

World Link for Law- International Commercial Arbitration Group

THE RUSSIAN FEDERATION

Questionnaire

**Please provide your name and your jurisdiction*

***Please provide quick and specific answers*

Background

- 1 What is the prevailing attitude towards arbitration, in general, in your jurisdiction? How much does represent arbitration versus litigation (court of law)?

The attitude towards arbitration is rather controversial in Russia. The prevailing opinion is that it is more efficient than litigation in case disputes involving foreign legal entities and specific fields of jurisprudence related to finances, stock markets, economy, production, and technical branches. At the same time, arbitration is more expensive. According to the statistics, there are approximately 2,000 private arbitration courts and around 115 state commercial courts in Russia.

- 2 What are the main sectors for arbitration (*e.g., real estate, distribution, transport, others*)?

Main sectors are as follows: supply, provision of works and services, construction contracts, credit operations, lease and intellectual property.

- 3 Does your domestic legislation regulate arbitration (ad-hoc, institutional or/and international arbitration), including the procedure for enforcement of awards for local and foreign arbitral disputes?

Yes, domestic legislation regulates the following institutions:

- International Commercial Arbitration (under the Law No. 5338-1 of the Russian Federation dated July 7, 1993 (last amended on December 3, 2008) (hereinafter “**the Law on ICA**”);
- Ad-hoc, private arbitration courts (under the Federal Law No.102-FZ dated July 24, 2002 (last amended November 21, 2011) (hereinafter “**the Law on Private Arbitration Courts**”);
- Enforcement of awards for local and foreign arbitral disputes (under the Arbitration Procedural Code of the Russian Federation No.95-FZ dated July 24, 2002 (last amended November 3, 2013).

- 4 Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)? Since when has the Convention been in force?

Yes, Russia is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), which was signed by the Russian Federation on August 24, 1960, entered into force on November 22, 1960.

It shall be also noted that Russia is a contracting state to the European convention on Foreign Trade Arbitration (1961), ratified on June 27, 1962.

- 5 Do bilateral investment treaties exist with other countries?

The Russian Federation Government has signed bilateral investment treaties with the following countries:

- Finland (signed in 1989, entered into force on May 13, 1999);
- Belgium and Luxemburg (1989, entered into force on August 18, 1991);
- United Kingdom and Northern Ireland (1989, entered into force on July 3, 1991);
- France (1989, entered into force on July 17, 1991);
- Canada (1989, entered into force on June 27, 1991);
- Austria (1989, entered into force on September 1, 1991);
- Spain (1990, entered into force on November 28, 1991);
- Switzerland (1990, entered into force on August 26, 1991);
- Korea republic (1990, entered into force on July 10, 1991);
- Italy (1996, entered into force on July 7, 1997);
- Turkey (2000, entered into force on May 15, 2000);
- Kazakhstan (1998, entered into force on February 11, 2000);
- China (2006, entered into force on May 1, 2009);
- Hashemite Kingdom of Jordan (2007, entered into force on June 17, 2009).

- 6 What is (are) the most prominent arbitral institution(s) situated in your jurisdiction? *(Please restrict your answer to institutions physically based in your jurisdiction and include name, address, homepage)*

International Commercial Arbitration Court at the Russian Federation Chamber of Commerce and Industry is the leading arbitration court in Russia that deals with resolving disputes of international character.

Address: 109012, Moscow, ulitsa Iliyinka 6.

Homepage: <http://mkas.tpprf.ru/en/>

- 7 Is your judicial system a common-law or a continental one? What else influences are foreseen with regard to arbitration?

Russian judicial system is a continental one. In general, political and economic situation in the state influences on arbitration.

Arbitration agreement

- 8 Under your country legal system are there any types of disputes that are not arbitrable? *(e.g., IP, antitrust, competition law, securities transactions, intra-company disputes)*

Due to the public nature, disputes relating to the following spheres usually are not arbitrable: antitrust regulation, bankruptcy, protection of patent rights, securities market. Please note, direct prohibition to use arbitration is stated only with respect to bankruptcy cases under the RF Federal Law on Bankruptcy, other disputes could be transferred for consideration to international arbitration courts.

Constitution of the arbitral tribunal

- 9 Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration when appointing/replacing an arbitrator?

In August 2010 the “Russian version” of the Guidelines – Rules on Impartiality and Independence of the Arbitrators – were adopted by the Chamber of Commerce and Industry of

the Russian Federation (CCI). Once the Rules were applied for the appointment of the President of the CCI. Otherwise, the Rules are expected to serve as a “manual” for arbitrators and a guidance for the arbitral institutions (inter alia when serving as appointing authorities), as well as, where appropriate, for the national courts of the Russian Federation in annulment and recognition, enforcement proceedings.

