Commercial Arbitration

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Russia

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Infrastructure

1. 1.**The New York Convention**
   Is your state a party to the New York Convention? Are there any noteworthy declarations or reservations?

   Russia is a party to the New York Convention. In 1960, the USSR made a reservation (which is still in force) that reciprocity shall apply to non-parties to the Convention.

2. 2.**Other treaties**
   Is your state a party to any other bilateral or multilateral treaties regarding the recognition and enforcement of arbitral awards?

   Russia is a party to the European Convention on International Commercial Arbitration 1961.

   Also Russia, as well as some former COMECOM members, is still a party to the Moscow Convention on the Settlement by Arbitration of Civil Law Disputes Arising from Relations of Economic, Scientific and Technical Cooperation 1972.

   Russia is a signatory to the Washington (ICSID) Convention from 16 June 1992, but the treaty is not ratified yet.

   According to UNCTAD, Russia is a party to 63 BITs. There are another 16 that were signed (including Morocco and Palestine in 2016), but not entered into force. Also, in April 2017, India terminated BIT, increasing a number of ever terminated Russian BITs to 5.

3. 3.**National law**
   Is there an arbitration act or equivalent and, if so, is it based on the UNCITRAL Model Law? Does it apply to all arbitral proceedings with their seat in your jurisdiction?

   Russia has dual arbitration regime.

   The Law of the Russian Federation No. 5338-1 dated 7 July 1993 on International Commercial Arbitration (the ICA Law) governs international arbitrations where the seat of arbitration is Russia. Certain provisions also apply to non-Russian arbitrations: waiver of the right to arbitrate by pursuing a claim in courts; the right to apply for interim measures in courts; recognition and

enforcement of awards. The ICA Law closely follows the Russian text of the UNCITRAL Model Law as adopted in 1985 (the Model Law).

Federal Law No. 382-FZ dated 29 December 2015 on Arbitration (Arbitration Proceedings) in the Russian Federation (the DCA Law) entered into force on 1 September 2016 and replaces the previous law of 2002. The new DCA Law applies to domestic arbitration with certain provisions applicable to international commercial arbitration with seat in Russia, including record keeping, liability of institutions and arbitrators, mandatory notification of a legal entity on corporate disputes between its shareholders, admission of the foreign arbitral institutions to act in Russia.

It should be noted that the content of the new DCA Law has to a great extent been unified with the ICA Law to reduce practical differences to a minimum.

4. 4.**Arbitration bodies in your jurisdiction**

What arbitration bodies relevant to international arbitration are based within your jurisdiction? Do such bodies also act as appointing authorities?

On 1 November 2017, the transitional period for the reform of arbitration in the Russian Federation came to an end: arbitral institutions lost the right to administer cases unless they had obtained a governmental licence.

The only exception applies to the two oldest institutions in Russia: the International Commercial Arbitration Court (ICAC or MKAS) and Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation. Thanks to their historical record, these institutions are exempt from the licence requirement.

So far only two institutions – the Arbitration Centre at the Institute of Modern Arbitration and Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs – have obtained a license and the right to administer cases.

In January 2017, the MKAS approved special rules whereby it acts as appointing authority. The Arbitration Centre at the Institute of Modern Arbitration and the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs have the same provisions in the General Arbitration Rules adopted in December 2016.

5. 5.**Foreign institutions**

Can foreign arbitral providers operate in your jurisdiction?

Yes. Foreign arbitration institutions may also receive the status of arbitration institution in the event of obtaining permission issued by the government of the Russian Federation. The DCA Law expressly provides only one requirement for foreign institutions to be admitted, which is a “widely accepted international reputation”. In the absence of the Russian government’s permission, arbitrations administered by foreign providers shall be treated as ad hoc arbitrations. As such, they are prohibited to administer resolution of any corporate disputes seated in Russia (see question 8).

6. 6.**Courts**
Is there a specialist arbitration court? Is the judiciary in your jurisdiction generally familiar with the law and practice of international arbitration?

