GETTING THE DEAL THROUGH

Arbitration

in 55 jurisdictions worldwide

2013

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Laws and institutions

1 Multilateral conventions

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

Yes, the Russian Federation is a contracting state to the New York Convention. This Convention was ratified by the USSR on 24 August 1960. Following the dissolution of the Soviet Union in 1991, the Russian Federation became the successor state and is recognised as the continuing legal successor to all international treaties of the USSR.

Based on article I(3) of the Convention, Russia has made a reservation with regard to awards made in the territory of a non-contracting state. According to the reservation, Russia will apply the Convention only to the extent to which the non-contracting state grants reciprocal treatment.

Apart from the New York Convention, Russia has also signed and ratified the European Convention on International Commercial Arbitration (1961); the Moscow Convention on the Settlement by Arbitration of Civil Law Disputes Arising from Relations of Economic, Scientific and Technical Cooperation (1972); the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk Convention, 1993); as well as the Agreement on Procedure of Settlement of Disputes Related to Economic Activity (Kiev Convention, 1992). Finally, Russia is a party to the Washington Convention on the Settlement of Investment Disputes (ICSID Convention, 1965), though this Convention is not in force in Russia as it has not been ratified.

2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

At present, there are 71 signed bilateral investment treaties with the Russian Federation. The treaties with Algeria, Croatia, Ecuador, Equatorial Guinea, Indonesia, Jordan, North Korea, Namibia, Nicaragua, Nigeria, Poland, Portugal, Singapore, Slovenia, Tajikistan, Thailand, the United Arab Emirates, the United States and Uzbekistan are signed but have not come into force.

3 Domestic arbitration law

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

The primary domestic source for domestic proceedings is the Civil Code, which establishes the right to a legal defence in the courts, including through the arbitration process. Also, this right is confirmed by the Arbitrazh Procedure Code and the Civil Procedure Code.

The law 'On Arbitral tribunals' of 24 July 2002 specifies principles, procedure, arbitration agreement and all other particularities.

As for foreign proceedings, there is the federal law 'On International Arbitration', dated 7 July 2002.

4 Domestic arbitration and UNCITRAL

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

The norms for domestic arbitration law correspond with the norms of the UNCITRAL Model Law in a major part. However, there are differences between them.

First, in comparison with the UNCITRAL Model Law, the domestic arbitration law has no norms that regulate what authority appoints, waives or replaces an arbitrator in the case of a refusal by a party or an authority agreed by both parties.

Second, there is no regulation of the creation and activity of the arbitral tribunal.

Additionally, the arbitration law defines two types of arbitral tribunal (permanent or created for resolution of a particular case).

5 Mandatory provisions

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

The mandatory domestic arbitration law provisions on procedure are few.

First, concerning the arbitration agreement: the arbitration shall be made by the parties in written form.

Second, the federal law provides a list of mandatory information that a claim must contain: date, names and addresses for companies and name, passport identification and address for individuals, justification of the arbitral tribunal jurisdiction, plaintiff's claims, circumstances on which a plaintiff is basing his or her claims, proofs of the grounds, claim fee and a list of attached documents.

The claim needs to be signed by a plaintiff or by his or her representative. In the case that the claim has been signed by his or her representative, a power of attorney shall be attached to the claim.

The burden of proof shall lie with the party who is asserting the circumstances on which he or she is basing his or her claims or his or her objections.

The main number of requirements can be found in the regulations on arbitral tribunals where the parties agree to transfer their claim according to the arbitration agreement.

The regulations on the arbitral tribunals are considered as an integral part of the arbitration agreement.

6 Substantive law

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

In the case of the parties in a contract having chosen an applicable law, an arbitral tribunal will have to decide the case on its merits, taking into consideration this choice of the parties.

However, in the case of the choice of applicable law not being made, the arbitral tribunal decides the disputes on the basis of the Constitution of the Russian Federation, federal and local law, and international agreements, as well as on the basis of all other regulatory legal acts that are in force in Russia.

