitration institutions also do not provide for such opportunity. However, the arbitral tribunal has discretion to take into consideration any circumstances it finds appropriate, including the use of 'guerrilla tactics', when rendering its costs sharing decision. Hence, the party can be ordered to pay more costs than it would be if it had behaved in a proper way. So far, the arbitral tribunals are not accustomed or empowered by the rules to order sanctions against parties' counsel.

Awards

32 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

According to the Arbitration Law, if otherwise is not agreed by the parties, it is sufficient if decisions are made by a majority vote of all members of the arbitral tribunal. If any of the arbitrators dissents and refuses to sign the award, it is enough if the award is signed by the majority of arbitrators, provided that the absence of other signature(s) is explained in the award. According to ICAC Rules, if decision cannot be made by the majority of arbitrators, the presiding arbitrator of the tribunal shall make the decision.

33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

There are no rules on dissenting opinions provided for by the Arbitration Law. At the same time, both the Domestic Arbitration Law and ICAC Rules provide that arbitrators are allowed to issue dissenting opinions, which shall be attached to the award. Still, there are no rules as to the form or content thereof.

34 Form and content requirements

What form and content requirements exist for an award?

An arbitral award shall:

- be made in writing;
- be signed by all or majority of arbitrators with reasoned explanations for omitted signatures (if any);
- be dated and state the place of the arbitration;
- state the reasons upon which it is based;
- state whether the claim has been granted or rejected; and
- include the amount of the tribunal's administration fees and expenses, as well as determine allocation of them between the parties. An executed copy of the arbitral award is required to be delivered to each party.

Domestic arbitral awards are also required to include:

- the name of the arbitrator(s) and the procedure of their appointment;
- name, location, date of birth, place of birth, registered address and, if applicable, employer's address of the parties to the dispute;
- reasoning for the competence of the arbitral tribunal for the dispute; and
- the substance of the parties' claim(s) and response(s).

35 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

Although the Arbitration Law does not specify time limits for rendering the award, timeframes are usually stated in rules of domestic arbitration institutions. For instance, ICAC Rules provide that all measures should be taken in order to complete arbitral proceeding within 180 days after the date of the composition of the arbitral tribunal. If it is necessary the Presidium of ICAC may extend the time for rendering the award on its own discretion or at the request of the panel. The extension does not require the parties' consent.

36 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

According to the Arbitration Law the date of the delivery of the award is decisive for:

- applications for correction and interpretation of an award (30 days, if parties haven't agreed otherwise);
- requests for rendering an additional award as to the claims pleaded by the parties but omitted from the award (30 days, if parties haven't agreed otherwise); and
- applications for setting aside the award (three months). If it is necessary, the arbitral tribunal may extend the time for correcting and interpreting the award, or rendering an additional award.

The date of the award is decisive for the correction of the award by the initiative of the arbitral tribunal itself (30 days). By contrast, under RAA Rules this term starts from the date when the award was announced to the parties, and under ICC Rules – when the award has been sent to the parties.

37 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The following types of awards are possible: final awards, partial awards, interim awards, and awards on agreed terms. There are no limitations on types of relief which may be granted by the arbitral tribunal; however, arbitrators are unlikely to grant relief that cannot be enforced in the country where the enforcement will be sought. Additionally, arbitrators should not render awards which deprive third parties of their rights or impose duties on them, where such third parties were not parties to the arbitral proceedings.

38 Termination of proceedings

By what other means than an award can proceedings be terminated?

According to the Arbitration Law, the arbitral tribunal shall issue an order for termination of the arbitral proceedings when:

- the claimant withdraws his claim;
- the claimant fails to submit his statement of claim;
- the parties agree to terminate the proceedings (should not be mixed with an award on agreed terms); or
- the tribunal finds that continuation of the proceedings has become unnecessary or impossible for some reason.

Additional causes for terminating the proceedings may be found in the rules of domestic arbitration institutions – typical causes are failure to pay the fees, inactivity of the parties or stagnation of the case.

39 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

The Arbitration Law does not provide specific rules on how the allocation of the costs of the arbitral proceedings should be made. Hence, the arbitral tribunal has broad discretion to allocate costs between the parties. Typically, the unsuccessful party bears the costs of the arbitral proceedings; however, when the case of the parties is evenly balanced, parties may be left to bear their own costs. While procedural codes of domestic courts provide a strict rule that the costs shall be borne by the unsuccessful party, arbitral tribunals are more flexible in solving this issue and may, inter alia, use non-typical allocation of costs for punishing the party which used 'guerrilla tactics'.

The recoverable costs include fees of the arbitral institution, fees and expenses of the arbitrators and witnesses, counsel's legal fees and expenses, and any other expenses in connection with the arbitral proceedings and the arbitral award (for instance, expenses for documents translation, interpreter's fees, etc). With regard to the legal fees, Russian arbitral tribunals have demonstrated tendency towards full recoverability of reasonable fees of counsel, although arbitrators may be very conservative when applying the 'reasonable' criteria.