There are no specialised arbitration courts in Russia. However, historically a large part of arbitration-related cases are tried by the Moscow Commercial Court (a first instance court) and the Commercial Court for the Moscow Region (a second-instance court for challenges and enforcement of awards). Both courts have accumulated significant experience. There are no specifically assigned judges or divisions within those courts to deal with arbitration matters on a permanent basis. However, certain judges, at least at the Moscow Commercial Court, are reported to deal with arbitration cases more often than others.

Agreement to arbitrate

7. 7.**Formalities**
What, if any, requirements must be met if an arbitration agreement is to be valid and enforceable under the law of your jurisdiction? Can an arbitration agreement cover future disputes?

An arbitration agreement shall be in writing and refer to a specific legal relationship. In this aspect the ICA Law and the DCA Law replicate the text of article 7 of the Model Law. In addition, both laws provide that arbitration agreement may be a part of corporate charter or registered trading rules. It may cover existing and future disputes, whether contractual or not.

8. 8.**Arbitrability**
Are any types of dispute non-arbitrable? If so, which?

As a general rule, all disputes are arbitrable if otherwise is not established by a federal law (article 1(4) of the ICA Law, article 1(3) of the DCA Law). Statutory exemptions shall be provided by federal laws only. Thus article 33 of the Commercial Procedural Code (APK) excludes bankruptcy, public acts and collective actions, as well as certain types of corporate and IP disputes that are subject to exclusive jurisdiction of commercial courts. Article 22 of the Civil Procedural Code (GPK) adds to this list following areas: state contracts; employment; family; estate (inheritance); environmental; tort; privatisation and some others.

Interestingly, disputes relating to public procurement are temporary non-arbitrable – until the law governing the procedure for determination of the arbitral institution for administration of such cases is adopted (currently this law has not been even drafted). Russian courts interpret this prohibition widely by applying it both to disputes arising from state or municipal public procurement and disputes involving Russian state companies. The Constitutional Court of the Russian Federation will soon consider the issue of arbitrability of disputes involving state-owned companies, so the court practice may change.

The DCA Law finally confirmed that in general, corporate disputes are arbitrabal. The following conditions shall be satisfied: the dispute must be referred to institutional arbitration; the institution must have special rules for corporate disputes; the seat of arbitration must be in Russia; and the arbitration agreement needs to be signed by all shareholders and by the company itself or unanimously approved and included into the charter of the company (see article 225.1(3) APK), article 7(7) of the DCA Law). In the meantime, disputes arising from notarial

certification of transactions, disputes regarding calling of shareholders' meeting and others listed in article 225.1(2) APK are non-arbitrable.

9. 9.**Third parties**
   Can a third party be bound by an arbitration clause and, if so, in what circumstances? Can third parties participate in the arbitration process through joinder or a third-party notice?

   As a general principle, no third party could be joined without its expressed consent and expressed consent of the parties to the arbitration proceedings. Both the ICA Law and the DCA Law endorse that arbitration agreements bound not only their original signatories, but also successors and assignees of such signatories.

   The new DCA Law introduced rule that institutions shall notify a legal entity which shareholders and participants started a corporate dispute. Following that, other shareholders will be entitled to join the proceedings.

10. 10.**Consolidation**
    Would an arbitral tribunal with its seat in your jurisdiction be able to consolidate separate arbitral proceedings under one or more contracts and, if so, in what circumstances?

    The ICA Law, following the Model Law, is silent on the matter. Thus, the matter shall be settled either by agreements of parties or through the applicable rules. For example, new ICAC Rules regulate single arbitration for multiple contracts, consolidation of arbitrations, joinder of additional parties, and intervention of non-parties. Specifically, the Presidium of ICAC may consolidate arbitration where (i) all parties agree on this; or (ii) all claims are made under the same arbitration agreement and there are no other obstacles to consolidation; or (iii) the claims are covered by compatible and related as per substantive law arbitration agreements.

11. 11.

    Groups of companies
    Is the "group of companies doctrine" recognised in your jurisdiction?

    No. However, if as a matter of applicable law, a parent company of a signatory became a successor or an assignee with respect to the obligations of a signatory, the issue of liability of an affiliated person will be considered.

12. 12.**Separability**
    Are arbitration clauses considered separable from the main contract?

