

# Reference to ICC Rules not enough for survival of arbitration agreement (Commercial Court Moscow region)

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In *Case No. A40-176466/2017*, the Commercial Court of the Moscow Region ruled that mere reference to the ICC Rules is not enough for the survival of an arbitration agreement.

The Commercial Court of the Moscow Region recently dismissed an application for enforcement of an ICC award on the basis that reference to an institution in the arbitration agreement is not enough to confer jurisdiction on a tribunal operating under that institution's rules.

The arbitration agreement between Dredging and Maritime Management SA (Dredging) and AO "Inzhtransstroj" (Inzhtransstroj) was formulated as follows:

"Any dispute should be finally resolved in international arbitration. Unless otherwise agreed by the parties, the dispute should be finally resolved in accordance with ICC Arbitration Rules".

After the ICC accepted the case and the tribunal rendered an award in Dredging's favour, Dredging applied to the Commercial Court of Moscow seeking recognition and enforcement of the award. However, the court dismissed the application reasoning that it violated Russian public policy and that the ICC tribunal did not have jurisdiction to hear the case.

The court found, among other things, that the language of the arbitration clause did not allow the court to determine the specific arbitral institution competent to hear the case. Therefore, the tribunal acting under the ICC Rules did not have jurisdiction.

Although, it is widely accepted that reference to the arbitration rules of certain arbitral institutions will be enough to confirm jurisdiction to administer a case, the Commercial Court of the Moscow Region (a higher instance court), rejected Dredging's appeal and agreed with the first instance court's reasoning, including that the arbitration clause was too uncertain.

If Dredging decides to appeal to the Supreme Court, there is a chance that this approach would be overturned. In any event, parties who may need to enforce their awards in Russia should be extremely careful when drafting their arbitration clauses. The best approach would be to indicate the full name of the administering institution in the arbitration clause.

It is notable that recent decisions of the Russian courts indicate a negative trend in accordance with which parties are required to specify an arbitral institution to administer the case, or to act as appointing authority in the arbitration agreement. For further discussion, see [Legal update, Arbitration clause providing for ad hoc arbitration invalid where arbitral institution not specified \(Russian Ninth Commercial Court of Appeal\)](#).

Case: *Case No. A40-176466/2017 dated 25 April 2018.*

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