7 Arbitral institutions

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

Arbitration at the Moscow Chamber of Commerce and Industry (MCCI)
38/1, Sharikopodshipnikovskaya str
Moscow 115088
Russia
www.mostpp.ru/eng

Notable rules and features of this institution include the following:
- fees are calculated on the basis of the amount in dispute;
- parties may decide on the number of arbitrators that they need. Otherwise, the number of the arbitrators is three;
- arbitrators shall be appointed from the list of the Arbitral tribunal;
- besides a main arbitrator, each party needs to appoint a replacement arbitrator in the case of illness or death of the main one. The third arbitrator is appointed by the previously appointed two arbitrators;
- in the case that the amount in dispute is less than US$3,000, the dispute shall be decided solely by one arbitrator who is appointed by the arbitral tribunal;
- registration fees in the amount of US$500 shall be paid at the moment of the claim filing. This registration fee may not be reimbursed;
- an arbitral tribunal may increase fees up to 50 per cent, in the case of the arbitral tribunal finding that the dispute is particularly legally or factually difficult;
- 60 per cent of the paid fees will be reimbursed in the case of the arbitration procedure being terminated before the first hearing, and 20 per cent if terminated after the first hearing, but before the final judgment;
- all the documents shall be submitted in five exemplars in the case of the three arbitrators, and in three exemplars in the case of the sole arbitrator.

Arbitral tribunal at the Chamber of Advocates of Saint-Petersburg.
53 Nevsky prospect
Saint-Petersburg 191025
Russia
www.ts.apspb.ru

Notable rules and features of this institution include the following:
- duration of the arbitration process is no more than two months from the arbitration composition;
- arbitrators shall be appointed from the list of the arbitral tribunal;
- besides a main arbitrator, each party needs to appoint a replacement arbitrator in the case of illness or death of the main one;
- a third arbitrator may be appointed by the both parties. In such a case the third arbitrator may not be in the provided list of the arbitrators in the arbitral tribunal;
- a sole arbitrator decides the case only if the both parties have agreed to it;
- arbitration fees shall be paid in rubles;
- 50 per cent of the paid fees will be reimbursed in the case of the arbitration procedure being terminated before the first hearing and 30 per cent if the case is decided by the sole arbitrator;
- fees are calculated on the basis of the amount in dispute; and
- documents shall be submitted in four exemplars in the case of three arbitrators and in two exemplars in the case of a sole arbitrator.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

The following cases may not be decided by the arbitral tribunals:
- disputes that have arisen from administrative or other public relationships;
- disputes of special proceeding, such as adoption, recognition of a person as dead or missing, limitation of legal capacity, concerning notarial actions, involuntarily hospitalisation to an inpatient psychiatric facility or change or correction in civil registration; and
- disputes that aim to establish facts that have a legal meaning.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

The arbitration agreement may be made only in written form. The arbitration agreement is considered as concluded in written form in the case of:
- the document of which the arbitration agreement is a part is signed by parties; or
- if the agreement is made by the way of the exchange of letters, messages through teletype, telegraph or by way of other devices of electronic or other communication, that provide the establishment of such an agreement.

The reference in a contract to the document that contains a provision on dispute transfer to the arbitral tribunal is considered as an arbitration agreement in the case that this contract is in written form and the reference makes the arbitration agreement a part of the contract.

The requirement of the written form for the arbitration agreement is an imperative norm. In the case of non-compliance to this norm, the arbitration agreement is not concluded.

The integral part of an arbitration agreement is the rules of a permanent arbitral tribunal to which the parties have agreed to transfer their dispute.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Death of an individual or liquidation of a company entails the termination of the arbitration agreement.

Opening of insolvency proceedings against one of the parties obliges another party to file all claims that have arisen before this opening to the state court that has begun this procedure. The arbitration agreement is enforceable but may not be applied.

Legal incapacity at the moment of the signing of the arbitration agreement affects the avoidance of such agreement. The consequent recognition of legal incapacity does not affect the validity of the previous signed arbitration agreement.

The invalidity of the main contract does not affect the invalidity of the arbitration agreement.

The duration of the arbitration agreement may be limited by the parties. Otherwise the arbitration agreement stays valid as long as all the obligations from the main contract are not accomplished. Thus the termination of the main contract does not affect the arbitration agreement.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement? (Please elaborate, briefly, in particular on: assignment, agency, succession, insolvency.)

The arbitration agreement is in force only for the signatories and may not bind any third party.

In the case of the assignment of the main contract where an arbitration agreement is a part, there is no regular legal practice in the Russian courts. Some of them consider that the assignment of the rights and obligations of the main contract assigns the arbitration agreement as well. Other courts oppose such an opinion. The same dilemma concerns the case of the succession.

We would recommend making an express assignment and succession of the arbitration agreement.

In the case of insolvency procedure, all claims should be filed to the court that opened the insolvency procedure. In the case of a company being recognised as bankrupt, the company will be liquidated. The liquidation of a company entails the termination of all previous obligations, including any arbitration agreement.