40 Interest

May interest be awarded for principal claims and for costs and at what rate?

Issues of interest are governed by the applicable substantive law. Hence, the arbitral tribunal has full discretion to award any interest on principal claims and costs if it is provided for by applicable substantive law and (or) contract. Russian law does not specifically provide for punitive damages, penalties or compound interest. If Russian court finds that the interest rate is punitive, it may reject to enforce an arbitral award in part or in full. However, when enforcing awards made under foreign substantive laws, Russian courts have developed a rule that an application by arbitral tribunals of foreign laws providing for interest rates higher than in Russia does not necessarily constitute punitive interest and does not per se violate public policy.

As for the claims considered under Russian substantive law, an interest rate comparable to the refinancing rate of the Central Bank of Russia, which currently is 8.25 per cent per annum, would be considered sufficient.

Proceedings subsequent to issuance of award

41 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Within 30 days after receiving the award, if parties haven't agreed on another term, any party may request the arbitral tribunal to correct any computation, clerical, typographical and similar errors in the award, subject to consent of the other party, to interpret any provision or part of the award, and to issue an additional award as to the claims pleaded by the parties but omitted from the award. The correction or interpretation of the award should be made within 30 days and the additional award should be issued within 60 days after receipt of the request by the arbitral tribunal, provided that the arbitral tribunal may extend these time limits if necessary.

On its own initiative the arbitral tribunal may correct the errors referred to above only within 30 days of the date of the award.

42 Challenge of awards

How and on what grounds can awards be challenged and set aside?

According to the Arbitration Law, an international arbitration award made in Russia may be set aside by Russian state courts, provided that the limitation period for such challenge is three months from the date when the applicant received the award (or from the date when the arbitral tribunal rendered a decision on the request for correction, interpretation or issuance of an additional award). As a general rule, an award made outside Russia may not be set aside in Russia. The only exception may be done to the awards rendered in the countries which are parties to the European Convention on International Commercial Arbitration of 1961, and where the foreign arbitral tribunal has applied Russian substantive law. In such case there is a risk that Russian court would accept and consider the application for setting aside such an award on the basis of article IX(1) of the European Convention on International Arbitration. This view was upheld by the Presidium of the Supreme Commercial Court of the Russian Federation in paragraph 10 of its Information Letter No. 96 of 22 December 2005.

The grounds for setting the award aside are the standard grounds which can be found in the UNCITRAL Model Law, the New York Convention and

the European Convention on International Commercial Arbitration of 1961. Domestic arbitral awards may be challenged on similar grounds.

An award may be set aside only if:

- the applicant shows sufficient cause that:
  - a party to the arbitration agreement, under the law applicable to it, was under some incapacity, or the agreement is not valid under the law to which parties have subjected it to or, failing any indication thereon, under Russian law;
  - a party was not properly notified of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case;
  - the award was made regarding 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 the Arbitration Law from which the parties cannot derogate or, failing such agreement, was not in accordance with the Arbitration Law; or
- the court finds that:
  - the subject matter of the dispute is not capable of settlement by arbitration under Russian law; or
  - the award is in conflict with the public policy of the Russian Federation.

Additionally, it should be kept in mind that parties to domestic arbitral proceedings may waive the right to set aside the award simply by including into the arbitration agreement that the arbitral award will be 'definitive' (*okonchatelnoye*). However, this rule is not applicable to international arbitral proceedings (in which parties from different countries are involved) held by domestic arbitration institutions.

43 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

The parties have the right to one automatic appeal against the decision of the court of first instance; and there is also a possibility to obtain leave to one appeal to the Judicial Panel of the Supreme Court, and further to one appeal to the Supreme Court, which are rarity.

The average duration of challenge proceedings is five to nine months. However, the first instance can be passed in one to two months. Although challenge proceedings do not automatically stay enforcement, the court in which the enforcement is sought may issue an interim order to suspend enforcement until resolution of the challenge.

Costs include state duty which amounts to:

- 2,000 roubles for the first instance;
- 2,000 roubles for the first and second appeal each; and
- 2,000 roubles for the third appeal in the Supreme Court.

State duty is recovered from the unsuccessful party in full. Legal fees could be claimed from the unsuccessful party 'within reasonable limits'. Practically, Russian courts award rather small amounts in legal fees.

44 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

In recent years, Russian state courts demonstrated a rather favourable approach to enforcing arbitral awards rendered by both domestic and foreign arbitration institutions. Russian courts enforce arbitral awards in approximately 80 per cent of the cases. Applications for the enforcement of arbitral awards shall be brought within three years from the date when the arbitral award was rendered.

An arbitral award may be enforced at the discretion of the enforcing party in Russian state court where the respondent resides or has his business or where the respondent's assets can be traced. A party seeking enforcement shall file an application with a competent court attaching the following documents (originals or certified copies, all translated into Russian, notarised, legalised (or apostilled), where applicable):

- the arbitral award;
- the arbitration agreement;
- the constitutional documents of the applicant (articles of association, by-laws, excerpt from trade register);
- a power of attorney for the signatory of the application; and
- confirmation of payment of the state duty for filing the application.