    Yes. This principle is established in article 16(1) of the ICA Law and article 16(1) of the DCA Law.

13. 13.**Competence-competence**

Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunal's jurisdiction and competence?

The principle of competence-competence is established in article 16 of the ICA Law and the DCA Law expressly empowering tribunals to decide on an issue of their jurisdiction. This rule is supported by article 148(1)(5) of the APK and article 222 of the GPK, which dictate termination of proceedings where there is an arbitration agreement unless the court finds an arbitration agreement null and void, inoperative or incapable of being performed. Also as ruled in 2009 the Supreme Commercial Court of the Russian Federation (now dissolved), the only way of challenging the jurisdiction of an arbitral tribunal is established by article 235 of APK (ie, a party shall apply to set aside an award on jurisdiction (ruling dated 1 April 2009 No VAS-3040/09 *Voskhod v Rual Trade Limited*)).

14. 14.**Drafting**

Are there particular issues to note when drafting an arbitration clause where your jurisdiction will be the seat of arbitration or the place where enforcement of an award will be sought?

There are no specific statutory requirements as to the drafting language of an arbitration clause. However, parties will be well advised to be specific and use model clauses recommended by institutions to avoid argument on whether a clause is incapable of being performed. Interestingly, the new DCA law provides a possibility for parties to provide in the arbitration agreement that an arbitral award would be final, in which case it would not be subject to setting aside. However, the court practice in this respect has not yet been clearly established.

15. 15.**Institutional arbitration**

Is institutional international arbitration more or less common than ad hoc international arbitration? Are the UNCITRAL Rules commonly used in ad hoc international arbitrations in your jurisdiction?

Ad hoc arbitrations are not very common in Russia. In most cases, parties prefer to opt for institutional arbitration. Understandably, UNCITRAL Arbitration Rules are commonly used by sophisticated parties in major contracts. Another variant was introduced by the DCA Law. Arbitration proceedings with a seat in Russia which are administered by a foreign provider not admitted by the Russian government shall be treated as ad hoc ones even though they are conducted under the rules of such provider.

Also under the DCA law the pending proceedings begun before 1 November 2017 in the Russian arbitration institutions, which fail to obtain a license for administration of cases, treat as ad hoc arbitrations.

16. 16.**Multi-party agreements**

What, if any, are the particular points to note when drafting a multi-party arbitration agreement with

your jurisdiction in mind? In relation to, for example, the appointment of arbitrators.

It is very helpful to determine the number of arbitrators and any specific mechanism of their appointment, including the appointing authority where parties do not reach agreement. It is important also to refer specifically to the right of tribunals to consolidate proceedings and to join other parties of a contract or a series of contracts. However, the drafter shall ensure that all such parties should be signatories to such arbitration agreement. So either one would need to produce a single umbrella arbitration agreement or ensure that arbitration clauses in multiple contracts are identical and clearly and unequivocally refer to the powers of tribunals to consolidate the proceedings.

Commencing the arbitration

17. 17.**Request for arbitration**
How are arbitral proceedings commenced in your jurisdiction? Are there any key provisions under the arbitration laws of your jurisdiction relating to limitation periods of which the parties should be aware?

Some institutions, like the ICAC, still follows a litigation model where to commence proceedings, it's necessary to submit a statement of claim. However, parties are free to adopt rules of other institutions or UNICTRAL Arbitration Rules where the process starts with a request for arbitration.

As a matter of Russian law, the statute of limitations is a part of substantive law. So this issue will be considered as per the law chosen in a contract or as per conflict of laws rules.

Choice of law

18. 18.**Choice of law**
How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?

The ICA Law, following the Model Law, refers to the choice of parties and, if it was not chosen, a tribunal will apply the law "that it considers applicable" in accordance with the conflict of laws rules.

Appointing the tribunal

19. 19.**Choice of arbitrators**
Does the law of your jurisdiction place any limitations in respect of a party's choice of arbitrator?

No. Parties are free to agree on the number of arbitrators and the appointment procedure. With the introduction of the new DCA Law, retired judges were allowed to accept such appointments.

20. 20.**Foreign arbitrators**
Can non-nationals act as arbitrators where the seat is in your jurisdiction or hearings are held there? Is this subject to any immigration or other requirements?

