



Arbitration Guide
IBA Arbitration Committee

RUSSIA

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration is the prevailing dispute resolution mechanism for disputes arising in connection with international commercial contracts, but has only limited application in domestic transactions. Reportedly less than one per cent of domestic disputes are resolved through arbitration.

Russian *arbitrazh* (commercial) courts (*arbitrazhnye sudy*), part of the state court system, are quite effective in terms of cost and speed of proceedings. Therefore, the duration of proceedings and limited rights of appeal against arbitral awards are seen as disadvantages of arbitration. The relative confidentiality of arbitration and perceived better quality of adjudication are considered to be advantages.

In transactions with an international element (including those where domestic players act through foreign holding companies or offshore vehicles) international arbitration in Russia or abroad is seen as the more neutral and objective dispute resolution method as compared to resolution by the domestic courts.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Since the 2015 reform, institutional arbitration is entrenched, whereas, *ad hoc* arbitration is subject to certain limitations that can make it less employed (see Section XVII).

Arbitration institutions are subject to getting governmental authorization to operate. The International Commercial Arbitration Court (the ICAC) at the Chamber of Commerce and Industry of the Russian Federation and (2) the Maritime Arbitration Commission (the MAC) at the Chamber of Commerce and Industry of the Russian Federation are exempt, which perform their functions by operation of law. No exceptions have been made for foreign arbitration institutions. ICAC is a busy arbitral institution with 271 cases resolved in 2016, with parties from 50 countries.

As of August 2017, two institutions have received the above mentioned authorizations: (1) the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs; and (2) the Arbitration Centre of the Autonomous Non-Profit Organisation 'Institute of Modern Arbitration', which means that only four arbitration centres are entitled to administer institutional proceedings.

(iii) What types of disputes are typically arbitrated?

Contractual disputes is the prevailing category. International commercial transactions almost universally include arbitration clause. Sale, lease and construction agreements take lead on domestic scene. Disputes arising out of

financing arrangements (lending, guarantees) are also visible on the dockets of domestic tribunals. Significant number of disputes resolved by the ICAC arise out of international sale contracts.

(iv) How long do arbitral proceedings usually last in your country?

The arbitration laws are silent on this matter. Arbitration rules usually set out that an arbitral tribunal shall render its final award within 120-180 days for international arbitration and within 60-90 days for domestic arbitration. Our experience shows that arbitral tribunals tend to comply with these time limits.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Foreign nationals can act as counsel and arbitrators in arbitrations in Russia. It should be noted, however, that whenever the place of arbitration is in Russia a sole arbitrator, or a presiding arbitrator, must have a diploma in law.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

Russia has a dual regulation system for international and domestic arbitration.

Domestic arbitration is regulated by Federal Law No. 382-FZ dated 29 December 2015 ‘On Arbitration (Arbitration Proceedings) in the Russian Federation’. It entered into force on 1 September 2016 and replaced the previous law of 2002. Certain provisions of this law are applicable to international commercial arbitration with seat in Russia, including retention of case materials, liability of institutions and arbitrators, requirements to arbitrators, mandatory notification of a legal entity on corporate disputes between its shareholders, admission of the foreign arbitral institutions to act in Russia.

International commercial arbitration is governed by the Law of the Russian Federation No. 5338-1 dated 7 July 1993 ‘On International Commercial Arbitration’. It applies with respect to international arbitrations where the seat of arbitration is in Russia. The following provisions of this statute apply also to foreign arbitrations: waiver of the right to arbitrate by pursuing a claim in courts; right to apply for interim measures in courts; recognition and enforcement of awards.

Both laws are derived from the UNCITRAL Model Law as adopted in 1985. The 2015 reform implemented some of the 2006 revisions (see Section VI(i)).

The Code of *Arbitrazh* (Commercial) Procedure and the Code of Civil Procedure govern ancillary court proceedings. Following the 2015 reform these codes also enlist non-arbitrable types of disputes effectively codifying all exceptions. However, it is still open for the legislator to provide other exceptions from arbitrability in other federal laws.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

Different statutes govern domestic arbitration and international commercial arbitration (see Section II (i) above). Differences between these laws include more detailed regulation of arbitrators' appointment, costs, pleadings, evidence issues, confidentiality and award requirements in the domestic arbitration law. Notwithstanding that, practical differences in these matters seem to be minimal.

In practice, domestic arbitration is less formal. Elaborated 'Procedural Order No 1', Terms of Appointment, procedural schedules with strict deadlines, disclosures and long hearings are far less often there than in international arbitrations.

It is also noteworthy that it is impossible under the international arbitration law to invoke *international* arbitration by mere agreement of the parties or choice of seat of arbitration. The law takes into account the subject matter of the dispute or the contract or the place of business of the parties that shall contain international elements.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Russia is a party to the New York Convention and the European Convention on International Commercial Arbitration 1961. Also Russia, as well as some former COMECON 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 was one of the signatories of the Energy Charter Treaty, but it did not ratify the document and in 2009 terminated its provisional application. Russia is a signatory to the Washington (ICSID) Convention from 16 June 1992, but the treaty has not been ratified to the date.

(iv) 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?

In international arbitration choice of parties determines applicable law and, if it was not chosen, a tribunal will apply the law which it considers applicable in accordance with the conflict of laws rules it deems fit.