In the case of an agency, it is dependent on the agency contract conditions. If the agent is acting on behalf of his or her own name, the principal is not bound by the signed arbitration agreement. He or she will be bound if the principal and the agent previously had agreed that the agent is acting on behalf of the principal. Thus, all the obligations made on behalf of the principal bind the principal, including the arbitration agreement.

12 Third parties – participation

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

Russian legislation does not specify the possibility as well as the procedure of the participation of the third parties.

However, in practice, a court or one of the parties may suggest the participation of a third party. As one of the bases of the arbitration process is confidentiality, third parties may participate in the arbitration process as long as both parties and a third party itself agreed on such participation.

The legal situation of a third party is not determined by current legislation because it does not determine that they have the same rights and obligations as the parties have. Thus third parties are deprived of accomplishing the most meaningful process actions, such as an arbitrator appointment or contestation of the final award. Thus, although third parties may participate in the arbitration process, their role is very limited because they cannot influence the arbitration process.

13 Groups of companies

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

Such doctrine is not recognised in Russian arbitration practice and thus only the signatory company is bound by the provisions of the signed arbitration agreement.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

Some associations, stock exchanges or joint ventures may establish in their rules that all disputes shall be decided in arbitral tribunal. Thus a new contractor needs to submit to these rules by the presentation of an application.

This stipulation may be a part of a multiparty contract, which will make such a stipulation an arbitration agreement between the same parties of the contract.

Constitution of arbitral composition

15 Eligibility of arbitrators

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

The Russian legislation establishes some limitations for the arbitrators:

- an arbitrator is an individual who is capable of providing an impartial judgment, is not directly or indirectly interested in the result of the case, is independent of the parties and has agreed to be an arbitrator;
- an arbitrator, who is solely deciding the case, must have an advanced level in legal education. If the case is decided collectively, in this case the presiding arbitrator needs to have an advanced level in legal education; and
- an arbitrator may not be an individual who:
  - does not have a complete legal capacity or is under guardianship;
  - has a previous criminal record or is held criminally liable; or
  - is a person whose powers as judge, attorney, notary, investigator, prosecutor or another employee of a law enforcement system were ceased for actions that were incompatible with his or her professional activity.

A foreign citizen may be appointed as an arbitrator in the arbitral tribunal in Russia.

Neither an active or retired judge may be an arbitrator.

According to Russian legislation, the composition of the arbitral tribunal is mostly regulated by the rules of a permanent arbitral tribunal, which has its list of arbitrators. However, the number of the arbitrators shall be uneven.

There has been no legal practice in the Russian courts where an arbitrator has been discriminated because of his or her nationality, religion or sex.

16 Default appointment of arbitrators

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

As for a permanent arbitral tribunal, there are rules that specify the method of appointing the arbitrators and the composition of the arbitration composition.

For a temporary arbitral tribunal, the composition of the arbitration is based on the agreement of the parties. In the case that they do not agree, the composition of the arbitration will be as follows. Each party appoints one arbitrator and then the appointed arbitrators appoint the third one. In the case that within 15 days one of the parties does not appoint an arbitrator or two appointed arbitrators do not appoint a third one, the arbitration process shall be terminated and the dispute shall be decided in a competent court.

In most permanent arbitral tribunals, the appointment process is as follows. Each party appoints one arbitrator and the arbitral tribunal appoints the presiding arbitrator.

Arbitration at the Moscow Chamber of Commerce and Industry (MCCI)
There are three arbitrators for each dispute. In the case the amount in dispute is less than US$3,000, the case is decided by a sole arbitrator.

Arbitral tribunal at the Chamber of Advocates of Saint-Petersburg.
In the case of the parties not agreeing otherwise, the number of the arbitrators is three.

17 Challenge and replacement of arbitrators

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

An arbitrator may be challenged in the case of non-compliance to the requirements of those listed in question 15.

In the case that an arbitrator knew of his or her non-conformity to the above-mentioned requirement, he or she has the obligation to inform the parties about it and to excuse himself.

The particularities of the challenging process are established by the rules on permanent arbitration.

In the case of illness or death an arbitrator may be replaced by another arbitrator. The process of replacing an appointed arbitrator corresponds to the process that has been used in order to appoint a replacement arbitrator.

In most of the permanent arbitral tribunals, the parties appoint two arbitrators (a principal one and replacement one).

For the present moment, the IBA Guidelines on Conflicts of Interests in International Arbitration do not apply.

