

Commercial Court of Moscow rules in favour of enforceability of arbitration agreement providing for resolution of dispute by "Swiss International Arbitration Court"

by *Practical Law Arbitration*, with *KK&P*

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In *Case No. A40-150562/2020*, the Commercial Court of Moscow relied on a pro-enforceability principle in finding that, by referencing "the Swiss International Arbitration Court" in their arbitration agreement, the parties intended to refer to the ICC International Court of Arbitration.

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Claimant, spice manufacturer VAN HEES GmbH, filed a claim in the Commercial Court of Moscow against Russian LLC "Stolitsa Vurst" (respondent) under a supply contract.

The contract provided for resolution of disputes by "the Swiss International Arbitration Court in accordance with Swiss law". The claimant justified the submission of a claim to a Russian state court on the basis that none of the institutions operating in Switzerland is called "the Swiss International Arbitration Court".

The respondent however contested the jurisdiction of the Commercial Court of Moscow, insisting on resolution of the case by arbitration. To support its argument on enforceability of the arbitration agreement, the respondent applied to the Russian Ministry of Foreign Affairs with a request for "assistance in the identification of a judicial authority in Switzerland".

In its reply, the Ministry of Foreign Affairs stated that the judicial body referred to in the contract as "the Swiss International Court of Arbitration" is the ICC International Court of Arbitration (the grounds for this conclusion do not expressly follow from the text of the judgment).

The court, referring to the Ministry's reply, dismissed the claim without a hearing on the merits. The court indicated that under article 7(8) of the Russian Arbitration Law and article 7(9) of the Law on International Commercial Arbitration, any uncertainty in interpretation of an arbitration clause shall be interpreted in favour of the arbitration agreement's validity and enforceability.

The court also indicated that if there were any objections regarding ICC jurisdiction, such objections should be resolved directly by the ICC arbitral tribunal in accordance with the ICC Rules.

The pro-arbitration approach demonstrated by the Commercial Court of Moscow deserves credit in comparison, for example, to the widely discussed *Dredging Maritime Management v AO "Inzhtransstroj"* case where the Supreme Court in 2018 did not recognise an ICC standard arbitration agreement (see [Legal update, ICC requests Russian Supreme Court to consider validity of its standard arbitration clause](#)). This approach will hopefully be shared by higher courts in case of appeal.

Case: *Case No. A40-150562/2020 (5 February 2021)* (Commercial Court of Moscow).

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