In domestic arbitration Russian law applies by default and application of foreign law is allowed under Russian conflict of law rules. But if an applicable international treaty establishes rules different from those contained in Russian law, such treaty will prevail.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

There is no legal requirement as to the content of an arbitration agreement. The agreement must be in writing, including an exchange of letters, emails or any other means of telecommunication, which provide a record of the agreement. Email exchange shall comply with general rules in applicable law on conclusion of contracts. Rules of stock exchanges or other trading platforms may provide for arbitration clauses too and these clauses will be applicable to all traders. Charter of a legal person may provide for the same for all shareholders/members of such legal person (except where their number exceeds 1 000 shareholders/members).

At the same time, the mere use of the word ‘arbitration’, ‘arbitral tribunal’ or ‘arbitrator’ will not alone suffice to qualify dispute resolution clauses as an arbitration agreement. Importantly, domestic commercial courts - part of the state court system - are confusingly called ‘*arbitrazh* courts’, a word the Russian pronunciation of which is almost indistinguishable from ‘arbitration’. A foreign party must thus be careful when reviewing the text of the respective clause in order not to confuse the nature of dispute resolution mechanism governing the contract.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

A court will not uphold an arbitration agreement if it finds that it is invalid or if the subject matter of the dispute is not arbitrable. The court may also refuse to dismiss a civil claim and refuse to refer the parties to arbitration if it finds that the subject matter of the arbitration agreement is not the same as the subject matter of the civil claim or if the parties to the civil proceeding are different than the parties to the arbitration agreement.

The laws contain a standard provision that the courts addressed with a dispute, which is subject to arbitration agreement, shall refer the parties to arbitration at the request of any of them (see Section IV (ii)), unless it finds that the arbitration agreement is invalid, terminated or cannot be executed.

Russian courts will generally enforce arbitration clauses. There is a long existing pro-arbitration policy of higher courts.

This policy is further supported by the 2015 reform. Now both laws for domestic and international arbitrations oblige the courts to interpret all doubts in favour of enforcement of arbitration agreements. They also confirm that arbitration agreements cover the entire contract life cycle including issues of invalidity and restitution.

- (iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are recognized in both domestic jurisprudence and arbitration practice. When the pre-arbitration procedures have not been complied with, an arbitral tribunal may either stay or dismiss the arbitration on the basis that the matter is not ripe for adjudication although the qualification of such failure (whether it impacts the tribunal's jurisdiction) is in a purview of the arbitrators.

If the first tier of dispute resolution requires mediation, the dispute may not be resolved by arbitral or court proceedings until completion of or expiration of the maximum period allowed for the mediation, unless one of the parties believes it to be necessary to enforce its rights before an arbitral tribunal or the courts.

If the first tier of dispute resolution is more formal (eg exchange of a claim and response or DAB procedures, such as those found in FIDIC construction contracts), the arbitration shall not proceed until completion of such preliminary steps (pre-arbitration dispute resolution procedures).

At the same time, if the first tier of dispute resolution is loosely formulated as a duty to 'negotiate' or attempt to find an amicable solution, an arbitral tribunal and the supervising court alike, will most probably disregard such a provision, as there is a general understanding that where a dispute has escalated to a degree of a judicial confrontation there is little or no chance that negotiations or conciliation attempts will bring about a successful result.

- (iv) What are the requirements for a valid multi-party arbitration agreement?**

Russian law (like the original UNCITRAL Model Law) is silent on multi-party arbitrations. There is not much court practice on this subject. In practice, multi-party arbitrations take place and some institutions, such as the ICAC, have made provisions in their rules accommodating the specifics of such disputes - for example, the appointment of arbitrators.

Drafting multi-party arbitration clauses for shareholders agreements requires much care, as well as commencing arbitration proceedings covering such disputes (see Section IV (i)).

- (v) **Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

Asymmetrical (or unilateral) arbitration agreements are at risk to be found void following the Ruling of the Supreme *Arbitrazh* (Commercial) Court in *Sony Ericsson* case in June 2012. The Supreme Court, which has recently absorbed powers of the Supreme *Arbitrazh* (Commercial) Court, clarified in *Piramida* case in 2014 that optional clauses are valid and enforceable so far they refer not to a particular party of a contract, but to “claimant”, ie any party of such contract.

- (vi) **May arbitration agreements bind non-signatories? If so, under what circumstances?**

Generally, non-signatories cannot be bound in Russia in the absence of an agreement. Both domestic and international arbitration agreements extend to successors and assignees or parties of an agreement, which incorporates by reference another document with an arbitration clause. Another common situation, which can amount to a waiver, is the failure to object to arbitration in proceedings by silence in procedural submissions following the first statement of the other party regarding jurisdiction of the tribunal.

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides - courts or arbitrators - whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Both the courts and arbitral tribunals may decide whether a matter is arbitrable, which is a matter of jurisdiction.

In the course of the 2015 reform both the *Arbitrazh* and the Civil Procedure Codes were amended to codify non-arbitrable types of disputes that include, for example, those arising under state contracts.

Corporate disputes can be subject to arbitration, with some exceptions established by the *Arbitrazh* Procedure Code. There are also procedural peculiarities of arbitrating corporate disputes. The mandatory seat shall be in Russia. Furthermore, they shall be conducted under a special set of rules for corporate disputes and administered by institutions only, thus excluding ad hoc arbitrations. Other notable requirements for handling such proceedings include mandatory notification of a legal entity of which shareholders have a dispute among each other, disclosure by the institution of the fact of the claim submission, a right of other shareholders to join the arbitration.

Following implementation of these requirements in the course of the 2015 reform, old arbitration clauses in shareholders agreements became non-operative and shall be revised accordingly.