There is no statutory restriction for non-Russian nationals to act as arbitrators. Parties are free to agree on any limitations on this point (article 11(1) of the ICA Law). Usual travel and visa requirements apply.

21. 21.**Default appointment of arbitrators**
How are arbitrators appointed where no nomination is made by a party or parties or the selection mechanism fails for any reason? Do the courts have any role to play?

Article 11 of the ICA and the DCA Laws empower a Russian competent court to act as an appointing authority where parties failed to agree or to follow the agreed procedure and where institutions do not perform their functions under applicable rules. Before this procedure was introduced by the new DCA Law, the President of the Chamber of Commerce and Industry of the Russian Federation had acted as an appointing authority.

22. 22.**Immunity**
Are arbitrators afforded immunity from suit under the law of your jurisdiction and, if so, in what terms?

The new DCA Law provides that arbitrators may be liable only if they are found guilty for committing a crime. However, institutions are free to reduce their fees if they failed to perform their duties properly.

The new DCA Law also specifies that institutions are liable only for their own faults in the course of administering proceedings. Their rules also may shift the burden of liability to their founders. Any liability could be triggered by gross negligence or deliberate acts and omissions only.

23. 23.**Securing payment of fees**
Can arbitrators secure payment of their fees in your jurisdiction? Are there fundholding services provided by relevant institutions?

There is no statutory regulation of the issue. Normally, it is settled in arbitration rules and the process will not continue before parties or claimants pay an advance on the arbitrators' fees and arbitration costs.

Challenges to arbitrators

24. 24. **Grounds of challenge**

On what grounds may a party challenge an arbitrator? How are challenges dealt with in the courts or (as applicable) the main arbitration institutions in your jurisdiction? Will the IBA Guidelines on Conflicts of Interest in International Arbitration generally be taken into account?

Following the approach of the Model Law, parties shall prove their justifiable doubts as to the arbitrator's impartiality or independence (articles 12(2) of the ICA Law and the DCA Law). It is also provided that an arbitrator may be challenged if he or she failed to meet requirements stipulated by law or by an agreement of parties. But a party who appointed an arbitrator may challenge him or her only if a ground for challenge became known after the appointment.

Under both the ICA and the DCA Laws (articles 13), procedure for challenge replicates the one provided by the Model Law. Courts are named as competent authorities, but parties are free to waive by their jurisdiction if the proceedings are administered by an institution.

Under the ICAC Rules, any challenge shall be submitted to the ICAC Appointment Committee directly within 15 days after a party was notified on composition of the tribunal or after it become aware of circumstances that can serve as a reason for the challenge. Challenges shall be considered by the ICAC Appointment Committee, if, prior to that, the arbitrator has not resigned voluntarily.

It is normal for parties and arbitrators to refer to the IBA Guidelines. Furthermore, in 2010 the ICAC issued its own Rules on Impartiality and Independence, which generally follow the IBA Guidelines.

Interim relief

25. 25.

Types of relief

What main types of interim relief are available in respect of international arbitration and from whom (the tribunal or the courts)? Are anti-suit injunctions available where proceedings are brought elsewhere in breach of an arbitration agreement?

Pursuant to the ICA Law and APK, the list of interim relief is non-exhaustive (ie, any measures may be granted by both arbitral tribunals and courts in aid of arbitration). However, as a non-final decision, an interim order of an arbitral tribunal is not enforceable in Russia. That is why it is preferable to apply directly to domestic courts at the seat of arbitration, or at the place of the debtor's incorporation, or at the place where the debtor's assets are located.

Russian courts may issue injunctions in support of commercial arbitration *(*see the case No. A55-22/2016 *Telecom Povolzhye v OJSC SMARTS and Bolaro Holding Ltd* where Samara Commercial Court issued a freezing injunction in support of an ongoing LCIA arbitration). Anti-suit injunctions are not prohibited, but there are no instances when Russian courts have granted such measures. Anti-suit injunctions ordered by foreign courts are not enforceable in Russia and they cannot estop a Russian court from trying a case (Information Letter of the Presidium of the

Supreme Commercial Court of the Russian Federation of 9 July 2013 No. 158). It should be noted that Russian courts will not secure the attendance of witnesses.