Jurisdiction

10 How is the competence of an arbitral tribunal decided? Is the principle “competence-competence” applied?

Yes, the arbitration courts in Russia are also entitled to consider the question of its own competence without waiting for a relevant decision from the state court. This principle is stated in the Law on ICA and Law on Private Arbitration Courts.

Arbitral proceedings

11 How are arbitral proceedings initiated? Which is considered to be the first step inside of an arbitration procedure?

Arbitral proceedings are initiated upon a lawsuit filed by any party. Selecting arbitrators is the first step inside the arbitration procedure.

12 Which are essential evidences used in arbitration under your country practice? (*witnesses; experts inspection by the arbitral tribunal; is there a tendency to apply or seek guidance from the IBA Rules on the Taking of Evidence in International Arbitration?*); do the courts of law play any role in administrating the evidences (e.g., interim measures)?

The evidence is considered by the arbitration court in accordance with the chosen substantial law applicable to the parties of the dispute. As a rule, written (documentary) evidence is more preferable. Courts of law consider applications for injunctive relief submitted by one party within a case (in some cases upon initiative of the arbitration court).

Awards

13 Do arbitral awards require the unanimity of the arbitrators or not? Is the dissenting opinion imposed by law?

Arbitral awards do not require the unanimity of the arbitrators; it shall be made by the majority of the arbitrators. Dissenting opinion of the arbitrator is prescribed only by the Law on Private Arbitration Courts and is to append to the arbitral award. The Law on ICA does not contain any provisions with respect to dissenting opinion of the arbitrator.

Proceedings subsequent to issuance of award

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

Pursuant to the Law on ICA arbitral awards could be challenged only via submission of the set aside motion and could be set aside if:

1) Applicant of this motion proves that:

- ✓ any party of the arbitration agreement was legally incapable or if this agreement is invalid under the law; or

- ✓ this party was not duly notified of the appointment of arbitrators or arbitration proceedings or upon other reasons could not give any explanations; or
- ✓ arbitral award made is not in compliance with the arbitration agreement (e.g. dispute is not covered by this agreement); or
- ✓ arbitral panel or arbitration procedure did not correspond to the agreement of the parties.

2) Arbitration court defines that subject matter of a dispute could not be subject of the arbitration proceedings or contradicts to the public order of the Russian Federation.

15 What requirements exist for recognition and enforcement of domestic and foreign awards? If your state is an EU member state, please specify the legal regime applying in this case.

Regardless of the country of where an arbitral award is made, it shall be recognized as binding and could be enforced upon submission of the written application to the competent court. In order to enforce an award the party shall submit duly certified original arbitral award or duly certified copy of it and original arbitration agreement or duly certified copy of it. If language of the award and agreement is other than Russian, the party shall submit duly certified translation of it into Russian language.

16 What costs are incurred in enforcing awards?

As per the Russian Tax Code state fee for applying to the competent court to enforce award is 2,000 RUR (approx. 34.5 EUR, on November 26, 2014 the official rate is 1 EUR=57.9 RUR).

However, except the state fee the party may bear additional expenses related to certification or/and translation of the documents when necessary.

Investment treaty arbitration

17 Indicate the multilateral investment treaties to which your state is a party (e.g., *ICSID Convention*, *Energy Charter Treaty*, *CAFTA-DR*, *NAFTA*) also specifying whether they are in force; which is the state agency/agencies involved in foreign investment?

- 1) Treaty on Cooperation in the field of investment activities (1993) entered into force on November 21, 1994 (was in force until April 3, 2002);
- 2) The Convention Establishing the Multilateral Investment Guarantee Agency (“Seoul Convention”) (1985) entered into force on December 29, 1992;
- 3) Convention on the Settlement of Investment Disputes between States and Nationals of other States (“Washington Convention”) signed by the Russian Federation on June 16, 1992, did not enter into force (was not ratified);
- 4) General Agreement On Trade in Services (GATS), entered into force for Russia on August 22, 2012;
- 5) Agreement On Trade-Related Investment Measures (TRIMs), entered into force for Russia on August 22, 2012;
- 6) General Agreement On Tariffs And Trade (GATT) (1994) entered into force for Russia on August 22, 2012;

7) The Energy Charter Treaty (1991) signed by the Russian Federation and provisionally applied until October 18, 2009 inclusively.

18 What are the most commonly used dispute resolution options for investment disputes between foreign investors and your state (*eg, ICSID, UNCITRAL*)?

ICSID is the most commonly used dispute resolution option for investment disputes in Russia.

Others

19 Give any other comment/detail regarding arbitration in your country.

The majority of legal entities prefer to settle domestic disputes at the state commercial courts rather than private arbitration courts due to its cost effectiveness, credibility and easier enforcement procedure.

20 Indicate if you deploy any particular activity related to arbitration (acting as lawyer, acting as arbitrator, publications, academic activities, member of arbitration organisations etc.).

As for the activities related to arbitration, representatives of our Law firm are acting as lawyers and from time to time work on publications regarding arbitration issues.

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