

Russian court rules that party's affiliation to arbitral institution not a ground to refuse enforcement of award (Commercial Court of the Moscow Circuit)

by *Practical Law Arbitration*, with *Kulkov, Kolotilov & Partners*

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In *Case No A40-70269/2023*, the Commercial Court of the Moscow Circuit considered whether the fact that one of the parties to an arbitration was affiliated to the arbitral institution, under whose rules the proceeding was conducted, constituted a reason to refuse enforcement of the resulting award. The court held it did not, finding that the party resisting enforcement had agreed to the forum and not raised any objection during the arbitration.

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A Russian court has held that the fact a party to an arbitration was affiliated to the administering institution did not constitute a reason to refuse to enforce the award.

A dispute arose between the Center for Procurement and Logistics of Helicopter Industry LLC (CPLHI) and Most-Satellite Systems LLC (MSS). In accordance with the parties' agreement, the dispute was referred to arbitration under the rules of SoyuzMashRussia.

In March 2023, the arbitral tribunal rendered its award, finding in favour of CPLHI, which then applied to the Commercial Court of Moscow to enforce the award. MSS objected and applied to set aside the award because, among other things, CPLHI was affiliated to the SoyuzMashRussia.

The court rejected the application and MSS appealed to the Commercial Court of the Moscow Circuit (Circuit Court). In its appeal, MSS outlined that the sole founder of CPLHI is Russian Helicopters JSC, whose CEO was also CEO of, and sat on the management bodies of, SoyuzMashRussia.

The Circuit Court rejected MSS's appeal, holding that an affiliation between a party to an arbitration and the arbitral institution administering the proceeding does not constitute a ground to set aside an award, or on which to refuse enforcement. The Circuit Court noted that MSS had voluntarily agreed to arbitrate at the forum SoyuzMashRussia when it entered into the arbitration agreement and had not raised any objection to the competence of the arbitral tribunal during the arbitral proceedings. The Circuit Court also expressed the view that an arbitration institution cannot be partial or impartial, and a party's affiliation with the administering institution does not mean there is any affiliation with the arbitrators appointed to decide the dispute.

This position was also voiced by the Russian Supreme Court (see *Poliplast v Novosibirsk Aircraft Repair Plant JSC, Case No #45-20132/2021*). The emerging trend of Russian courts ignoring the concept of objective impartiality as it relates to arbitral institutions represents a departure from the 2016 arbitration reform, which aimed to eliminate biased "pocket" arbitrations (where arbitral institutions were created by large companies, principally to deal with cases involving the founding companies and their numerous subsidiaries) and adopted measures to prevent their formation.

Case: [Case No A40-70269/2023 \(4 April 2024\)](#).

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