26. 26.**Security for costs**

Does the law of your jurisdiction allow a court or tribunal to order a party to provide security for costs?

The ICA Law is silent on the security of costs issue. There is also no case law addressing this issue. However, there is nothing special in Russian law to conclude that a tribunal is not entitled to issue such an order. Article 19(2) of the ICA Law leaves a wide margin of appreciation to arbitrators to determine the course of the process.

Procedure

27. 27.

Procedural rules

Are there any mandatory rules in your jurisdiction that govern the conduct of the arbitration (eg, general duties of the tribunal and/or the parties)?

No, in general there are not. To some extent, articles 18–27 of the ICA Law set up a framework for conducting arbitration. The overarching principles, as per the Model Law, are equal treatment of parties and right to be heard (article 18 of the ICA Law). To the rest, parties to arbitration may agree on applicable procedural rules. In the absence of parties' agreement, an arbitral tribunal may conduct the arbitration in such manner as it considers appropriate (article 19(2) of the ICA Law).

However, the DCA Law (article 45(8)) envisages some requirements applicable to arbitration of corporate disputes.

28. 28.**Refusal to participate**

What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration?

Failure to participate does not prevent an arbitral tribunal from entertaining a claim and delivering an award on the evidence presented before a tribunal. Therefore, default awards are enforceable in Russia. It is of paramount importance to ensure that a respondent received notice of the proceedings in a sufficient and timely manner. Non-service on a respondent is a frequent ground for non-enforcement of default awards in Russia.

29. 29.

Admissible evidence

What types of evidence are usually admitted, and how is evidence usually taken? Will the IBA Rules on the Taking of Evidence in International Arbitration generally be taken into account?

Documents, witness and expert statements generally used in international commercial arbitration are the most common evidence in Russia. Basically, other types of evidence are also admitted.

Parties to arbitration may agree on application of the IBA Rules on the Taking of Evidence in International Commercial Arbitration or other "soft law". Tribunals apply IBA Rules as guidelines frequently.

Arbitral awards based on fabricated documents are not enforceable in Russia as contrary to public policy (Information Letter of the Presidium of the Supreme Commercial Court of the Russian Federation of 22 December 2005 No. 96).

30. 30.**Court assistance**

Will the courts in your jurisdiction play any role in the obtaining of evidence?

Pursuant to article 27 of the ICA Law and article 74.1 of APK, Russian commercial courts may order a third party to produce evidence. The court proceedings in aid of institutional arbitration shall be initiated at the request of the arbitral tribunal with a seat in Russia (except ad hoc tribunals) or by a party to such arbitration subject to the tribunal's approval. Such aid is unavailable for ad hoc arbitration. There are very few cases where Russian commercial courts have considered such motions. Domestic courts will not secure the attendance of witnesses.

31. 31.**Document production**

What is the relevant law and prevailing practice relating to document production in international arbitration in your jurisdiction?

Document production is not envisaged as a separate stage of arbitration in the ICA Law. Depending on the complexity of a case and other associated circumstances, parties to arbitration or an arbitral tribunal may stipulate this stage as a part of arbitration process.

Redfren schedules are frequently used in the course of document production. If a party fails to comply with an order for document production, a tribunal may draw adverse inferences against that party.

32. 32.**Hearings**

Is it mandatory to have a final hearing on the merits?

It is standard practice, although a final hearing on the merits is not mandatory unless parties to arbitration agreed otherwise. In the absence of such agreement, an arbitral tribunal must hold a hearing if so requested by a party.

33. 33.

Seat or place of arbitration
If your jurisdiction is selected as the seat of arbitration, may hearings and procedural meetings be conducted elsewhere?

Article 20(2) of the ICA Law does not ban the holding of hearings in a place other than the juridical seat of arbitration, unless the parties agreed otherwise. The seat must be named as such in an award.

Award

34. 34.**Majority decisions**
Can the tribunal decide by majority?