18 Relationship between parties and arbitrators

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

Both parties have the opportunity to appoint one arbitrator (as the sole arbitrator or one of the three arbitrators in arbitration composition). Regardless of the appointment by one of the parties, this arbitrator is obliged to stay impartial during the whole arbitration process.

Each arbitrator has to be remunerated. This remuneration is a part of arbitration fees that parties pay to the arbitral tribunal, which also includes arbitrators' expenses (travel expenses, etc) and expenses for the organisation of the arbitration process, etc.

In a permanent arbitral tribunal the fees of the arbitrators are determined based on the fees scale stipulated by the rules of this arbitral tribunal. In the case of the absence of such a scale, the amount of the remunerations is determined based on claim price, claim difficulty, time spend by arbitrators and all other relevant circumstances.

19 Immunity of arbitrators from liability

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

This liability is not explicitly regulated by the legislation. The legislator does not stipulate any sanctions for arbitrators in the case of breach of the principles of confidentiality, independency, impartiality or legitimacy. At the present time, there is not any legal precedent that may demonstrate to us how this norm shall be applied in such a situation.

However, regardless of the fact that the legislator does not stipulate any sanctions for arbitrators' liability, the breach of the above-mentioned principles are considered as one of the grounds to rescind the award of the arbitral tribunal.

Jurisdiction

20 Court proceedings contrary to arbitration agreements

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

Regardless of the existence of an arbitration agreement between two parties, in the case of a dispute, one of the parties may file a complaint to a competent state court. This court will accept it. However, in the case that by no later than the end of the day when another party makes his or her first statement on the merits and makes an objection based on the existence of an arbitration agreement, in this situation the court will have to refuse to decide the case.

21 Jurisdiction of arbitral composition

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

An arbitral tribunal independently makes an award whether or not it has a competence thereto. In the case of disagreement, a party may challenge its competence only before he or she did not make his or her first statement on the merits.

In the case that a party considers that the arbitral tribunal exceeds its competence during the arbitration process, the party may challenge this. In such a situation the arbitral tribunal will have to render a court determination concerning this matter.

Rendering a decision by the arbitral tribunal with excess of competence or without competence over the dispute is one of the grounds for the rescission of the arbitral tribunal decision in the future.

Arbitral proceedings

22 Place and language of arbitration

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

According to the general rule, the parties determine the place of arbitration within the arbitration agreement. Failing prior agreement of the parties, the arbitral tribunal, at its own discretion, determines the place of arbitration subject to all circumstances, including the convenience of the parties. In respect of the language of the proceedings, failing prior agreement of the parties and provided that the proceedings according to the Russian law shall be conducted in the Russian language, as well as in the case of international arbitration, the tribunal, at its own discretion, determines the language of the proceedings.

23 Commencement of arbitration

How are arbitral proceedings initiated?

Arbitration proceedings start with referring a claim directly to the clerk of the arbitral tribunal by post or by e-mail. Requirements to the content of the claim are usually listed in the Regulation of Arbitration of the particular permanent arbitration.

According to the Regulation the parties may agree on the number of the judges. Unless otherwise provided by the agreement between the parties, as a rule, the composition of an arbitration consists of three judges. However, the parties may designate a single judge on mutual consent, taking into account the difficulty of the dispute, amount of claim, lower amount of arbitration fee (less than 20 per cent) and other essential circumstances.

When there is a composition of three judges, each party appoints one judge and those two judges designate from the list of judges the chief judge for the court composition. The parties can appoint as a judge any person of any profession on the condition of compliance to the requirements of independence and impartiality and also requirements of full legal capacity, no criminal record and lack of restrictions for an occupation of such kind of activity that is usually stated in the Regulation of the Arbitration.

The parties can adjudicate a dispute by themselves or with the help of a representative.

24 Hearing

Is a hearing required and what rules apply?

The parties are entitled to determine the rules, how the proceedings shall be conducted and they are entitled to choose the oral hearing or examination of the case 'according to the papers'. In the second form of arbitration the parties do not meet at the place of arbitration, but are entitled to send all papers to the tribunal and wait for the award.

Failing prior agreement of the parties, the proceedings are conducted in a form of closed session. The order of the session is not determined in law, but is determined by the tribunal at its own discretion.

25 Evidence

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

Each party shall prove the facts that it refers to. The principal distinction of the arbitral proceedings from the court proceedings is the possibility for the parties to agree on the rules of providing the evidence for the tribunal, including the rules of their 'admissibility, relevance, materiality and significance'. The law does not list the type of evidence, however, by means of a consistent interpretation of the law on arbitral tribunals we can conclude that the list of evidence is the following:

- the expert conclusion;
- written evidence;
- material evidence; and
- witness testimony.