Another issue to be tested is enforceability of awards in Russia under arbitration clauses designed to avoid these requirements of Russian law: namely, clauses in shareholder agreements of offshore companies where the purpose and content of such agreements are about management of Russian companies.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

Procedure codes (rules of the court) and arbitration laws provide that where a claim that is subject to an agreement to arbitrate is brought before a court, it shall refer the parties to arbitration provided that a timely objection is brought by a party opposing the claim. The objecting party must make its objection no later than filing its first statement on the substance of the dispute; otherwise it is deemed to have waived its right to object. By participating in court proceedings without making objection as to jurisdiction and moving to refer a matter for arbitration, the party waives its right to arbitrate but in respect of a specific dispute only. In other words the arbitration clause does not become defunct as such and may be invoked in further cases arising out of the same relationship.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

The principle of *competence-competence* is recognized and enshrined in Russian law.

In line with the UNCITRAL Model Law, a finding of the arbitral tribunal that it has jurisdiction can be appealed immediately to the domestic courts. Generally, arbitral proceedings may continue while such a review by the domestic courts takes place. Refusal of an arbitral tribunal to assume jurisdiction over a dispute is not appealable in a state court.

V. Selection of Arbitrators

- (i) **How are arbitrators selected? Do courts play a role?**

Parties are free to agree on specific procedure of tribunals' formation and qualification requirements for arbitrators, so far they comply with statutory mandatory requirements.

Following the 2015 reform, state courts are now competent to support selection and appointment of arbitrators instead of local Chambers of Commerce. Parties to institutional arbitrations are free to opt out such assistance of courts. However, such agreement may lead to termination of the arbitration where the institution for some reason fails to perform this function.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

The law states that when a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstance likely to give rise to justifiable doubts as to his independence or impartiality. An arbitrator may be dismissed only if there are circumstances that *give rise to justifiable doubts* as to his independence or impartiality, or if he does not possess the qualifications agreed to by the parties or prescribed by the law. Any challenge shall be made within 15 days after constitution of the arbitral tribunal or becoming aware of the circumstances leading to the challenge. The arbitral tribunal shall decide on the challenge, unless the rules governing the arbitration provide for a different procedure. Dismissal of the challenge may be appealed into the court within one month. Parties are free to exclude this judicial recourse in their agreement. In such cases, if a challenge is rejected, the arbitral tribunal shall continue with the proceedings and render its arbitral award. It is possible for the party challenging the arbitrator to invoke any wrongful rejection of the challenge as a ground for setting aside the arbitral award.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Arbitrators shall have legal training unless parties agreed otherwise. Persons under age of 25, or those whose capacity is limited, or those who left the bar, the notary or state legal service due to breach of professional ethics, or who have criminal record cannot act as arbitrators.

Retired judges are allowed to act as arbitrators.

The international arbitration law expressly states that a person of any nationality may be an arbitrator (unless the parties agreed otherwise).

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There are no specific codes concerning conflicts of interest for arbitrators. However, one of the grounds for challenging an arbitrator includes justifiable doubt as to the arbitrator's impartiality. Arbitrators are also required to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence (see Section V (ii)).

The IBA Guidelines on Conflicts of Interest in International Arbitration were translated into Russian in 2009 and are gaining weight among arbitration practitioners in Russia. In 2010, the Russian Chamber of Commerce and Industry implemented rules on the independence and impartiality of arbitrators. These rules apply to all arbitrations under the auspices of the Russian Chamber of Commerce and Industry (including the ICAC) and are a source of guidance for other domestic bodies. These rules largely follow the IBA Guidelines, however, substantial differences do exist as to the scope of disclosure and waivable and non-waivable conflicts.

VI. Interim Measures

- (i) **Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Arbitral tribunals are empowered to order any interim measure of protection they consider necessary.

It is also provided that prior to formation of a tribunal an institution may grant interim measures.

Interim measures ordered by arbitrators may be enforceable in the courts if made as a partial (not interim) award.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following constitution of the arbitral tribunal?**

National courts have competence to and in practice may grant provisional relief in support of arbitrations. Such relief may include orders freezing the respondent's assets, enjoining the respondent or third parties, directing the respondent to take specific actions to prevent deterioration of the property in dispute or requiring the respondent to transfer possession or custody of the property in dispute until final resolution of the case. General requirements as to expediency (eg burden and proportionality) of relief set for domestic courts apply, both before and after constitution of the arbitral tribunal. Court-ordered provisional relief will remain in place until vacated and constitution of the arbitral tribunal does not impair its effect.

- (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

Domestic courts are authorized to grant provisional relief in support of institutional arbitration, including the freezing of a respondent's assets, enjoining the respondent or third parties, directing the respondent to take specific actions to prevent deterioration of the property in dispute, or requiring the respondent to transfer possession or custody of property in dispute until final disposition of the arbitration or litigation. In *Edimax Limited v. Shalva Chigirinsky* (2010), the Supreme Arbitrazh Court confirmed that courts are competent to order interim relief over assets located in Russia in connection with an international commercial arbitration conducted abroad.

A party to ongoing arbitration proceedings is not required to obtain a leave from the tribunal to seek provisional relief in support of the arbitration. Most arbitration rules provide that a party shall keep the tribunal informed of developments in such collateral proceedings.

Arbitral tribunals operating under the auspices of a permanent arbitration institution (or a party to the proceedings from consent of the tribunal) may seek assistance of state courts in taking evidence. There is no such facility in the context of *ad hoc* proceedings.

Russian courts are conservative in granting such orders (just as in domestic litigation). A party must demonstrate that the requested evidence is material and relevant and it has failed to obtain it by other means. This follows the civil law principle – the party shall prove its case by evidence in its possession.

