

Supreme Court of Russian Federation adopts new Plenum Resolution clarifying the functions of state courts in relation to arbitration

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On 10 December 2019, the Plenum of the Supreme Court of the Russian Federation adopted Resolution No. 53 "On performing of assistance and control functions in relation to domestic arbitration and international commercial arbitration by the courts of the Russian Federation".

The Plenum of the Supreme Court of the Russian Federation (SC) has adopted Resolution No. 53 "*On performing of assistance and control functions in relation to domestic arbitration and international commercial arbitration by the courts of the Russian Federation*" (Resolution). The Resolution clarifies certain issues in relation to the recognition, enforcement and challenges of arbitral awards, as well as the competence of arbitral tribunals and interpretation of arbitration clauses.

Among these innovations, the Resolution sets forth the presumption that, unless agreed otherwise, arbitration clauses may cover all types of contractual and non-contractual claims (such as damages and unjust enrichment).

The Resolution also clarifies the application of arbitration clauses in relation to non-signatories, stating that arbitration clauses concluded by a party can be binding on its successors, both in the case of universal and singular succession. Moreover, according to the Resolution, if the arbitration clause is included into the charter of a company, it is binding for the new shareholders as well.

In accordance with the Resolution, if the arbitration clause is not clear about the arbitral institution or arbitration rules applicable to the proceedings, such uncertainty does not lead to unenforceability of the clause. To the contrary, the real intention of the parties should be established. The same approach is also applicable to the validity of the arbitration clause.

Another important point relates to the characteristics of a valid ad hoc arbitration. According to the Resolution, ad hoc arbitration would not be considered valid and any resulting arbitral award would be unenforceable if the tribunal was constituted as ad hoc in circumstances where the arbitration actually had characteristics of an institutional arbitration, such as rules of arbitration.

In general, the Resolution introduces a moderate pro-arbitration approach. Nevertheless, a number of important issues, such as rules on corporate disputes and parallel proceedings in arbitration and the state courts, have not been covered so far.

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