These are the most common when the rules of providing the evidence are determined by the rules of a particular standing arbitrage.

There are no special provisions on witness testimony. Witness testimony is relatively uncommon in Russian arbitrations as opposed to written evidence. Witnesses are heard without being sworn in before the tribunal.

Failing prior agreement of the parties, the arbitral tribunal is entitled to appoint experts for clarification of the issue arising within the dispute and for requiring special knowledge, as well as to require from the parties the providing of additional papers, materials or items. Failing the prior agreement of the parties the arbitral tribunal determines the expert candidates and the issues to be clarified within the expertise. The expert conclusion is to be presented in written form.

A non-mandatory approach of the Russian legislation on this matter allows the presentation of the expert conclusions prepared by the specialists invited (appointed) by the parties (party-appointed experts). Such specialists are not appointed by the tribunal, but invited by the parties. The expenses for party-appointed experts shall be paid by the party that appointed such experts.

26 Court involvement

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

An arbitral tribunal, or a party with the consent of the arbitral tribunal, may request the competent court to provide assistance in obtaining evidence for use in arbitral proceedings. The court may execute such a request on the basis of the general Russian procedural rules on taking and securing evidence.

27 Confidentiality

Is confidentiality ensured?

The Russian law on arbitral proceedings does not contain an express confidentiality provision. In the Law on International Arbitration Proceedings, however, there is an obligation on the arbitrators, case reporter, experts and secretariat to keep confidential any information that they become aware of by virtue of the arbitral proceedings. Importantly, this obligation of confidentiality does not expressly extend to the parties in dispute.

In addition, the law clarifies that the arbitration hearings shall be conducted in private, unless the parties consent and direct the arbitral tribunal to allow the attendance of persons not participating in the proceedings. The arbitral awards are published in edited and abbreviated form, where the names of the parties and the details of the dispute are hidden, without the permission of the parties.

Interim measures

28 Interim measures by the courts

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

In the case of a party that is willing to take interim measures, he or she has the choice of the court to which he or she may address such a demand: an arbitral tribunal or a state-competent court. The arbitral tribunal does not have the legal powers that the state-competent court has. Thus, the arbitral tribunal may render the interim measures that will oblige only the parties and not any third party.

The interim measures may be taken at any stage of the arbitration proceeding.

The list of the interim measures provided by the legislator is not exhaustive and it is decided case by case:

- seizure of money assets, including money assets that will be paid into the bank account or any other property belonging to the defendant and being in his or her possession or in the possession of a third person;
- prohibition of certain actions to be accomplished by the defendant or a third person that affects the matter of dispute;
- imposition of obligations on the defendant to accomplish certain actions in order to prevent worsening or damage of the matter of dispute; and
- handover of the matter of dispute to the custody of the plaintiff or a third person, etc.

In the case that the arbitral tribunal has rendered the decision to take interim measures towards the third parties, this decision shall be legalised by the state-competent court. By the objection of another party, the state-competent court may refuse if it does not find enough proof in order to take interim measures.

In the case that the arbitral tribunal has refused to take interim measures, based on such an arbitration decision, the state-competent court rescinds this previous decision.

29 Interim measures by an emergency arbitrator

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

Interim measures may be taken even before the claim has filed to the arbitral tribunal. The legislator does not specify whether a demand on the interim measures may be filed to the arbitral tribunal before a claim has been filed.

Arbitration at the Moscow Chamber of Commerce and Industry (MCCI)

According to the Rules of the Arbitral Tribunal, a demand on interim measures may be filed before a claim has been filed. In such cases, the president of the arbitral tribunal will render a decision.

Arbitral tribunal at the Chamber of Advocates of Saint-Petersburg.

The Arbitral Tribunal Rules do not specify such a possibility.

30 Interim measures by the arbitral composition

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

The arbitral composition may take any interim measures that have been listed in question 28. This list is not exhaustive. However, as the arbitration composition does not have enough legal powers towards third parties, in the case the decision on interim measures concerns third parties, such a decision has to be legalised at the state-competent court.

The most practical interim measures that can be taken are the following:

- seizure of money assets, including money assets that will be paid into the bank account or any other property belonging to the defendant and being in his or her possession or in possession of a third person; and
- prohibition of certain actions to be accomplished by the defendant or a third person that affect the matter of dispute.

