

# ICC requests Russian Supreme Court to consider validity of its standard arbitration clause

by Maxim Kulkov (Managing Partner), Sergey Lysov (Associate), KK&P

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In *Case No. A40-176466/2017*, the Russian Supreme Court ruled that mere reference to the ICC standard arbitration clause is not enough for the survival of an arbitration agreement. The ICC has now filed a request with the Supreme Court to clarify what the Supreme Court believes is wrong with its arbitration clause.

The International Chamber of Commerce (ICC) has filed a request with the Russian Supreme Court to clarify why the court is not satisfied with the ICC standard arbitration clause (the text of the request is not available).

On 25 April 2018, the Commercial Court of the Moscow Region dismissed an application for enforcement of an ICC award and ruled that reference to an institution in an arbitration agreement is not enough to confer jurisdiction on a tribunal operating under that institution's rules. The court also denied recognition and enforcement for violation of public order. For further details, see *Legal update, Reference to ICC Rules not enough for survival of arbitration agreement*.

On 26 September 2018, the Russian Supreme Court refused to reconsider the lower court's approach. The Supreme Court agreed with all the arguments raised against enforcement, including the invalidity of the ICC standard arbitration clause (the lower courts had found that the ICC standard arbitration clause does not identify the arbitration institution).

Even though the uncertainty of the arbitration clause was not the only reason to deny enforcement (the ruling also mentions violation of public policy by preferential satisfaction of claim), the Supreme Court was expected to partially correct the lower court's ruling. However, that did not happen, and accordingly the ICC has raised its request.

Hopefully, the Supreme Court will not disregard the request and will clarify its position regarding uncertainty of the standard arbitration clause. Indeed, the situation needs to be clarified, because Russian courts have, to date, successfully enforced awards based on the standard ICC clause.

In the meantime, parties should be extremely careful when drafting arbitration clauses. The best approach would be to indicate the name of the institute which will administer the case in the arbitration clause.

Case: *Case No. A-40-176466/2017*.

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