VII. Disclosure/Discovery

(i) **What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

In line with the continental law approach, the parties should be prepared to support their case with documents they have in their possession. Experienced arbitrators will grant requests for disclosure of documents that are identified with a high degree of specificity (as opposed to classes or categories of documents), including confidential documents. More commonly, they will ‘invite’ the target party to produce evidence. If the party fails to deliver, the arbitral tribunal may draw an adverse inference, but it is not common in practice.

Members of the Russian Bar (advocates) have the power to issue disclosure requests out of proceedings. Failure to comply with such request may lead to administrative fine. However, invoking commercial secret defense (as well as other information of restricted access under any statute) will prevent such liability.

(ii) **What, if any, limits are there on the permissible scope of disclosure or discovery?**

A typical objection to document production requests, particularly on behalf of third parties, is the reference to the confidential nature of information, such as professional secret, commercial secret and other similar types of information. In addition, reference is often made to the constitutional right against self-incrimination.

Documents in files of advocates are protected by the privilege of advocates’ secrecy. Other consultants who are not members of the Bar and in house counsel are not protected by such professional privileges. In practice tribunals are wary of ordering disclosure of documents provided by advocates and other lawyers to their clients (similar to work-product doctrine or attorney-client privilege).

(iii) **Are there special rules for handling electronically stored information?**

There are no such rules. Parties, tribunals and institutions are free to adopt best practices available. One of the licensed institutions – Institute of Modern

Arbitration – provides users with its own e-system for submissions, record keeping and case management.

VIII. Confidentiality

(i) **Are arbitrations confidential? What are the rules regarding confidentiality?**

Confidentiality rule may be found in the law on arbitration, which further prohibition on arbitrators, as well as staff of arbitral institution to disclose information learned in the course of proceedings. Hearings are not open to public. There is no similar provision in the law on international commercial arbitration but in practice confidentiality is viewed as an immanent feature of alternative dispute resolution. The parties may also address this issue, whether directly in the arbitration agreement, or indirectly, by selecting institutional rules, such as those of the ICAC, which contain an explicit confidentiality provision and prevents arbitrators and staff from disclosure of information that can be detrimental to the parties' interests.

Arbitration-related proceedings that may be brought before state courts are not confidential. If there is an application to the court in respect of arbitral proceedings, a party wishing to maintain confidentiality may file a respective motion but that option is not frequently used.

(ii) **Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

The parties may rely on the general provision of the arbitration law empowering the arbitral tribunal to grant any interim measures of protection it considers appropriate (see Section VI). Specific provisions may be found in the arbitration rules and in the parties' agreement. Requests for protective orders are particularly common when the underlying contractual documentation contains a confidentiality clause, which thus may be enforced.

(iii) **Are there any provisions in your arbitration law as to rules of privilege?**

Arbitrators are immune from being called as a witness and shall maintain confidentiality in respect of the proceedings they handle. As to party's counsel, general rules of privilege apply. Communications with advocates are protected by the privilege of advocates' secrecy. An advocate may not be summoned and examined as a witness with respect to facts and information learned during the course of the representation. Communications with in-house counsel as well as with outside counsel, unless he has status of advocate, which is not required by Russian law, are not covered by legal privilege (see also Section VII).

IX. Evidence and Hearings

(i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration**

proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

A Russian translation of the IBA Rules on the Taking of Evidence in International Arbitration was produced in 2011 and is available on the IBA website. Russian arbitrators rarely rely on the IBA Rules and it is more common to rely on the arbitral tribunal's power under the arbitration law to conduct proceedings in the manner they consider appropriate particularly, in respect of determining the admissibility, relevance and weight of any evidence.

Rules of arbitral institutions often contain guidance as to the presentation of evidence. In practice, arbitrators may take the approach more common for state court proceedings. For instance, the parties may be required to produce all documents either as originals, or as authenticated copies, which is the case under the ICAC Rules.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

Arbitrators are masters of the proceedings and may govern hearings, as they consider appropriate, subject to the party's agreement. General notions of due process apply in arbitration. The parties shall be given an equal opportunity to present their case and must be treated equally. In practice both the parties and the tribunal tend to derive general principles of procedure and approach towards the hearing from procedure codes applicable in domestic courts (Code of Civil Procedure and Code of *Arbitrazh* (Commercial) Procedure).

Non-appearance of any of the parties does not prevent the tribunal from conducting the hearing if it considered such non-appearance unfounded.

Arbitral proceedings may be conducted entirely on the basis of documents and other written evidence. However, it is traditional to have oral hearings.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

In line with the continental procedural tradition, documents are given more weight than witness testimony. In fact, it is quite common that parties do not produce witnesses.

In cases where a party produces a witness, it is frequent to limit testimony to oral examination without exchanges of witness statements. All parties may pose questions to the witness. Arbitrators may intervene with questions at any time. The transcript of witness testimony will typically be prepared by the tribunal secretary in summary form and not verbatim. Often it is paraphrased and summarized, unless one of the parties engages a reporter or a stenographer to produce a transcript. Usually the claimant's witnesses are examined first and in each case the party's counsel (including the party who produced the witness) is given an opportunity to conduct oral examination.