In practice the difficulty in taking interim measures is closely related to the proofs provided by a demanding party. According to Russian legislation, the interim measures may be taken only in two following situations if:

- in the case that the enforcement of the judgment will be difficult or impossible to execute; and
- in order to protect the plaintiff from considerable damage.

The demanding party is not obliged to provide the court with the address of any real estate or details of bank accounts. This burden is on the bailiff system in the Russian Federation.

The party against whom the interim measures have been taken may address a demand to the state-competent court in order to secure his or her possible losses in the future. In its turn, the court may propose or oblige the party who asked for the interim measures to secure such losses of another party by providing a bank guarantee, etc. The legislator does not provide such powers to the arbitral tribunals.

Awards

31 Decisions by the arbitral composition

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

According to the general provisions of Russian law the award of the arbitral tribunal is made by a majority of all its members unless the parties agree otherwise. The written award shall be signed by all arbitrators (or by the majority of arbitrators in the case of collegial proceedings), including the arbitrator having the dissenting opinion.

32 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The dissenting opinions shall be drafted as a separate written document in the same form as the award itself, but shall not be announced at the court proceeding. The dissenting opinion shall be enclosed with the award of the arbitral tribunal; however, the law does not require that a copy of the dissenting opinion be sent to the parties. Practically all dissenting opinions arise within the bulk of the proceedings, but shall not be considered as to preclude the enforcements of the award. Usually, they are used within the proceedings on reversal of awards in order to show the unsubstantial part of the making of the award.

33 Form and content requirements

What form and content requirements exist for an award?

The award shall be made in written form and signed by the arbitrators that are members of the arbitral tribunal. The essential parts of the award are the following:

- the date of making the award;
- the place of tribunal proceedings;
- the members of the tribunal and the method of its formation;
- the titles (names) and the locations of the legal entities and individuals being the parties to the proceeding;
- the basis for choosing the competence of the arbitral tribunal;
- the state of the case;
- evidence;
- the law applicable to the case; and
- the resolution of the tribunal.

34 Time limit for award

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

No time limits for rendering an award are provided for in Russian law. In practice, the time limit for the award can be agreed by the parties within the arbitration agreement or within the rules of the arbitral proceedings elaborated by the parties. Any time limit provided for can be extended by agreement of the parties or at the discretion of the arbitral tribunal.

35 Date of award

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

Russian regulations for arbitral tribunals provide the following time limits:

- unless agreed otherwise, either party (with due notification of the other party), within 10 days from the date of delivery of the award, is entitled to refer to the arbitral tribunal with the application on adoption of the additional award in respect of the requirements to be reflected in the award. This application shall be examined by the arbitrators within 10 days after its receipt;
- unless agreed otherwise, either party (with due notification of the other party), within 10 days from the date of delivery of the award, is entitled to refer to the arbitral tribunal with the application on commenting on the award. This application shall be examined by the arbitrators within 10 days after its receipt;
- the tribunal, on its own initiative or at the request of either party is entitled to correct calculation errors, misprints, etc, in the adopted award;

All the above-mentioned points shall also be applicable to the Regu-

lation on International Commercial Arbitral Tribunals; however, the terms indicated shall be extended to 30 days. The international commercial arbitral tribunal in the case of necessity can extend the terms even more.

Either party is entitled to file a petition on cancellation of the award within three months from the time of the delivery of the award to the mentioned party.

36 Types of awards

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

If the Russian law is interpreted consistently it can be concluded that the term 'arbitral award' shall be determined as the final award of the arbitrators on the merits of the case, in other words, the conclusion on recovery or on refusal to grant the recovery that was claimed within the arbitral proceedings. In cases of making conclusions on any procedural issues the term 'decision of the arbitral tribunal' is usually used. The decision is practically made in the case of termination of the arbitral proceedings if there is a failure to render the award on the merit of the case or for execution of the decisions on procedural issues.

37 Termination of proceedings

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

The arbitral proceedings are terminated by the making the final award or by issuing a resolution. The resolution on the termination of the proceedings is issued by the arbitral tribunal in the following cases:

- the claimant refuses his or her claims;
- the parties agree on the termination of the process; or
- the arbitral tribunal decides that the proceedings, due to reasons, have become unreasonable or useless.

38 Cost allocation and recovery

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

Unless the parties agree otherwise the cost allocation within the arbitral proceedings is performed in proportion to the satisfied and dismissed claims. The cost allocation is reflected in the award or decision of the arbitral tribunal. The party that has incurred additional costs within the proceedings may require their recovery from the other party within the arbitral proceedings, namely the representative's fee and other expenses connected to the arbitral proceedings. However, the arbitral tribunal is entitled to recover from either party extra expenses caused by the inexpedient and unfair actions of the other party, including the actions caused by unreasonable protraction of the case.