If the court, after considering the application in a hearing, rules in favour of the enforcement, it issues a writ of enforcement. Such writ may be submitted to the bailiffs for execution within six months from the moment of entry into force of the ruling declaring the award enforceable.

45 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

If a foreign arbitration award has been set aside by the courts at the place of arbitration Russian courts will not enforce such an award.

46 Cost of enforcement

What costs are incurred in enforcing awards?

State duties for enforcing arbitral awards through Russian courts are the same as charged for challenging arbitral awards (refer to question 43 for more details). Legal fees on a contingency basis may be as high as 30 per cent of the claim amount, though an average for US$100,000 claim would be not less than circa US$15,000 in the court of primary jurisdiction.

If debtor refuses to pay the debt voluntary, bailiffs will also charge him an execution fee of 7 per cent from the amount of the claim. However, this sum does not constitute an expense of the party which seeks the enforcement and is to be paid by the debtor.

Other

47 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

In Russia, which is a civil law country, the following features of the Russian judicial system might exert an influence on an arbitrator in Russia:

- Oral witness testimony is more common than written statements (written statements are rare but there are no restrictions on presenting them in addition to oral testimony);
- There is no discovery or disclosure as opposed to common law countries tradition;
- Arbitrators tend to follow the traditions of proceedings in the national courts;
- Arbitrators may tend to take a very formal approach to evidence, especially the way of producing written evidence (for instances, the judges are quite reluctant to accept e-mails, not certified copies of documents, etc); and
- Sometimes arbitrators take very formal approach to proofs of counsel's authority to represent his client (for instance, they may require producing the original or certified copy of the power of attorney and original passport of the counsel).

48 Professional or ethical rules applicable to counsel

Are specific professional or ethical rules applicable to counsel in international arbitration in your country? Does best practice in your country reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

So far, there are no specific rules or admission requirements applicable to a counsel in international arbitration in Russia. Even in-house lawyers are admitted to represent parties in arbitration.

Update and trends

Last year was marked by heated debate of a new law for domestic arbitration. It has not yet been introduced into parliament as some of the proposed features were quite controversial. On the positive side, the law will clarify arbitrability rules regarding types of corporate disputes (eg, arising under shareholders agreement) that can be arbitrated. On the other hand, it will provide that public procurement contracts and disputes arising thereunder are not arbitrable at all. Another unusual feature of the proposed regulation is a requirement to register arbitral institutions with the Ministry of Justice. The registration is supposed to be non-automatic, but rather the institutions will be screened by the expert board of the Ministry of Justice to deter fraudulent and abusive recourse to arbitration as dispute resolution method. Progressive aspects of the law include clear guidance for courts with respect to support of the arbitral procedure, such as assistance in the collection of evidence and interim injunctions in support of arbitration. It is expected that a tuned-down version of the law will be introduced into parliament and enacted before the end of 2015.

The Russian Arbitration Association (RAA), a new and favoured arbitral institution administering disputes under UNCITRAL Rules, is working on the adoption of online arbitration rules which will be expedited as a quick and economic way of resolving routine differences between suppliers and customers. It is expected that, given Russia's vast territory covering nine time zones, the option to resolve small claims without the requirement of physical attendance at the hearing will become quite popular. In the near future the RAA is expected to introduce three sets of industry-specific rules for insurance, banking and construction disputes. In order to facilitate the arbitrator selection process by the users the RAA maintains an electronic arbitrators database freely accessible online.

Also, insurance and banking industry are looking at a pondering adoption of arbitration as a preferred dispute resolution method for settling cases between the players – that is, reinsurance or interbank lending related cases.

49 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

There is a general formal requirement that foreign attorneys should be registered with the state register handled by a local department of the Ministry of Justice of the Russian Federation in order to provide legal assistance as an attorney (*advokat*) in Russia. However, absence of such registration does not bar a foreign lawyer from representing its client in arbitral proceedings in Russia, because there is no rule that only attorneys can act as representatives.

In addition, foreign practitioners may face the following formalities:

- a foreign practitioner may be not guarded by attorney client privilege (this is a prerogative of attorneys admitted to Russian bars (advokats) and foreign attorneys registered with the state register);
- a foreign practitioner may need to obtain a certain type of visa to enter the Russian Federation;
- there is a potential risk that practising as counsel or an arbitrator on a permanent basis might be considered as opening a business in Russia, which would require a work visa, number of filings and registrations (however, this is very unlikely when the practitioner acts only on a case-to-case basis without having residence in Russia); and
- personal income tax will be payable if an individual receives income from any sources in Russia.

VAT may be also payable for services rendered by a foreign lawyer, foreign arbitrator in ad hoc arbitration, and foreign arbitration institutions with a seat in Russia (only legal services of Russian advokats are VAT exempt).

Power of attorney, passport and other formal documents presented in the arbitral proceedings will need to be accompanied by apostille (legalised) and translation certified by a Russian notary.

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