- (iv) **Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

No mandatory rules on oath or affirmation apply to witnesses examined by arbitral tribunals. Any person, including parties' executives, employees, consultants and the like, may appear as a witness. The witness is typically instructed by the chairman of the arbitral tribunal that he or she is expected to provide truthful and honest testimony and failure to do so may result in the tribunal drawing an adverse inference.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (eg, legal representative) and the testimony of unrelated witnesses?**

There are no procedural differences in respect of the questioning of witnesses specially connected with one of the parties, although arbitrators tend to discount the weight of testimony of related witnesses due to a general understanding that the submissions would typically be geared towards a position favouring their party. As explained above, the existence of a relationship between a witness and a party is as such no reason for disqualification of the witness. Typically, the tribunal will carefully scrutinise the credibility of a related witness.

- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Experts are commonly used and their testimony is usually produced in the form of a written statement prior to hearings. Experts may be called to hearings and asked questions about the contents of the report and their findings; however, this is not a universal rule. If an expert is called to the hearings, both parties are given opportunity to ask questions with the tribunal leading the examination and interjecting with comments or clarifications at any point.

- (vii) **Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

The arbitration laws specifically empower an arbitral tribunal, subject to parties' agreement, to choose and appoint one or several experts and define the scope of their assignment. There is no limitation to commissioning an expert assessment in addition to the testimony given by the party appointed experts.

Normally, however, an arbitral tribunal would not appoint its own expert unless a party so requests or there are other compelling reasons to do so. Costs of a tribunal-appointed expert are always an issue and the parties may be required to put up an additional deposit to cover its fees. There is no legal presumption as to the credibility of a tribunal-appointed expert as opposed to a party-appointed expert.

Some arbitration institutions do maintain a list of experts but there is no requirement that the expert be selected from that list only.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Witness conferencing is typically not used in arbitration, although this practice may gain acceptance in the near future.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

Typically, the arbitration institution will provide extensive secretarial support to the arbitrators.

A remarkable element of Russian institutional arbitrations, such as the ICAC, is the role of the reporter (*dokladchik*), which may be compared to that of a federal district judge's clerk in the United States. Apart from keeping the file, sitting in on hearings and keeping minutes thereof, it is common for them to be involved in drafting awards. All *dokladchiks* are lawyers, typically younger, and many are quite skilled. At the ICAC, the sole arbitrator or the chairman of the tribunal nominates the *dokladchik*, who may be selected, as a general rule, from the list approved by the Presidium of the ICAC. A *dokladchik* has to be impartial and independent, just as members of the tribunal.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

An arbitral award shall be made in writing and signed by all arbitrators or signed by the majority with reasoned explanations for any omitted signatures. Other formal requirements for an award are to state the reasons upon which it is based; to allocate arbitration costs between the parties; to state the date and the place of the arbitration. A signed copy of the arbitral award is required to be delivered to each party.

The law governing domestic arbitration contains additional requirements:

- the award must identify the arbitral tribunal, the procedure of its appointment and the ground for its competence as well as the parties' names and addresses;
- the award must deal with the substance of the claim(s) and the response(s) as well as the parties' motions; and
- the arbitral award must describe the facts established, the evidence and legal rules supporting the tribunal's findings.

There are no limitations on types of permissible relief in the laws on arbitration.

However arbitrators are unlikely to grant relief that is incapable of being enforced in the country where enforcement of the arbitral award may be sought.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

Russian courts recognize and enforce arbitral awards containing punitive or exemplary damages for breach of contract. Post-award interest and compound interest may also be awarded. These are considered issues of applicable substantive law and thus not subject to review on merits by a domestic courts. In extreme cases, an arbitral award of multiple or exorbitant punitive damages may be found to be in violation of public policy.

(iii) Are interim or partial awards enforceable?

Russian courts do not enforce preliminary or interim awards, specifically arbitral awards ordering a party that defaulted in paying an advance on arbitration costs to indemnify another party that paid such amounts on its behalf. Such awards are not considered to be final within the meaning of New York Convention.

Partial awards are enforceable to the extent they contain a final determination of part of the respective issues to be resolved by the tribunal.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Arbitrators may issue dissenting opinions and those shall be attached to the award. There are no other rules as to the form or content thereof.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

A settlement can be recorded in the form of a consent award if the parties asked so and the tribunal has no objections. A consent award shall comply with all formal requirements of any other award. It has the same status and legal effect as any other arbitral award on the subject matter of the dispute.

The arbitral tribunal shall issue an order for termination of the arbitral proceedings where the (i) claimant withdraws his claim, subject to respondent's objections; (ii) parties agree to terminate the proceedings; or (iii) tribunal finds that continuation of the proceedings has become unnecessary or impossible. With respect to the latter ground, the law governing domestic arbitration specifies that it may be invoked if there is a court decision or an arbitral award between the same parties over the same dispute.

Additional causes for terminating the proceedings may be found in the rules of arbitral institutions - typical causes are failure to pay the fees or inactivity of the parties.

(vi) **What powers, if any, do arbitrators have to correct or interpret an award?**

A premise is that the authority of the arbitral tribunal is terminated after the termination of the arbitration subject to its power to correct or interpret the award.

According to the laws on domestic and international arbitration, an arbitral tribunal is empowered to make typographical or clerical corrections to the arbitral award upon its own initiative within 30 days from issuing the arbitral award. A party with notice to the other party may request the arbitral tribunal to make typographical or clerical corrections within 30 days from receipt of the arbitral award, unless the parties agreed to a different timeframe. Further, if contracted for by the parties, a party with notice to the other party may request the arbitral tribunal to clarify or explain any part of the arbitral award or reasoning therein within 30 days from receipt of the arbitral award, unless the parties agreed to a different timeframe. Unless otherwise agreed by the parties, a party with notice to the other party may request the arbitral tribunal to make an additional arbitral award as to claims presented in the proceedings but omitted from the arbitral award. The time limit for such an application is also 30 days from receipt of the award.