39 Interest

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

There are no such rules under Russian law.

Proceedings subsequent to issuance of award

40 Interpretation and correction of awards

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

Unless agreed otherwise, either party (with due notification of the other party), within 10 days from the date of delivery of the award, is entitled to refer to the arbitral tribunal with the application on interpretation of the award. This application shall be examined by the arbitrators within 10 days after its receipt.

The tribunal on its own initiative or at the request of either party is entitled to correct calculation errors, misprints, etc, in the adopted award.

All above-mentioned points are also applicable to the Regulation on International Commercial Arbitral Tribunals; however, the terms indicated shall be extended to 30 days. In the case of necessity, the international commercial arbitral tribunal can further extend the terms.

41 Challenge of awards

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

Unless the parties agreed that the arbitral award shall be final for them, either party is entitled to challenge the award within three months from the date of receipt of the arbitral award. The award can be set aside by the state, civil or commercial court (subject to the matter of the case) acting in the territory where the arbitral award was adopted.

The arbitral award can be set aside in the following cases:

- the applicant proves that:
  - the arbitration agreement is invalid;
  - the arbitral award is adopted for the dispute not provided for by the arbitration agreement;
  - composition of the arbitrators or the arbitral proceedings do not comply with the legal requirements;
  - the party-defendant within the proceedings was not duly notified on the election of the arbitrators or on the time and place of the proceedings and therefore was not able to provide its own explanations; or
- the arbitral tribunal stated that:
  - the dispute considered by the arbitral tribunal shall not be the subject of the arbitral proceedings; or
  - the award of the arbitral tribunal breaks the fundamental principals of the Russian law.

The application on challenge of the award shall be examined by a single judge within one month in the case of state civil proceedings and within three months in the case of state commercial proceedings.

42 Levels of appeal

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

The appeal system in this case consists of only one level. The application on challenge of the award is examined by a single judge within one month in the case of state civil proceedings and within three months in the case of state commercial proceedings. This application costs the same as the application for the delivery of an enforcement order.

43 Recognition and enforcement

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

According to the legal provisions it is expected that the awards of the arbitral tribunals shall be executed by the parties voluntarily. In the case that the award is not executed by either party within the provided term it shall be enforced through the domestic court (civil or commercial court, depending on the matter of the case). First, the party waiting for the legal execution of the award shall file an application to the state court for the issue of an enforcement order.

This application shall be filed within three years from the time of the expiration of the term for voluntary execution of the award. The application is examined by the sole judge within one month (three months in the case of foreign award) from the time of the delivery of the application. As a result of the examination, there is either the issuance of the enforcement order or a refusal to issue the enforcement order. By examining the award the judge is not entitled to study the facts established by the arbitral tribunal or to re-evaluate the award on the merits.

The state court shall refuse to issue the enforcement order in the following cases:

- the losing party proves that:
  - the arbitration agreement is invalid;
  - the arbitral award is adopted for the dispute not provided for by the arbitration agreement;
  - composition of the arbitrators or the arbitral proceedings do not comply with the legal requirements; and
  - the party-defendant within the proceedings was not duly notified on the election of the arbitrators or on the time and place of the proceedings and therefore was not able to provide its own explanations; and
- the arbitral tribunal stated that:
  - the dispute considered by the arbitral tribunal shall not be the subject of the arbitral proceedings; and
  - the award of the arbitral tribunal breaks the fundamental principals of Russian law.

44 Enforcement of foreign awards

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

The Russian Arbitration Code provides for application for recognition and enforcement of a foreign arbitration award to be filed with an arbitral court at the place of the debtor's domicile or, if unknown, at the place where the debtor's assets are located. Unfortunately, the law does not clarify what to do if the debtor's domicile is abroad. If such is the case, in some instances courts have denied enforcement because the law does not stipulate which court has jurisdiction.