The majority rule applies where there is more than one arbitrator. The ICA Law does not specify the voting procedure. Neither does it stipulate that in the case of diverging opinions the chairperson shall rule alone.

However, the new ICAC Rules stipulate that if an award cannot be made by a majority vote, it shall be made by the presiding arbitrator (article 36(3)).

35. 35.**Limitations to awards and relief**
Are there any particular types of remedies or relief that an arbitral tribunal may not grant?

If Russian law governs the substance of a dispute, there are no specific restrictions on remedies or relief that can be granted. Among others, orders for specific performance, declaratory and monetary awards are eligible in Russia.

36. 36.**Dissenting arbitrators**
Are dissenting opinions permitted under the law of your jurisdiction? If so, are they common in practice?

The ICA Law is silent on this matter. The new ICAC Rules allow such opinions (article 36(3)). Dissenting opinions are quite rare. In practice, arbitrators endeavour to reach unanimous awards.

37. 37.**Formalities**
What, if any, are the legal and formal requirements for a valid and enforceable award?

Primarily, an award shall be made within the jurisdiction of a tribunal as it is set up in an arbitration clause.

An award shall contain arguments behind decisions made by a tribunal, including on the allocation of costs. It shall state the date and the seat of arbitration along with clear conclusions about whether claims have been granted or dismissed. Unreasoned awards are not enforceable in Russia.

If all the panel members do not sign an award, the award shall contain the reasons for this.

38. 38.**Time frames**

What time limits, if any, should parties be aware of in respect of an award? In particular, do any time limits govern the interpretation and correction of an award?

International arbitrations seated in Russia are not limited in time in rendering awards. It usually takes up to six months to deliver an award from the date of the hearing or the date of the final submission. The new ICAC Rules (article 35) prescribe that the ICAC shall take measures to secure completion of the arbitral proceedings in a case within 180 days after the date of composition of the arbitral tribunal. This period is often extended by the ICAC Presidium.

Any party may refer to a tribunal for the purpose of rectifying errors or typographical mistakes in an award within 30 days from its receipt unless another time scale is agreed. If such a request is justifiable, a tribunal shall correct an award within 30 days. A tribunal may correct an award likewise on its own.

Power of award's interpretation may be vested in a tribunal under an agreement of parties. A tribunal shall give an interpretation within 30 days from the request.

Unless parties agreed to the contrary, a tribunal may render an additional award on the request of a party to be lodged within 30 days from an award's receipt. Subject to this, within 60 days from the request, a tribunal shall render an additional award regarding the claims left unconsidered in the course of main proceedings.

The above time periods for correction, interpretation and delivery of an additional award may be extended by a tribunal (the New ICAC Rules (article 41).

Article 33 of the New ICAC Rules provides for an expedited procedure according to which relevant bodies and authorised officials of the ICAC and tribunals shall take measures to secure completion of arbitral proceedings within 120 days after the date of the formation a tribunal. This period may also be extended.

Costs and interest

39. 39.

Costs

Are parties able to recover fees paid and costs incurred? Does the "loser pays" rule generally apply in your jurisdiction?

Parties are able to recover fees paid and costs incurred. It is for the tribunal to rule on these issues in an award. A losing party is usually ordered to pay reasonable fees and costs of a winning party.

40. 40.**Interest on the award**
Can interest be included on the principal claim and costs? Is there any mandatory or customary rate?

The ICA Law does not address this issue. Parties can specify interest in their agreement and an award will be enforceable in this respective part (case No. A40-120756/2009 *Arktur v General Motors Uzbekistan*).

Article 308.3 of the Civil Code stipulates that upon a party's request, a court may order payment of an amount calculated under principles of justice, proportionality and prohibition of abuse of rights. The same regulation will likely be applicable to arbitration should Russian law governs the substance of the case.

Challenging awards

41. 41.**Grounds for appeal**
Are there any grounds on which an award may be appealed before the courts of your jurisdiction?

No, Russian courts are not empowered to hear appeals from awards. Rather, they can set aside awards in a limited number of cases. Awards are immune from judicial review on the merits or on the point of Russian law that applied to the substance of the dispute.

42. 42.**Other grounds for challenge**
Are there any other bases on which an award may be challenged, and if so what?

