Amendments to Russian Arbitration Law

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Articles | Law stated as at 29-May-2019 | Russian Federation

This Article explains the significant amendments made to the Russian Arbitration Law, which came into force on 29 March 2019.

Overview

On 29 March 2019, new amendments to the Russian Arbitration Law entered into force (Federal Law dated 27 December 2018 No. 531-FZ). Several significant amendments were introduced, including:

- Modifications to the procedure for establishing and registering Permanent Arbitral Institutions.
- Arbitrability of corporate and procurement disputes.
- Restrictions over *ad hoc* arbitration activity.

A review of the key amendments is presented below.

Permanent Arbitral Institutions (PAI)

Before the arbitration reform there were nearly a thousand arbitral institutions in Russia, which ceased to exist on 1 September 2017 (except the International Commercial Arbitration Court (ICAC) and the Maritime Arbitration Commission (MAC) under the Chamber of Commerce and Industry of the Russian Federation). Some institutions attempted to obtain a license, but, to date, only one foreign institution (Hong Kong International Arbitration Centre (HKIAC)) and three Russian institutions (The Arbitration Center at The Russian Union of Industrialists and Entrepreneurs (RSPP), the Russian Arbitration Center, Sports Arbitration Chamber) succeeded.

The new Arbitration Law adopted in 2016 introduced a new system for the establishment of PAI, consisting of two steps:

- The Council for the Development of Arbitration (Council) considers the application to establish a PAI.
- Government approves the application upon the recommendation of the Council.

See *Article, Russian Arbitration Law 2016: key issues* for more details.

The procedure has been modified so that now, the Ministry of Justice (instead of the Government) will be responsible for approving applications.

Also, now the list of documents required to be attached to the application is stipulated in the Arbitration Law, instead of in various disparate Ministry of Justice Regulations.

Foreign arbitral institutions

The new Arbitration Law in 2016 provided that prominent foreign arbitral institutions, that are recognised worldwide as reputable institutions, also have the right to apply to the Council for a license to administer arbitrations with a Russian seat (Article 44(12), Arbitration Law).

The amendments have simplified this procedure: now foreign arbitral institutions are no longer required to establish a branch (presence) if they are not intending to administer domestic arbitration disputes.

Notably, the Council recently issued guidelines containing the criteria to be applied to determine whether an international arbitral institution has a widely recognised reputation. The key criteria are:

- Presence in recognised ratings of international arbitration institutions (that is, the recommended list of the International Bar Association, "White List" (White List) Global Arbitration Review Guide to Regional Arbitration).
- Number of cases.
- Geographical variety of parties (including information on Russian parties).
- Positive case law on recognition and enforcement of arbitral awards in various jurisdictions.

Although the new requirements were only recently enacted, there is already a positive example of the application of the new requirements: on 4 April 2019 the Council recommended that the Ministry of Justice grant a license to the HKIAC.

Arbitrability of corporate disputes

Initially, the law provided that in order to administer corporate disputes, a PAI must adopt special rules which should be deposited with the Ministry of Justice. The law also required the approval of the arbitration agreement by all the shareholders.

See *Article, Russian Arbitration Law 2016: key issues* for more details.

The new amendments have introduced exceptions to this rule. Special rules are no longer required for the following disputes:

- Disputes regarding the ownership of shares (that is, Sale and Purchase Agreements (SPA) disputes).
- Disputes arising from shareholders' agreements.

Therefore, Russian PAI or foreign arbitral institutions which obtain PAI status (such as the HKIAC) have the right to administer disputes arising from SPAs and shareholder agreements without adopting special rules on corporate disputes. The arbitration agreement in this case should exist only between the parties to the relevant agreement.

Arbitrability of procurement disputes

The issue of arbitrability of procurement disputes with state-owned companies has frequently come before the Russian courts with varying outcomes. Finally, in July 2018, the Supreme Court issued a judgment holding that the non-arbitrability of public procurement contracts does not affect regular procurements made by legal entities (even state-owned entities).

See *Legal updates, Russian procurement disputes with state-owned companies are arbitrable (Russian Supreme Court)* and *Supreme Court of Russia clarifies arbitrability of procurement disputes* for more details.

The new amendments expressly stipulate that procurement disputes are arbitrable if two criteria are met:

- The dispute is administered by a PAI.
- The seat of arbitration is Russia.

Ad hoc arbitration

The Arbitration Law drew a line between PAI and *ad hoc* arbitration by imposing certain restrictions on the latter.

The new amendments establish limitations for *ad hoc* arbitration: now individuals or organisations acting without PAI status are forbidden from administering disputes (including fee collection). If the ban is violated, an *ad hoc* award will not be enforceable.

The amendments aim to prevent organisations without a license, from creating a fictional arbitral institution using *ad hoc* provisions. The amendments also prohibit advertisement of *ad hoc* activity.

Comment

The new amendments, such as the simplification of the registration procedure for foreign arbitral institutions and the expansion of the list of arbitrable disputes will hopefully have positive impact on the development of arbitration in Russia.

Meanwhile restrictions on *ad hoc* arbitration demonstrate the Russian Government's intention to limit arbitration to permanent arbitral institutions. This was, and remains, the key purpose of arbitration reform in Russia and time will show whether the new system justifies itself.

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