Arbitral awards irrespective of where (in what country) they were adopted, are recognised as obligatory and are enforced subject to the written petition thereon. The procedure for enforcement of foreign awards is almost the same as provided for domestic awards. However, the following grounds for refusal in issuing an enforcement order differ slightly from those mentioned above:

- the losing party proves that:
  - either party in the arbitration agreement suffers a disability;
  - the arbitral agreement is invalid under the applicable law;
  - the party-defendant within the proceedings was not duly notified on the election of the arbitrators or on the time and place of the proceedings and therefore was not able to provide its own explanations;
  - the arbitral award was adopted for a dispute not provided for by the arbitration agreement;
  - composition of the arbitrators or the arbitral proceedings do not comply with the legal requirements;
  - the award is not obligatory for the parties, was cancelled; or
  - its enforcement was halted in the country of its adoption; or
- the court stated that:
  - the dispute considered by the arbitral tribunal shall not be the subject of the arbitral proceedings; or
  - the recognition and enforcement of the award is against the public policy of the Russian Federation.

Update and trends

One of the most important trends is a more detailed regulation of precisely what disputes are arbitrable. The recent Decree No. 10-P of the Constitutional Court of the RF of 26 May 2011 is seen as expanding the scope of arbitrable disputes to civil law matters relating to rights to immovable property situated or registered in Russia.

Another important trend, exemplified by a recent remarkable case, which was pending before the Presidium of the Supreme Arbitrazh Court (Ruling of the Supreme Arbitrazh Court No. 9899/09 of 11 September 2009), is a narrower application of the public policy concept as grounds for refusing the recognition and enforcement of arbitral awards and restricting Russian courts from reconsidering the tribunal's findings on the issue of the validity of a contract. The Presidium of the Supreme Arbitrazh Court has also suspended proceedings until the Swedish Svea Court of Appeal considers an application for setting the award aside.

Further trends are cases where Russian courts granted interim relief in support of arbitration (eg, Decree No. KG-A40/17466-10 of the Federal Arbitrazh Court of the Moscow District of 19 January 2011).

A Law on Mediation was adopted in 2010 and entered into force on 1 January 2011. The Law is considered to be a further step in the development of alternative dispute resolutions in Russia.

In consequence, a new institution of intermediary (mediation) appears in Russian dispute resolution practice. The 2010 Law was adopted to create some legal conditions for the application of a mediation procedure in the Russian Federation with the role of a mediator being to assist with the development of partner business relations, and to form business turnover ethics and harmonise social relations.

45 Cost of enforcement

What costs are incurred in enforcing awards?

Within the procedure of enforcement the applicant shall pay only the state fee for issuance of the enforcement order in the amount of €50.

Other

46 Judicial system influence

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

There are no special provisions for discovery and production of documents in Russia. Witness testimony is relatively uncommon in Russian arbitrations as opposed to written evidence. Oral testimony is usually used in civil court procedures. Witnesses are heard without being sworn in before the tribunal.

47 Regulation of activities

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

At present, Russia operates up to 700 arbitral tribunals on a permanent basis, which are not part of the judicial system of the Russian state, and adjudicate a type of alternative dispute resolution. A dispute may be referred to arbitration only upon an agreement between the parties on the arbitration procedure.

Within the meaning of paragraph 2 of article 3 of the FL-102 On Arbitral Tribunals in the Russian Federation, any legal entity may establish a permanent court of arbitration.

In addition to permanent arbitral tribunals, the legislation provides for the establishment of an arbitral tribunal for the resolution of a particular dispute.

Curiously, the law does not impose specific requirements on the qualification of the arbitrator. According to paragraph 2 of article 8 FZ-102 On Arbitral Tribunals in the Russian Federation, only an

arbitrator who is resolving a dispute alone must have a law degree. In the case of the collective dispute resolution, only the chairman of the arbitral tribunal should have a law degree. That is, the other two judges need not be professional lawyers.

It should be noted that the arbitrator is not a judge, in the sense of the Federal Law On the Status of Judges in the Russian Federation, and the arbitral tribunal, in accordance with the law, cannot dispense justice. Therefore, the arbitrator cannot be subject to criminal liability under article 305 of the Criminal Code, Knowingly Giving Unlawful Judgment, Decision or other Judicial Act.

The advantages of arbitration are its fairness and independence from political influence, as well as confidentiality, efficiency, and immediate entry into force. This encompasses, perhaps, all of its advantages.

The negative side, in our opinion, shows certain disadvantages:

- challenging the decision of the arbitral tribunal is sometimes impossible, if the parties have agreed that the arbitration decision cannot challenged and is final (article 40 of the FZ-102, On Arbitral Tribunals in the Russian Federation);
- the three-month period for filing an application for annulment of the arbitral tribunal is preclusive; and
- the arbitrators or organisations that operate in the arbitral tribunals do not bear any responsibility for deliberately incorrect or erroneous decisions.

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