An open-ended list of grounds for challenge is provided in article 34 of the ICA Law. That list repeats the same grounds as they are specified in article V of the New York Convention.

43. 43.**Modifying an award**
Is it open to the parties to exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

The ICA Law (article 34(1)) envisages that parties may waive their right to bring an action to set aside an award, except ad hoc arbitration.

At the same time, if an arbitral award affects rights or interests of a third party (eg, a bankruptcy receiver), such a party may file a set-aside application.

Enforcement in your jurisdiction

44. 44.**Enforcement of set-aside awards**
Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?

It is for the domestic court to decide whether an annulled award should be enforced in Russia. Normally, Russian courts refuse enforcement of annulled arbitral awards.

It should be kept in mind that article IX of the European Convention on International Commercial Arbitration 1961 narrows the cases when annulment of an award at the place of arbitration can lead to its non-enforcement in Russia.

45. 45.**Trends**
What trends, if any, are suggested by recent enforcement decisions? What is the prevailing approach of the courts in this regard?

Russian courts favour international arbitration. In 2017, in the majority of cases (about 75 per cent), domestic courts enforced international arbitration awards. Statistics on this have been pretty steady during recent years.

46. 46.**State immunity**
To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

The Federal Law of 3 November 2015 No. 297-FZ on Jurisdictional Immunities of Foreign States and Property of Foreign States in the Russian Federation finally endorsed the restrictive theory of sovereign immunity. Basically, the Law resembles the provisions of the UN Convention on Jurisdictional Immunities of States and Their Property of 2004. In assessing state activity as jure gestionis (commercial), Russian courts shall determine both nature and purpose. Russian judiciary is vested with power to lower the level of foreign state protection based on reciprocity rule.

Article 16 of the aforesaid Law enumerates categories of property that are immune from execution.

Further considerations

47. 47.**Confidentiality**

To what extent are arbitral proceedings in your jurisdiction confidential?

Unlike the Law on Domestic Arbitration, the ICA Law does not provide for confidentiality rule. Typically, arbitration agreements and applicable institutional rules stipulate that arbitration and awards shall not be public. Publication of materials may also be prescribed by institutional rules. For example, according to article 46(4) of the New ICAC Rules arbitral awards and orders may be published with the consent of the Presidium provided that names of the parties and other identifying details which may impair the legitimate interests of the parties are removed.

48. 48.**Evidence and pleadings**

What is the position relating to evidence produced and pleadings filed in the arbitration? Are these confidential? Is there any way that they might be relied on in other proceedings (whether arbitral or court proceedings)?

Unlike the Law on Domestic Arbitration, the ICA Law is silent on this matter. Typically, confidentiality of arbitration covers submissions with evidence in the course of arbitration. In accordance with the New ICAC Rules (article 46(1)) unless the parties agree otherwise, arbitration shall be confidential. At the same time, there is no consistent practice regarding this issue.

49. 49.**Ethical codes**

What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your jurisdiction?

There are no ethical codes or other professional standards in Russia that apply specifically to counsel or arbitrators. However, lawyers who are admitted to advocates' chambers (bars) shall abide by the rules of the Law on Advocates Activity and Advocates and the Code of Professional Advocate Ethics. Still, lawyers who are not admitted to advocates' chambers (bars) are not prohibited from counselling or arbitrating in Russia.

50. 50.**Procedural expectations**

Are there any particular procedural expectations or assumptions of which counsel or arbitrators participating in an international arbitration with its seat in your jurisdiction should be aware?

Extensive production of documents and broad use of witness statements should not be expected in Russia, which is a civil-law jurisdiction.

The new version of ICA and the new Law on Domestic Arbitration became effective from 1 September 2016. Basically, Russian legal society welcomes the said laws, which are supposed to bring more certainty and make arbitration more attractive and more popular means of resolving disputes in Russia.

51. 51.

Third-party funding
Is third-party funding permitted in your jurisdiction?

There is no express restriction with respect to third-party funding, although it is not commonly used and there is a lack of court practice on this issue. There also might be difficulties in recovery of costs incurred by a third party, since only costs of a party to the proceedings are recoverable.

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