Russian courts, when asked to set aside an arbitral award may, where appropriate and so requested by a party, temporarily stay setting-aside proceedings in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action that in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

XI. Costs

(i) **Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

In the context of domestic arbitration, a general rule is that the tribunal shall allocate the costs in accordance with parties' agreement. In the absence of the agreement, arbitration costs may be apportioned between the parties pro rata depending on the relative success of each party in its claims. Typically, the unsuccessful party bears the costs. However, where the case of the parties is evenly balanced, parties are often left to bear their own costs. On rare occasions, when specific circumstances of a case dictate so, the arbitral award on costs may not follow the event.

(ii) **What are the elements of costs that are typically awarded?**

Russian law stipulates that costs shall include, unless otherwise agreed by the parties, fees and expenses of the arbitrators and third parties (witnesses, experts and interpreters), counsel's legal fees and expenses, administrative costs and other expenses to be defined by the arbitral tribunal.

As far as legal fees are concerned, Russian tribunals lean towards full recoverability of reasonable fees of outside counsel. However, arbitrators may be quite cautious in determining what is reasonable. Bear in mind that as a general matter, arbitration is far less expensive here than in Western jurisdictions.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

The law governing domestic arbitration provides that arbitral tribunal fees shall be determined by an arbitral institution.

Russian arbitral institutions operate on the basis of a fee scale pegged to the amount in dispute or fixed on a lump sum basis and charge a fraction of the cost of prominent institutions elsewhere.

In ad hoc arbitrations the tribunal decides on its own costs and expenses. The law provides guidance for criteria for determining respective fees in ad hoc proceedings being price of the claim, complexity of the dispute, time spent by the arbitrators and other relevant factors.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

The arbitral tribunal has broad discretion to allocate costs between the parties. The law governing domestic arbitration specifies that the costs shall be allocated in proportion to the satisfied and dismissed claims.

Noteworthy, the advance on costs is typically deposited alone in full by the claimant. The respondent is not expected to contribute to the arbitration costs until the arbitral award is made or, alternatively, until it files a counterclaim.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

The courts may review the arbitrators' decision on costs under general grounds for setting aside arbitral awards. However, it is not common for the court to intervene with the cost matters of arbitral awards.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

An arbitration award may be challenged within three months from the date on which the party making an application had received the award. According to the court statistics, in 2016, *Arbitrazh* courts considered 577 challenge cases. In 106 of these 577 annulment cases, petitioners were successful. The 20 % annulment rate relates to both domestic awards and international arbitral awards rendered in Russia.

Grounds for challenging both domestic awards and international awards are based on the UNCITRAL Model Law and reflected in the arbitration laws and procedure codes.

The most frequently invoked grounds by petitioners, although in most cases unsuccessfully, are that the award is in conflict with the public policy of Russia or that the subject matter of the dispute is not capable of settlement by arbitration.

The average duration of challenge proceedings depends on the nationality of the parties involved in the proceedings. The proceedings may take two to four months between Russian parties and up to nine months, if one of the parties to the proceeding is a foreign person.

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 appeal to the Supreme Court, which is a rarity. Typically, leave to appeal to the highest court of the country is granted in one per cent of the applications.

Challenge proceedings do not stay enforcement; however, a party may apply for such stay.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

The parties may agree on a waiver of the right to challenge an arbitral award rendered under auspice of a permanent arbitration institution. Consequently, if the parties to arbitration have agreed that an arbitral award is final, then an application to set the award aside is, in general, inadmissible. However, in practice, courts may be willing to consider the public policy ground as well as arbitrability issues even in the face of the waiver.

The waiver shall be explicit and in writing. The right to challenge cannot be waived in *ad hoc* arbitration.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

Awards are immune from judicial review on the merits that applied to the substance of the dispute.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

Yes, courts may remand an award to the tribunal. In particular, if asked to set aside an award upon the following grounds:

(i) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid;

(ii) or the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings;

(iii) or the arbitral award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement;

(iv) or the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or the federal law,

a court may, where appropriate and so requested by one of the parties, suspend setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will enable to eliminate the grounds for setting aside.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

The arbitration laws and procedure codes regulate the enforcement of awards rendered in Russia. These arbitration regulations have been inspired by the UNCITRAL Model Law and the New York Convention and thus the grounds for opposing the enforcement of an award are also similar to those found in these legal instruments.

The party shall file an application for recognition and enforcement of a foreign arbitral award with a court at a place of residence/location of a party against whom the award was rendered. If the place of residence/location is unknown, the application shall be filed with a court at the location of the property of the party against whom the award was rendered. The same conditions are applicable to domestic awards and international awards rendered in Russia.

The opposition does not stay the enforcement; however, a party may apply for such stay. The court may leave the enforcement only if there are significant grounds for such measure.

Arbitral awards that do not require enforcement are recognized in Russia without the need for separate procedure. A party against which such an award is rendered may object against the recognition of the award on general grounds

within one month from the date of the service of the award.

- (ii) **If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

Courts have jurisdiction over execution (collection) proceedings handled by bailiffs. A party may seek to amend, suspend or modify the writ of execution, seek binding explanations from the court as to the content of the writ of execution and procedure for its implementation and appeal the actions of bailiffs.

- (iii) **Are conservatory measures available pending enforcement of the award?**

Yes, conservatory measures are available pending enforcement of the arbitral award.

- (iv) **What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

Russian courts favour foreign arbitral awards and enforce them in the majority of cases (circa 90 per cent). As for annulled awards, the general approach by Russian courts is to reject their enforcement relying on Article V of the New York Convention. However, it shall be taken into account that Russia is also a party to the European Convention on International Commercial Arbitration 1961 that limits the possibility to reject enforcement of annulled awards made in contracting states to specific grounds.

- (v) **How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

The time limit for seeking the enforcement of an award is three years from the date when the award became binding upon the parties. In general, it may take two to four months to enforce a domestic arbitral award and up to nine months for a foreign award.

XIV. Sovereign Immunity

- (i) **Do State parties enjoy immunities in your jurisdiction? Under what conditions?**

In Russia, functional doctrine of sovereign immunity prevails. Foreign states enjoy immunity from adjudication for acts performed in the exercise of sovereign power, but not in respect of commercial acts (the Federal Law No 297-FZ on Jurisdictional Immunity of a Foreign State and a Foreign State's Property in the Russian Federation).

The Law on Jurisdictional Immunity requires reciprocity, ie Russian courts must consider the degree of immunity the Russian Federation enjoys in a foreign state

when deciding whether to lift the jurisdictional immunity of that state. Consequently, the immunity of a foreign state can be limited in Russia if the foreign state limits Russian jurisdictional immunity.

The Law on Jurisdictional Immunity defines disputes in which a foreign state cannot rely on the state immunity: (i) disputes concerning the commercial activity of a foreign state or civil law transactions, (ii) labor disputes, (iii) disputes concerning participation in organisations, (iv) disputes concerning a foreign state's rights and obligations in respect of real estate and other property located in Russia, (v) tort cases, (vi) intellectual property and copyright disputes and (vii) disputes concerning commercial vessels.

Moreover, a foreign state waives its jurisdictional immunity if it submits a claim to a Russian court. Finally, any property of a foreign state located in Russia can be seized to secure the execution of a court decision if this property is not used and/or not supposed to be used for the purposes of performing a state's sovereign power functions.

The case law on the application of the Law on Jurisdictional Immunities is only beginning to develop, for instance, *Tatneft v. Ukraine* in which *Tatneft* seeks an enforcement of a UNCITRAL award issued against the State in an investment dispute under the Russia-Ukraine BIT.

(ii) Are there any special rules that apply to the enforcement of an award against a State or State entity?

No special rules apply to the enforcement of arbitral awards against a State or State entity through court proceedings. However, a court decision issued against the State, ie against funds of the federal budget, or a regional budget, or a municipal budget, has to be submitted to the State Treasury (a department of the Ministry of Finance) and there are special rules regarding the allocation of public funds to satisfy such claims as well as special administrative procedures. Court bailiffs are not involved in such execution proceedings.

XV. Investment Treaty Arbitration

(iii) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Russia signed the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965); however, the Convention has not been ratified yet.

Russia signed the Energy Charter Treaty containing provisions pertaining to investment protection, but never ratified it and “withdrew its signature” from the Energy Charter Treaty in 2009.

Russia is a party to the Treaty on the Eurasian Economic Union (2014). The

Treaty provides, among others, a full range of investment protections, along with a binding investor-state arbitration mechanism (*See*: Protocol No 16 to the Treaty). Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia are members to the Treaty, as of August 2017.

(iv) **Has your country entered into bilateral investment treaties with other countries?**

Russia is the successor to the Soviet Union and assumed the international obligations of the latter. Bilateral investment treaties concluded by the Soviet Union are binding for Russia.

Russia has signed about 80 bilateral investment treaties and most of them have been ratified and entered into force. According to UNCTAD, Russia is a party to 64 BITs in force. Meanwhile, a bilateral investment treaty with the United States was signed in the 1990s but has not been ratified yet.

In general, BITs include a fair and equitable treatment standard, clause dealing with expropriation and contain a binding investor-state arbitration mechanism. The scope of arbitration clauses and available fora vary from treaty to treaty.

XVI. Resources

(i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

Bulk of the material relating to arbitration is available in the Russian language only. There are several online services that provide access to Russian legislation and court practice. The most prominent are Garant, Consultant, Kodeks, Casebook and State Automated System 'Justice' (www.garant.ru, www.consultant.ru, www.kodeks.ru, www.casebook.ru and www.sudrf.ru).

Public resources include portals and forums, for instance www.pravo.ru, www.arbitrations.ru, www.zakon.ru and www.cisarbitration.com. These sites publish materials and discussions relating to arbitration.

Leading magazine on the subject are *Treteysky Sud* (www.arbitrage.ru) and *Vestnik Mezhdunarodnogo Kommercheskogo Arbitrazha* (International Commercial Arbitration Review, www.arbitrationreview.ru), which is now available online at Kluwer Arbitration.

Reputable texts in Russian are *Commentary to the Law on International Commercial Arbitration, Commentary of the Arbitration Law. Scientific-practical article-by-article comment on the legislation on arbitration courts* (V.V. Khvalei., ed. - M: RAA, 2017), *Mezhdunarodnyj kommercheskij arbitrazh: uchebnik* by Karabelnikov B.R. (Infotropic, 2012) and *Ispolnenie i osparivanie reshenij mezhdunarodnyh kommercheskih arbitrazhej. Kommentarij k N'ju-Jorkskoj konvensii 1958 g. i glavam 30 i 31APK RF 2002 g.* (Statut, 2008) and also Ilya Nikiforov, *UNCITRAL Arbitration Rules 2010 (with a new paragraph 4 of article 1 of 2013): Workbook* (Statut. Moscow, 2015) by

Ilya Nikiforov.

Treatises in English are scarce. *'Arbitration Law of Russia: Practice and Procedure'* by Roman Khodykin (2013) and *'Enforcement of Foreign Arbitral Awards in Russia'* (2014) by William R. Spiegelberger provide good coverage. However, these were published before 2016 reform.

Basic IBA texts were translated into Russian and are available at IBA site:

Guidelines on Conflict of Interest in International Arbitration (IBA, 2004)
<https://www.ibanet.org/Document/Default.aspx?DocumentUid=601BFA34-F5E6-4CD8-A4C1-D1C0BDF4CEBE>

Guidelines on Party Representation in International Arbitration (IBA, 2013. Foreword by Ilya Nikiforov, Tatyana Slipachuk, Vladimir Khvalei)|
<https://www.ibanet.org/Document/Default.aspx?DocumentUid=B080D208-4742-4225-99F2-406DCE66CAD9>

Rules on the Taking of Evidence in International Arbitration (IBA, 2010)
<https://www.ibanet.org/Document/Default.aspx?DocumentUid=D93AED22-2A27-4B1A-8455-D49711F66C18>

There is also a number of materials discussing the amendments introduced by the 2015 reform, for instance Skvortsov O.U. and Savranskiy M.U. (eds), *'Kommentarij k Federalnomu Zakonu 'Ob arbitrazhe (treteiskom razbiratelstve)v Rossijskoy Federatsii'* (Statut, 2016) and Kurochkin S.A. *'Tretejskoe razbiratelstvo and arbitrazh'* (Statut, 2017).

- (ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

Arbitration related events are held in Russia almost on a monthly basis. The Russian Arbitration Association (RAA) frequently organises ADR events in the form of roundtables, lectures, seminars and conferences (www.arbitrations.ru/en/). Among other recurring events are the Annual International Arbitration Conference organised by the ICC, the ABA Moscow Dispute Resolution Conference and the Russian Arbitration Day.

There are also seminars and workshops organised by young practitioners by the Russian Arbitration Association 40 (RAA40), LCIA, ICC and ICDR.

XVII. Trends and Developments

- (i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

Arbitration is the only real alternative to court proceedings in commercial matters.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

While dispute settlement through a trustworthy referee (an elder with political, business or social clout) is traditionally common for Russian culture, formal ADR practices, apart from arbitration, are not broadly used.

It is not rare for contracts to contain multi-tier clauses, which call for good-faith negotiations between the parties prior to resorting to litigation or arbitration. Such contracts do not typically require proper mediation, but if such a clause is present, the parties are expected to make a conciliation attempt before commencement of the proceedings.

Mediation becomes accepted in disputes between parties especially belonging to the same group of companies and thus having strategic interest in future relations.

The 2010 Law on Mediation provides that a dispute may be referred to mediation at any stage of court or arbitral proceedings. New arbitration laws also specifically state that mediation is allowed at each stage of arbitration and may cause suspension of the proceedings. The statute of limitations period is tolled for the duration of the mediation procedures.

If the parties enter into a mediation or settlement agreement relating to their dispute, it operates as a civil law contract and may be recognized and enforced by both courts and arbitral tribunals. The arbitral tribunal may also render a consent award based on the mediation or settlement agreement that could simplify its enforcement. Any information that becomes known during mediation proceedings may not be disclosed by a party at a later stage of the legal process and is inadmissible evidence in subsequent court or arbitral proceedings.

Specific provisions of the law deal with deadlines of mediation procedures. Where mediation is commenced prior to court proceedings, the mediation must be completed within 180 days. The time limit is only 60 days to complete mediation proceedings commenced in parallel to on-going court proceedings.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

The recent arbitration reform has opened a new page in arbitration in Russia and brought with it both reinforcement of state control over arbitral institutions and an attempt to make arbitration more attractive and in line with the UNCITRAL Model Law.

The hot topic is a new requirement for authorization by the Ministry of Justice of arbitral institutions, introduced for the purpose of proper development of domestic arbitration market but applicable to any institution (see Sections I and II). That has led to only few of them so far obtaining the permission to operate. The ICAC and the MAC at the Chamber of Commerce and Industry of the Russian Federation remain the most stable institution in the sense their authority was not questioned by the new law that released it from the necessity to apply

for permission.

In the view of the state's tendency for closer involvement in the activity of arbitral institutions, the new regulation imposed a number of limits on ad hoc arbitration that will likely make it less desirable and ultimately unsuitable for a number of claims, for instance for disputes falling within the scope of corporate law under Russian legislation, as well as where the parties wish to waive their right to have recourse to the court for the award annulment, which is now available only for institutional arbitrations.

Having mentioned that, the reform puts Russia on a non-too numerous list of countries that explicitly allow parties to waive the right to set aside an award without reservations. The law also emphasised that award recognition does not require any separate procedure and is thus automatic, which can be important in practice for the purpose of the parties' ability to rely on the award that did not require enforcement.

The law introduced the presumption that any dispute is arbitrable unless there is an express legal provision of the opposite. In general, Russian courts remain cautious about arbitrability of any disputes containing public element and one cannot exclude quite extensive interpretation of the public interest notion. A recent example is a finding by the Supreme Court panel on the non-arbitrability of the claim arising out of the commercial contract for utility connection of power equipment on the basis that the contract was for public needs' and involved public funds (the Supreme Court Ruling in the Case No 305-ЭС15-20073 dd 28 July 2017).

Mediation is becoming more popular in intragroup disputes.